

**STATE OF VERMONT
VERMONT CRIMINAL JUSTICE COUNCIL**

IN RE: JOHN GRISMORE

DOCKET NO. 2020OGD

**DECISION AND ORDER
REGARDING PERMANENT REVOCATION OF LAW ENFORCEMENT
CERTIFICATION**

The Vermont Criminal Justice Council (“Council”) held a Formal Hearing at the Vermont Fire Academy in Pittsford and via Microsoft Teams on November 14 and December 6, 2023 to consider the imposition of sanctions against the law enforcement certification held by Sheriff John Grismore for alleged unprofessional conduct, specifically excessive use of force pursuant to 20 V.S.A. §2401(2)(C). Kim McManus, Esq. prosecuted the alleged offense. Sheriff Grismore appeared at the Hearing, and was represented by Robert J. Kaplan, Esq. A quorum of Council members, none of whom are part of its Professional Regulation Subcommittee, participated in both the Hearing and subsequent deliberation, and hereby issues the following Findings of Fact, Conclusions of Law, and Order based on the evidence and testimony presented:

I. ISSUE

Whether to impose sanctions, up to and including permanent revocation, against the Vermont law enforcement officer certification held by Sheriff John Grismore for alleged unprofessional conduct, namely the excessive use of force under authority of the State.

II. EVIDENCE ADMITTED

1. State’s Exhibit 1: Statewide Policy on Police Use of Force, 10/01/21

2. State's Exhibit 2: Deputy Christopher Major's BodyCam Video, 08/07/22
3. State's Exhibit 3: Eric Daigle's Report, 02/14/23
4. State's Exhibit 5: John Grismore's Written Statement (six pages)
5. State's Exhibit 6: John Grismore's Use of Force Report, 22FRC0058640, 8/07/22
6. Grismore Exhibit A: Deputy Karry Andileigh's Affidavit of Probable Cause, 09/02/22
7. Grismore Exhibit B: Deputy Christopher Major's Supporting Affidavit, 09/02/22
8. Grismore Exhibit C: Screen Capture of Franklin County Sheriff Department on 08/07/2022 at 14:08:42
9. Grismore Exhibit D: Thomas Aveni's Curriculum Vitae
10. Grismore Exhibit H: John Grismore's Registered Course Certificate Status and Situational Use of Force Coursework
11. Grismore Exhibit J: Deputy Karry Andileigh's Use of Force Report, 08/07/22
12. Grismore Exhibit K: Deputy Karry Andileigh's BodyCam Video, 08/07/22

III. TESTIFYING WITNESSES

1. State Witness 1: Deputy Christopher Major
2. State Witness 2: Deputy Karry Andileigh
3. State Witness 3: Lieutenant Mark Lauer
4. State Witness 4: Eric Daigle, Esq.
5. Grismore Witness 1: Sheriff John Grismore
6. Grismore Witness 2: Thomas J. Aveni, MSFP (Masters in Forensic Psychology)

IV. FINDINGS OF FACT

1. Sheriff Grismore received his first Vermont law enforcement certification in 1997, and his Level II certification in 2014. Sheriff Grismore began his employment with the Franklin County Sheriff's Department ("FCSD") in 2019. By August 2022, he held the rank of Captain. He currently serves as Sheriff of Franklin County, having been elected in 2022, and is identified as such though, at all times relevant to this matter, he was a FCSD Captain.

