

VOLUSIA SHERIFF'S OFFICE
INTERNAL AFFAIRS

REPORT OF INVESTIGATION

REPORT NUMBER: IA 20-013

PERIOD COVERED: July 25, 2020 – July 26, 2020
DATE REPORTED: July 29, 2020
SUBJECT NAME: Sergeant Jacob Kraker #7672
INVESTIGATING OFFICERS: Lieutenant Daniel Shivers #6842

BASIS FOR INVESTIGATION:

On July 29, 2020, Sheriff's Office Command Staff received a memorandum drafted by Lieutenant Cody Cochran; the memorandum detailed an incident involving Sergeant Jacob Kraker and Dane Wehr, a civilian, at the pool area of the Sanctuary at Westport Apartments. Sergeant Jacob Kraker was working in an off-duty capacity as a "courtesy officer" and subsequently contacted Wehr while he was in the pool. Wehr was in the pool area of the apartments after hours while the pool area was closed per apartment policy. Sergeant Kraker identified himself as a deputy sheriff, at which time an altercation ensued and Sergeant Kraker used force to subdue Dane Wehr by applying a "chokehold;" contrary to Volusia Sheriff's Office agency policy & procedures and use of force guidelines.

OFFENSES:

This investigation is relevant to an alleged violation of Department Standards Directives and Volusia County Merit Rules and Regulations:

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 Federal Laws, State laws, County ordinances, VSO Standard Directives, and 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. *This violation may be sufficient grounds for disciplinary action ranging from oral reprimand to dismissal, depending on the seriousness of the offense and other circumstances related to the situation.*

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 an employee to be suspended or discharged. Approval will at times be subject to review and cancelation.

Volusia 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.

INVESTIGATIVE SUMMARY:

On August 5, 2020, Chief Deputy Joseph Gallagher assigned the above incident to the Internal Affairs Unit. This report details the internal affairs investigation conducted by Lieutenant Daniel Shivers.

On July 29, 2020, Sheriff's Office Command Staff received a memorandum drafted by Lieutenant Cody Cochran; the memorandum detailed an incident involving Sergeant Kraker and Dane Wehr, a civilian, at the pool area of the Sanctuary at Westport Apartments where Sergeant Kraker used force to subdue Wehr via "chokehold." *(See Tab-C for Memorandum)*

On August 5, 2020, Sergeant Kraker was served with a Notification of Internal Investigation along with a copy of his Officer Bill of Rights. *(See Tab- D for Official Correspondence)*

According to the memorandum, on July 26, 2020 at approximately 0010 hours, Sergeant Kraker contacted the on-duty watch commander, Lieutenant Cody Cochran, and advised him that while

he was off-duty working in a capacity of a “courtesy officer” for the Sanctuary at Westport Apartments, he was tasked with vacating people from the apartment’s pool area due to the pool being closed. Sergeant Kraker stated he responded to the pool area while wearing civilian attire, and asked several individuals to leave the area.

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

Sergeant Kraker indicated the Port Orange Police Department responded and documented the incident (Port Orange Police Case Number PO200005016) (*See Tab-E for Official Reports*). Sergeant Kraker advised the incident was concluded because he did not wish to pursue criminal charges against Wehr. It was observed Sergeant Kraker completed a Port Orange Police Department refusal to prosecute affidavit, which is included within the report.

The memorandum indicates Lieutenant Cochran conducted a preliminary investigation into the incident due to Sergeant Kraker displaying his departmental credentials and identifying himself 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 used by Sergeant Kraker.

Additionally, the memorandum indicates Lieutenant Cochran advised he contacted Wehr at approximately 1930 hours, on July 26, 2020, at Wehr’s residence in Edgewater. Lieutenant Cochran advised he asked Wehr to discuss the incident, at which time 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 Sergeant Kraker. Wehr indicated he believed Sergeant Kraker was a security guard for the apartment complex, which led him to become confrontational instead of being compliant.

While in contact with Sergeant Kraker, Wehr advised he recalled “*brushing shoulders*” with Sergeant Kraker, at which time Sergeant Kraker 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 Sergeant Kraker on his back. Wehr advised he “submitted” to Sergeant Kraker by “tapping out,” and Sergeant Kraker 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.

Volusia Sheriff's Office Original Report – 200013365

(See Tab-E for Official Reports)

Sergeant Kraker completed an “information” report on July 27, 2020, which was officially uploaded into RMS via Copperfire. Sergeant Kraker wrote in the report that at approximately 2331 hours, he was notified of several noise complaints coming from the pool area of the apartment complex by several residents. He advised in the report that he responded to the pool area to ask the subjects to quiet down and depart the pool area because he is the property's courtesy officer.

Sergeant Kraker indicated in the report that he went to the pool area wearing a red t-shirt, blue shorts, all of which had no law enforcement identifying features, and contacted several individuals in the pool “smoking, drinking, and being loud.” Sergeant Kraker detailed the pool closed at 1700 hours, and he asked them to exit the pool and leave.

Sergeant Kraker advised Wehr immediately became verbally aggressive and was “clearly intoxicated or heavily under the influence of narcotics or alcohol.” Sergeant Kraker wrote that Wehr exited the pool and continued making vulgar and aggressive statements towards him. Sergeant Kraker advised Wehr “began to approach Kraker in an aggressive manner, blowing smoke in his face and continuing to be aggressive.”

Sergeant Kraker wrote that he identified himself as the courtesy officer, and Wehr continued to act aggressively towards him, to include “throwing his shoulder in to Kraker on several occasions making physical contact” and stating, “I'll fucking blast you!” while pointing his finger in a gun motion at Kraker.

Sergeant Kraker advised Wehr asked, “What fucking authority do you have over me?” at which time Sergeant Kraker contacted VSO dispatch and identified himself to Wehr as a Deputy Sheriff. Sergeant Kraker wrote Wehr began to question the validity of Sergeant Kraker being a law enforcement officer do to Sergeant Kraker's attire and the absence of a badge, so Sergeant Kraker attempted to show Wehr his credentials in his wallet. Sergeant Kraker advised Wehr “ripped them from Kraker's hand and threw them.”

Sergeant Kraker wrote he continued to be “verbally attacked” by Wehr, and Wehr continued with his aggressive and belligerent behavior. Sergeant Kraker advised Wehr “came at Kraker in an aggressive manner throwing his shoulder into him” and, as Wehr's friends were attempting to restrain Wehr, Wehr came at Sergeant Kraker, “throwing his face and head into Kraker's head making contact.”

Sergeant Kraker then wrote, “After multiple physical attacks from Wehr and the situation appearing to escalate by Wehr’s behavior, Kraker escorted him down on to one of the lounge chairs placed around the pool and ordered him to stop. Wehr was let up after a brief conversation to which Wehr advised he understood his wrongdoing.”

Sergeant Kraker wrote in the report that Wehr departed the area prior to the arrival of Port Orange Police officers, and that he immediately notified the Sheriff’s Office on-duty watch commander and the district supervisor responded.

Sergeant Kraker authored and submitted the report on July 27, 2020, at approximately 1510 hours.

Sanctuary at Westport Surveillance Video

Lieutenant Shivers contacted the management staff of Sanctuary at Westport Apartments and obtained a copy of the video surveillance depicting the altercation between Sergeant Kraker and Wehr. It should be noted, only video surveillance is observed; no audio. Additionally, the video is infrared, so it is solely in black/gray/white format. The date and time stamped on the video is on July 25, 2020, beginning at approximately 2330 hours and ends at approximately 2341 hours. *(See Tab-F for Digital Media)*

Upon reviewing the video, Lieutenant Shivers observed several individuals in the pool area, and in the pool. Lieutenant Shivers observed Sergeant Kraker, wearing a t-shirt, shorts, and shoes, enter the locked pool area at approximately 2335 hours, and approach the people within the pool. Sergeant Kraker is observed standing near the pool speaking with Wehr and others, who were all in the pool. Sergeant Kraker is observed a minute later removing something from his left pocket while walking toward Wehr and the other people in the pool. Sergeant Kraker then squats down holding the object towards Wehr, at which time Wehr takes the object from Sergeant Kraker and tosses it behind Sergeant Kraker.

Wehr is then observed exiting the pool, walking aggressively towards Sergeant Kraker, and then stand directly in front of him. At this time, another person stands in between Sergeant Kraker and Wehr and begins attempting to push Wehr away from Sergeant Kraker.

At approximately 2337 hours, Sergeant Kraker appears to remove his cellular telephone from his pocket and put it to his ear, presumably contacting VSO dispatch. During the next two minutes, Wehr continues his aggressive actions, making physical contact with Sergeant Kraker with his shoulder, and having to be pushed away from Sergeant Kraker by another person.

At approximately 2339 hours, Wehr approaches Sergeant Kraker, who then grabs Wehr around his head/neck area with his right arm around the back of Wehr’s head and Sergeant Kraker’s left

arm pulling his right arm into a locking position (neck/choke hold). Sergeant Kraker and Wehr then fall onto a lounge chair adjacent to the pool area. The video depicts what appears to be Wehr's left hand patting on Sergeant Kraker's back immediately after falling onto the lounge chair.

Sergeant Kraker remains on top of Wehr in this position on the lounge chair for approximately 18 seconds; however, the view is obstructed by a pole and the top half of Sergeant Kraker and Wehr is not able to be viewed.

Sergeant Kraker is then observed standing up and walking away, at which time Wehr stands up and is pushed/pulled in the opposite direction of Sergeant Kraker. Additional people are observed packing/cleaning the pool area up, and no further contact was made between Sergeant Kraker and Wehr. The video surveillance recording ends at approximately 2341 hours.

Port Orange Police Department Body Worn Camera Footage

Lieutenant Shivers reviewed the body worn camera footage provided by Port Orange Police Department regarding the incident.

Lieutenant Shivers observed Sergeant Kraker conversed with several Port Orange Police Officers and a Sergeant, and provided his recollection of the events. Below is a summation of several statements made by Sergeant Kraker during the videos:

Port Orange Police BWC Video "AXON_Body_2_Video_2020_7_25_2347a" *(See Tab-F for Digital Media)*

This video was recorded via Port Orange Police Officer James Sluder at 2347 hours, and totals 20:31 minutes in duration. Below is a summary of relevant findings –

At minute mark 1:47, Sergeant Kraker is observed talking to Port Orange Police Officer Sluder and an unidentified male, at which time Sergeant Kraker stated, "...and he's gonna head butt me and then fucking threaten to shoot me in the face? Come on man." Afterwards, an unidentified male [later identified as Barkin Kesimer] states, "He didn't really head butt you...come on." Barkin then continued to speak with Port Orange Police Officers, and a second shirtless heavysset unidentified male [later identified as Nicholas Bevaqua], walked up with Barkin and began speaking with the officers.

It was determined the two unidentified males were with Wehr when the altercation occurred; however, they refused to provide their names or any other information to Port Orange Police. Both males advised several times that they were attempting to calm Wehr down, and prevent any violence, and did not want to be involved or identify themselves to law enforcement.

At minute mark 4:04, Port Orange Officer Sluder asked Barkin and Nicholas simultaneously, *“Did he identify himself as an officer?”* at which time Barkin advised, *“He showed his badge, but I’m not sure...I don’t think Dane [Wehr] saw.”*

Barkin and Nicholas advised they did not observe Wehr “hit” Sergeant Kraker, but advised they observed Wehr “bump” into Sergeant Kraker with his shoulder/arms.

At minute mark 5:25, Nicholas advised, *“The only thing that I saw was the fact that he [Wehr] walked into him [Sergeant Kraker] and head butted him; not even head butted, but the fact that he just walked into him.”*

Port Orange Officer Sluder also speaks with Lindsay Mayberry, who is Wehr’s ex-girlfriend and a resident of the apartment complex. She advised she did not witness any of the incident, but provided Port Orange Police officers with Wehr’s name and information. She said she only heard *“Screaming”* but did not see anything happen.

It was also observed, Barkin and Nicholas became argumentative with Port Orange Police Officers, and walked away from the area without giving any further information.

Port Orange Officer asked Sergeant Kraker if he wished to pursue charges, at which time Sergeant Kraker advised he did not. Officer Sluder provided Sergeant Kraker with a case card and had Sergeant Kraker complete a “refusal to prosecute” Waiver and Affidavit. *(See Tab-E for Official Reports)*

At minute mark 16:50, Sergeant Kraker explains to Port Orange Officer Sluder that he told his phone to *“Call dispatch”* and his phone auto-dialed dispatch supervisor; indicating he contacted VSO Communications Supervisor staff directly on their direct-line county cellular telephone instead of calling the non-emergency or emergency lines.

