

**VOLUSIA COUNTY PERSONNEL BOARD**  
**SUMMARY OF FINDINGS AND DETERMINATION**  
**ADVERSE ACTION APPEAL #20180416**

**APPELLANT:** Charles Brown

**POSITION HELD:** Captain, Volusia County Sheriff's Office

**DATE OF HIRE:** February 10, 1995

**DATES OF APPEAL HEARING:** April 16, 2018  
April 18, 2018

**SUBJECT:** Termination

**HEARING BODY:** Personnel Board

**FINAL AUTHORITY:** County Manager

**ATTENDEES:**

**Personnel Board Members:** Patrick Lane, Chair  
Dr. Fran Duvall  
Joie Alexander  
Frank Bruno

**Personnel Board Legal Advisor:** Jeff Mandel, Esquire

**Ex-Officio Members**

**Executive Secretary:** Tom Motes, Human Resources Director

**Employer:** Volusia County Sheriff's Office

**Employer's Representative:** Michael G. Moore, Assistant County Attorney

**Employer's Witnesses:** Sheriff Michael Chitwood, VCSO  
Lieutenant Justin Sawicki, VCSO  
Sergeant Brian Cobb, VCSO  
Sergeant Jason "Mike" Hattaway, VCSO  
Detective Seth Amrhine, VCSO  
Matsuko Hulsey  
Joanne Fischer

**Appellant's Representative:** Gary Wilson, Esquire

**Appellant's Witnesses:** Charles Brown, Appellant  
Charles Mandizha, Retired VCISO Captain  
Captain David Brannon, VCISO  
John Harvey, Retired VCISO Deputy  
Sergeant Dominic Amendolare, VCISO  
Sergeant Austin Hairston, VCISO  
Deputy Robb Campbell, VCISO  
James Whittet, Retired Sergeant VCISO  
Deputy Christy Bourke-Sturup, VCISO  
Lieutenant Donaldson "Don" Taylor, VCISO

Recording Secretary: Meggan Znorowski, County Attorney's Office

I. **INTRODUCTION**

The Volusia County Personnel Board convened on April 16, 2018 at 9:30 a.m. and April 18, 2018 at 9:30 a.m. for the hearing regarding the termination appeal filed by Charles Brown from Volusia County Sheriff's Office.

**BACKGROUND**

1. The hearing before the Personnel Board was conducted in accordance with Merit System Rules and Regulations Code §86-485.
2. The hearing was held at the request of the appellant.

II. **EMPLOYER'S ACTION AND POSITION**

On June 28, 2017, Sheriff Michael Chitwood issued a Notice of Intent to Terminate (Suspension with Pay), and thereafter on July 31, 2017, issued a Final Termination to Appellant for violations of the following:

**Volusia County Merit Rules and Regulations Sec. 86-453 (2), (8), (10), (13), (12), and (21):**

- (2) Disregard for or frequent violations of county ordinances, departmental polices, and regulations...
- (8) Criminal, dishonest, or other conduct, which interferes with effective job performance or has an adverse effect of the efficiency of County service. (Volusia County Human Resources Bulletin 20)
- (10) Incompetent or unsatisfactory performance of duties.
- (13) Any conduct, on or off duty that reflects unfavorably on the County as an employer.

(12) Knowingly giving false statements to supervisors, other public officials or the public. (Volusia County Human Resources Bulletin 20)

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

**Sheriff's Office Standards Directives:**

**26.2.48 Use of Profanity** - Employees shall not use profanity or vulgarity in speech or gesture at any Department work place, on or off duty, in public or while representing the Department or County. *(Violation subject up to a 1 day suspension.)*

**26.2.62 Derogatory Ethnic Remarks** – Employees shall not make derogatory remarks concerning race, sex, religion, age or national origin of any person. *(Violation subject up to dismissal.)*

**26.2.118 Code of Ethics for Public Officers and Employees** – Employees shall strictly adhere to the code of ethics for public officers and employees and shall not violate the Code of Ethics for Public Officers and Employees as set forth in Florida law and the County Merit System. *(Violation subject up to dismissal.)*

**26.2.122 Abusiveness** – Employees shall not use abusive language or gestures toward a supervisor or superior officer of the Department. Superior officers shall not use abusive language or gestures toward subordinates. *(Violation subject up to a 5 day suspension.)*

**EMPLOYERS REQUEST**

The Employer requested that the Board uphold the action taken by Sheriff Michael Chitwood.

