

**BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING**

1999 N. AMIDON, SUITE 350 • WICHITA, KANSAS 67203
Tel (316) 832-9906 • Fax (316) 832-9679

In the Matter of)
)
Johnathan M. Robinson)
 Cert. No. 28851)

Case No. 2017-0120

ORDER

Now, on this 13th day of April 2018, the above-referenced matter comes for hearing by the Kansas Commission on Peace Officers' Standards and Training (the Commission). Under the Kansas Administrative Procedure Act, the Commission has delegated its authority to serve as the Presiding Officer in the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Richard Powell, Undersheriff of Sedgwick County Sheriff's Office; Herman Jones, Sheriff of Shawnee County Sheriff's Office; and Bradley Schoen, Director of Riley County Police Department.

Johnathan M. Robinson appeared in person, pro se. The Commission was represented by Michelle Meier, Special Assistant Attorney General, who serves as its litigation counsel. Also present was Janet Arndt, Assistant Attorney General, who serves as counsel to the Hearing Panel in this matter.

Based upon its records and the evidence presented at the hearing, the Commission makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

Procedural History

1. Johnathan M. Robinson (Robinson) received his certification as a law enforcement officer on September 30, 2016. He obtained employment as a deputy with the Woodson County Sheriff's Office.

2. The Commission received a Notice of Termination form signed by Wayne Faulkner, Sheriff of Woodson County. He indicated on the Notice that Robinson's employment had been terminated because Robinson had made false statements regarding whether he had completed a report for an incident involving a woman from Texas. Based upon this Notice, the Commission initiated an investigation to determine whether Robinson had violated the Kansas Law Enforcement Training Act (KLETA).

3. After the investigation was completed, the Commission's Investigative Committee issued a Summary Order of Revocation. The Investigation Committee determined Robinson had committed the following violations of the KLETA: (1) engaged in unprofessional conduct by intentionally using a false or deceptive statement in an official document or official communication, (2) provided false information to the Commission during an investigation to determine an officer's continued suitability for law enforcement certification, and (3) failed to maintain the certification requirement of good moral character. Based upon these violations, the Investigative Committee revoked Robinson's certification as a law enforcement officer.

4. Robinson requested a hearing on the Summary Order of Revocation. The hearing was held on April 13, 2018. Robinson appeared at the hearing pro se. The Commission admitted Exhibits 1 through 7 and heard testimony as set forth below.

Hearing

5. On February 17, 2017, Robinson initiated a traffic stop and, after contact with the female driver from Texas, determined she was experiencing a medical problem. This incident was reported in Case No. 17-IN-044. That same day Robinson assisted an officer with the Yates Center Police Department involving a driver of a vehicle being arrested for possessing marijuana. This incident was reported in Case No. 17-IN-040.

6. On March 20, 2017, Sheriff Faulkner discussed with Robinson the Texas driver in Case No. 17-IN-044 and asked Robinson if he had completed his report on the incident. Robinson responded, "Yes."

7. On March 21, 2017, Sheriff Faulkner and Sergeant Jacob Morrison, who was Robinson's immediate supervisor, spoke with Robinson to discuss his reports. Sergeant Morrison described the beginning of this meeting as routine—discussing cases and Robinson's strengths and need to improve in other areas. Sheriff Faulkner asked Robinson if he had completed all of his reports. Robinson said, "Yes," except for a case involving a horse being shot and a case involving a dog being shot. Sheriff Faulkner again asked about his report for Case No. 17-IN-044. Robinson replied he had finished the report and placed it in the in box for Undersheriff Charles Bitler. Sheriff Faulkner asked Robinson for a copy of the report for Case No. 17-IN-044, but Robinson was not able to find it. Sheriff Faulkner then asked Robinson to retrieve the report from the Information Technologies Records Management Software (ITI) and print a copy of it. Robinson logged onto ITI, but could not find the report in Case No. 17-IN-044.