It should be noted, Sergeant Kraker’s statements regarding the manner he called the dispatch supervisor’s cell phone was not consistent with the statements he made in his interview with internal affairs. During the interview, Sergeant Kraker advised, *“I tried to get through to dispatch like two or three times. It didn’t go through so I believe I ended up calling the dispatch supervisor’s phone and the dispatch supervisor called and I say, “Hey, you know, I’m having an issue here can you send Port Orange?”*

Port Orange Police BWC Video “AXON_Body_2_Video_2020_7_25_2347b”
(See Tab-F for Digital Media)

This video was recorded via Port Orange Police Officer James Dykstra at 2347 hours on July 25, 2020, and totals 23:12 minutes in duration. Below is a summary of relevant findings –

At minute mark 2:03, Port Orange Police Officer Dykstra asked Sergeant Kraker if he had any injuries, at which time Sergeant Kraker advised, *“My fucking rib’s killing me. He fucking head butted me so I tackled him.”*

It should be noted, Sergeant Kraker refused all offers for medical evaluation/treatment, and his statement that he *“...tackled him”* is inconsistent with the surveillance video and later statements made by Sergeant Kraker and other witnesses.

Port Orange Officer Dykstra contacts Port Orange Police Sergeant Harrison, and provides him with a brief synopsis of what occurred, then returns to the area where Sergeant Kraker was, and subsequently to where Port Orange Police Officer Sluder, Barkin, and Nicholas were.

Port Orange Officer Dykstra attempts to obtain further information from Barkin and Nicholas; however, was not provided any further information to assist with the identification and/or location of Wehr. Both unidentified males are observed stating to Port Orange Police Officer Dykstra that they do not want to be involved and are not going to provide any information.

Officer Dykstra stands by for a few minutes, and then drives around the parking lot in attempt to locate Wehr and/or his vehicle. He returns back to where Sergeant Kraker is speaking with Port Orange Police officers and then goes back to his vehicle to conduct research on his computer.

At minute mark 21:18, Sergeant Kraker is overheard speaking to Port Orange Police officers, at which time he states, *“Well he had to pull that door open, and I said, “Get a hold of your boy right now or I’ll put him down.” I was like “I’m not playing with you.” Then he pushed him all the way over the gate and he came running back, and I just said, I was like, “Go for it bud! I’ll put you down!”* Sergeant Kraker continues to speak; however, it is inaudible.

Port Orange Police Officer Dykstra ends his video recording a few moments later.

Port Orange Police BWC Video “AXON_Body_2_Video_2020_7_25_2350”
(See Tab-F for Digital Media)

This video was recorded via Port Orange Police Officer Wayne Jean at 2350 hours on July 25, 2020, and totals 12:06 minutes in duration. Below is a summary of relevant findings –

At minute mark 1:26, while speaking with Port Orange Police Officer Wayne Jean about the incident, Sergeant Kraker advised Wehr, *“Shoulder checked me a couple times and then he fucking head butted me and I’m not fucking playing that game.”*

It should be noted, Sergeant Kraker advised Wehr “shoulder checked” him *“multiple”* times; all of which is inconsistent with the video surveillance where it appears Wehr only had shoulder-to-shoulder contact one time.

At minute mark 1:33, Sergeant Kraker advised, *“When he head butted me, I took him to the ground and basically told him, you know, fucking knock it off.”*

Sergeant Kraker explains one of the unidentified males took Wehr and threw him over the fence, and he did not know where Wehr was.

At minute mark 1:50, Sergeant Kraker stated, *“My fucking rib is killing me.”* At which time Port Orange Officer Jean asked if he wanted medics, to which Sergeant Kraker declined.

Port Orange Police Officer Jean subsequently goes to his vehicle and drives around the area in attempt to locate Wehr, with negative results. He speaks to residents in the area in attempt to determine if they saw Wehr, but did not obtain any further information.

Port Orange Police Officer Jean ends his video recording a few minutes after returning to the area where the other Port Orange Police officers were.

Port Orange Police BWC Video “AXON_Body_2_Video_2020_7_25_2351”
(See Tab-F for Digital Media)

This video was recorded via Port Orange Police Sergeant William Harrison at 2351 hours on July 25, 2020, and totals 16:03 minutes in duration. Below is a summary of relevant findings –

At minute mark 1:28, Sergeant Kraker is speaking with Port Orange Police Sergeant Harrison and other officers, at which time Sergeant Kraker advised Wehr was, *“Loud. Belligerent.”* Port Orange Police Sergeant Harrison then asked Sergeant Kraker if he wished to pursue charges, at which time Sergeant Kraker advised he did not, and laughingly stated, *“Absolutely not.”*

Sergeant Kraker went onto state, *“I just wanted his ass to fucking calm down and go to bed. But you’re also not gonna put a, you know, put your finger in my face and tell me that you’re gonna blast me in the face and then head butt me.”*

It should be noted, in a later interview with internal affairs, Sergeant Kraker advised Wehr was unarmed and did not have immediate access to any weapons.

At minute mark 2:05, Port Orange Sergeant William Harrison asks Sergeant Kraker if he identified himself as a LEO (Law Enforcement Officer), at which time Sergeant Kraker advised, *“Oh yeah. And he fucking snatched my badge out of my hand and fucking threw it.”* Sergeant Kraker went onto state, *“I said I’m Sergeant Kraker with the Sheriff’s Office...”* identifying himself as a Deputy Sheriff.

At minute mark 2:25, Sergeant Kraker stated Wehr asked him what authority he had over him, at which time Sergeant Kraker advised, *“I said well first of all, I’m the courtesy officer here, too. And number two, I’m a law enforcement officer with the Sheriff’s Office. And I showed him my badge and he fucking threw it.”*

Port Orange Police Sergeant Harrison also speaks with Lindsay Mayberry in attempt to gain further information on the whereabouts and/or identification of Wehr.

Additionally, Port Orange Police Sergeant Harrison speaks with Barkin and Nicholas; however, he was unable to obtain any further information as to their identities or incident details. Port Orange Police Sergeant Harrison ends his recording soon thereafter.

Port Orange Police BWC Video “AXON_Body_2_Video_2020_7_26_0009”
(See Tab-F for Digital Media)

This video was recorded via Port Orange Police Sergeant William Harrison at 0009 hours on July 26, 2020, and totals 11:59 minutes in duration. Below is a summary of relevant findings –

In this video, Port Orange Police Sergeant Harrison speaks to Lindsay Mayberry to obtain her identity and address. Additionally, Port Orange Police Sergeant Harrison speaks to one of the unidentified males, who is argumentative and is asked to depart from the area.

Port Orange Police Sergeant Harrison and Lindsay Mayberry walked to where Sergeant Kraker and other Port Orange Police officers were talking, at which time Lindsay Mayberry speaks to Sergeant Kraker as to the ramifications of Wehr and the other two unidentified males’ actions as it pertains to her status as a resident in the apartment complex.

Lindsay Mayberry additionally advised Wehr had been consuming excessive amounts of alcohol, but she did not believe he was in any danger due to the level of his intoxication.

During the conversation, at minute mark 10:25, Sergeant Kraker is explaining what happened to Lindsay Mayberry, and states, *“I thought I was pretty nice. Hey, pool closes in five, you guys, let’s*

wrap it up, and he just right off the bat, fired right into me. Who the fuck are you and what authority do you have over me? I identified myself, showed him my badge, and he fucking rips it out of my hand and throws it. I mean... Try to be nice; try to be respectful, and at that point, what do you do? I don't know how many opportunities I gave him before I finally had to put him on the ground because, I mean, he kept coming into my face, kept running back towards me. I'm not pressing charges; I don't care."

It should be noted, the statement that Wehr, "...kept coming into my face, kept running back towards me" is inaccurate, as the surveillance video does show Wehr approaching him several times, he is not seen "running back" towards Sergeant Kraker.

Port Orange Police Sergeant Harrison ends his recording soon thereafter.

Port Orange Police Interview with Dane Wehr

On July 26, 2020, at approximately 0244 hours, Port Orange Police Officer Dykstra contacted Wehr in person at the Forest Lakes Apartments in Daytona Beach. Wehr called VSO dispatch and requested to speak with police.

Port Orange Police BWC Video "AXON_Body_2_Video_2020_7_26_0316" *(See Tab-F for Digital Media)*

This video was recorded via Port Orange Police Officer James Dykstra at 0316 hours on July 26, 2020, and totals 22:48 minutes in duration. Below is a summary of relevant findings – This video contains an interview with Port Orange Police and Wehr a few hours after the incident occurred. Only Wehr and Port Orange Police Officer Dykstra were present during this interview.

At minute mark 2:40, Wehr advised the altercation, "...got a little aggressive. I may have touched him [Sergeant Kraker] with my shoulder and then I was put into a very strong chokehold and I tapped out because I couldn't breathe. Literally couldn't breathe."

It should be noted, Wehr's statements were consistent with the surveillance video.

Wehr went onto state he did not believe Sergeant Kraker was a law enforcement officer until after the takedown.

It was observed Officer Dykstra verified Wehr's identity via DAVID (Wehr's Florida driver's license). Wehr was also observed in the video writing a sworn written statement, where he wrote the following – "I was celebrating my 21st birthday when a unknown came up and claimed to be a

officer me drunkenly decided to be slightly aggressive and say some unneeded things I then proceeded to leave after 2 verbal warning and a choke hold. We made contact via shoulders.”

Officer Dykstra wrote in a supplemental report that Wehr stated “*he may have become overly aggressive with the officer [Sergeant Kraker] and approached, then rubbed shoulders with him. The officer then proceeded to place him in a choke hold.*” Additionally, Officer Dykstra indicated Wehr did not recall head-butting Sergeant Kraker, and wrote that Wehr “*did state that he did not “put his hands on” him [Sergeant Kraker]” (See Tab-E for Official Reports)*

Volusia Sheriff’s Office Body Worn Camera Footage

Lieutenant Shivers reviewed body worn camera footage by Volusia Sheriff’s Office Sergeant Richard Hansard that was recorded on July 26, 2020, at 0036 and 0046 hours. Below is a summation of several statements made by Sergeant Kraker while speaking with Sergeant Hansard.

Sergeant Richard Hansard’s BWC “AXON_Flex_2_Video_2020_07_26_0036” *(See Tab-F for Digital Media)*

This video was recorded via Volusia Sheriff’s Office Sergeant Richard Hansard at 0036 hours on July 26, 2020, and totals 04:03 minutes in duration. Below is a summary of relevant findings –

At minute mark 2:10, Sergeant Hansard asks Sergeant Kraker if he “*engaged the guy?*” and Sergeant Kraker responded with, “*Yea, we just wrestled on the ground.*”

It should be noted, Sergeant Kraker’s statement that he and Wehr, “*...just wrestled on the ground*” was inconsistent, as it appeared Wehr was not offering any resistance to Sergeant Kraker upon being placed on the lounge chair.

At minute mark 2:27, Sergeant Kraker, while explaining the incident to Sergeant Hansard, states the following – “*Who the fuck are you? What fucking authority do you have over me? So I’m the courtesy officer here for one and number two, I’m a deputy with the Sheriff’s Office. Showed him my badge, he snatched it out of my hand, looked at it and fucking threw it. Proceeded to you know, curse me out up and down; his friends were like “no, no, stop, calm down, blah blah blah.” He shoulder checked me a couple times and then his buddies started dragging him away. He got away, came running up to me, and then did one of “these,” friggin threw his head into my face, and that’s when I just took him to the ground. I said you need to fucking knock it off. Time to go home.*”

At minute mark 3:01, Sergeant Kraker continues by saying, *“He screamed “I can’t breathe... Release...I can’t breathe! Played that whole game.”*

At minute mark 3:12, after Sergeant Hansard asked for Wehr’s description, Sergeant Kraker stated, *“I had him by the freakin waist. Picked him up...”* [The rest of the statement is unintelligible]

Additionally, Sergeant Kraker confirmed he was uninjured from the altercation after being asked by Sergeant Hansard.

Sergeant Richard Hansard’s BWC “AXON_Flex_2_Video_2020_07_26_0046”
(See Tab-F for Digital Media)

This video was recorded via Volusia Sheriff’s Office Sergeant Richard Hansard at 0046 hours on July 26, 2020, and totals 10:42 minutes in duration. Below is a summary of relevant findings –

During this video, Sergeant Hansard explains that the decision to not pursue any criminal charges against Wehr is *“not sitting well with Cody”* [Lieutenant Cody Cochran - Watch Commander], Sergeant Kraker responds with, *“It’s not up to Cody. If he’s got a problem he can call me.”*

Sergeant Hansard replies with, *“Once you identify yourself as a law enforcement officer, though, you’re taking on that role, and now you’re talking about battery on a LEO. And you may end up hurting tomorrow; you’re not feeling today. Or injured tomorrow.”*

Sergeant Kraker responds by saying, *“Yeah, well, I just talked to him, but whatever he wants to do. The kids not even here. I don’t even know where he is.”*

At minute mark 6:14, Sergeant Kraker again describes the incident by saying, *“I just put him on the ground and held him there and told him he needs to fucking cool off and knock it off.”*

It should be noted, Sergeant Kraker does not complain of any injuries to his head or face area, and none of the videos depict any injuries or markings consistent with Sergeant Kraker being head-butted in the face or head.

