

Sheriff

MICHAEL J. CHITWOOD

OFFICE
(386) 736-5961



VOLUSIA COUNTY SHERIFF'S OFFICE

123 WEST INDIANA AVE • P.O. BOX 569 • DELAND, FLORIDA 32721-0569
(386) 822-5074 (FAX) • WWW.VOLUSIASHERIFF.ORG

September 15, 2020

Sergeant Jacob Kraker #7672
Volusia Sheriff's Office
SOD / DeLand Courthouse

Final Termination

Sergeant Jacob Kraker:

Volusia County Sheriff's Office Directive 26.2.34 requires that all "Employees shall adhere to all official Directives and/or orders, and shall faithfully execute all the duties and responsibilities of their assigned position." As a result of your actions documented in IA-20-013, I have determined you violated the following Volusia County Merit Rules and Regulations, and Volusia Sheriff's Office Standards Directives:

Volusia County Merit System Rules and Regulations 86-453. *Any violation is cause for disciplinary action ranging from oral reprimand to dismissal, depending on the seriousness of the offense and other circumstances related to the situation.*

RE: *(2) Disregard for or frequent violations of county ordinances, departmental policies and regulations, including safety rules.*

(14) Any conduct, on or off duty that reflects unfavorably on the County as an employer.

(22) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

Volusia County Merit System Rules and Regulations 86-43.

RE: *(c) Outside Employment*

(2) Approval to engage in outside employment must be obtained in writing from the employee's appointing authority. If the specific conditions of the outside employment change, a new request for approval must be submitted. Failure to secure required approval may cause and employee to be suspended or discharged. Approval will at times be subject to review and cancelation.

A handwritten signature in black ink, appearing to be "JK".

Sheriff's Office Standards Directives:

26.2.105 Unlawful Use of Deadly Force - Deputies shall use deadly force in strict accordance with the policy and procedure established in Directive 1.1 Use of Force Guidelines and shall not violate or exceed statutory provisions governing the use of deadly force to the extent that injury or death is inflicted or is likely to result. *(Violation subject up to dismissal.)*

26.2.133 Job Knowledge and Performance- Repeated failure to maintain necessary skills, knowledge and abilities after counseling and instruction shall result in increasing the severity of disciplinary actions. *(Violation subject up to dismissal)*

26.2.134 Knowledge of Official Directives – VSO personnel are required to possess a sound working knowledge of the policies and procedures established by the Standards Directives.

To Wit:

On August, 5, 2020, at the direction of Chief Deputy Joseph Gallagher, an administrative investigation was initiated into an incident involving you and Dane Wehr, a civilian, at the pool area of the Sanctuary at Westport Apartments, where you used force to subdue Wehr via chokehold.

On July 26, 2020, you contacted the on-duty watch commander, Lieutenant Cody Cochran, and advised him that while you were off-duty working in the capacity of a "courtesy officer" for the Sanctuary at Westport Apartments, you were tasked with vacating people from the apartment complex's pool area. You stated you responded to the pool area while wearing civilian attire, and asked several individuals to leave the area.

During the encounter, Wehr became argumentative and confrontational, and he refused to leave. You indicated in your report that you provided Wehr your Volusia Sheriff's Office badge and ID card and verbally identified yourself as a law enforcement officer to gain further compliance and to de-escalate the situation, but to no avail. You stated Wehr "slapped" your law enforcement credentials out of your hand and "head-butted" you in the chest, at which time you responded by taking Wehr to the ground, where you were able to subdue Wehr without further incident. After the takedown, the altercation ceased and Wehr departed the area.

The Port Orange Police Department responded and concluded their investigation because you did not wish to pursue criminal charges against Wehr. You completed a Port Orange Police Department refusal to prosecute affidavit, indicating you did not wish to pursue charges.

Lieutenant Cochran conducted a preliminary investigation into the incident due to you displaying your departmental credentials and identifying yourself as a law enforcement officer before using force against Wehr. The investigation was to determine if a Response to Resistance report was required to document the force you used.



Lieutenant Cochran contacted Wehr to discuss the incident. Wehr advised he was at the pool area with several friends celebrating Wehr's 21st birthday. Wehr stated he was intoxicated when he was contacted by you. Wehr indicated he believed you were a security guard for the apartment complex, which led him to become confrontational instead of being compliant with you.

While in contact with you, Wehr advised he recalled "*brushing shoulders*" with you, at which time you placed him in a "*rear naked choke*." Wehr stated the chokehold completely restricted his breathing, and he immediately fell forward into a lounge chair with you on his back. Wehr advised he "submitted" to you by "tapping out," and you subsequently released him. Wehr stated he and his friends then left and that he was uninjured from the altercation. Lieutenant Cochran indicated he did not observe any visible injuries on Wehr.

A video of the incident was recovered from the Sanctuary at Westport Apartment's surveillance video system. A review of the video shows several individuals in the pool area, and in the pool. You entered the locked pool area, and approached the persons within the pool. You are observed standing near the pool speaking with Wehr and others, who were all in the pool. You are observed later removing your Volusia Sheriff's Office credentials while walking toward Wehr and the other people in the pool. You then squatted down, holding your credentials towards Wehr, at which time Wehr takes your credentials from you and tossed them behind you. Wehr is then observed exiting the pool, walking aggressively toward you, and standing directly in front of you. At this time, another person stands in-between you and Wehr and begins pushing Wehr away from you.