**APPELLANT'S POSITION**

Appellant opposed the County's position regarding his dismissal from Volusia County Sheriff's Office.

**APPELLANT'S REQUEST**

The Appellant requested that the Board recommend that the County reinstate his employment.

**III. SUMMARY OF EVIDENCE**

On July 31, 2017, Appellant Charles Brown was terminated from employment with the Volusia County Sheriff's Office. Evidence presented to the Personnel Board was as follows:

On October 23, 2013, Charles Brown responded to a call for service. During this call, a

male subject ran from a deputy on foot and Mr. Brown responded to a residence Mr. Brown believed the subject may have been trying to reach. Upon arrival at said residence, Mr. Brown met the suspect's 80 year old grandmother, Ms. Hulsey. During the encounter with Ms. Hulsey, Mr. Brown accused her of lying and placed her into handcuffs. Mr. Brown then proceeded to enter her residence and partially searched her residence without gaining consent. Mr. Brown then called for back-up, and two detectives responded to the scene. Mr. Brown ordered the two detectives to search the residence without adequate consent or a search warrant; it was determined the male suspect was not at the residence and was later apprehended by deputies. Mr. Brown informed Ms. Hulsey she was "lucky" she wasn't going to jail. During Mr. Brown's interview with Internal Affairs he gave contradictory statements as to when Mr. Brown allegedly asked Ms. Hulsey for consent to search the residence, and accused Ms. Hulsey of being untruthful to him, and he informed Ms. Hulsey she could go to jail prior to Mr. Brown asking her for consent to search her residence.

After Mr. Brown's encounter with Ms. Hulsey, he received a telephone call from her daughter, Ms. Fischer, to ascertain what transpired with Ms. Fischer's mother. Ms. Fischer also wished to make a complaint over the treatment of her elderly mother. In lieu of transferring the telephone call to his supervisor, Mr. Brown handled the telephone call during which the complainant wished to make a complaint about Mr. Brown. During Mr. Brown's interview with Internal Affairs, he stated Ms. Fischer merely wanted information regarding what had transpired at her mother's residence; Mr. Brown failed to follow up and send Ms. Fischer information. Ms. Fischer testified, "Because I wanted to talk to somebody's supervisor. I would have never filed a complaint with the person that did it."

On April 03, 2017, Captain Paul Adkins spoke to Deputy Nicholas Yackel and Deputy Donald Gray. During this conversation the deputies informed Captain Adkins that Mr. Brown called them derogatory names alluding to homosexuality and used other profanity in a "belittling, demeaning, enraging, and hostile" manner. Captain Adkins completed a memorandum into the allegations, thus an Internal Affairs investigation was commenced.

During the course of the Internal Affairs investigation, it was revealed that Mr. Brown has had a history of demeaning employees with profanity and using intimidation through derogatory comments to gain a desired outcome.

It was also revealed, that Mr. Brown made racially toned comments regarding the promotion of an upper level Command Staff employee. According to sworn testimony Mr. Brown stated this employee was promoted due to his race and not his qualifications.