8. Sergeant Morrison went to the dispatch office to determine whether Robinson's report for Case No. 17-IN-044 had been filed there before it had been approved. Sergeant Morrison did not find the report in the dispatch office. Sheriff Faulkner told Robinson he wanted the report in Case No. 17-IN-044 completed by the end of his shift. Sheriff Faulkner later contacted Undersheriff Bitler and asked him if he

had received Robinson's report for Case No. 17-IN-044. Bitler did not recall receiving the report.

9. On March 22, 2017, the report for Case No. 17-IN-44, and two other reports were in Undersheriff Bitler's in box. Robinson told Sheriff Falkner and Undersheriff Bitler he had found his report for Case No. 17-IN-044 in Case No. 17-IN-040. Robinson explained he copied the report from Case No. 17-IN-040, pasted it into Case No. 17-IN-044, and then deleted it from Case No. 17-IN-040.

10. Shortly thereafter, Undersheriff Bitler remembered the computer software recorded changes in reports and called the ITI tech support. He learned a report could be deleted in the computer but it could not be deleted from the audit record, which shows the history of a case. An audit record lists the date and time of each entry, the type of modification, the activity that occurred, the user who made the modification, and the computer from which the modification was made. The audit record cannot be edited or deleted by an employee at the Woodson County Sheriff's Office. Only ITI was authorized to permanently delete information.

11. The ITI tech support showed Undersheriff Bitler how information could be deleted on a report but captured in an audit report by having Bitler sign into Case No. 17-IN-040. Undersheriff Bitler next deleted the last two lines Robinson typed in Case No. 17-IN-040, i.e., "Nothing Further At This Time, Deputy Johnathan M. Robinson W06." Undersheriff Bitler then re-entered those last two lines. An audit report was then ran for Case No. 17-IN-040 for the dates of March 21 and 22, 2017. These were the dates Robinson indicated he had copied the report from Case No. 17-IN-040, pasted it into Case No. 17-IN-044, and then deleted it from Case No. 17-IN-040.

12. The audit report showed Sergeant Morrison logged into Case No. 17-IN-040 on March 21, 2017, but did not make any changes. The audit report also recorded Undersheriff Bitler deleting the last two lines in Robinson's report on March 22, 2017, and then re-entering those last two lines on March 22, 2017. It did not show any activity by Robinson on either March 21 or 22, 2017. Based on this audit report, Undersheriff Bitler determined Robinson did not delete his report from Case No. 17-IN-040 as he had stated.

13. Undersheriff Bitler also had an audit report created for Case No. 17-IN-044. It showed Robinson made several entries onto his report for approximately two hours on the evening of March 21, 2017. On each occasion, Robinson added information to his prior entry. Undersheriff Bitler reported the results of the audit reports to Sheriff Faulkner.

14. On March 24, 2017, Sheriff Faulkner, Undersheriff Bitler, and Sergeant Morrison met with Robinson. Sheriff Faulkner asked Robinson to explain again how he found the report for Case No. 17-IN-044. Robinson said he found the report for Case No. 17-IN-044 in another case, Case No. 17-IN-040. He copied the report from Case No. 17-IN-040 and pasted it into Case No. 17-IN-044. Sheriff Faulkner asked Robinson if he was sure this was the process he used and Robinson responded, "Yes."

15. Undersheriff Bitler instructed Robinson to log onto his computer and find the report from which he deleted the information. Robinson could not find the report. Undersheriff Bitler told Robinson that he had talked to the ITI tech support who advised the report could not be permanently deleted by a user; rather, only ITI was authorized to permanently delete information from a case. Undersheriff Bitler also told Robinson that he had printed off the audit report for Case No. 17-IN-044 and it appeared that Robinson had typed his report, not copied and pasted it. He showed the printout of the audit reports to Robinson.