Lieutenant Shivers reviewed body worn camera footage by Volusia Sheriff’s Office Lieutenant Cody Cochran which was taken on July 26, 2020, at 1934 hours during an interview with Wehr at his residence in Edgewater, FL. Below is a summation of several statements made by Wehr while speaking with Lieutenant Cochran about his recollection of the incident.

Lieutenant Cochran’s BWC (Spare 51) “AXON_Flex_2_Video_2020_07_26_1934_flip”

(See Tab-F for Digital Media)

This video was recorded via Volusia Sheriff's Office Lieutenant Cody Cochran at 1934 hours on July 26, 2020, and totals 10:35 minutes in duration. Below is a summary of relevant findings –

At minute mark 2:32, Wehr explains the incident and stated, *"I became verbal. Aggressive. Verbally. After a few drinks, it was my 21st birthday. And then, we touched shoulders, I remember we touched shoulders; shoulder to shoulder. Someone said something about head butting, or something. My head didn't go anywhere near him. It was a shoulder, kinda like that [makes a motion with his shoulder to show Lieutenant Cochran]."*

Lieutenant Cochran asks clarifying questions, and Wehr responds that he and Sergeant Kraker "shoulder checked" each other while walking by one another. Wehr then advised, *"I feel like we were both angry at each other...irritated...and then, I don't remember how I got put in a chokehold. I think it was for "that" reason. [Wehr slaps his shoulder to indicate the shoulder contact]."*

Wehr further explains he ended up on a chair, on his back, at which time he stated, *"I tapped out...on his back. I said I'm done; I can't breathe, I'm done. I tapped on him."*

Lieutenant Cochran asked Wehr if he recalls Sergeant Kraker grabbing him, at which time Wehr advised, *"Just the chokehold, that's all I remember. Being on the...on the, uh, pool, pool bench."*

At minute mark 4:06, as Lieutenant Cochran was reiterating the story with Wehr, Wehr clarified his statements by saying the following, *"I think he took me to the chair with the chokehold."*

Lieutenant Cochran asked if Wehr could demonstrate how Sergeant Kraker held him, at which time Wehr demonstrated how Sergeant Kraker took him down to the pool lounge chair. It was observed Wehr demonstrated the hold on a common utility dolly, and placed his right hand/arm around the dolly in the same manner as he recalled Sergeant Kraker did to him.

At minute mark 5:31, Lieutenant Cochran asked Wehr where his chin was on Sergeant Kraker's arm, at which time Wehr demonstrated on himself by putting his right arm around his neck with his chin in the inside part of his forearm/elbow bend.

At minute mark 5:38, Lieutenant Cochran asked Wehr if he felt Sergeant Kraker "tighten down" on him, at which time Wehr advised, *"Oh yeah. I couldn't breathe, that's why I tapped. I got scared."*

Wehr advised after he tapped on Sergeant Kraker, Sergeant Kraker let him go.

Lieutenant Shivers observed the statements made by Wehr during the interview with Port Orange Police Officer Sluder and Lieutenant Cochran were consistent and corroborated each other.

Lieutenant Shivers also observed Sergeant Kraker's statements on the body worn video and the surveillance video are inconsistent with the incident described within Sergeant Kraker's official incident report.

Lieutenant Shivers also observed Sergeant Kraker did not mention to any of the Port Orange Police Officers or detail in his original report that he grabbed and/or held Wehr by his neck area; as evidenced by the surveillance video recording and the statements made by Wehr. The only clarifying statement made by Sergeant Kraker in regards to the manner he used force on Wehr was to Sergeant Hansard when he indicated he, "*had him by the freakin waist,*" which was inaccurate based on the surveillance video where it clearly depicted Sergeant Kraker holding Wehr by his neck/head area.

Acknowledgement of Departmental Directive Updates/Changes via Target Solutions

Lieutenant Shivers observed on June 19, 2020, Sheriff Michael Chitwood sent file "FYI 040FYI02.20" to "All Sworn" with the following Departmental Policy revisions –

“GENERAL ORDERS

GO-001-01 Use of Force Guidelines

Pg. 3 – Definitions: Neck Hold;

Pg. 5 – B. FORCE GUIDELINES-GENERAL, 4.c. Deadly Force

GO-001-03 Use of Less-Lethal Weapons and Devices

Pg. 2 – Definitions: Taser

Pg. 6 – BOLAWRAP, 3.a. and D.4.b.

Pg. 9 – F. TASER, 3.a.(1)

These policy revisions were effective immediately, and the changes were reflected in the Directives Manual located on the Sheriff's Office Intranet Home Page and I-Drive.”

Additionally, the file contained a notice on the bottom, which indicated the following –

“NOTICE

ROLL-CALL TRAINING WILL BE DOCUMENTED ON ALL POLICES ISSUED BY THE SHERIFF – NEW AND REVISED

Electronic Acknowledgement indicates MORE than just receipt of a directive change; it indicates both receipt AND REVIEW/UNDERSTANDING of the Directive change. This review will be accomplished through DOCUMENTED supervisory Roll-Call training – both sworn/civilian, as the subject matter dictates.”

Lieutenant Shivers observed the updated Departmental Directive for “GO-001-01 Use of Force Guidelines” detailed the following definitions, orders, and direction –

“Deadly Force – The use of deadly force is a measure to be employed in the most extreme circumstances and when lesser means for force have failed or could not be reasonably employed given the circumstances at the time. While it is preferred not to have to use force at all, the Sheriff recognizes, as do the courts, the legislature, and community, that Deputies – by the very nature of their duty and oath – will be confronted with situations that require them to use deadly force in order to defend themselves or others. It is also recognized that Deputies are often forced to make a split second “use of force” judgements in circumstances that are tense, uncertain and rapidly evolving and that they must do so based on an objectively reasonable perception at the time of the treat or danger. It is from this court-recognized position established in Graham v. Connor that the actions of Deputies within the totality of the circumstances will be judged for properness.”

Less-lethal Force - The Volusia Sheriff’s Office provides force options that are less-lethal and can be applied to various resistance levels in which deadly force is not authorized. These options include impact weapons designed to deliver less-lethal striking or leverage control techniques and less-lethal weapons include specialty impact munitions/projectiles designed to stun, temporarily incapacitate, or cause temporary discomfort to a person for the purpose of gaining compliance and control.

III. POLICY

*It is the policy of the Volusia Sheriff’s Office that Deputies use only the minimal degree of force that is necessary to overcome the immediate threat and/or to effectuate an arrest. **Excessive force will not be tolerated.** Deputies shall exercise all safe and reasonable means of control and containment; the application of force shall be guided by Florida State Statues, Volusia Sheriff’s Office general orders, and agency approved training.*

The Sheriff authorizes Deputies to use that amount of force that is proportional, reasonable and necessary under the circumstances to protect themselves and/or others while performing their lawful duties. When feasible and practical, Deputies shall attempt to resolve potential use of force situations with non-physical force alternatives, such as direction, persuasion, verbal warning, or time/distance tactics prior to resorting to the use of force. Deputies have a duty to

intervene if they anticipate or observe the unreasonable, unnecessary, or disproportionate use of force.”

Further in the policy, the following note was added –

“POLICY NOTE: Due to the complexities involved in certain force encounters and the inherent potential for rapidly evolving/changing circumstances, the Sheriff recognizes that unique and unforeseen situations arise while in the performance of law enforcement duties requiring the immediate application of common sense, discernment and independent judgement. In these circumstances, deviation from established protocol may be required in order to affect the best possible outcome. In this case, it shall be incumbent upon the Deputy to justifiably articulate and document within the incident report the events, circumstances and required actions taken. The administrative review of all such reports shall include review by the Training Captain.”

Additionally, the following definition was added –

“IV. DEFINITIONS

Neck Hold – One of the following types of holds (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by the compression of the blood vessels in the neck; (3) lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject’s neck. A neck hold is considered deadly force; Volusia Sheriff’s Office does not train in this restraining technique and does not authorize its use.”

Also within the policy, it states –

“V. PROCEDURE

B. FORCE GUIDELINES – GENERAL.

3. Subject Resistance: *An act by an individual that opposes a Deputy’s lawful commands is resistance. There are four levels of resistance:*

a. Passive Resistance: A subject’s verbal and/or physical refusal to comply with a Deputy’s lawful direction causing the Deputy to use physical techniques to establish control. Example: Subject refuses to move at the Deputy’s direction.

b. Active Resistance: A subject’s use of physically evasive movements directed towards the Deputy such as bracing, tensing, pushing, or pulling to prevent the Deputy from establishing control over the subject. Examples include:

- *The subject physically anchors himself to a person or object to prevent being removed*
- *The subject braces or pulls away from the Deputy when the Deputy grips the subject's arm*
- *The subject attempts to run when the Deputy touches or attempts to grab the subject's arm or shoulder*

c. Aggressive Resistance: Subject's active defiance through attacking movements toward a Deputy that may cause injury but are not likely to cause death or great bodily harm to the Deputy or others. Examples include:

- *The subject balls up his fist and approaches the Deputy*
- *The subject pushes the Deputy back as the Deputy tries to take the subject into custody • The subject grabs any part of the Deputy's body*
- *The subject attempts to strike the Deputy*

d. Deadly Force Resistance: A subject's hostile, attacking movements, with or without a weapon, that cause a reasonable perception by the Deputy that the subject intends to cause, and had the capability of causing, death or great bodily harm to the Deputy or others.

4. Deputy Response to Subject Resistance: *The level of force required by the Deputy to meet the subject's resistance to the point of gaining/regaining control of the subject. Response to subject resistance through physical force occurs when the subject refuses to comply with the Deputy's lawful order and verbal dialogue. There are three levels of force response: [NOTE: The mere handcuffing of compliant individuals is not considered force.]*

a. Physical Control: Use of restraining and/or physical force to achieve compliance or custody through the use of empty-hand or leverage-enhanced techniques, such as pain compliance, transporters, restraint devices (including Emergency Restraint Chair-E.R.C.), takedowns, and striking techniques.

b. Less-Lethal Weapons: Use of weapons that are not fundamentally designed to cause death or great bodily harm. Some examples include chemical agent sprays (e.g. FREEZE +P), DartFiring Stun Gun (e.g. TASER), the remote restraint device (e.g. BolaWrap), less-lethal impact weapons such as expandable batons (e.g. ASP) and 12-GA. Less-Lethal impact munitions.

c. Deadly Force: Force that is likely to cause death or great bodily harm. Some examples include use of a firearm, eye gouges, empty hand strikes to the throat, impact weapon strikes to the head or side of the neck.

The policy also details the following –

6. Applying Force: *It is recognized that Deputies are required to make use of force decisions based on the totality of the circumstances known or perceived by the Deputy at the time of the incident. Since most situations are fluid and dynamic, formulating a reasonable and valid response requires constant threat assessment as the situation unfolds and changes. Force guidelines do not require matching a subject's level of resistance with an exact level of response*

but rather gives Deputies the latitude to pick a use of force response that he or she reasonably believes is appropriate based on an assessment of the totality of the circumstances the Deputy is facing in that moment.

a. The most serious act in which a Deputy can engage during the course of their official duties is the use of deadly force. The authority to carry and use firearms in the course of public service is an immense power, and one which comes with great responsibility.

b. A Deputy is not justified in using deadly force at any point in time when there is no longer probable cause to believe the suspect is dangerous, even if deadly force would have been justified at an earlier point in time.

c. Should use of deadly force be required, Deputies shall immediately render the appropriate medical aid and request further medical assistance for the suspect and any other injured individuals, including the Deputy, when necessary and safe to do so.”

Later in the policy it details –

*“10. **Required Reporting:** In addition to documenting incidents with the Volusia Sheriff’s Office Incident Report, a supervisor shall be informed immediately of each incident involving the use of force by a Deputy(s):*

a. When restraining force is simply used to gain control of a subject without injury, charging the defendant and initiating a Response to Resistance report shall be left to the discretion of the arresting Deputy and the supervisor based on the circumstances; however, any restraining force or physical force resulting in injury, or a complaint of injury (whether or not visible), shall require a Response to Resistance report and Administrative Review through the chain of command.”

