BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION
IN AND FOR THE STATE OF WASHINGTON

In re the Peace Officer Certification of: VANCE O. JOHNSON, Respondent.	No. 14-530 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REVOKING PEACE OFFICER CERTIFICATION

An administrative hearing in this matter was held on November 2, 2016, at the Washington State Criminal Justice Training Commission facility in Burien, Washington, before the Washington State Criminal Justice Training Commission Hearing Panel ("Hearing Panel") to determine whether Respondent Vance Johnson's peace officer certification should be revoked. The Hearing Panel was advised by Assistant Attorney General John Hillman, and consisted of Presiding Member Professor Matthew Hickman of Seattle University, Chief Kelley Busey of the Gig Harbor Police Department, Sheriff Jim Raymond of the Franklin County Sheriff's Office, Sergeant Susanna Monroe of the Seattle Police Department, and Sergeant Sean Madison of the Sequim Police Department. Petitioner was represented by Assistant Attorney General Susie Giles-Klein. Respondent was represented by attorney Joseph Baker.

I. PROCEDURAL HISTORY

1.1 Vance Johnson was terminated from employment with the Pacific County Sheriff's Office ("Sheriff's Office") on August 31, 2014. Prior to his termination, Mr. Johnson had been employed as a deputy sheriff with that agency.

1.2 On February 10, 2016, the Criminal Justice Training Commission filed a Statement of Charges seeking to revoke Vance Johnson's peace officer certification on the basis that he was discharged from the Sheriff's Office for disqualifying misconduct. The Statement of Charges alleged that Mr. Johnson was fired because he was convicted of a crime committed under color of authority as a peace officer, to wit: Official Misconduct. RCW 9A.80.010.

1.3 Mr. Johnson timely requested a hearing.

1.4 On August 3, 2016, the Criminal Justice Training Commission filed an Amended Statement of Charges seeking to revoke Vance Johnson's peace officer certification on the basis that he was discharged from the Sheriff's Office for disqualifying misconduct. The Amended Statement of Charges alleged that Mr. Johnson was discharged for engaging in conduct that would constitute a crime committed under color of authority as a peace officer, to wit: Official Misconduct. RCW 9A.80.010; RCW 43.101.010(8)(b). The Statement of Charges was amended following the Petitioner's discovery that Mr. Johnson was terminated on August 31, 2014 for the underlying conduct of a crime committed under color of authority as a peace officer, prior to his conviction of Official Misconduct on April 27, 2015.

II. HEARING

2.1 A hearing was held on November 2, 2016, at the Commission facility in Burien, Washington, before the Hearing Panel. The hearing was open to the public.

2.2 The Petitioner presented the testimony of Chief Dustin Breen of the Lewis County Sheriff's Office and Sheriff Scott Johnson of the Pacific County Sheriff's Office.

2.3 The Respondent testified on his own behalf.

2.4 The following exhibits were offered by the Petitioner and were admitted at the hearing, having been previously stipulated to by Respondent at the Third Prehearing Conference on October 18, 2016.

1. Statement of Charges, *In re the Certification of Vance O. Johnson,* dated February 10, 2016
2. Request for Hearing, dated April 8, 2016
3. Peace Officer Certification Application for Vance O. Johnson signed March 15, 2005
4. Notice of Officer Separation, dated September 17, 2014
5. Letter requesting assistance from Lewis County Sheriff with internal investigation, dated April 23, 2014
6. Notice of Administrative Leave, dated May 2, 2014
7. Notice of Right to Representation/Order to Cooperate, dated June 17, 2014
8. Interview of Vance Johnson, dated June 17, 2014
9. Lewis County Sheriff's Office Memorandum, dated June 24, 2014
10. Memorandum from Undersheriff Todd Fosse to Sheriff Scott Johnson, dated July 9, 2014
11. Memorandum regarding Notice of Predisciplinary Hearing, dated July 29, 2014
12. Excerpts from the Pacific County Sheriff's Policy Manual
13. Code of Ethics and Core Values, signed by Vance Johnson
14. Letter Terminating Employment, dated August 31, 2014
15. Amended Criminal Complaint in *State of Washington v. Vance Owen Johnson*, dated December 17, 2014
16. Second Amended Criminal Complaint in *State of Washington v. Vance Owen Johnson*, dated February 4, 2015
17. Affidavit of Probable Cause in *State of Washington v. Vance Owen Johnson*, dated September 19, 2014
18. Judgment and Sentence in *State of Washington v. Vance Owen Johnson*, dated April 27, 2015
19. Order on R.A.L.J. appeal in *State of Washington v. Vance Owen Johnson*, dated September 25, 2015
20. Teamsters Union Local #252 Memorandum regarding Pre-Disciplinary Investigation Response to New Information, dated August 18, 2014
21. Log Notes from Undersheriff Todd Fosse, various dates