16. Robinson asked Sheriff Faulkner if Sergeant Morrison could leave the room, which he did. Robinson was silent for a few minutes. When asked if he had something to say, Robinson stated he had not done the report and he had lied because he did not want to look like "a fucking idiot." Robinson never mentioned using a flash drive for the report. Sheriff Faulkner terminated Robinson's employment with the Sheriff's Office because he had not been truthful in his statements about the report for Case No. 17-IN-044.

17. Because the audit reports covered only March 21 and 22, 2017, Undersheriff Bitler had audit reports created for Case No. 17-IN-040 and Case No. 17-IN-044 that did not include any restrictive dates. Those audit reports were faxed to him while the hearing was being conducted. The audit report for Case No. 17-IN-040 included the entries made from February 18, 2017, to March 22, 2017. The last entry made by Robinson occurred on February 22, 2017. The next entries were made by Sergeant Morrison on March 21, 2017, and by Undersheriff Bitler on March 22, 2017. Their entries were identical to those recorded in the prior audit report. The audit report for Case No. 17-IN-044 was identical to the prior audit report except that there were three additional pages related to Undersheriff Bitler's approval of the report on March 23, 2017.

18. Dave Thompson who is an investigator for the Commission was assigned to this case. Thompson received and reviewed documents and case reports from the Woodson County Sheriff's Office. He also reviewed the audio recordings that were taken when Robinson was interviewed by Sheriff Faulkner, Undersheriff Bitler, and Sergeant Morrison. Thompson then conducted an interview with Robinson on July 27, 2017.

19. At the interview with Thompson, Robinson stated he was experiencing personal issues that delayed him completing the report for Case No. 17-IN-044. When Sheriff Faulkner asked about the report, Robinson remembered typing it but could not find it. Robinson went home that evening and found the report on a flash drive. Robinson said he copied the report and pasted it from his flash drive into the ITI case. Robinson claimed he did not copy the report from one ITI case and paste it into another ITI case. Thompson then asked Robinson how Case No. 17-IN-040 was brought into the conversation. Robinson said he found demographic information in Case No. 17-IN-040 that belonged in Case No. 17-IN-044; so, he corrected Case No. 17-IN-044 and deleted the information from Case No. 17-IN-040. Robinson continued his claim that he copied and pasted a completed report and then later typed corrections.

20. When Thompson listened to the recording of Robinson's interview with Sheriff Faulkner, Undersheriff Bitler, and Sergeant Morrison, Robinson never mentioned he had used a flash drive. However, the recording ended when Sergeant Morrison left the interview because he was the person who was recording it.

21. Robinson explained to Thompson that he initially typed the report as a Word document so that he could check his spelling and grammar. However, when Thompson reviewed Robinson's report for Case No. 17-IN-044, he noticed there were grammar and spelling errors that would have been corrected had Robinson used the grammar and spelling option as he claimed. For example, each version of the report in Case No. 17-IN-044 stated "when I noticed vehicle" rather than "when I noticed a vehicle." The report also concluded with "Nothin' Further At this Time" rather than "Nothing Further At This Time."

22. Robinson also told Thompson he asked if Sergeant Morrison could leave the last interview because he did not get along with him and did not see a need for him to be in the interview with the Sheriff and Undersheriff. Robinson told Thompson there was a hostile work environment at the sheriff's office because the sheriff said he was tired of homosexuals working at the sheriff's office during his campaign.

23. At the hearing, Robinson agreed during the first interview he told Sheriff Faulkner and Undersheriff Bitler, his report for Case No. 17-IN-044 was in Case No. 17-IN-040. He also agreed he repeated those statements during the second interview to Sheriff Faulkner, Undersheriff Bitler and Sergeant Morrison and he made those statements because he did not want to look like "a fucking idiot." Robinson also acknowledged he admitted at the second interview after the information from ITI was shared with him that he had typed out the report on the ITI.

24. Robinson claimed he was afraid he would be fired after Sheriff Faulkner was elected because he understood Sheriff Faulkner stated during his campaign that the homosexuals working at the sheriff's office would be fired. Sheriff Faulkner later came to Robinson's residence, denied making that statement, and asked if he was staying. However, Robinson remained skeptical and was fearful of being fired so he tried to do everything correctly.