Lastly, the following portion of the Departmental Policy is included in the document –

“D. DEADLY FORCE

I. DEADLY FORCE AUTHORIZATION

*a. Deputies are authorized to use **Deadly Force** only when they reasonably believe it is necessary to perform one or more of the following:*

- (1) To prevent imminent death or great bodily/physical harm to a deputy or other person(s).*
- (2) To prevent the escape of a person arrested for a violent felony involving the use or threatened use of deadly force and an imminent danger exists to the Deputy or other person(s).*

(3) *To prevent the escape of an inmate from a detention facility or during transport to or from a detention facility when the escapee poses an imminent danger to the Deputy or other person(s).*

(4) *To apprehend a fleeing felon who the Deputy has probable cause to believe had committed a felony which involved the use or threatened use of deadly force, and an imminent danger exists to the Deputy or other person(s); and when feasible a verbal warning is given to the fleeing subject prior to the use of deadly force.*

b. Unless impractical under the circumstances, deputies shall attempt to give a verbal warning prior to the use of deadly force.

c. Employees should take reasonable measures available under the circumstances to ensure the safety of bystanders when engaging in deadly force.

d. Deadly Force is also authorized to put down a dangerous animal(s) that poses an immediate threat of serious bodily/physical harm to a Deputy, another person, or to neutralize the vicious attack on another animal, but only when other reasonable alternatives are unavailable and only when deadly force can be used without jeopardizing bystanders.

*e. **NOTE:** The dispatch of an injured or sick animal by the use of a firearm does not constitute a use of force, nor require a use of force report; the incident will be documented in an incident report and have supervisory review as with any other non-force incident."*

Lieutenant Shivers observed the updated Departmental Policy for "GO-001-03 Use of Less-Lethal Weapons and Devices" detailed the following definitions, orders, and direction –

"K. DEPUTY REQUIRED REPORTING – INCIDENT REPORT

1. *The Volusia Sheriff's Office Incident Report shall be completed and delivered to the supervisor as soon as possible after the incident.*
2. *Each Deputy present or assisting in the arrest, or incident requiring force shall submit a Volusia Sheriff's Office Supplement Report describing the incident. When possible, the Volusia Sheriff's Office Incident Report shall include:*
 - *The number of subjects and Deputies involved*
 - *Statements made by those involved*
 - *The number of other persons at the scene, as well as their mood and any statements made*
 - *The defensive tactics the Deputy used, and to what part of the body these tactics were applied*
 - *The names, addresses and telephone numbers of witnesses not involved*
 - *Photographs of the Deputy involved if the incident resulted in injury to the Deputy or damage to the uniform*

- *The age, sex and physical size of the suspect(s) involved*
- *The suspect's proximity to weapons*
- *Medical treatment required and the offer of medical treatment*
- *All injuries **shall** be photographed if possible and described in the report*
- *Nature of the post arrest restraint procedures; how long the subject was face down or restrained?*
- *How was the subject transported and in what position?*
- *In cases involving the use of a Taser, include the number of verbal "Taser" warnings issued prior to deployment/use.*

L. SUPERVISOR NOTIFICATION

1. *Deputies involved in any use of force incident, to include restraining force and the use of less-lethal weapons and devices, shall report the incident to an on-duty supervisor as soon as practicable. The Deputy will complete a Volusia Sheriff's Office Incident Report in accordance with general order 1.1 Use of Force Guidelines, Section V,B,10 Required Reporting. [EXCEPTION: Excludes Deputy Involved Shootings - Refer to general order 1.1 Use of Force Guidelines, Section 6,B,5]"*

Lieutenant Shivers observed Sergeant Kraker did not obtain a case number to complete a report until approximately 1307 hours on July 27, 2020; as evidenced by the CAD call history. The CAD call history indicates the following –

*"[07/27/2020]
13:07:43 CASE Case#:PO200005054 Comment: PER VC7672
13:08:09 CASE Case#:VP200013365 Comment: PER VC7672"*

It is observed, Sergeant Kraker's departmental identification number is VC7672.

Lieutenant Shivers observed on June 25, 2020, Sheriff Michael Chitwood sent file "FYI 040FYI03.20" to "All Sworn" which contained the following corrections/updates -

"The below correction is effective immediately upon issue. Changes will be reflected in the Directives Manual located on the Sheriff's Office Intranet Home Page and I-Drive.

GO-001-01 Use of Force Guidelines

*Pg. 3 – Definitions: **Neck Hold** - One of the following types of holds (1) bar-arm control or choke hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by the compression of the blood vessels in the neck; (3) lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a*

prone subject's neck. A neck hold is considered deadly force; Volusia Sheriff's Office does not train in this restraining technique and does not authorize its use."

Additionally, the file also contained a notice on the bottom, which indicated the following –

**“NOTICE
ROLL-CALL TRAINING WILL BE DOCUMENTED ON ALL POLICES ISSUED BY THE
SHERIFF – NEW AND REVISED**

Electronic Acknowledgement indicates MORE than just receipt of a directive change; it indicates both receipt AND REVIEW/UNDERSTANDING of the Directive change. This review will be accomplished through DOCUMENTED supervisory Roll-Call training – both sworn/civilian, as the subject matter dictates.”

Lastly, roll-call training bulletin number 20-17 – Positional Asphyxiation was disseminated on June 2, 2020 via VSO Training (Target Solutions). In this bulletin, it contains the following –

“According to agency use of force guidelines (1.1), a neck hold is considered lethal force. A neck hold is described as one of the following types of holds:

- (1) Arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck;*
- (2) Carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck;*
- (3) lateral vascular neck constraint;*
- (4) a hold with a knee or other object to the back of a prone subject's neck.*

- Do not place your knee on the subject's neck for compliance.*
- If your knee or other object is inadvertently placed on the subject's neck or head while restraining them, you should immediately remove it.*
- As soon as the subject is restrained properly, place the subject in the seated or standing position, this will allow oxygen to flow to the brain easier.*
- Be aware of the time of day and the season as the ground temperature may be extremely hot for the subject.*
- Have EVAC/Fire Rescue on their way or standby should there be a risk of positional asphyxiation.”*

A review of Sergeant Kraker's training file revealed the following information –

On June 9, 2020, at approximately 0844 hours, Sergeant Kraker reviewed and acknowledged the aforementioned roll-call training bulletin 20-17 Positional Asphyxiation in Target Solutions. Additionally, this roll-call training included a five question quiz, which had to be passed with a

score of at least 80% before the acknowledgement box could be checked and the training could be completed.

On June 22, 2020, at approximately 0912 hours, Sergeant Kraker reviewed and acknowledged the aforementioned Departmental Policy Update 20-01 FYI Policy Revision (FYI) in Target Solutions.

On June 22, 2020, at approximately 0915 hours, Sergeant Kraker reviewed and acknowledged the aforementioned Departmental Policy Update 20-02 Use of Force Guideline Revision Markup in Target Solutions.

On June 22, 2020, at approximately 0917 hours, Sergeant Kraker reviewed and acknowledged the aforementioned Departmental Policy Update 20-03 Use of Less-Lethal Weapons and Devices in Target Solutions.

On July 07, 2020, at approximately 1520 hours, Sergeant Kraker reviewed and acknowledged the aforementioned Departmental Policy Update 20-04 FYI Correction – Use of Force Guidelines in Target Solutions.

Each of the aforementioned Departmental Policy updates/revisions and roll-call training bulletins were acknowledged by Sergeant Kraker on the above listed dates/times by reviewing the material and manually checking a box indicating he acknowledged the updates/revisions and roll-call training. *(See Tab-G for Training Records and Tab-H for Departmental Policy Revisions/Updates)*

Lieutenant Shivers and Internal Affairs Sergeant Brian Cobb conducted interviews with Captain Brian Bosco and Lieutenant Cody Cochran regarding the incident. Below is a summary of their statements.

Captain Brian Bosco

(See Tab-I for Official Transcript)

On August 10, 2020, Lieutenant Shivers and Sergeant Cobb conducted a sworn recorded interview with Captain Brian Bosco at the Deputy Stephen Saboda Training Center, Daytona Beach. Just prior to the interview, Captain Bosco viewed the Sanctuary at Westport surveillance video of the incident; however, he was only provided basic information as to the circumstances leading up to the incident and Sergeant Kraker was merely identified generically as a law enforcement officer, not by name. The following is a summary of that interview:

Lieutenant Shivers asked Captain Bosco questions regarding his certifications and qualifications to intelligently provide his opinions on the use of force by Sergeant Kraker. Captain Bosco advised he has held several positions within the Volusia Sheriff's Office as a trainer of defensive tactics,

and is a certified instructor and also a policy writer/maker within the agency. Captain Bosco also advised he teaches defensive tactics at the Daytona State College police academy, and has an extensive history throughout his career instructing defensive tactics and evaluating use of force incidents.

Captain Bosco was asked what his opinion was regarding the response to resistance in the video, at which time Captain Bosco advised, *“A neck hold was used as a takedown, which is not a taught practice here.”*

Lieutenant Shivers asked Captain Bosco to explain “neck hold,” at which time Captain Bosco advised –

“Yeah basically as the subject went around the, I guess we could call him the suspect, went around the off-duty deputy is my understanding, as he went around the deputy closed the distance, grabbed the subject around the back of his neck similar to what a sleeper hold would be but instead of up front around the back and then used his weight to bring the suspect’s head down via the neck to get him to the ground.”

Captain Bosco went on to state that neck holds are not taught to deputies by Volusia County Sheriff training staff, nor is it taught at Daytona State College. Captain Bosco also stated neck holds are not taught because, *“It’s considered deadly force.”*

Lieutenant Shivers asked Captain Bosco why it is considered deadly force, at which time Captain Bosco replied with, *“You can damage the neck and cause great physical bodily harm or death.”*

Captain Bosco then detailed how Volusia Sheriff’s Office training sent out training bulletins recently regarding how neck holds are considered deadly force. Captain Bosco indicated the bulletins were sent through Volusia Sheriff’s Office training website, “Target Solutions.” Captain Bosco advised when these bulletins are sent out, a deputy has to view the material, which then allows the deputy to check a box indicating they are *“agreeing that they sign and have viewed it.”* Captain Bosco indicated the deputy has to manually check the box for the training to be considered and recorded in the system as complete.

Captain Bosco was then asked his opinion on whether or not the incident was a violation of Volusia Sheriff’s Office policy, at which time he responded with –

“I can tell you that having seen it, the video, the subject actually swings his arm around and gives that person an opportunity to grab the arm which would have allowed an arm bar take down which would have been more appropriate, should a takedown have even been done there.”

Lieutenant Shivers asked Captain Bosco the following question – *“Well let me ask you this. Given the fact that he was not in uniform, had no duty gear presumably no duty gear available to him at the time do you think that his response was appropriate to the level of aggression or level of force that was being shown to him by this person?”*

Captain Bosco responded with the following –

“Absolutely not. As a matter of fact on an officer safety standpoint there was looked like this subject and two of his buddies who were nearby and the worst thing he could have done is what he did, which was to go, he actually chased the guy to grab him in a headlock instead of gaining distance, waiting for uniformed officers or deputies to get there to handle it. He put himself in a position that was extremely dangerous.”

Lieutenant Shivers asked Captain Bosco, in his professional opinion, being the commander of training and having all these certificates what he thought would have been the best option prior to a deputy in the same situation using force? Captain Bosco responded, *“Call the police, gain distance.”*

Lieutenant Cody Cochran

(See Tab-J for Official Transcript)

On August 10, 2020, Lieutenant Shivers and Sergeant Cobb conducted a sworn recorded interview with Lieutenant Cody Cochran at the Deputy Stephen Saboda Training Center, Daytona Beach. The following is a summary of that interview:

Lieutenant Cochran discussed that he was the on-duty watch commander working on July 25, 2020, and that he was contacted by Sergeant Kraker regarding the incident. Lieutenant Cochran advised the following –

“He informed me that he was involved in a physical incident, altercation if you will, at his apartment complex. When I asked him to explain he said that he was acting as, he responded to the pool area of the apartment complex as his as his duties of, as the, I guess the courtesy officer for the apartment complex.”

Lieutenant Cochran advised Sergeant Kraker indicated he contacted several persons in the pool area, at which time -

“At some point it escalates, he then produces his department credentials identifying himself as a deputy sheriff. To the best of my recollection he tells me that he that a certain individual, get his name for you, Dane Wehr actually slaps his credentials out of his hand and head butts him in the chest, I believe were the words that he told me, and that he had wrestled this particular individual to the ground; and after a scuffle on the ground the guy was released, got up and he left.”