Mr. Brown's disciplinary history, which includes:

- A.) August 10, 1999, Final Written Reprimand, 040FY107.97 Employees who are the subject of suspension may not accrue overtime during the pay period in which a suspension is taken.
- B.) July 13, 1999, Intent Written Reprimand, 040FY107.97 Employees who are the subject of suspension may not accrue overtime during the pay period in which a suspension is taken.
- C.) June 16, 1999, Final Suspension (1 Day) and Written Reprimand; 26.2.95 Careless Handling of Equipment Not Resulting in Damage Loss; failure to take

- appropriate law enforcement action.
- D.) June 10, 1999 Intent to Suspend (1 Day) and Written Reprimand; 26.2.95 Careless Handling of Equipment Not Resulting in Damage Loss; failure to take appropriate law enforcement action.
- E.) February 13, 1997 Final Suspension (90 days) in Lieu of Termination and Probation Agreement
- F.) February 13, 1997, Amended Intent to Terminate
- G.) August 1, 1994, Intent to Terminate

Mr. Brown was given the opportunity to speak with designees for Sheriff Chitwood at a last chance meeting before his final termination was issued. Mr. Brown failed to take ownership of his actions other than his use of profanity.

Appellant having been a VCSO deputy for approximately 17 years at the occurrence of meeting with the victim in 2013, some of those years serving as a Field Training Officer and responsible for training new deputies, Mr. Brown should have followed proper protocol for the search of a home, and shown the characteristics of his position as Captain and not used profanity, derogatory ethnic remarks, or abusive language. Sheriff Chitwood testified that he felt Mr. Brown's treatment of Ms. Hulseley to be a violation of her 4<sup>th</sup> Amendment rights and the potential civil liability created, as well as Mr. Brown's failure to take and assume ownership of his actions, Sheriff Chitwood decided to terminate Mr. Brown.

#### IV. **BOARD'S FINDINGS OF FACTS AND CONCLUSIONS**

##### **Volusia County Merit Rules and Regulations Sec. 86-453 (2), (8), (10), (13), (12), and (21):**

- (2) Disregard for or frequent violations of county ordinances, departmental policies, and regulations...

##### Discussion:

Mr. Lane stated this is the time for the Board's findings to be entered into the record. Mr. Lane continued that he made a note to have a discussion about the gray area, and it has been an interesting hearing for him because Mr. Lane doesn't recall a past hearing that had such disparity and stark differences in testimony. Mr. Lane stated an interesting thing in these proceedings was that they did not hear from Yackel or Gray. Mr. Lane stated that if they are judging credibility of evidence or witnesses, a face to face meeting is more credible and more convincing than a written statement.

Ms. Alexander stated there may be circumstances why they could not attend. Ms. Alexander continued that there is a lot of talk on each side. Ms. Alexander added that she wrote down many notes and needs time to get them together.

Mr. Lane stated that they are not in a hurry at this point, that they are going to take their time and go through it as best they can.

Dr. Duvall stated that she would have liked to have heard from Yackell and Gray. Dr. Duvall continued that watching someone speak and watching their body language is better than the written word, although she understands that Detective Sawicki is a sworn notary. Dr. Duvall stated that since this case has so much in it, you have to pull away other stuff to get to the crux of it. Dr. Duvall stated there is a lot of he said, she said, which is awful. Dr. Duvall said she wants to go back to what the Board is tasked with, which is facts, and what facts do they have. Dr. Duvall added that when she looks at (2), it comes to her mind, and understands what Mr. Lane said about the gray area, is the detainment of Ms. Hulsey. Dr. Duvall stated there is so much minutia in this case. Dr. Duvall stated that even before Sheriff Chitwood testified, she kept going back to Ms. Hulsey, and whether that detainment was unlawful or not. Dr. Duvall stated she thinks it was unlawful.

Ms. Alexander there was no legal cause to handcuff someone; a reason was not given, nor to enter.

Mr. Bruno stated at the same time there was testimony from deputies and sergeants indicating that it is not a prerequisite to put someone in handcuffs, it is done on a regular basis, and usually it is done for their safety as well as the safety of the officer and in most cases the handcuffs come off and they may or may not go to jail.

Ms. Alexander stated that you can spin a story any way that you want, and in probably nine tenths of the cases that is what is perceived and they have to do it for their safety; in this case Ms. Alexander stated she could never be convinced.