22. Citizen Complaints regarding Deputy Vance Johnson, various dates

23. Interview of Robert Verbooman, from May 9, 2014

24. Narrative Report of Detective Sergeant Dusty Breen, from the Lewis County Sheriff's Office, dated June 7, 2014

25. Estimates for car repairs for Vance Johnson

2.5 The following exhibits were offered by the Respondent and were admitted at the hearing, having been previously stipulated to by Petitioner at the Third Prehearing Conference on October 18, 2016:

101. Testimony of Raymond PD Officer Robert Verbooman in *State v. Vance Johnson*, Pacific County District Court No. 9831/9846.

102. Testimony of Brandi Huber in *State v. Vance Johnson*, Pacific County District Court No. 9831/9846.

2.6 The parties made their respective arguments, which were considered by the Hearing Panel.

Based on the evidence presented at the hearing, the Hearing Panel enters the following Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

3.1 Vance Johnson was hired as a deputy sheriff by the Pacific County Sheriff's Office on or about July 7, 2009.

3.2 At all times relevant to the allegations below, Vance Johnson was employed by the Sheriff's Office as a deputy sheriff.

3.3 On or about March 28, 2014, Mr. Johnson saw an egg hit his personal vehicle, a jeep. Believing that the egg came from a passing car, Mr. Johnson (who was off-duty and in civilian clothing) got into his jeep and chased the car. Inside the car were five young adults,

later identified as Alec Oatfield, Michaela Huber, Kailee Lucero, Chase Clements, and Kira Dunsmoor.

3.4 Mr. Johnson followed the second car very closely with his headlights at the "high" setting. At one point, Mr. Johnson cut in front of the second car, causing the driver to break suddenly to avoid a collision. Mr. Johnson then exited his jeep and approached the second car in a threatening manner, appearing to reach for his gun. The driver of the second car put the car in reverse and attempted to flee from Mr. Johnson. Mr. Johnson got back in his jeep and chased the second car again, reaching speeds of over 50 miles per hour. Eventually, Mr. Johnson stopped chasing the second car.

3.5 Approximately three weeks later, on or about April 20, 2014, Mr. Johnson was assisting Officer Robert Verbooman of the Raymond Police Department on a burglary call when he noticed the car from the "egging" incident drive by. Mr. Johnson directed Officer Verbooman to follow with him as he followed the car. Mr. Johnson was on-duty and in uniform, driving a Sheriff's Office SUV. Mr. Johnson followed the car into the driveway of a personal residence, and used his SUV to block the car from backing out of the driveway. He approached the driver of the car, Alec Oatfield, and told him to exit the vehicle. After demanding Mr. Oatfield's ID, Mr. Johnson told him about the egging of his jeep. He demanded that Mr. Oatfield fill out a statement about the events of March 28, 2014, and that if he did not tell the truth "he would get a ride in a cop car." Mr. Johnson was aggressive and threatening. His behavior was observed by Mr. Oatfield's neighbor, Kerie Maneman.

3.6 Officer Verbooman accompanied Mr. Johnson and was present for Johnson's interactions with the Oatfields, but primarily remained in the background while Mr. Johnson talked to the Oatfields.

3.7 At some point, Mr. Oatfield's mother arrived at the residence. Mr. Johnson told Ms. Oatfield that if he was not paid $1,500 to repair his jeep, "felony charges could be filed." He indicated that he would not file felony charges if he was paid $1,500.

