



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

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In the Matter of)
)
VIRGIL BREWER)
 #29558)
_____)

Case No. 2018-0207

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 VIRGIL BREWER (Respondent).

STATEMENT OF FACTS

1. The Kansas Commission on Peace Officers’ Standards and Training (Commission) granted full-time certification to Respondent, certification number 29558.
2. Respondent was employed as a full-time law enforcement officer with the Barber County Sheriff’s Office (BASO) from January 9, 2017 to January 8, 2021.
3. On October 6, 2017, the BASO was called after S.M. left a bar and was seen with a long gun. Three BASO law enforcement officers responded and located S.M. in a nearby shed. S.M. was ordered to come out of the shed and complied. S.M. was then given conflicting verbal commands by Respondent and Deputy Suchy (Suchy). S.M. was never informed

that he was under arrest or that he was about to be shot with a bean bag munition. While giving S.M. Commands, Respondent shot S.M. with a bean bag round from his personally owned 12-gauge shotgun. The bean bag penetrated S.M.'s chest and he was pronounced deceased at the scene. Respondent later stated that he did not see S.M. with a weapon and that his intent in shooting S.M. was to gain compliance.

4. Suchy was near Respondent at the time S.M. was shot. Suchy described S.M.'s behavior as "passive aggressive" and stated that S.M. was walking toward Suchy and Respondent, but not directly at them. Suchy indicated that S.M.'s walk as not fast paced or rushing them. Suchy could clearly see that S.M. was not holding a firearm. Suchy had his rifle in the "low ready" position with the safety on, and he did not believe that S.M.'s behavior warranted a lethal response. Suchy was considering using a less lethal option such as his Taser or a baton, but Respondent shot S.M. before Suchy could implement such an option. At the time S.M. was shot, Suchy's body camera showed S.M. standing, not making any aggressive movement or moving toward Suchy or Respondent.
5. Respondent shot S.M. in the torso area (center mass) with his personal shotgun using bean bag ammunition he received from a coworker at his previous job in Texas. At the time of the shooting, Respondent had not received any training regarding the use of bean bag ammunition, including where to shoot a subject or the appropriate range in which to shoot a subject. Respondent's range and target of center mass are inconsistent with training standards for bean bag ammunition. Respondent shot S.M. in an area with the greatest potential to cause serious injury or death and which should be avoided unless the intent is to deliver deadly force. Additionally, the bean bag round used by Respondent was rectangle shaped. The use of square or rectangle bean bag munitions has been discontinued for several years due to the likelihood of causing penetrating injuries when compared to the rounded "balloon" shaped bean bags in current use. The bean bag ammunition used by Respondent was given to him by a previous coworker to evaluate. The coworker's family was considering selling it in their tactical supply store. The other Texas deputies who tested the bean bag ammunition did not think it looked professionally made and discovered it was made from "reload" shells. After speaking with the manufacturer, the tactical supply store evaluating the bean bag ammunition decided it would not sell the ammunition and

that it should not be fired at a person or used on duty by law enforcement. Respondent's former coworker believed he communicated to Respondent that the bean bag ammunition should not be used on a person. After shooting S.M., Respondent received bean bag training, but stated he would not have changed his actions regarding the range or targeted body area in which he shot S.M.

6. In an unrelated incident in 2017, Respondent pointed a shotgun at an unruly inmate, J.R., in the Barber County Jail and threatened to shoot him. This caused fear and concern amongst the inmates.

CONCLUSIONS OF LAW

Unprofessional Conduct

7. Pursuant to K.S.A. 74-5616(b)(7), the Commission may revoke the certification of any police or law enforcement officer who has engaged in unprofessional conduct as defined by rules and regulations of the Commission.
8. K.A.R. 106-2-3(f) defines unprofessional conduct as using excessive physical force in carrying out a law enforcement objective. As used in this subsection, physical force shall be deemed excessive if it is greater than what a reasonable and prudent officer would use under the circumstances.
9. Respondent used excessive physical force in carrying out a law enforcement objective on multiple occasions.

Good Moral Character

10. 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.

11. 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.
12. 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.
13. 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.
14. 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

15. 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

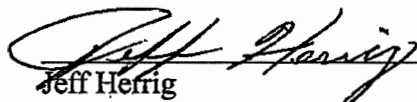
Based on the above Statement of Facts and Conclusions of Law, the Commission orders that the Kansas Law Enforcement Officer Certification of VIRGIL BREWER be revoked.

ACCORDINGLY, THE KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING CERTIFICATE OF VIRGIL BREWER 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 30 day of May, 2023.

KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING



Jeff Heffrig
Chair, Investigative Committee

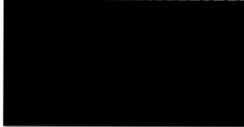
NOTICE OF RELIEF FROM THIS SUMMARY ORDER

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 30th 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:

VIRGIL BREWER





Staff
Kansas Commission on Peace Officers'
Standards and Training