Dr. Duvall wondered that when Ms. Hulsey was giving her testimony, if Mr. Brown would have said to her, "you stay right here, you do not move"; Mr. Brown is a big guy and in a uniform, and when someone in uniform tells Dr. Duvall to do something, she would absolutely do it. Dr. Duvall wondered if Ms. Hulsey would have stayed right there without him putting handcuffs on her.

Mr. Lane stated that this is all Monday morning quarterbacking; and the Board is charged with not substituting their judgment for that of the Sheriff. Mr. Lane added that he said that because they are all substituting our judgment for what they think Mr. Brown did; and to a large extent Mr. Lane trusts the officers in the field to do what they feel is best for their own safety or the safety of civilian.

Dr. Duvall clarified that the Board is charged with determining facts, and is their substantive evidence supporting those facts; that is what the Board has to pare out.

Ms. Alexander stated the report narrative is what so much of the action was taken on, and it is left; there is so much that is not clear. Ms. Alexander continued that she would think after 18 years the report would have included the necessary things. Ms. Alexander stated that is why she asked about where Mr. Brown articulated reasonable suspicion.

Ms. Alexander moved to sustain the termination.

Mr. Lane asked for a second for the purposes of discussion; he would like to discuss it more.

Dr. Duvall stated she wanted to talk about it a little more.

Mr. Lane asked if Dr. Duvall was seconding the motion.

Dr. Duvall stated no, she wanted to discuss it more.

Mr. Lane asked if Dr. Duvall was seconding the motion for purposes of further discussion; the Board is not voting on it at the moment.

Dr. Duvall seconded the motion for purposes of further discussion.

Mr. Lane stated that obviously they have a sympathetic witness in Mr. Hulsey; it is hard to justify putting handcuffs on an 80 year old grandmother; and Mr. Lane's first reaction is that it is terrible, and there is no way Ms. Hulsey could give proper consent if she is in a position of being intimidated by a big guy who slaps handcuffs on her and then tells her she is giving him consent; there is no way Ms. Hulsey could cogently and calmly give consent at that point, which was certainly Sheriff Chitwood's opinion as well. Mr. Lane continued that they have convoluted things to consider; and Mr. Lane stated that it is his opinion that Sheriff Chitwood's opinion is valid and Sheriff Chitwood sees no gray area here, so there is no way Mr. Brown had consent or probable cause to search Ms. Hulsey's house, and Detective Sawicki testified to the same. Mr. Lane continued that if Sheriff Chitwood and Detective Sawicki feel strongly about it, and Mr. Lane's initial reaction is that is a pretty harsh way to proceed with an investigation is to cuff grandma.

Mr. Bruno stated that as egregious as it appears, Mr. Bruno thinks that he goes back, and it was questioned of Ms. Hulsey, if Mr. Brown hurt Ms. Hulsey in any way, and Ms. Hulsey said no. Mr. Bruno stated Mr. Brown was probably very considerate, cautious, and didn't slam the cuffs on Ms. Hulsey; if he hadn't been careful, Ms. Hulsey would have said something to the Board, and Ms. Hulsey did not make that comment. Mr. Bruno stated he feels that Mr. Brown took every precaution in what he did.

Ms. Alexander asked Mr. Bruno if what he was saying was that because Mr. Brown did not hurt Ms. Hulsey in putting her in handcuffs that overrides.

Mr. Bruno said no, he is trying to understand Mr. Brown's position in this situation, and Mr. Brown didn't know where the grandson was, and where he could come from, for Ms. Hulsey's safety or for his own safety, Mr. Brown did what he did.

Dr. Duvall responded that was why she asked Mr. Brown why Mr. Brown didn't wait for backup; there was no urgency for him to go into that house. Dr. Duvall stated she understood the police have to keep the people on scene safe, but Mr. Brown could have waited for other people, and then someone or Mr. Brown could have stayed with her, and the other two deputies could have gone into the house. Dr. Duvall stated this is a tough case.