25. Robinson stated he took a couple of days leave from work due to a personal matter. When he returned to work in March, Robinson was behind in his work and was later reprimanded for not reporting to work on time after he radioed that he was in service but had not yet completed checking his patrol vehicle. Robinson stated he made copies of his reports and recordings of his conversations, but they were on the flash drive and equipment that were in his patrol vehicle when he was fired. He also claimed he had recordings on his personal phone.

26. Robinson explained he started his reports in a Word document and saved them on a flash drive. He did not place them on his personal computer. Robinson did not tell Sheriff Faulkner, Undersheriff Bitler, or Sergeant Morrison during the interviews

that the report was on the flash drive because he believed he would be fired if they knew what he had done. Robinson believed he had completed the report for Case No. 17-IN-044, but knew it was on the flash drive and thought he had placed it on ITI.

27. At the close of the hearing, Robinson argued he did not deny he lied during his interviews with Sheriff Faulkner, Undersheriff Bitler, and Sergeant Morrison, but he did so because he feared being fired. Robinson contended he did not make a false statement on his report and he believed he had completed the report when he initially told Sheriff Faulkner that it was done. Robinson believed his sexual orientation was the reason he was fired.

Conclusions of Law

28. The Commission issued a law enforcement certification to Johnathan M. Robinson. The KLETC authorizes the Commission to suspend, condition, or revoke the certification of a law enforcement officer who commits a violation under subsection (b) of K.S.A. 2017 Supp. 74-5616. The Commission's Investigative Committee subsequently issued an order revoking Robinson's certification after concluding he had violated three provisions under K.S.A. 2017 Supp. 74-5616(b). The Commission has jurisdiction over Robinson and the subject matter of this hearing.

Unprofessional Conduct by Intentional Use of a False or Deceptive Statement in an Official Communication

29. The KLETA authorizes the Commission to suspend, condition, or revoke the certification of a police officer or law enforcement officer who engages in unprofessional conduct as defined by the Commission in a regulation. K.S.A. 2017 Supp. 74-5616(b)(7). The definition of unprofessional conduct includes intentionally using a false or deceptive statement in any official document or official communication. K.A.R. 106-2-3(j)(1).

30. The facts are undisputed regarding Robinson's statements about his report in Case No. 17-IN-044 during the first interview he had with Sheriff Faulkner and Undersheriff Bitler and during the second interview he had with Sheriff Falkner, Undersheriff Bitler, and Sergeant Morrison. During both of those two official communications, Robinson made the following false statements:

- A. He found the report for Case No. 17-IN-044 in Case No. 17-IN-040;
- B. He copied the report for Case No. 17-IN-044;
- C. He pasted the copy of the report into Case No. 17-IN-044;
- D. He deleted the report from Case No. 17-IN-040.

31. Robinson argued the initial statement to Sheriff Faulkner that he had completed the report was not a lie because he believed he had completed the report. However, the official communications are the subsequent interviews occurring on March 22, 2017, and Mach 24, 2017, when Robinson made the false statements described

above. Robinson admitted those statements were intentionally made; he testified those false statements were made to avoid being fired because he had initially told Sheriff Faulkner he had completed the report.

32. Based upon the totality of the evidence the Commission concludes that there is clear and convincing evidence to show Robinson engaged in unprofessional conduct by using intentional false statements in an official communication, thereby violating K.S.A. 2017 Supp. 74-5616(b)(7) as defined in K.A.R. 106-2-3(j)(1).

Providing False Information or Failing to Cooperate in an Investigation by the Commission

33. The Commission is also authorized to suspend, condition, or revoke the certification of a police officer or law enforcement officer who provides false information or otherwise fails to cooperate in an investigation conducted by the Commission to determine an officer's continued suitability for law enforcement certification. K.S.A. 2017 Supp. 74-5616(b)(3).