Lieutenant Cochran advised Sergeant Kraker advised he was uninjured, and there did not appear to be any injuries to Wehr. Lieutenant Cochran also advised Sergeant Kraker advised he did not wish to pursue any charges against Wehr.

Lieutenant Cochran stated on July 26, 2020, at approximately 1930 hours, he responded to Wehr's residence to obtain Wehr's statement regarding the incident. Lieutenant Cochran advised the following during their conversation –

“He [Wehr] didn't recall a badge incident, he didn't recall the credentials but he did say I believe that at some point his friends were telling him that it was a law enforcement officer that they were dealing with. He said that, so when I got to the physical part of the situation asked him to explain to me how it got physical. How did it get from a confrontation verbally to you guys actually touching each other? And he says, he says he doesn't remember head butting him [Sergeant Kraker] but he said he did remember as he was walking by Sgt. Kraker they brushed shoulders is how he explained it to me and that after he had brushed shoulders with Sgt. Kraker now they're basically facing away from each other. As if they're walking past each other they brush shoulders now they're facing the opposite directions. He said he was going to collect some items off of the lounge chair by the pool deck there and that's when Sgt. Kraker applied a rear naked choke and he with the body weight of Sgt. Kraker he fell forward onto a lounge chair and he said quote “I had to tap out” or something to that, something to that I guess that's how he submitted and once he tapped out he said that Sgt. Kraker released him.”

Lieutenant Cochran asked if the hold constricted Wehr's breathing, at which time Lieutenant Cochran stated Wehr responded with, *“...he said yes he couldn't breathe at all that's why he tapped out and then once he was released he left.”*

Lieutenant Cochran advised he asked Wehr if he was injured, and Wehr advised he was not.

Lieutenant Shivers asked Lieutenant Cochran if he asked Wehr specific questions about where his head was when Sergeant Kraker had him, at which time Lieutenant Kraker advised *“Yeah he said well he said that his neck he was facing forward and that his chin or the front of his throat was in the elbow, bent elbow of Sgt. Kraker.”*

Lieutenant Shivers responded with asking, *“So on the inside of the elbow?”* at which time Lieutenant Cochran stated, *“Right.”*

Lieutenant Shivers asked Lieutenant Cochran if his training and experience led him to believe that Sergeant Kraker's hold was consistent with a choking, chokehold or some sort of other neck hold, at which time Lieutenant Cochran advised, *“Yes. Yep.”*

Lieutenant Cochran advised he had not discussed the incident further with Sergeant Kraker; however, during the conversation he had with Sergeant Kraker, Sergeant Kraker did not specifically detail the level and techniques he utilized when he used force.

Lieutenant Cochran advised, based on the information he had at the time, he formulated “*The conclusion that the allegations made by Dane [Wehr] that Dep. Kraker while acting in the scope of his duties as a law enforcement officer applied a chokehold.*”

Lieutenant Cochran was asked if Sergeant Kraker indicated Wehr “*threatened him in any way or otherwise physically assaulted him or anything else to warrant a chokehold or a hold that would be potentially be, you know, used for lethal force?*” at which time Lieutenant Cochran stated, “*So there was nothing, so Kraker didn’t tell me anything that would lead me to believe that the use of deadly force would have been warranted.*”

Lieutenant Cochran also advised there was no mention of Wehr having or using any weapons by Sergeant Kraker.

Lastly, Lieutenant Cochran was asked if Wehr’s description of Sergeant Kraker’s takedown technique would be a violation of Sheriff’s Office policy for neck restraints, at which time Lieutenant Cochran responded by saying, “*It definitely would.*”

Off-Duty Employment

While conducting the investigation Lieutenant Shivers observed Departmental Policy requires employees to obtain approval/authorization from the Sheriff to engage in off-duty/outside employment. Departmental Policy 22.9 titled “Outside Employment” details the following –

“IV. DEFINITIONS

Off-Duty Employment – *Outside employment wherein the use of law enforcement powers is not anticipated. Performed out of uniform and not connected with the Volusia Sheriff’s Office (i.e.; clerk at a convenience store.)*

V. PROCEDURE

F. OFF-DUTY EMPLOYMENT

- 1. Approval to engage in off-duty employment by any employee must be obtained in writing from the Sheriff. Requests shall be made in writing and submitted via the employee’s chain of command. See general order 26.2 Standards of Conduct for additional information.”*

General Order 26.2 titled “Standards of Conduct” states the following –

“MERIT SYSTEM RULES AND REGULATIONS

86.43 Conduct of Employees

C. Outside Employment

- 1. Full-time employees are not encouraged but not prohibited from engaging in other employment during their off-duty hours. However, County employment shall be considered the primary employment and no employee may engage in outside employment which in any manner interferes with proper and effective job performance, results in a conflict of interest or which may subject County government to public criticism or embarrassment.*
- 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 an employee to be suspended or discharged. Approval will at all times be subject to review and cancellation.*
- 3. Disapproval of a request or cancellation of an existing approval may be appealed through the grievance procedure."*

Lieutenant Shivers observed Sergeant Kraker did not have any memorandums or letters in his personnel file regarding the authorization by the Sheriff for off-duty/outside employment at Sanctuary at Westport Apartments. Additionally, Sergeant Kraker did not have any memorandums or letters on file for off-duty/outside employment in the Sheriff's memorandum or letter logs between January 1, 2017 and August 14, 2020.

It should be noted, according to Volusia Sheriff's Office payroll, Sergeant Kraker did not make any punches in/out or adjustments in Kronos on July 25, 2020 or July 26, 2020, and was not paid any hours for any work performed on these dates.

Kimberly Polito

(See Tab-K for Official Transcript)

On August 14, 2020, Lieutenant Shivers conducted a sworn recorded interview with the Sanctuary at Westport Apartment manager Kimberly Polito via tele-conference due to her concerns regarding Covid-19 (she advised she would be unable to do an in-person interview due to her personal precautionary measures due to the pandemic). The following is a summary of that interview:

Lieutenant Shivers asked Kimberly to describe the requirements to be a courtesy officer for the apartment complex. Kimberly advised she had the “scope of work” for courtesy officers in her complex, and detailed the following -

“Alright so, be on call for disturbances and calls as needed, walk the community at regular intervals. Areas to patrol should be amenities, common areas, management office, walkways etc. On communities with pools, monitor pools for unauthorized persons. Complete the courtesy patrol night reports to document patrols and supply this to the community manager. Respond to courtesy related requests as appropriate and contact law enforcement for additional back up or assistance when needed. File the courtesy officer patrol nightly report with the community manager to report disturbances either answered or unanswered, stray animals, suspicious persons, etc. The report should include locations patrolled including a time record of incidents. Notify the community manager immediately of any altercations on the community that involve injury, property damage, resident complaints or media attention. Inspect lights and report any outages on the daily report given to the community manager. Attend community functions and meetings as requested. Assist the community manager in handling any resident problems when requested. Notify the community manager of any planned absences and arrange to have duties performed during such absences. Maintain a courteous visible presence among the residents and additional duties upon request; which we don’t have any.”

Kimberly additionally advised Sergeant Kraker has resided at the apartment complex since June 1, 2020, and as a courtesy officer, he receives a \$600.00 discount from the normal, non-courtesy officer resident rent.

Kimberly advised in order to be a courtesy officer within the apartment complex, the courtesy officer has to be a currently employed and certified law enforcement officer. She also advised if a courtesy officer was unable to perform the duties, they could still reside at the apartment complex; however, could not be a courtesy officer and would no longer be eligible for any monetary discount off of their monthly rent.

Also, Kimberly advised she had no paperwork or authorization provided by Sergeant Kraker or the Volusia Sheriff’s Office authorizing Sergeant Kraker to engage as a courtesy officer for the apartment complex.

Kimberly indicated Sergeant Kraker is the only courtesy officer for the apartment complex.

Dane Wehr

(See Tab-L for Official Transcript)

On August 19, 2020, Lieutenant Shivers and Sergeant Cobb conducted a sworn interview with Dane Wehr at his residence in Edgewater. Below is a summary of that interview –

Wehr was asked to describe, in his own words, what happened during the incident, at which time Wehr stated, *“A altercation broke out between me and a police officer of the Volusia*

County...uh, (unintelligible)...and um, that's about it. And some things got physical, and then it got averted."

Lieutenant Shivers asked Wehr to provide further detail as to the incident, at which time Wehr advised, *"Uh, some things were said, and uh..."* Lieutenant Shivers asked Wehr "What things?" and Wehr replied with, *"I cannot tell you. I just know harsh, verbal aggression was said. And uh, from what I was told, and uh, it lean...and then the officer thought that I was going to physically "aggress" on him, then he took me down with the means to not physically "aggress" on him.*

When asked him to describe the "aggression" further, at which time Wehr advised he did not remember anything that was said verbally. Wehr confirmed he was intoxicated, and did not recall anything Sergeant Kraker said to him specifically. Wehr advised he only recalled *"Minimal, very minimal"* information regarding the incident, other than, *"Laying in bushes."*

Lieutenant Shivers asked Wehr how the incident became physical, at which time Wehr advised, *"He took me down."* Lieutenant Shivers asked Wehr if Sergeant Kraker took him down because he was trying to strike Sergeant Kraker, at which time Wehr responded with, *"Because he thought I was going to physically attack him."* Lieutenant Shivers asked Wehr if he was "going to physically attack him [Sergeant Kraker]," at which time Wehr advised, *"No. I'm not trying to go to jail."* Wehr advised he believes Sergeant Kraker thought he was going to attack him because of Wehr's *"body language."* When asked to describe his body language, Wehr advised it was *"probably just aggressive body language"* and described himself as a six-foot-four male and two-hundred forty-five pounds, so because of his stature and distance from Sergeant Kraker, his body language was probably aggressive, and Sergeant Kraker may have felt that it was going to become physical.

Additionally, Wehr advised before Sergeant Kraker took him down, there was no physical contact between the two.

Lieutenant Shivers asked Wehr to describe how the incident became physical; specifically asked what Sergeant Kraker physically did, at which time Wehr advised, *"He just laid me down on to a...uh, uh, pool bench thing, like a pool bench."* Lieutenant Shivers asked him how Sergeant Kraker laid him down, and Wehr stated, *"Just took me by my back and put me down there."* When asked by Lieutenant Shivers as to "what kind of manner" Sergeant Kraker put him down, Wehr advised, *"Very relaxing, calm manner. In my mind. It was nice. You know...Just a nice little, settle down my man kinda thing."*

Lieutenant Shivers advised Wehr that in a previous interview with Lieutenant Cochran he advised Lieutenant Cochran that Sergeant Kraker took him down via chokehold, at which time Wehr advised, *"I was then later told by him that, and my other friends that wasn't a chokehold.*

It was more of like a back kind of hold...dealio. That I thought was meant...Cause I think he went around my area right here, my chest area and went like this and laid me down which I thought was a chokehold at that time, cause I told him I remember minimal." Lieutenant Shivers advised Wehr that he also told the Port Orange Police officer that he was placed in a "very strong chokehold" and that he was "unable to breathe" at which time Wehr advised, "I did tap out, yeah. At the time I thought it was a chokehold. Later figured out it wasn't a chokehold I was put into."

Lieutenant Shivers asked Wehr how he figured out it was not a chokehold, at which time Wehr stated, *"By what my friends said and what he told me."* Wehr advised he spoke to Sergeant Kraker after the incident occurred. When asked when Wehr talked to Sergeant Kraker, Wehr advised he and Sergeant Kraker, *"Live in the same community, or we used to. We used to be friends actually prior to that."*

Lieutenant Shivers asked Wehr when the last time was that he spoke to Sergeant Kraker, at which time he advised, *"A couple week...week ago...week and a half maybe, two."* Lieutenant Shivers asked Wehr to describe the substance of their conversation, at which time Wehr advised, *"Uh, it was me catching up with him. Seeing how his girl was, and just saying sorry cause I act like a douchebag to him verbally, so just that."* Lieutenant Shivers asked Wehr if Sergeant Kraker told him that he didn't put him in a chokehold, at which time Wehr advised, *"Yeah. I asked him, I was like huh, ok, I took his word and asked my friend, and he was like yeah I don't think he really did put you in a chokehold. I think it was more like a chest kind of put me down."*

Lieutenant Shivers asked Wehr which friend he talked to, and Wehr advised it was Barkin Kesimer. It should be noted, the shorter unidentified male in the Port Orange Police body worn cameras was later identified as Barkin Kesimer, and the heavysset, shirtless unidentified male was later identified as Nicholas Bevacqua. Wehr provided their names and telephone numbers; however, advised Barkin would not be willing to cooperate with the investigation.