Mr. Lane stated that a lot of these ideas will transfer into other sections of this matter; and as they discuss them, and that they will not all take this long, and appreciates being cautious with this. Mr. Lane stated he respects this board, and no one is going to roll over on the Board, and the Board will chew it until it is tender.

Dr. Duvall stated she thinks the Board needs to be cautious on every single charge.

Mr. Lane asked if the Board has enough evidence to uphold (2).

Ms. Alexander stated she feels there is, or she would not have made the motion.

Mr. Lane asked if the Board wanted to continue to discuss. Mr. Lane stated the Board is not required to vote unanimously on the charges; and if they don't, that sends a message too. Mr. Lane added that there are a lot of things in this case that he wished had happened differently. Mr. Lane stated he wished Sheriff Chitwood had been patient enough to receive a personal interview with Mr. Brown.

Mr. Lane asked if there was further discussion, hearing none, he called for a vote to uphold (2).

Vote called. Motion carried 3 to 1. Mr. Bruno opposed.

(8) Criminal, dishonest, or other conduct, which interferes with effective job performance or has an adverse effect of the efficiency of County service. (Volusia County Human Resources Bulletin 20)

Mr. Lane stated they are talking about the potential unlawful detention and the phone call from Ms. Fischer. Mr. Lane continued that the Sheriff was not shy about his opinion; Ms. Fischer stated that she certainly felt slighted by the way it was handled.

Ms. Alexander stated that the actions that Mr. Brown took, and then when the public learned about how the situation was handled, it does have an effect on the county.

Mr. Lane stated he feels like even if Mr. Brown made an error in judgment, Mr. Lane feels it does not reach the level of criminal threshold; or that Mr. Brown was necessarily dishonest. Mr. Lane added he felt Mr. Brown was incomplete with his report and that included the consent, if that is what Mr. Brown thought.

Dr. Duvall stated she did not think Mr. Brown did it on purpose, that it was an honest mistake.

Ms. Alexander pointed out the word "or" interferes with effective job performance."

Mr. Lane reiterated, "criminal, dishonest, or other conduct..." Mr. Lane posed the question that if the Board was to suggest that the termination be upheld, would that overall have an adverse effect of the efficiency of county service. Mr. Lane stated that sometimes he thinks that too much importance is placed on what the Board does in these hearings. Mr. Lane stated he doesn't think Mr. Brown did anything criminal, and does not believe that Mr. Brown was necessarily dishonest.

Mr. Bruno concurred.

Dr. Duvall agreed, there wasn't anything criminal or dishonest done.



Mr. Bruno moved to not uphold (8). Seconded by Dr. Duvall.

Vote called. Motion carried unanimously.

(10) Incompetent or unsatisfactory performance of duties.

Ms. Alexander stated that the narrative report in an unsatisfactory performance of duties by being incomplete.

Mr. Lane stated he cannot argue with that, and doesn't believe Mr. Brown would argue with that.

Ms. Alexander moved to sustain (10). Dr. Duvall seconded the motion.

Mr. Lane stated the Board was focusing on the report which does not mention consent or probable cause.

Ms. Alexander responded yes.

Dr. Duvall responded correct.

Vote called. Motion carried 3 to 1. Mr. Bruno opposed.

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

Ms. Alexander stated that one of Sheriff Chitwood's lead employees was incompetent would reflect unfavorably on the county as an employer; in fact, Sheriff Chitwood stated that it reflected poorly on the County pursuant to the officer code of conduct, because he skirted responsibility.

Mr. Lane stated that they were not here for the good stuff that Mr. Brown did during his career; in his mind it balances out what was a momentary snap judgment to handcuff Ms. Hulsey. Mr. Lane stated he is having difficulty with the follow up calls from Ms. Fischer because he thinks she knew how to make a complaint, and Mr. Lane is not sure if that term was ever present in their conversation, although the Sheriff thought she did.

Dr. Duvall stated that Ms. Fischer clarified her job that she just passed the complaints along, and that Ms. Fischer listened to people, but that she just passed the information along. Dr. Duvall added that Ms. Fischer is an intelligent woman.

