



**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)
)
SCOTT BIRNEY)
 #1278)
_____)

Case No. 2022-0075

SUMMARY ORDER OF REVOCATION

Pursuant to K.S.A. 77-537

The above-captioned matter comes on for Commission action through a summary proceeding under the Kansas Administrative Procedures Act, K.S.A. 77-537, regarding the law enforcement certification of SCOTT BIRNEY (Respondent).

STATEMENT OF FACTS

1. The Kansas Commission on Peace Officers' Standards and Training (Commission) granted full-time certification to Respondent, certification number 1278.
2. Respondent was employed as a full-time law enforcement officer with the Garden City Police Department (GCPD) from January 30, 2009 to June 1, 2022.
3. While investigating a high-profile homicide that occurred several years earlier, the GCPD discovered that they were missing evidence that had been returned from the lab. Respondent had previously taken the homicide evidence off-site to his private storage unit, along with personal items and old paperwork. Once the location of the homicide evidence

was questioned, Respondent retrieved the homicide evidence, opened the box it was mailed in, then turned it over to the detective who was currently working the homicide case.

4. During the process of looking for the missing homicide evidence, it was discovered that Respondent had stored evidence in temporary lockers for multiple years without ever entering it or cataloging it. The lockers were breached as part of the investigation. Once the items were discovered, Respondent threw the contents of one locker in the trash. The discarded items included laptop computers, phones with cords, drug paraphernalia, and other items Respondent could not remember. Respondent was instructed to retrieve the items. He did so and then entered the items into evidence. In a separate locker, Respondent had kept fourteen grams of heroin for two or three years. Once the locker was breached, Respondent placed the drugs in a cabinet that was not secure.
5. Based on the information in paragraphs three and four, a Commission interview with Respondent was necessary to determine his continued suitability for law enforcement certification. Commission Investigator Richard Powell determined that the nature of the investigation required an in-person interview and notified Respondent of the time and date. Respondent chose not to attend the interview and did not cooperate with the Commission investigation.

CONCLUSIONS OF LAW

Criminal Conduct

6. Pursuant to K.S.A. 74-5616(b)(5), the Commission may revoke the certification of any police or law enforcement officer who engages in conduct which, if charged as a crime, would constitute a felony crime under the laws of this state, a misdemeanor crime of domestic violence as defined in the Kansas Law Enforcement Training Act at the time the conduct occurred, or a misdemeanor crime that the Commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the Commission.
7. K.A.R. 106-2-2a(a)(45) states that, pursuant to K.S.A. 74-5616, and amendments thereto, an applicant or officer shall not engage in conduct, whether or not charged as a crime or

resulting in a conviction, that would constitute official misconduct, as defined in K.S.A. 21-6002, and amendments thereto.

8. Pursuant to K.S.A. 21-6002, official misconduct includes, except as authorized by law, knowingly destroying, tampering with, or concealing evidence of a crime, when committed by a public officer in the officer's public capacity or under color of the officer's office or employment. Official misconduct of this manner is a severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony and a class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor.
9. Respondent's conduct constitutes a felony crime under the laws of this state and a misdemeanor crime that the Commission determines reflects on his honesty, trustworthiness, integrity, or competence as defined by rules and regulations of the Commission. Respondent's conduct constitutes official misconduct.

Failure to Cooperate in Commission Investigation

10. Pursuant to K.S.A. 74-5616(b)(3), the Commission may revoke the certification of a police or law enforcement officer who provides false information or otherwise fails to cooperate in a Commission investigation to determine a person's continued suitability for law enforcement certification.
11. Respondent failed to cooperate in a Commission investigation to determine his continued suitability for law enforcement certification.

Good Moral Character

12. Pursuant to K.S.A. 74-5616(b)(1) the Commission may revoke the certification of a police or law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto.
13. K.S.A. 74-5605(b)(5) states that each applicant for certification shall be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer.

14. K.A.R. 106-2-4(a) defines good moral character as including the personal traits or qualities of integrity, honesty, upholding the laws of the state and nation, conduct that warrants the public trust, and upholding the oath required for certification as specified in K.A.R. 106-3-6.
15. Pursuant to K.A.R. 106-2-4(b), any single incident or event may suffice to show that a licensee lacks or has failed to maintain good moral character.
16. Respondent's conduct shows that he has failed to maintain good moral character sufficient to warrant the public trust in him as a law enforcement officer.

Summary Proceedings

17. Under K.S.A. 77-537, the Commission may conduct these summary proceedings, subject to Respondent's request for a hearing. The Commission finds that the use of summary proceedings in these circumstances does not violate any provisions of law and the protection of the public interest does not require the Commission to give notice and opportunity to participate to any person other than Respondent.

ORDER

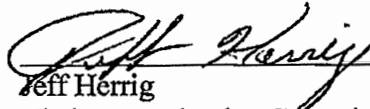
Based on the above Statement of Facts and Conclusions of Law, the Commission orders that the Kansas Law Enforcement Officer Certification of SCOTT BIRNEY be revoked.

ACCORDINGLY, THE KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING CERTIFICATE OF SCOTT BIRNEY IS HEREBY REVOKED.

FURTHER, Respondent is ordered to surrender and return to the Commission all evidence of his certification as a law enforcement officer.

DATED this 11 day of May, 2023.

KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING



Jeff Herrig
Chair, Investigative Committee

NOTICE OF RELIEF FROM THIS SUMMARY ORDER

Pursuant to K.S.A. 77-537, the Summary Order is subject to your request for a hearing. If you desire a hearing, you must direct a written request for a hearing to the Kansas Commission on Peace Officers' Standards and Training, 1999 N. Amidon, Suite 350, Wichita, Kansas 67203. This written request must be filed within fifteen (15) days from the date indicated in the Certificate of Service below. If a written request for hearing is not so made, this Summary Order becomes final and effective upon the expiration of the time for requesting a hearing.

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of May, 2023, a true and correct copy of the above and foregoing Summary Order of Revocation was deposited in the United States mail, certified, postage prepaid, return receipt requested, and deposited in the United States mail, with tracking, postage prepaid, addressed to:

SCOTT BIRNEY





Staff
Kansas Commission on Peace Officers'
Standards and Training