3.8 Having learned the names of the other passengers in the car that night, Mr. Johnson (still on duty and in uniform) went to the home of Kailee Lucero. Ms. Lucero was not home, so Mr. Johnson spoke with her mother, Mindi Passolt. Mr. Johnson told Ms. Passolt that if she did not pay him $1,500 to repair damage to his jeep, her daughter would face felony charges. Mr. Johnson's demeanor was aggressive and his manner threatening throughout the interaction.

3.9 Mr. Johnson told Ms. Passolt to call Ms. Lucero, which she did. Mr. Johnson then got on the phone with Ms. Lucero and told her that if she did not pay him $1,500, she would face felony charges. Ms. Lucero noted that Mr. Johnson's tone was harsh, and he sounded angry.

3.10 The next day, April 21, 2014, Mr. Johnson was again on duty and in uniform. He went to the office of Brandi Huber, the mother of Michaela Huber, one of the passengers of the car. Ms. Huber was an employee of the Pacific County Prosecutor's Office and had known Mr. Johnson for several years. When he arrived at her office, Ms. Huber asked him not to close the door. Mr. Johnson closed the door anyway, and told Ms. Huber that if he was not paid $1,500, he would file felony charges. Mr. Johnson became agitated and loud during this interaction, and at one point Ms. Huber asked him to lower his voice. Mr. Johnson's actions intimidated Ms. Huber.

3.11 The actual damage to Mr. Johnson's vehicle was $300 or less, which value would not allow felony charges.

3.12 After receiving numerous complaints from the people affected by Mr. Johnson's actions, the Pacific County Sheriff's Office requested that the Lewis County Sheriff's Office conduct an internal investigation into the alleged misconduct. Detective Sergeant Dusty Breen conducted a thorough investigation. Based on Detective Sergeant Breen's findings, Pacific County Sheriff Scott Johnson served Deputy Johnson with a Notice of Pre-disciplinary Hearing on July 29, 2014. A pre-disciplinary hearing was held on August 5, 2014, after which

Deputy Johnson's representative was given the opportunity to submit an additional memorandum.

3.13 On August 31, 2014, Deputy Johnson was terminated from the Sheriff's Office. One of the primary reasons for his termination was his abuse of authority to obtain a personal benefit on April 20 and 21, 2014. In his letter informing Mr. Johnson of his termination, Sheriff Scott Johnson stated:

> "While on duty and wearing the uniform of the Pacific County Sheriff's Office, you pursued and threatened several citizens with felony arrests unless they paid you for the damage caused by a single egg being thrown from a moving vehicle – an amount you claimed would be $1,500. You chose to take the law into your own hands, dispensing with due process and the presumption of innocence. That you engaged in this conduct while wearing the uniform of this office, purportedly acting in the color of your authority as a deputy sheriff, casts a stain on this entire office."

3.14 Deputy Johnson has not pursued a civil service appeal, administrative appeal, or collective bargaining remedy since his termination by the Pacific County Sheriff's Office.

3.15 Deputy Johnson's termination from the Pacific County Sheriff's Office is final.

3.16 On December 17, 2014, the Office of the Attorney General filed an amended criminal complaint against Deputy Johnson in Pacific County District Court. This was followed by a second amended criminal complaint, which was filed on February 4, 2015. The criminal complaints alleged one count of reckless driving, five counts of reckless endangerment, and one count of official misconduct.

3.17 On April 27, 2015, Vance Johnson was convicted by a jury of Official Misconduct and Reckless Endangerment in Pacific County District Court.

3.18 On September 25, 2015, Mr. Johnson's convictions for Official Misconduct and Reckless Endangerment were affirmed on appeal to the Pacific County Superior Court.

3.19 Any Conclusion of Law deemed to be properly considered a Finding of Fact is hereby adopted as such.

Based on the foregoing Findings of Fact, the Hearing Panel makes the following:

IV. CONCLUSIONS OF LAW

4.1 Revocation of Respondent Vance Johnson's peace officer certification is governed by RCW 43.101 and WAC 139-06.

4.2 The Washington State Criminal Justice Training Commission and this Hearing Panel have jurisdiction over the Respondent and these proceedings. RCW 43.101.085; RCW 43.101.105; RCW 43.101.380.

4.3 RCW 43.101.105(1)(d), provides that the Commission may revoke a peace officer's certification when "[t]he peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis of the discharge proceedings occurred on or after January 1, 2002."