Ms. Alexander added that it was a process, and Ms. Hulsey was nervous about it all.

Dr. Duvall stated she asked Ms. Fischer if she wanted to make a complaint, and Ms. Fischer responded yes, and that she didn't in deference to her mother, and that Ms. Fischer did want to go ahead with the complaint. Dr. Duvall added that the way Ms. Fischer said it with conviction in her voice, Dr. Duvall believed her because Ms. Fischer did not hesitate.

Mr. Bruno stated that yet a complaint was never made.

Dr. Duvall concurred that was a fact.

Mr. Lane stated this is what he meant that there was no proof that it occurred, only a he said she said.

Mr. Bruno added this whole case is just that.

Dr. Duvall concurred.

Mr. Lane asked if the Board has heard evidence of any conduct on or off duty that reflects unfavorably on the county as an employer, and the Board has to have proof or it's just hearsay or innuendo.

Mr. Bruno stated his problem is that he doesn't believe as the three other Board members believe that the handcuffing was the main issue, and as long as the other members have that issue, that would fall under "any conduct," so Mr. Bruno is at odds with it.

Mr. Lane asked where they were missing the mark on it, where is the crux in lieu of the handcuffing.

Mr. Bruno responded that it's whether you believe Mr. Brown or you believe a written report and inconsistencies in two versions of a video and a report. Mr. Bruno is siding with the captain on duty in light of the circumstances.

Mr. Lane stated he finds it difficult to disagree with Mr. Bruno.

Dr. Duvall stated that there are inconsistencies, but the main portion of Ms. Hulsey's testimony did not change.

Mr. Bruno stated that in Ms. Hulsey's written testimony, she admitted that she gave him approval to go into the house, which is an inconsistency.

Dr. Duvall stated that is a big part of it.

Mr. Lane added that the county's argument to that point is that she is unable to give permission if she is intimidated and in handcuffs.

Ms. Alexander stated that she feels Mr. Brown just simply said can we go inside, and is she is going to understand what that means.

Mr. Bruno responded that is a possibility, and that all he can say is that it is inconsistent with the video and what she said in testimony that she did give permission.

Dr. Duvall stated that if Ms. Hulsey was intimidated, then maybe she would say yes, do whatever you want to.

Mr. Bruno replied that is very possible.

Ms. Alexander said she goes back to the probable cause to detain her and reasonable suspicion, and there is only slight cause. Ms. Alexander stated she is basing her decision on the narrative and circumstances.

Dr. Duvall stated the Sheriff was very adamant in his testimony.

Mr. Lane stated that everyone was so concerned about the grandson circling back to grandma's house; but if it was him running from the police, he would not go back to the place the police know he had just been.

Mr. Bruno stated all of Mr. Brown's off-duty conduct reflects very favorably on the county, and also coaching uses crazy terms with players. Mr. Bruno stated he was looking at the opposite side.

Mr. Lane stated if they are looking at the totality of what has been heard, is that Mr. Brown did not intend to reflect unfavorably on the county; and Mr. Lane is not sure if the full story was heard by anybody. Mr. Lane continued that at first blush it looks like Mr. Brown handcuffed Ms. Hulsey, but when you hear the reasons why this could happen and understand the situation, Mr. Lane doesn't know that it reflects unfavorably on the county at this point.

Mr. Bruno stated he doesn't either.

Ms. Alexander stated that other than perhaps that one of the key leaders doesn't have good judgment.

Mr. Bruno moved to not uphold (13). Mr. Lane seconded the motion.

Dr. Duvall stated Ms. Fischer said their family thought unfavorably of the county and her mother absolutely did not want to talk to anybody because Ms. Hulsey was still upset.

Ms. Alexander added that was why Ms. Hulsey did not want to move forward because she did not feel it would be to her advantage at all.

Dr. Duvall said there hasn't been a lot of talk about this.

Mr. Lane stated he asked Ms. Fischer if she thought better of the county after seeing how this had turned out and there had been action taken against Charles Brown, and Ms. Fischer said absolutely. Mr. Lane continued that in Ms. Fischer's mind, she would vote to uphold (13).