Lieutenant Shivers then asked Wehr who initiated the conversation with Sergeant Kraker after the incident, at which time Wehr replied that he did. Wehr advised he saw Sergeant Kraker in person at the Sanctuary at Westport apartment complex, at which time Sergeant Kraker remembered him, because the conversation was only a few days after the incident. When asked about the context of the conversation, Wehr advised, *"Friendly. Uh, me saying sorry about proolly eight, ten times. And then we talked about the grill, and we talked about what he was going to do that night, and then we talked about what happened that night, and then we laughed a bit, we shook hands and he went on his way and I went on my way."*

Lieutenant Shivers asked what was said about the incident, and Wehr advised, *"He was just giving me details about what has happened, in his point-of-view."* Lieutenant Shivers asked

Wehr, *“But that’s not specifically what you remembered the night it happened? Right?”* Wehr advised, *“Yeah.”* Lieutenant Shivers then advised, *“The details that he had was a little bit different than the details that you told Port Orange...”* at which time Wehr replied, *“Yeah, then I got them confirmed, I got them confirmed by someone. Cause uh, whoever came, the bald guy I dunno, I don’t remember his name, I think he was from Port Orange maybe, or maybe he was from Volusia [Lieutenant Cochran] ...he came before I talked to Mr. uh Kraker.”*

Wehr explained he believed he spoke to Sergeant Kraker the weekend after the incident occurred and hasn’t seen Sergeant Kraker since.

Lieutenant Shivers affirmed that the statements made by Wehr during this interview were not based on his independent recollection of the incident, but what he was concluding due to what was told to him by Sergeant Kraker and Barkin. Wehr advised he remembered *“Tapping out and not being able to breathe, but that’s proly because he was laying on me. He let me go as soon as I tapped out.”*

Lieutenant Shivers asked Wehr if he recalled Sergeant Kraker telling him anything while he was on top of him, and Wehr advised Sergeant Kraker told him *“You better leave. You better get out of here before the police come.”* Wehr advised that is all that Sergeant Kraker said to him, and when asked if Sergeant Kraker said he was going to arrest him, Wehr advised, *“No.”*

Wehr advised he did not believe Sergeant Kraker was a law enforcement officer at first, and does not recall Sergeant Kraker showing him his badge and credentials, but advised, *“But I know he did”* because he was told Sergeant Kraker did, *“By a trusted source”* who he advised was Barkin.

Lieutenant Shivers asked Wehr, *“So basically you are basing everything on what Barkin says?”* at which time Wehr advised, *“Yeah...my eyes and my ears.”* Lieutenant Shivers responded with, *“Ok. cause you don’t specifically remember what happened?”* at which time Wehr advised, *“mmhmm. (a positive response)”*

Lieutenant Shivers reiterated with Wehr that he provided a statement to Port Orange Police the night of the incident and a separate, consistent statement to deputies the following day; which included statements detailing how Sergeant Kraker placed him in a chokehold. Additionally, Lieutenant Shivers reiterated with Wehr that he provided a demonstration to Lieutenant Cochran on how Sergeant Kraker placed him in a chokehold, and stated he could not breathe and “tapped out” because he was scared and couldn’t breathe.

Lieutenant Shivers also reaffirmed that Wehr’s inconsistent statements during this interview were based on the fact that he was spoke with Sergeant Kraker and Barkin and not based on his

own recollection of events. Wehr advised he, *“got a different point of view of the story.”* Lieutenant Shivers stated, *“But it’s not your point of view, it’s somebody else’s, correct?”* at which time Wehr responded with, *“Yeah. Someone watching from a third-party.”* Lieutenant Shivers asked Wehr, *“You don’t specifically remember how he took you down?”* at which time Wehr stated, *“mm-mm. (a negative response).”* Lieutenant Shivers stated, *“But you recalled the night of and the day after?”* at which time Wehr stated, *“I just recalled what I thought happened...until I figured out more facts, till I put the story together.”*

Lieutenant Shivers confirmed with Wehr that his current statements in this interview were a collaboration of his, Sergeant Kraker’s, and Barkin’s statements; not specifically Wehr’s own specific recollection of events. Wehr stated, *“It’s just everything what I’ve said, and what I’ve heard. I just kinda put all things together.”*

Sergeant Cobb asked Wehr if he felt the level of force Sergeant Kraker used against him was appropriate, at which time Wehr advised, *“Appropriate. One-hundred percent. One-hundred percent appropriate. I think he saw something with my body language, that I might not even know, and he just averted a situation even before it happened.”*

Wehr went onto state that he solicited the information regarding the use of force from Sergeant Kraker when he spoke to him after the incident. Wehr advised he had already spoke to Barkin and had his point of view of the incident, and he solicited Sergeant Kraker for his after speaking with Barkin.

Wehr explained that he knew Sergeant Kraker prior to the incident, as he would regularly see him at the Sanctuary at Westport apartments. He advised they contacted each other on several occasions as Wehr was using the grill, or just being outside. Wehr advised he had not met Sergeant Kraker prior to Sergeant Kraker moving into the apartments.

Even though he advised he knew Sergeant Kraker prior to the incident, Wehr also advised he did not recognize Sergeant Kraker during the incident because he stated he was, *“Black-out drunk.”* Wehr went on to state Sergeant Kraker, *“...He fucking acted appropriately in my mind. He literally...to me, like I was just a blacked-out idiot, like, I’m six-four, like I said, scary guy, if I’m coming at you like rah rah rah rah rah, clearly someone’s gonna be scared, you know?”*

Wehr was asked if he watched the video if he thought it would change his mind regarding what happened, and Wehr advised it wouldn’t. Lieutenant Shivers asked if Wehr sustained any injuries as a result of the altercation, at which time Wehr advised he was, *“a little sore”* but advised his soreness was from running through the woods.

Wehr later confirmed he was sober when he spoke to Lieutenant Cochran the day after the event, and that he did not mislead or be untruthful with Lieutenant Cochran when he provided his statement. Wehr advised the version of events he provided Lieutenant Cochran were *“What I knew at the time.”* He advised it was, *“It was just fresh in my mind, that’s what I thought happened because I couldn’t breathe.”*

Nicholas Bevacqua

(See Tab-M for Official Transcript)

On August 19, 2020, Lieutenant Shivers conducted a sworn interview with Nicholas Bevacqua via telephone, as Nicholas advised he would be unavailable to meet in person for an interview for at least several weeks. Below is a summary of that interview –

Nicholas explained as he was in the pool area with Wehr, swimming and consuming alcohol for Wehr’s birthday. He stated a *“Cop came by”* and said they had to leave. He advised as he was swimming towards the side of the pool to get out and observed the “cop” [Sergeant Kraker] and Wehr were *“getting in an argument.”* He advised a few minutes later Wehr began *“yelling at the cop, and something happened, I can’t remember what exactly like started it, but the next thing I know the cop put Dane [Wehr] in like a, a chokehold; not really like a chokehold, but yeah, I guess it was because he had his arm around his neck and like flipped him over onto uh, one of the beach chairs that was sitting in, on the edge of the pool.”*

Nicholas advised he tried talking to Sergeant Kraker calmly to allow Wehr to get up, and Sergeant Kraker let Wehr get up and Nicholas assisted in pushing Wehr away.

Nicholas stated there weren’t any *“punches thrown or anything”* during the incident. Nicholas advised he did not see Wehr’s actions just prior to Wehr being taken down to the pool chair. Nicholas explained his back was turned and he, *“came up like after he was already in the hold”* and he did not see the actual takedown.

Lieutenant Shivers asked Nicholas if he saw anything leading up to Sergeant Kraker and Wehr being on the pool chair, at which time Nicholas advised he did not; however, stated, *“Yea, I didn’t, the only time that I, that I saw anything like, the only time I should say that Dane actually get like aggressive, was after the officer had already put him in a chokehold. Which I’m, you know, when you’re kinda drunk you’re gonna be upset if someone’s choking you out, you know? But, again I didn’t see Dane throw a punch or anything.”*

Lieutenant Shivers asked Nicholas, *“Was the officer’s arm around his throat though, like was he?”* at which time Nicholas stated, *“Yeah.”* Lieutenant Shivers continued and asked Nicholas, *“Or was it around his waist?”* and Nicholas stated, *“No, it was around his throat.”* Nicholas stated

he did not remember what, if anything, that Wehr was saying, and that he was more focused on trying to calm Sergeant Kraker and Wehr down.

Nicholas advised it appeared Sergeant Kraker was upset, but he believed it was because Wehr snatched his badge from him.

Nicholas advised he actually broke his ring finger on his hand due to the altercation, while pushing Wehr away from Sergeant Kraker. Nicholas advised he told Wehr about his broken finger, and talked about the incident after it occurred.

Nicholas was asked if he believed Sergeant Kraker's actions were justified, at which time Nicholas stated, *"Honestly, not entirely. But because, two reasons why, I can, I'm one of those types of people where I can play devil's advocate. I can understand to a degree because he's a bigger guy but me myself I'm 6'7". I don't feel that's necessarily a reason to kind of go above and beyond by kind of slamming somebody. I do understand that you know because he's a bigger guy when he does get angry, being like held down and stuff I definitely get it, but I do think that you know because he was drunk. I told the officer "Hey I'm sorry it's his 21st birthday he had a little bit too much to drink." I think the officer could have been a little bit easier on him. But I mean he did give, he did give us multiple opportunities to kind of like calm down and walk away. So I appreciate what he did there but I think leading off by like slamming Dane led it off on like a really bad foot you know. But other than that I mean I think that after that happened I think he kind of realized that slamming Dane was not a good idea and I think that's why he just kind of tried to like walk away.*

Lieutenant Shivers asked Nicholas why he said that Sergeant Kraker realized that slamming Dane was not a good idea, at which time Nicholas responded, stating *"Just because he was basically like on the phone with the police saying like, "Hey I'm bringing in extra squadron cars if you don't, if you guys don't get out of here right now" kind of thing and it kind of seemed like he wanted us to like get out of there like as soon as possible. Which in the moment I didn't think was weird but I mean now that you kind of mentioned there's an internal investigation and the fact that he slammed Dane you know it seemed a little bit weird that he like kind of went that hard on him at first."*

Nicholas advised he did not observe Wehr make any attempt to strike Sergeant Kraker, nor did he observe Sergeant Kraker have any further physical contact with Wehr.

Lastly, Nicholas corroborated the statements made by Wehr as to Wehr stating he discussed the incident with Sergeant Kraker after the incident occurred. Nicholas advised he had heard that Sergeant Kraker and Wehr discussed the incident, but he did not know exactly when or who was with Wehr (he assumed Lindsay was with Wehr).

Barkin Kesimer

(See Tab-N for Official Transcript)

On August 20, 2020, Lieutenant Shivers conducted a sworn interview with Barkin Kesimer via telephone, as Barkin advised he would not meet in person for an interview; however, would consent to a telephonic interview. Below is a summary of that interview –

Barkin was asked to describe the incident in his own words, at which time he stated, *“Well we were, it was Dane’s 21st birthday, we were celebrating his birthday at the pool because we couldn’t really go out anywhere else and I’d say around 12:30 am the pool was closed, obviously, and around 12:30 am the resource officer, the one being investigated, showed up telling us to leave. We were giving him a hard time at first you know because we were like “Hey we’re not gonna leave until you know real cops show up” or something like that, we just kind of messing around and, and then Dane said oh you know “how do we know you’re even a real cop” you know because he was dressed in civilian clothes and the guy showed his badge, and then Dane kind of got aggressive because he was, we were kind of hazing him so he was pretty aggressive. So I was pretty sober so I was like “yo this is like a real cop this isn’t like a joke.” Because he still didn’t believe him, I don’t know if he believed or not or if he just whatever. But we got out of the pool, Dane was kind of aggressing on the cop. He was like bumping into his shoulder and such. Not like trying to like fight him or anything, but like kind of like getting into his personal space, kind of yelling I was like you “Dane you’ve gotta chill” you know this is like, like a real cop this isn’t like a joke. And then they had like a little verbal thing I was in between trying to split them up like “yo this is all good, chill” you know. And Dane walked away, then I’m guessing you guys called for the internal affairs because of what happened next, which is a quote-unquote use of force. Dane sprinted towards the cop, at this point while he’s walked away, I’m not sure what (unintelligible) but he was sprinting towards him and I believe this officer had to well, take him down, because like what else do you have to do, all he did was basically grab him, put him down on the pool chair. The cop did put him in a like a chokehold but I think that was more so to subdue him. I don’t think he was gonna like choke him out or anything.”*

Barkin then stated, *“But the only concern with that incident right there was I was standing next to the cop and while he was taking him down, and also my friend Nick was, and the guy the cop didn’t really let go, like when Dane was tapping out, he was tapping out like yo he said something like “I’m done” or I don’t know like he was basically tapping out and the cop was still like “are you done, are you done?” and we were like you, “he’s done chill, chill” and the guy kind of like kind of prolonged it more than it needs to be.”*

Barkin then detailed that Sergeant Kraker gave Wehr numerous opportunities to *“back off and chill”* but Wehr did not and Sergeant Kraker, *“was a good cop in my opinion because he didn’t make it an issue, he just kind of like he had to take him down; basically he had to.”*

Barkin subsequently advised, *“The chokehold maybe was a little unnecessary, but other than that I think he handled it pretty well, the cop did because Dane was aggressive prior and he was using*

threatening language but he didn't see him as a threat but which I respect that but you know...He had to do what he had to do there."