The video shows you contacted the Sheriff's Office Communications supervisor via cellphone, at which time Wehr makes physical contact with you with his shoulder. A few moments later, Wehr approached you, at which time you grabbed Wehr around his head/neck area with your right arm around the back of Wehr's head and your left arm pulling your right arm into a locking position (neck/choke hold). You and Wehr then fall onto a lounge chair adjacent to the pool area. The video depicts Wehr's left hand patting on your back immediately after falling onto the lounge chair.

You remained on top of Wehr in this position on the lounge chair for 18 seconds, at which time you stood up and walked away. Wehr is subsequently escorted in the opposite direction of you by his associates. Port Orange Police arrived a few minutes later.

During Port Orange Police's investigation, you advised you identified yourself as a law enforcement officer then Wehr "shoulder checked" and "head butted" you, so you "put him on the ground." You later advised Volusia Sheriff's Office Sergeant Hansard that you, "Had him by the freakin' waist."

Port Orange Police conducted an interview with Wehr in the early morning hours of July 26, 2020, after the incident occurred, and Wehr stated that he made shoulder contact with you, and you subsequently placed him in a "very strong chokehold." He then stated that he "tapped out because I couldn't breathe. Literally couldn't breathe." Wehr also completed a sworn written statement indicating you placed him in a chokehold.

Volusia Sheriff's Office Lieutenant Cochran conducted a second interview with Wehr in the evening hours of July 26, 2020. During the interview, Wehr provided the same recollection of events and stated you placed him in a chokehold. Additionally, Wehr demonstrated how you held him during the altercation, which was observed to be consistent with a neck or chokehold.

You wrote an official report regarding this incident on July 27, 2020, two days after the incident; however, you did not detail the defensive tactics you used; what part of the body you applied the tactics to; the age, sex, and physical size of Wehr; Wehr's proximity to weapons; or any medical treatment, or the offer of medical treatment, provided to Wehr.

The surveillance video does not depict Wehr head-butting you in the head/face area as stated by you during your interview with internal affairs and documented in your original incident report, nor does it show you being head-butted in your chest as you claimed on the Port Orange Police body worn camera video. Also, at no time did you advise you were injured, stunned, or in any immediate danger of serious bodily harm or death, including during the conversations you had with the Port Orange Police Officers immediately after the incident. You also failed to articulate these points in your report.

Several witnesses were contacted and provided sworn statements indicating you placed Wehr in a neck or chokehold. Additionally, you stated on body worn camera and during your interview with Port Orange Police that Wehr told you that he couldn't breathe.

You have received and acknowledged several Departmental Directive revisions/updates that prohibit deputies from using neck or chokeholds while using force, with the exception of a deadly force situation. You stated during your interview with Internal Affairs that Wehr was not offering "deadly force" subject resistance at the time you utilized force against him. Additionally, you stated that you did not place Wehr into any type of neck hold or any other variation of a neck or chokehold; however, as stated before, the video surveillance clearly depicts you placing Wehr into a neck or chokehold.

Lastly, you did not request or receive authorization by any person in the Volusia Sheriff's Office to be employed off-duty as a courtesy officer for the Sanctuary at Westport Apartments; if and to the extent you were acting as Sanctuary at Westport Apartments' employee, such action was not permitted or approved.

You have previously been the subject of the following disciplinary action:

11/17/2011	26.2.98	Careless Handling of Equipment and vehicle	Sustained
08/05/2015	26.2.98	Careless Handling of Equipment and vehicle	Sustained
06/06/2019	26.2.24	Leaving Assigned Work Area	Sustained
06/06/2019	26.2.34	Failure to Follow Directive or Order	Sustained
06/06/2019	86-453(2)	Disregard for or Frequent Violations of Federal Laws, State Laws, County Ordinances	Sustained
06/06/2019	86-453(5)	Violation of Any Reasonable or Official Order, Refusal to Carry Out Lawful Order	Sustained
07/29/2020	26.2.134	Knowledge of Official Directives	Sustained

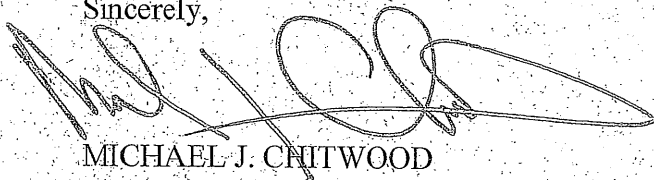
In determining your discipline, I have considered your prior disciplinary history, performance, length of service with VSO, and seriousness of the circumstances of the most recent violations.

Sergeant Kraker, you were served with an "Intent to Terminate" letter on August 26, 2020, advising you of my intent to terminate your employment with the Volusia Sheriff's Office. You appeared before me on September 8, 2020, and had the opportunity to offer any mitigating circumstances that should be considered prior to the final discipline. After earnest consideration, my final decision is to **terminate your employment with the Volusia Sheriff's Office.**

Pursuant to the Volusia County Merit System Rules, Section 86-455, the Volusia County Legal Department and Human Resources Director have reviewed and concur with this intended action.

If you wish to appeal my decision in this matter, you may do so by filing a written request through the County Human Resources Director within ten (10) days of receipt of this notification.

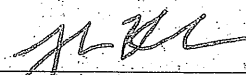
Sincerely,



MICHAEL J. CHITWOOD
SHERIFF

cc: Human Resources
County Legal
Internal Affairs

MC/ds 040L0219.20



This letter read and received by:
Sergeant Jacob Kraker #7672
Date: 09/17/2020
Time: 1151 AM

SERVED BY LT SHIVERS
DUP 6842