2. The Statewide Policy on Police Use of Force (the “Policy”) became effective on October 1, 2021. St. Ex. 1.
3. Lt. Mark Lauer testified that FCSD adopted the policy prior to August 7, 2022. He previously worked for FCSD until his retirement. He ran an unsuccessful write-in campaign against Sheriff Grismore in the 2022 election.
4. Sheriff Grismore testified that he had undergone and completed all of the use of force training required of him by the State of Vermont. *See* Grismore Ex. H.
5. August 7, 2022 was a scheduled day off for Sheriff Grismore. Nevertheless, he went to the FCSD station to address a backlog of administrative tasks. He dressed in civilian clothes: shorts, a short sleeve t-shirt, and a baseball cap.
6. At all relevant times to this matter, including on August 7, 2022, Sheriff Grismore agreed that he was on duty. He testified further that he was, and is “always on duty.”
7. That day, Deputies Karry Andileigh and Christopher Major (collectively, the “Deputies”) received a call regarding an intoxicated and argumentative adult male refusing to leave his parent’s house in St. Albans. *See* St. Ex. 6 at 3.
8. Deputy Major testified that he has been a Level II certified law enforcement officer in Vermont since January 2022. Deputy Andileigh testified that she has been a Level II certified law enforcement officer since June 2019. Neither are still FCSD employees.
9. Sheriff Grismore testified that, upon hearing the call over the radio, he researched and learned that the likely subject was Mr. Jeremy Burrows. He learned that Mr. Burrows had prior incidents of violence against police officers, including one in which he used a knife. *See* St. Ex. 6 at 3. He testified that he called a third officer, Bryan Mathieu, to the scene for back-up. Officer Mathieu was not called to testify.

10. At the St. Albans residence, Deputy Major subdued and handcuffed Mr. Burrows after he became overtly aggressive, removed his shirt, and had attempted to punch Deputy Major. The Deputies arrested Mr. Burrows. *See* St. Ex. 6 at 3; Grismore Ex. J. Mr. Burrows continued to be aggressive as he was led out of the residence, kicking at and striking the Deputies' cruiser several times before entering it. During transport to FCSD, Sheriff Grismore testified that he heard reports over the radio that Mr. Burrows was hitting his head against the dividing wall inside the police cruiser. *See* St. Ex. 6 at 3.
11. The Deputies brought Mr. Burrows inside the FCSD station and seated him in a holding area with his hands cuffed behind his back and his ankles shackled to the bench. Mr. Burrows was able to stand up and move around within the immediate area. The FCSD facility does not have a holding cell.
12. Sheriff Grismore testified that he put his administrative work down to assist the Deputies, in part, due to their level of inexperience. He testified that he began monitoring the interactions between the Deputies and Mr. Burrows. The Deputies told him that Mr. Burrows spat on and attempted to assault Deputy Major, and that he kicked Deputy Mathieu. *See* Grismore Ex. J. Sheriff Grismore also testified that he reviewed the BodyCam footage from the initial arrest during this time.
13. While this conversation was occurring, an unaccompanied Mr. Burrows fell on his face while attempting to walk away from the holding area, despite his legs being shackled.
14. The Deputies re-entered the holding area, lifted Mr. Burrows from the floor, and sat him on a bench. Mr. Burrows subsequently stood up, and the Deputies struggled to seat an increasingly aggressive Mr. Burrows. Mr. Burrows was verbally abusive, and verbally threatened violence towards Deputy Major. Deputy Andileigh agreed that Mr. Burrows

tried to spit at her, and the other officers. Nevertheless, the Deputies both testified that they were not threatened by Mr. Burrows at that time, because he was handcuffed and shackled to the bench.

15. Sheriff Grismore entered the holding area swiftly and used his right his foot to strike Mr. Burrows' abdomen/hip area, which resulted in seating Mr. Burrows. Sheriff Grismore's Use of Force Report described this action as using his "foot/leg to push Burrows back onto the bench." St. Ex. 6 at 3. His subsequent written statement described this action as "press[ing] into his lower abdomen and push[ing] him back onto the bench" with his "right foot and leg." St. Ex. 5 at 4. At Hearing, Sheriff Grismore described this action as using his leg to "push him" on his "upper left thigh."
16. Mr. Burrows stood back up despite Sheriff Grismore's repeated commands to Mr. Burrows to "sit down." Sheriff Grismore testified that, at this point, he perceived that Mr. Burrows was preparing to spit at him or one of the Deputies. *See* St. Ex. 6 at 3. Sheriff Grismore proceeded to kick Mr. Burrows' abdomen/hip area with his right foot with demonstrably greater force than the prior time, resulting in Mr. Burrows returning to a seated position. Deputy Major testified that he did not believe it was urgent to get Mr. Burrows re-seated on the bench.
17. Sheriff Grismore prepared two written reports following this incident. St. Ex. 5 and 6. In one, known as a "Use of Force Report," he described his second kick as "a distractionary front kick to Burrows' abdomen area." St. Ex. 6 at 2. For the type of force used, he wrote: "Kick (front)" and for the count, or number of kicks: "2." St. Ex 6 at 1. In another statement, he referred to the second kick as "push[ing] forward, this time more quickly, with my right leg again and ma[king] contact with his lower abdomen." St. Ex. 5 at 5. At