In discussing the incident further, Lieutenant Shivers asked Barkin if Wehr and Sergeant Kraker were arguing with each other, at which time Barkin advised, *"They were just arguing about, no Dane was gonna leave, but I think it was more so like what kind of authority you have here and then the cop's like "I have authority by Volusia department" or whatever. And Dane's like oh well you're off-duty you know it was more so like a testing his credentials type of thing. It wasn't like a, we're not leaving kind of thing, it was more so like who are you to tell me what to do kind of thing. Like ego clash."*

Lieutenant Shivers asked if Barkin saw Sergeant Kraker show him, Wehr, or anybody his badge and ID card, at which time Barkin advised, *"Yes, he showed a, he showed me."* Barkin explained Sergeant Kraker showed him his badge and ID before the incident occurred.

Lieutenant Shivers asked Barkin to explain how Sergeant Kraker had Wehr in a chokehold in regards to what position they were laying, etc., at which time Barkin stated, *"Ok, so he was on top of Dane. His left leg was over Dane's legs and then his right arm was around his neck kind of, and his left hand was supporting his right hand like Dane was, I guess in his arms. The guy was on top of him yelling in his face. Dane was completely like, what's it called, like immobile, like he couldn't move kind of thing. But he wasn't fighting, like he wasn't resisting at that point because he's like oh shit I got taken down by a cop kind of thing."*

Lieutenant Shivers asked Barkin if he observed Sergeant Kraker squeezing Wehr's neck, at which time Barkin stated, *"Yeah no I had a good view like I was literally in front of them and it didn't look like it would choke, it looked like more like just like a hold like a like he wasn't squeezing or anything he was just like kind of holding him in position and maybe using some force to be honest, because you've got to take down this guy, but like it wasn't from what I saw excessive in my opinion. Like it didn't seem like Dane was gonna like black out or choke get choked out, it just seemed more like he was being held down."*

Lieutenant Shivers stated, *"Alright, but Dane was tapping said, Dane was tapping out"* at which time Barkin stated, *"He was tapping out and the guy didn't let go that was the only concern I had but other than that (inaudible)..."* Lieutenant Shivers asked Barkin if he knew why Wehr was tapping out or if Wehr mentioned at any time after the incident that he couldn't breathe, at which time Barkin advised, *"I can't specifically recall if he said that, but he didn't, he wasn't even afraid, kind of like, like he verbalized that he was like "yo I'm done resisting" kind of thing, like I don't know what the words he said was, I can't remember but it was kind of like "yo I'm done I'm done" kind of I don't know, but he didn't mention anything like not breathing."*

Lieutenant Shivers stated, *"But you said he held him down there, in your opinion, a little bit longer than he should have..."* at which time Barkin explained, *"For sure, yeah...Because he was already*

taken down and he was like yelling in his face unnecessary bullshit like oh are you done, oh are you done like he was kind of like agitating him...When he already had him in like a proper hold a restraint."

Lieutenant Shivers asked Barkin if Sergeant Kraker's actions justified in his opinion, at which time Barkin advised, *"100%. I hate to say it but yeah. When you have a guy charging at you like that you've gotta you know you've gotta take him down. Maybe like don't hold onto him so long but you know he doesn't know Dane, like he could have been a real threat, but he did what he had to do and I respect that looking back on it. And even in the moment I was like, yo this guy's way too nice on him because he was kind of you know aggressing on him more than he should have."*

Lindsay Mayberry

(See Tab-O for Official Transcript)

On August 21, 2020, Lieutenant Shivers and Sergeant Cobb conducted a sworn interview with Lindsay Mayberry at the Volusia Sheriff's Office administration building in DeLand. Below is a summary of that interview –

Lindsay advised she and some friends were at the pool when they were approached by Sergeant Kraker, who she observed was off-duty at the time. She advised Wehr and Sergeant Kraker began arguing back and forth with each other, at which time Sergeant Kraker *"...put him in a headlock or something, put Dane in a headlock and then that was all I saw was Dane saying ok like I'm done or something."*

Lindsay went onto state that Wehr and Sergeant Kraker were outside of the pool on a lounge chair, and then stated, *"So I guess he had, he wasn't on top of Dane he was just kind of you know like restraining him I guess and you know what I'm not even sure if it was a headlock I think I heard that but I saw him restraining him just kind of like barely laying on him and restraining him on the lounge chair. I'm not even sure if it was a headlock."*

Sergeant Cobb asked Lindsay why she was not sure, at which time Lindsay stated, *"Well I remember him, it was like a quick glance. No it was like a quick glance and all I saw was Dane kind of like laying on the chair and then the off duty cop just kind of like on him. I don't know if he was like, I don't know if his arm was around his neck is what I'm saying. And that's all I'm saying."*

Lieutenant Shivers advised Lindsay that her statements were contradictory to what was seen in the surveillance video, at which time she advised, *"Yeah I, I don't wanna say he put him in a headlock. I just know, Dane said he was in a headlock but I don't wanna say that just because that's what I heard. All I know is that he was restraining him."* Lindsay also advised that she did not see Wehr's hand around Sergeant Kraker's neck.

It should be noted, Lindsay explained to the Port Orange Police Officers during the night of the incident that she did not see the altercation between Wehr and Sergeant Kraker.

Lindsay later advised she was present when Wehr approached Sergeant Kraker a few days after the incident occurred, but she was not present when they discussed the incident. Lindsay stated Wehr initiated the conversation with Sergeant Kraker, but she did not hear any of the discussion.

Lieutenant Shivers asked Lindsay for clarification on her statements, and stated, *“You said you didn’t actually see the incident until after it had already gotten physical and they were already laying in the beach chair...”* at which time Lindsay replied with, *“I saw like the before and after, so I saw when he told him or told all of us but then Dane was the only one that really said anything to him, like had the interaction.”* Lieutenant Shivers asked, *“Like told, told you guys to leave?”* at which time Lindsay stated, *“Yes well he told all of us to leave and then Dane was like who are you and like he was like well I’m I don’t know what he said but he said I’m an undercover cop and he was like I don’t believe you show me your badge and then he showed him his badge and he snatched it and threw it. So I saw that and then that’s when I kind of got out of the pool, all of us were kind of leaving and then I saw the end of it. I know there was like a lot of back and forth.”*

Lindsay advised she had no concerns that Sergeant Kraker was not a law enforcement officer.

Lieutenant Shivers asked Lindsay if she observed Wehr punch, strike, kick, shove, push, or anything Sergeant Kraker, at which time Lindsay advised, *“No.”*

Sergeant Jacob Kraker

(See Tab-P for Official Transcript)

On August 21, 2020, Lieutenant Shivers and Sergeant Cobb conducted a sworn interview with Sergeant Kraker at the Volusia Sheriff’s Office administration building in DeLand. Also present within the interview was IUPA Attorney Gary Wilson, and Sergeant Brodie Hughes, Volusia County Deputies Association, Local 6035 president. Below is a summary of that interview –

Sergeant Kraker was sworn in by Lieutenant Shivers and signed an “Advisement of Rights for a Disciplinary Interview Garrity Warning” form.

Sergeant Kraker advised he has resided at the Sanctuary at Westport apartments since June 1, 2020. He advised he has been the courtesy officer since he moved in. When asked what his duties were as the courtesy officer, at which time Sergeant Kraker advised, *“Lock up the pool at night, do a grounds check, make sure you know there’s not obstructions on the sidewalks, roadways, all the lights are operational. Respond to like minor noise complaints and stuff like that.”*

Lieutenant Shivers asked Sergeant Kraker if he receives any payment or discounts for being the courtesy officer, at which time Sergeant Kraker advised he receives a \$600 discount on his rent.

Sergeant Kraker was asked if he obtained written approval from the Sheriff or anyone else within the Volusia Sheriff's Office to engage as a courtesy officer for the complex, at which time Sergeant Kraker stated, "No."

Sergeant Kraker then confirmed he responded to the pool area as the courtesy officer for people being in the pool after hours, and subsequently advised he identified himself as a Deputy Sheriff or a law enforcement officer. He advised he "attempted" to show his badge and/or his Sheriff's Office ID card during the incident.

Lieutenant Shivers asked Sergeant Kraker, "After you identified yourself as a Deputy Sheriff did you apply any level of force against anyone?" At which time Sergeant Kraker stated, "Yes." Lieutenant Shivers asked Sergeant Kraker, "Was the suspect armed with any weapons or anything that could be construed as a weapon?" to which Sergeant Kraker responded with, "No, not that I believe."

Lieutenant Shivers asked Sergeant Kraker why he used force and what type of force he applied, at which time Sergeant Kraker stated, "Basically, we've all seen the video but I responded to the incident reference noise complaint people in the pool. When I arrived there basically said hey guys pool closes at 5 it's time to go, I'll give you, you know, give you all a couple minutes to kind of collect your belongings and get out of here, you know, and by the way how did you get in here? They said we used the gate which I know is inaccurate because I locked the pool probably three or four hours prior to that.

Immediately, Mr. Wehr got verbally aggressive, you know, yelling profanities refusing to leave; kind of swimming around in the pool. Basically told him again, look man I'm not trying to, I'm not trying to be you know an asshole or anything like that, you know, just I'm asking you guys to leave, I'll give you some time it's time to go. You know, typical F-you, you have no authority over me, I'm not leaving you know blah, blah, blah.

I said look I don't wanna get Port Orange involved but I will. I said I just want you guys to go and then that's when he became very aggressive and you know, made several statements to include like, I'll blast you, fuck you, I'll beat your ass kind of stuff like that.

I said look man, and I'm a law enforcement officer as well, I was like I'm just trying to deescalate like the situation at this point. I said look I'm also an officer, I said you know you don't wanna go this route, I'm just I'm asking politely, I don't wanna get anyone else involved just please go. Again, he jumps up or he's in the pool I kind of crouch down to show him my badge because he doesn't believe me at that point; again still being very aggressive and verbal.

He snatches the, my badge out of my hand, you know, and starts waving it around as he's swimming in the pool and then throws it off onto the pool deck somewhere. Again at that point I

said alright, you know, we're done, you need to get out, you know, we're not playing around anymore I'm not being nice you know it's time to go.

He immediately jumps out of the pool, gets in my face making more profanities blowing smoke in my face getting you know aggressively in my face. At one point he points you know, I'll fucking blast you kind of statement with pointing his finger at me.

It continues on again, at this point I'm calling and I had already called or started to call Port Orange at some point. I tried to get through to dispatch like two or three times. It didn't go through so I believe I ended up calling the dispatch supervisor's phone and the dispatch supervisor called and I said hey you know I'm having an issue here can you send Port Orange.

As the incident continued on there were several times where he, you know, shoulder checked me or bumped into me or, or would make aggressive gestures towards me escalating his behavior and his aggression. Making several statements I told him hey I'm on the phone with Port Orange you know they're on their way you guys need to knock it off and you need to go continue on. As his, you know, I'm trying to deescalate this situation telling him hey now I've identified myself as a cop hoping that hey maybe this will calm him down a little bit. No. Alright I called Port Orange they're on their way he still didn't calm down he's still escalating. His buddies are trying to get involved keeping this kid, you know, hey man it's a cop you don't wanna do this, you know, back off kind of thing. Keeps escalating, he ends up shoulder checking me pretty good one more time and I said look that's your last opportunity I said we're not playing around anymore I said, you know, you need to stop.

At that point he kind of like I think breaks away from his friend and he starts coming at me pretty aggressively and then throws his face into my face making contact with me and at that point. I'm on the phone with Teddy in one hand and just completely reactionary like alright he's now he's escalated this to the next level, you know, the phone's in one hand and I just, you know, went to grab him to control him and end up, you know, end up, you know, bringing him down onto, there's a like a pool chair or a lawn chair next to the pool.