Vote called. Motion lost, 2 to 2. This violation is not sustained. Mr. Bruno and Mr. Lane for not upholding (13); Ms. Alexander and Dr. Duvall against.

(12) Knowingly giving false statements to supervisors, other public officials or the public. (Volusia County Human Resources Bulletin 20)

Ms. Alexander stated portions of the narrative are false or not including everything, which she would consider as false and in the gray area.

Ms. Alexander stated there were two things not in the report that were so critical in this case, and that is the asking about going inside and the handcuffing, and probable cause; it all goes back to that and the code of ethics.

Mr. Lane stated he doesn't believe that he knowingly gave a false statement; incomplete is different than dishonest.

Dr. Duvall stated that Mr. Moore brought out that there were contradictory statements that were made; she doesn't believe knowingly false statements were given, but rather based on confusion.

Mr. Bruno stated or left out of a report that doesn't necessarily mean it's true or not true.

Dr. Duvall stated that if it's not in a report it doesn't exist.

Mr. Lane stated there is some validity to that.

Ms. Alexander concurred that it if it is not written down.

Mr. Bruno added that they did get verbal testimony today; so it is whether you believe it or you don't.

Ms. Alexander stated it is a really smart person that is able to analyze and then convince people that he left it out, but if he had to do it over he would put it in; when Mr. Brown talks about the things he's done, and he portrays himself as being just about perfect in everything, then to write a report that does not include the basic things that it should causes her to have doubts.

Mr. Lane stated he doesn't know if it rises to the level of giving false statements.

Mr. Bruno moved that (12) not be upheld. Mr. Lane seconded the motion.

Dr. Duvall asked for a moment because she was struggling with this. Dr. Duvall stated she remembers some contradictory statements in his report, and that bothers her.

Ms. Alexander questioned whether he gave false statements to Ms. Fischer in his responses to her during the call.

Mr. Lane responded that is a reasonable thing to discuss. Mr. Lane explained that Mr. Brown told Ms. Fischer he was there, but did not necessarily stress that he was the person that put Ms. Hulse in handcuffs.

Dr. Duvall stated that is a false statement by omission.

Ms. Alexander agreed.

Mr. Lane added that he didn't disagree with that either.

Dr. Duvall stated she thinks that is important.

Mr. Lane stated that if he was making that call on behalf of his mom, and it was not made abundantly clear to him that Mr. Brown was the guy that handcuffed Mr. Hulse, he would be upset by not having full disclosure made.

Dr. Duvall agreed.

Mr. Lane added that he is not sure that is what happened because Ms. Fischer did not follow up on the complaint.

Vote called. Motion lost, 2 to 2. This violation is not sustained. Mr. Bruno and Mr. Lane for not upholding (12); Ms. Alexander and Dr. Duvall against.

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

Mr. Lane stated the Sheriff thought it was warranted to the extent that he goes straight to termination on this; and they have covered the specifics on the other conduct, and doesn't know that this carries much weight for discussion because it is so vague.

Ms. Alexander stated that one thing that the Sheriff brought up is the fact that Mr. Brown had lost his credibility, and would not be able to testify in court with the lack of credibility.

Dr. Duvall stated the Sheriff also said that Mr. Brown did this backwards; he did something that he had to cover up.

Mr. Bruno asked if there is any evidence of a cover up. Mr. Bruno stated he is having a problem with that.

Mr. Lane responded that if he were to play devil's advocate; the cover up was the handling of the call by Mr. Brown and not forwarding it, and just blowing Ms. Fischer off by saying he would get back to her and not doing so, which would have the effect of squelching what may have been considered a complaint. Mr. Lane stated the other part would be correcting or adding into a report consent when the Sheriff doesn't feel that Ms. Hulse could have given consent under the conditions of being handcuffed. Mr. Lane stated there are strong opinions on both sides of this.