34. During his interview with Thompson, Robinson said he remembered typing the report for Case No. 17-IN-044 but could not find it when Sheriff Faulkner asked for it. Robinson told Thompson he found the narrative of the report for Case No. 17-IN-044 on a flash drive; he copied the report from his flash drive and pasted the copy into the ITI case. To explain why Case No. 17-IN-040 was discussed, Robinson stated he found demographic information in Case No. 17-IN-040 that belonged in Case No. 17-IN-040. He corrected the information in Case No. 17-IN-044 and deleted the information from Case No. 17-IN-040. Robinson continued to claim that he copied and pasted a completed report into Case No. 17-IN-040 and later typed corrections. These statements to Thompson are not supported by the audit reports for Case No. 17-IN-040 and Case No. 17-IN-044 and contradict Robinson's statements to Sheriff Faulkner, Undersheriff Bitler, and Sergeant Morrison during the second interview.

35. The full audit report for Case No. 17-IN-040 showed Robinson's last entry occurred on February 22, 2017. Thus, he did not delete any information in March 2017 when the record for Case No. 17-IN-044 was being investigated. Similarly, the full audit report for Case No. 17-IN-044 showed the narrative was created by several entries occurring over approximately two hours on March 21, 2017. The narrative was not created by one entry as Robinson claimed. Moreover, Robinson admitted to the statements he made during the second interview with Sheriff Faulkner and Undersheriff Bitler after Sergeant Bitler had left. Robinson told them he had not done the report.

36. Based upon the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show Robinson provided false information in an investigation by the Commission to determine an officer's continued suitability for law enforcement certification, thereby violating K.S.A. 2017 Supp. 74-5616(b)(3).

Failure to Maintain Certification
Requirement of Good Moral Character

37. The Commission is authorized to suspend, condition, or revoke the certification of a police officer or law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605 and amendments thereto. K.S.A. 2017 Supp. 74-5616(b)(1). One requirement for certification as a law enforcement officer is good moral character sufficient to warrant the public trust. K.S.A. 2017 Supp. 74-5605(b)(5).

38. K.A.R. 16-2-4(a) defines the term "good moral character" to include the following personal traits or qualities:

- (1) Integrity;
- (2) honesty;
- (3) upholding the laws of the state and nation;
- (4) conduct that warrants the public trust; and
- (5) upholding the oath required for certification as specified in K.A.R. 106-3-6.

The required oath for certification as a law enforcement officer is:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution of the United States and of the state of Kansas, my community, and the agency I serve. K.A.R. 106-3-6.

39. Any single incident or event is sufficient to show that an officer has failed to maintain good moral character sufficient to warrant the public trust. K.A.R. 106-2-4(b).

40. Because they are vital members of the judicial system, law enforcement officers must adhere to a higher standard of conduct than what is expected of private citizens. For persons who uphold the law, this higher standard is not reflected in taking the path of least resistance, but by doing the unpleasant thing if it is right and not doing the pleasant thing if it is wrong. *Application of Walker*, 112 Ariz. 134, 138 (1975).

41. The practice of law enforcement is reliant upon the trait of good moral character sufficient to warrant the public trust. The trust that the public places in a law enforcement officer is based upon the expectation that an officer is honest, candid, fair, and respectful of the laws and individuals. Any officer failing to adhere to these standards has compromised their integrity.

42. The Commission hereby incorporates by reference the paragraphs numbered 30 through 32 and 34 through 36 above. Those paragraphs show Robinson's conduct clearly demonstrates a lack of good moral character sufficient to warrant the public trust in the following respects:

A. Robinson lacked the personal traits of honesty and integrity each time he made an intentional false statement to Sheriff Faulkner, Undersheriff Bitler, and Sergeant Morrison during their investigation of the report for Case No. 17-IN-044.