End up grabbing him, taking him down onto that and just saying, look man you're done, like we need to fucking knock this off it's time to go, stop. Once I, you know, got him onto the chair reposition told him look knock it off I was up in a matter of seconds and he I think at this point is when he took off and he ran from the pool. And that's basically the incident in a nutshell."

Lieutenant Shivers asked Sergeant Kraker if he placed Wehr into any type of neck hold or any variation of neck or choke hold, at which time Sergeant Kraker stated, "No."

Sergeant Kraker then stated Wehr did make a statement that he couldn't breathe; however, indicated that it was, "After the altercation had taken place he was screaming like he couldn't breathe and stuff he was playing the whole I can't breathe release game." Lieutenant Shivers observed this statement was consistent with the statement Sergeant Kraker made to Sergeant Hansard the night of the event (recorded on Sergeant Hansard's body worn camera); however, the statement to "release" indicates Wehr made this statement while force was being used against him

by Sergeant Kraker. Additionally, Wehr advised Port Orange Officer Dykstra and Lieutenant Cochran that he was unable to breathe while being held by Sergeant Kraker.

Sergeant Kraker was asked if Wehr was offering “deadly force” subject resistance at the time he utilized force against him, at which time Sergeant Kraker advised, “No.”

Sergeant Kraker was asked, “*Did he [Wehr] have any hostile attacking movements with or without a weapon that would cause reasonable perception by you that he intended to cause and had the capability of causing death or great bodily harm to you or others?*” at which time Sergeant Kraker responded with, “Yes.”

Lieutenant Shivers also asked Sergeant Kraker, “*Did you believe, do you believe the subject was going to cause imminent death or great bodily or physical harm to you or any other persons?*” at which time Sergeant Kraker advised, “Yes.”

It should be noted, the video does not depict Wehr head-butting Sergeant Kraker in the head/face area prior to Sergeant Kraker applying force as stated during this interview and documented in his original incident report. Secondly, Sergeant Kraker previously advised Wehr was unarmed and did not have immediate access to any weapons during the altercation.

It should also be noted, Sergeant Kraker exclaimed numerous times to Port Orange Police Officers that he was uninjured during the altercation; however, it was observed on the aforementioned Port Orange Police body worn camera that he advised his ribs were hurting. No obvious signs of injury to Sergeant Kraker’s face or head were present on any of the Port Orange Police body worn camera recordings, nor were they observed when he was served with his notice of internal investigation on August 5, 2020.

Sergeant Kraker advised he did not offer Wehr any type of medical aid and/or assistance after using force against him, and stated, “*Oh, he didn’t say he was hurt or anything...so no.*”

Sergeant Kraker affirmed he received and acknowledged all of the Departmental Directive updates and revisions since June 1, 2020, and the “Positional Asphyxiation” roll-call bulletin; all through Training Solutions. Specifically, Lieutenant Shivers asked Sergeant Kraker if he recalled the policy updates detailing that a neck hold is considered deadly force, at which time Sergeant Kraker stated, “Yes.”

When asked, Sergeant Kraker then advised he completed a written report of the incident because “*I was ordered to.*” He confirmed this report he completed did not detail the defensive tactics and what body part or what part of the body the tactics were applied, the age, sex, and physical size of the suspect involved, the suspect’s proximity to weapons, nor did it contain any medical treatment or the offer of medical treatment to the suspect.

Lieutenant Shivers asked Sergeant Kraker why the suspect was not arrested, at which time Sergeant Kraker deferred, stating *"I don't know. Port Orange is the investigating agency."* Lieutenant Shivers pointed out that Sergeant Kraker indicated that he didn't wish to pursue charges, at which time Sergeant Kraker advised, *"Correct."* Lieutenant Shivers asked Sergeant Kraker why he didn't want to pursue charges, at which time Sergeant Kraker stated, *"Because I live there and the kid's 21 on his 21st birthday. I'm not trying to ruin his life or mine. I live there with my children."*

Lieutenant Shivers asked Sergeant Kraker if he has had any contact with Wehr since the incident, at which time he stated, *"The following day."* Sergeant Kraker advised he discussed the incident with Wehr, and only he and Wehr were present during the conversation. Lieutenant Shivers asked Sergeant Kraker if he coerced or manipulated him in any way to change his recollection of events, at which time Sergeant Kraker advised, *"No."*

It should be noted, Wehr advised he spoke to Sergeant Kraker the weekend following the incident, and when Wehr was specifically asked if it was the following day that he spoke to Sergeant Kraker, Wehr indicated that it was not. Additionally, when Lieutenant Shivers asked Wehr if Sergeant Kraker remembered him from the incident, Wehr advised, *"Yeah he remembered me of course he remembered me it was fresh it was like two days, three days, four days maybe after?"*

Sergeant Kraker advised he believed he handled the incident appropriately, and he would not have done anything differently.

Attorney Gary Wilson asked Sergeant Kraker if Wehr told him that a *"bald headed lieutenant had already come out and talked to him that day?"* during their conversation after the incident, at which time Sergeant Kraker advised, *"He said someone had come out to speak to him at some point."* Attorney Wilson then asked, *"And was that before he apologized to you or after do you remember? In other words did he say yeah and somebody else has already come and talk to me when he approached you and apologized to you."* At which time Sergeant Kraker responded with, *"Yes."* Attorney Wilson then asked, *"Ok so someone from this agency, not you because you're also bald headed right?"* and Sergeant Kraker stated, *"Correct."* Attorney Wilson stated, *"Had already come and talked to him."* and Sergeant Kraker indicated, *"Yes."*

During this exchange, Attorney Wilson and Sergeant Kraker were referring to Lieutenant Cochran's body worn camera recorded interview with Wehr. It should be noted, as stated before, Lieutenant Cochran did not speak with Wehr until approximately 1930 hours on July 26, 2020, in Edgewater, FL.

Attorney Wilson then asked Sergeant Kraker, in regards to the statements made by Barkin and Nicholas, *"And we also read that they don't believe you had him in a chokehold is that right?"* at which time Sergeant Kraker advised, *"Correct."* Lieutenant Shivers observed this information is inaccurate, as both Barkin and Nicholas both advised in their sworn statements that Sergeant

Kraker placed Wehr into a chokehold; specifically, Barkin advised, *“The cop did put him in a like a chokehold but I think that was more so to subdue him I don’t think he was gonna like choke him out or anything”* and, *“Ok so he was on top of Dane. His left leg was over Dane’s legs and then his right arm was around his neck kind of and his left hand was supporting his right hand like Dane was I guess in his arms”* and Nicholas stated, *“...I can’t remember what exactly like started it but the next thing I know the cop put Dane in like a chokehold”* and, *“Not really like a chokehold but I guess it was because he had his arm around his neck and like flipped him over onto the uh, one of the beach chairs that was sitting on the edge of the pool,”* and lastly, when asked about if Sergeant Kraker’s arm was around Wehr’s throat or his waist, Nicholas stated, *“No, it was around his throat.”*

Sergeant Brodie Hughes asked Sergeant Kraker, *“Generally are strikes to the face considered, could be considered deadly force?”* at which time Sergeant Kraker advised, *“Could be, yes.”* Sergeant Hughes then asked, *“So when you were head-butted in the face would that technically rise to the level that it would be a strike to the face?”* and Sergeant Kraker stated, *“Correct.”* This line of questioning is inconsistent with the evidence observed on the surveillance video, and also at no time did Sergeant Kraker advise he was injured, stunned, or in any immediate danger of serious bodily harm or death, including during the conversations he had with the Port Orange Police Officers immediately after the incident; nor did Sergeant Kraker articulate in his report any injuries or potential serious bodily harm or death concerns for his safety.

Sergeant Kraker advised his use of force was *“Completely reactionary”* due to the aggressive behavior of Wehr. When asked by Attorney Wilson of his intent when he used force, Sergeant Kraker advised, *“Basically get a hold of the guy and you know say hey we’re you know try to deescalate this situation and like look we’re done playing you know stop. Like I’m not gonna let you keep berating me, keep putting your hands on me, keep cursing at me. You know it’s done I’m done letting you walk all over me we’re you know.”*

After providing that statement, Lieutenant Shivers asked Sergeant Kraker, *“Well why didn’t you just walk away outside the gate and close just close the gate and call 911?”* at which time the following exchange of questions and answers occurred –

Sergeant Kraker – *“Why and “what if” all day long if you want, sir.”*

Lieutenant Shivers – *“I mean we can “what if” either way of this I mean.”*

Sergeant Kraker – *“I know.”*

Lieutenant Shivers – *“Either all this stuff that you’re saying now or the fact that you could have walked away and closed the gate behind you.”*

Sergeant Kraker – *“I could have. Correct. But I’ve already identified myself as a law enforcement officer I’ve already been battered multiple you know on multiple occasions I’ve been threatened. At that point I mean do we go to calls where we’re threatened and battered and we just walk away, no. I mean at that point...”*

Lieutenant Shivers – *“No, but usually we have a bunch of tools to our disposal and also you know, radio and direct line of communication with other deputies and also it’s, you know.”*

Sergeant Kraker – *“I believe that’s here-nor-there honestly, I mean we’re gonna sit here and “what if” all day long.*

Lieutenant Shivers – *“Ok.”*

Sergeant Kraker – *“I believe I acted in, in, you know appropriate response to the given uh response I was getting back.”*

Lieutenant Shivers ended the interview moments later.

During the interview, Sergeant Kraker was asked if he violated the following Sheriff’s Office directives and Volusia County Merit System Rules and Regulations.

26.2.105 Unlawful Use of Deadly Force	No
26.2.133 Job Knowledge and Performance	No
26.2.134 Knowledge of Official Directives	No
86-453 Volusia County Merit System Rules and Regulations (2)	No
86-453 Volusia County Merit System Rules and Regulations (14)	No
86-453 Volusia County Merit System Rules and Regulations (22)	No
86-43 Volusia County Merit System Rules and Regulations (C)(2)	No

Conclusion:

On August 26, 2020, this investigation was presented to Sheriff Chitwood and his staff. After review, Sheriff Chitwood determined the violation of the below listed Departmental Directives and County Merit Rules and Regulations to be:

26.2.105 Unlawful Use of Deadly Force	Sustained
26.2.133 Job Knowledge and Performance	Sustained
26.2.134 Knowledge of Official Directives	Sustained
86-453 Volusia County Merit System Rules and Regulations (2)	Sustained

86-453	Volusia County Merit System Rules and Regulations (14)	Sustained
86-453	Volusia County Merit System Rules and Regulations (22)	Sustained
86-43	Volusia County Merit System Rules and Regulations (C)(2)	Sustained

EXHIBITS:

- A. Report of Investigation
- B. Administration of Oath/Perjury Warning/Garrity Warning
- C. Official Memorandum
- D. Official Correspondence
- E. Official Reports
- F. Digital Media
- G. Training Records
- H. Departmental Policy Revisions/Updates
- I. Official Transcripts of Captain Brian Bosco
- J. Official Transcript of Lieutenant Cody Cochran
- K. Official Transcript of Kimberly Polito
- L. Official Transcript of Dane Wehr
- M. Official Transcript of Nicholas Bevacqua
- N. Official Transcript of Barkin Kesimer
- O. Official Transcript of Lindsay Mayberry
- P. Official Transcript of Sergeant Jacob Kraker

WITNESSES:

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Sergeant Jacob Kraker
Volusia Sheriff's Office
386-736-5961

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true to the best of my knowledge and belief.

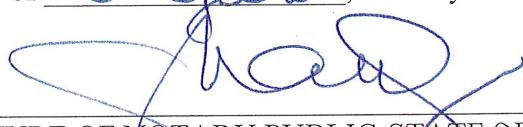
AND

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the suspect of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.

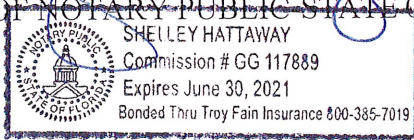
DETECTIVE:  DATE: 08/27/2020
Lieutenant Daniel Shivers, 6842
Internal Affairs Detective

STATE OF FLORIDA
COUNTY OF VOLUSIA

Sworn to (or affirmed) and subscribed before me by means of physical presence or online Notarization this 27th day of August, 2020 by Lieutenant Daniel Shivers



SIGNATURE OF NOTARY PUBLIC STATE OF FLORIDA



PRINT, TYPE, OR STAMP COMMISSIONED NAME OF NOTARY PUBLIC

PERSONALLY KNOWN OR PRODUCED IDENTIFICATION

TYPE OF IDENTIFICATION PRODUCED

APPROVED BY:  DATE: 8-27-2020
CHIEF DEPUTY JOSEPH GALLAGHER
VOLUSIA COUNTY, FLORIDA