4.4 The Petitioner bears the burden of proving "discharge for disqualifying misconduct" by "clear, cogent, and convincing evidence." RCW 43.101.010(8); RCW 43.101.380(1).

4.5 RCW 43.101.010(8) defines a discharge for "disqualifying misconduct" to include discharge resulting from conduct that would constitute a crime committed under color of authority as a peace officer.

4.6 A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege (a) he or she intentionally commits an unauthorized act under color of law; or (b) he or she intentionally refrains from performing a duty imposed upon him or her by law. RCW 9A.80.010.

4.7 The crime of official misconduct is a crime committed under color of authority as a peace officer, and engaging in conduct that would constitute that crime constitutes "disqualifying misconduct" pursuant to RCW 43.101.010(8)(a)(i) and (b).

4.7 The Panel concludes by clear, cogent, and convincing evidence that Respondent was a public servant and a peace officer on April 20 and 21, 2014.

4.8 The Panel concludes by clear, cogent, and convincing evidence that on April 20 and 21, 2014, Respondent contacted Alec Oatfield, Jennifer Oatfield, Mindi Passolt, Kailee Lucero, and Brandi Huber under color of authority as a peace officer.

4.9 The Panel concludes by clear, cogent, and convincing evidence that on April 20 and 21, 2014, Respondent contacted Alec Oatfield, Jennifer Oatfield, Mindi Passolt, Kailee Lucero, and Brandi Huber in order to obtain a benefit or privilege, specifically to obtain monetary compensation for damage to his vehicle he believed was caused by these individuals or the children of these individuals.

4.10 The Panel unanimously concludes that Petitioner established by clear, cogent, and convincing evidence that Respondent engaged in conduct that would constitute Official Misconduct when on April 20 and 21, 2014 he told Alec Oatfield, Jennifer Oatfield, Mindi Passolt, Kailee Lucero, and Brandi Huber that he would file felony charges against them if they did not pay him $1,500 to repair his personal vehicle. By threatening civilians with felony charges to obtain financial reward - while on duty as a peace officer/public servant and in uniform - Mr. Johnson committed an unauthorized act under color of law.

4.11 The Panel unanimously concludes that the conduct described above is disqualifying misconduct under RCW 43.101.010(8)(b).

4.12 The Panel unanimously concludes that Respondent was discharged for disqualifying misconduct within the meaning of RCW 43.101.010(9).

4.13 The Panel unanimously concludes that Respondent's discharge is final as that term is defined in RCW 43.101.010(10).

4.14 The Panel unanimously concludes that the disqualifying misconduct for which Respondent was finally discharged occurred after January 1, 2002.

4.15 The Panel unanimously agrees that Respondent's disqualifying misconduct warrants revocation of his peace officer certification.

4.16 Any Finding of Fact deemed to be properly considered a Conclusion of Law is hereby adopted as such.

V. ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, the Hearing Panel now therefore issues the following ORDER:

The peace officer certification issued to respondent Vance O. Johnson is hereby REVOKED.

DATED this 8TH day of November, 2016.

PROFESSOR MATTHEW HICKMAN
Seattle University
Presiding Panel Member

NOTICE TO PARTIES

RECONSIDERATION: Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that: (a) there is a material clerical error in the Order, or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering directly to the Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Burien, Washington 98148, with a copy to all other parties of record and their representatives. Filing means actual receipt at the Commission's office. RCW 34.05.010(6).

A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition for reconsideration is filed, the Commission does not: (a) dispose of the petition, or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not a prerequisite for filing a petition for judicial review.

STAY OF EFFECTIVENESS: The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Commission has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW.

JUDICIAL REVIEW: Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement (RCW 34.05.510 through .598). The petition for judicial review of this Order shall be filed with the appropriate court and served on the Commission, the Office of the Attorney General, and all parties within thirty (30) days after service of this Order, as provided in RCW 34.05.542.

SERVICE: This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

REINSTATEMENT: A peace officer whose certification is revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after the revocation, petition the commission for reinstatement of the certificate or for eligibility for reinstatement. The commission shall hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in rules of the commission. If the certificate is reinstated or eligibility for certification is determined, the commission may establish a probationary period of certification. RCW 43.101.115(4).