B. Robinson lacked the personal traits of honesty and integrity each time made a false statement to Thompson during his investigation to determine Robinson's continued suitability for law enforcement certification.

C. Robinson failed to uphold the oath required for certification by failing to have the courage to hold himself accountable for his actions during each interview with Sheriff Faulkner, Undersheriff Bitler, Sergeant Morrison, and Investigator Thompson.

D. Rather than admitting to his conduct, Robinson created false statements about finding the report for Case No. 17-IN-044 in Case 17-IN-040, copying the report, and pasting it in Case No. 17-IN-044, and then deleting the report from Case 17-IN-040. Robinson created another false statement later about finding the report for Case No. 17-IN-044 on a flash drive, copying the report, and pasting it in Case No. 17-IN-044.

E. At the hearing, Robinson attempted to justify his conduct by assailing the termination of his employment as a discriminatory action. With the multiple false statements he has made over the course of the Sheriff's and the Commission's investigations, Robinson lacks credibility.

43. Based upon the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show Robinson has failed to maintain the requirements for certification as a law enforcement officer, specifically the requirement in K.S.A. 2017 Supp. 74-5605(b)(5) of "good moral character sufficient to warrant the public trust," thereby violating K.S.A. 2017 Supp. 74-5616(b)(1).

Sanction

44. The Commission has concluded that the facts show that Robinson has violated three provisions of the KLETA. First, Robinson engaged in unprofessional conduct by intentionally making false statements in an official communication, thereby violating K.S.A. 2017 Supp. 74-5616(b)(7) as defined in K.A.R. 106-2-3(j)(1). Second, Robinson provided false information in an investigation by the Commission to determine an officer's continued suitability for law enforcement certification, thereby violating K.S.A. 2017 Supp. 74-5616(b)(3). Third, Robinson has failed to maintain the requirements for certification as a law enforcement officer, specifically the requirement in K.S.A. 2017 Supp. 74-5605(b)(5) of "good moral character sufficient to warrant the public trust," thereby violating K.S.A. 2017 Supp. 74-5616(b)(1).

45. No evidence was presented to show Robinson has been previously disciplined by the Commission for a violation of the KLETA. However, he had been certified for less than one year when his conduct began in March 2017. Thus, it took little

time for Robinson to take the wrong path in his law enforcement career.

46. Robinson's conduct strikes at the core of being certified as a law enforcement officer—failing to maintain good moral character sufficient to warrant the public trust and making false statements during the official investigations by the Woodson County Sheriff's Office and the Commission's Investigator. Such conduct erodes the public confidence in law enforcement officers. If he had been truthful with the Woodson County Sheriff's Office during their investigation, Robinson may have been disciplined or terminated from his employment, but he would not have violated the KLETA or eroded the public confidence in law enforcement officers.

47. Based upon the above violations, separately and collectively, the Commission determines that the law enforcement officer certification issued to Johnathan M. Robinson should be revoked. It is the further decision and order of the Commission that Johnathan M. Robinson must surrender and return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.



Richard Powell
Commissioner and Chair of Hearing Panel
As designated by and on behalf of the
Kansas Commission on Peace Officers'
Standards and Training

NOTICE OF ADMINISTRATIVE RELIEF

The above Order revoking the certification as a law enforcement officer issued to Johnathan M. Robinson is a final order. Pursuant to K.S.A. 2017 Supp. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 2017 Supp. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for reconsideration, a petition for stay of effectiveness, or a petition for judicial review on behalf of the Commission is: Gary E. Steed, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.


CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of May 2018, a copy of the above Order and Notices were deposited in the United States mail, first-class postage prepaid, and addressed to:

Johnathan M. Robinson


I further certify that on the same day a copy of the above Order and Notices were personally delivered to:

Michelle R. Meier
Special Assistant Attorney General
Kansas Commission on Peace
Officers' Standards and Training
1999 N. Amidon, Suite 350
Wichita, KS 67203



Staff
Kansas Commission on Peace Officers'
Standards and Training