the Hearing, Sheriff Grismore described his second kick as a “quicker reaction” with his foot “in a pushing, defensive posture” to “interrupt his spit.”

18. Deputy Andileigh’s Use of Force Report describes Sheriff Grismore’s actions both times as “front thrust kicks” and her testimony at Hearing was consistent with this. Grismore Ex. J.
19. After the second kick, Sheriff Grismore left the holding area. He returned immediately and placed a spit hood over Mr. Burrows’ head. He testified that he had concerns after this attempt by Mr. Burrows to spit, and the prior episodes of spitting on Deputy Major and in the police cruiser. St. Ex. 6 at 3. Sheriff Grismore testified about his concerns with COVID-19, having recently lost a parent to it. No one present was wearing, or was required to wear, a mask. The spit hood was not placed on Mr. Burrows prior to his arrival to FCSD, upon his arrival, or at any time prior to the two times that Sheriff Grismore kicked him.
20. Lt. Lauer testified that, subsequent to the August 7, 2022 incident, he completed an internal investigation on FCSD’s behalf to determine whether Sheriff Grismore’s use of force involved unprofessional conduct. He issued a recommendation that Sheriff Grismore’s conduct was unbecoming.
21. Eric Daigle, Esq. was retained by the prosecution in connection with another case involving Sheriff Grismore arising out of the August 7, 2022 incident, and also for this matter. Mr. Daigle is an attorney and recognized expert in officer use of force. He testified that the amount of force used against Mr. Burrows by Sheriff Grismore was neither reasonable nor necessary considering the totality of the circumstances he faced, as evaluated under: the holding of *Graham v. Connor*, 490 U.S. 386 (1989), the Policy, FCSD policies and training, and industry standards.

22. Thomas Aveni, MSFP, testified as an expert for Sheriff Grismore. Mr. Aveni is a former police officer and state trooper, and is recognized as a leading researcher and trainer in the field of use of deadly force. He testified that Sheriff Grismore's prior knowledge of Mr. Burrows' history of violence towards law enforcement officers, Mr. Burrows' violent actions towards Deputy Major at the St. Albans residence from BodyCam footage that day, and Mr. Burrows' aggression towards Sheriff Grismore in the holding area (his perceived intention to spit on Sheriff Grismore) are relevant to the totality of the circumstances Sheriff Grismore faced. Accordingly, to him, Sheriff Grismore's actions were reasonable and justified.
23. Mr. Aveni conceded, however, that Sheriff Grismore's second "foot push," a euphemism for kick, was "a bit more emphatic" than the first.

V. CONCLUSIONS OF LAW

1. This Council was created, in part, to "maintain statewide standards of law enforcement officer professional conduct by accepting and tracking complaints alleging officer unprofessional conduct, adjudicating charges of unprofessional conduct, and imposing sanctions on the certification of an officer who the Council finds has committed unprofessional conduct." 20 V.S.A. §2351(b)(2).
2. The Council conducted these proceedings in accordance with the Vermont Administrative Procedure Act, pursuant to 20 V.S.A. §2405.
3. Sheriff Grismore is alleged to have engaged in "Category B conduct," as defined in 20 V.S.A. §2401(2)(C), specifically "gross professional misconduct . . . that involve[s] willful failure to comply with a State-required policy, or substantial deviation from professional

conduct as defined by the law enforcement agency's policy or if not defined by the agency's policy, then as defined by Council policy, and shall include: excessive use of force under authority of the State, first offense."

4. The Statewide Policy on Police Use of Force confirms: "[w]hen force is necessary to bring an event or incident under control, officers will use only objectively reasonable force to accomplish lawful objectives." St. Ex. 1 at 1. Moreover, "[w]hether the decision by a law enforcement officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances." *Id.* at 3; 20 V.S.A. §2368(b)(1). Failure to use reasonable alternatives is a consideration in the evaluation. *Id.* The Policy confirms that contributing factors determining objectively reasonable use of force include whether the subject was an "immediate threat to officers." St. Ex. 1 at 4.
5. The Policy was in force, and applicable to Sheriff Grismore, at all times relevant to this matter.
6. Sheriff Grismore was on duty and acting under the authority of the State at all times relevant to this matter.
7. The Council, unanimously among the sixteen members eligible and available to vote, upon consideration of all evidence and exhibits admitted, finds by a preponderance of the evidence that Sheriff Grismore engaged in unprofessional conduct, namely excessive use of force under authority of the State. In particular, the Council concludes that the second kick to Mr. Burrows, which Sheriff Grismore had described as "a distractionary front kick," was objectively unreasonable, unnecessary, punitive, and demonstrative of a failure to use

reasonable alternatives. Mr. Burrows was not an immediate threat to Sheriff Grismore or the Deputies; he was handcuffed behind his back, and his legs were shackled.

8. The Council finds that both Deputies acted reasonably despite the significant challenges that they faced with Mr. Burrows. Given their involvement in this incident, the Council need not ask what a hypothetical, reasonable law enforcement officer would have done on August 7, 2022. The Deputies were in the “same situation” as Sheriff Grismore and faced the same “totality of the circumstances.” *See* St. Ex. 1 at 3. After the Deputies brought a handcuffed Mr. Burrows to the holding area, and applied leg shackles to him, neither Deputy concluded that it was reasonable or necessary to kick, or engage in any use of force against, Mr. Burrows. Both Deputies testified credibly that they were not threatened by Mr. Burrows in the holding area, because he was handcuffed and shackled to a bench. While both experts presented credible testimony, the Deputies presented the most compelling testimony.
9. Having concluded that the “Category B” misconduct occurred as alleged, the Council must determine a proper sanction.
10. Upon a finding of unprofessional conduct, the Council may impose sanctions ranging from a written warning to a permanent revocation of a law enforcement officer’s certification. 20 V.S.A. §2406(a)(1)-(4).
11. Based on the evidence presented, and based on the nature of Sheriff Grismore’s misconduct, a majority of the sixteen members eligible and available to vote determined that the appropriate sanction is a permanent revocation of his law enforcement officer certification. All other applicable, potential sanctions were considered and rejected as

inappropriate. This sanction was previously and publicly announced at the conclusion of the hearing on December 6, 2023, consistent with 20 V.S.A. §2406(b)(1)(A).

12. Within ten business days from the date of the Council's decision, or no later than December 20, 2023, Officer Grismore may voluntarily surrender his certification if there is a pending labor proceeding related to the Council's unprofessional conduct findings. If Sheriff Grismore fails to, or chooses not to, voluntarily surrender his certification, this below order shall take effect on December 20, 2023. *See* 20 V.S.A. §2406(b)(1)-(2).

ORDER

Based on the foregoing, and this final decision of the Vermont Criminal Justice Council, effective December 20, 2023, Sheriff John Grismore's law enforcement certification is hereby **PERMANENTLY REVOKED** .

DATED at Pittsford, Vermont this 11th day of December, 2023.

VERMONT CRIMINAL JUSTICE COUNCIL

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William Sorrell
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William Sorrell, Chair