Ms. Alexander move to uphold (21). Dr. Duvall seconded the motion.

Vote called. Motion lost, 2 to 2. This violation is not sustained. Ms. Alexander and Dr. Duvall for upholding (21). Mr. Lane and Mr. Bruno against.

**Sheriff's Office Standards Directives:**

**26.2.48 Use of Profanity** - Employees shall not use profanity or vulgarity in speech or gesture at any Department work place, on or off duty, in public or while representing the

Department or County. *(Violation subject up to a 1 day suspension.)*

Mr. Lane commented that he understands the paramilitary egos in the workplace, but he wished they wouldn't do it, and it doesn't make you anymore persuasive in your argument with people.

Mr. Bruno agreed.

Mr. Bruno moved to sustain 26.2.48. Ms. Alexander seconded the motion.

Vote was called and the motion passed unanimously.

**26.2.62 Derogatory Ethnic Remarks** – Employees shall not make derogatory remarks concerning race, sex, religion, age or national origin of any person. *(Violation subject up to dismissal.)*

Ms. Alexander stated there were other comments where Mr. Brown was being demeaning to others; and again, it is who you believe.

Dr. Duvall pointed out that this is related to ethnic remarks.

Mr. Lane stated that if Mr. Brown has any personal integrity in teaching these types of courses that he is going to be careful to try to not do that himself. Mr. Lane said this just doesn't ring correct, and he doesn't believe Mr. Brown did that.

Dr. Duvall agreed.

Mr. Bruno moved that 26.2.62 not be sustained. Ms. Alexander seconded the motion.

Vote was called and the motion passed unanimously.

**26.2.118 Code of Ethics for Public Officers and Employees** – Employees shall strictly adhere to the code of ethics for public officers and employees and shall not violate the Code of Ethics for Public Officers and Employees as set forth in Florida law and the County Merit System. *(Violation subject up to dismissal.)*

Ms. Alexander stated this is the one had a lot of emphasis from the Sheriff.

Mr. Lane added this is the violation that is subject up to dismissal.

Dr. Duvall stated this is the one that the Sheriff was adamant about, and the Sheriff said Mr. Brown violated the code of ethics absolutely, other things can be fixed, but not that.

Ms. Alexander stated there was evidence of a willingness to operate in the gray area in some areas in her opinion, and bad judgment.

Dr. Duvall asked to go back to the facts, look at what way did Mr. Brown violate the code of ethics.

Mr. Lane replied that the Sheriff said that Mr. Brown violated her civil rights in handcuffing her, and he did not have probable cause or reasonable suspicion.

Dr. Duvall and Ms. Alexander agreed.

Mr. Lane added that therefore it violated the code of ethics by violating her civil rights.

Ms. Alexander stated the code of ethics was mentioned several times.

Mr. Lane added that if that is the Board's take on what happened, and it is for the Sheriff, then yes it is, but if you don't believe that happened, then no it is not, and there you are.

Dr. Duvall stated she is impressed by Mr. Brown, his years of service, and good things he has done, but believes he made a very large mistake; knowing how experienced Mr. Brown is, when Mr. Brown approached Ms. Hulseley, based on what he said, in the correct manner by establishing rapport, but then he established rapport and then she had handcuffs on her. Dr. Duvall questioned that he stated they still had a good conversation because she didn't shout out, she didn't ask the officers for help, but when Ms. Hulseley testified she kept saying she was mad. Dr. Duvall stated she wondered how Ms. Hulseley expressed that madness.

Mr. Lane added that when the other officers arrived she did not express anger to them, but she might have been stewing in her own juices at that point.

Dr. Duvall continued that to have such rapport and then there you are in handcuffs, and maybe it was for her safety. Dr. Duvall stated that bothers her, the rapport then handcuffs. Dr. Duvall added that it's almost like he's sneaking up on her, I'm your good friend, put your hands behind your back.

Mr. Lane stated the approach can be applied to the whole hearing because what has turned out to be the serious issue from a relatively benign comment of a couple people. Mr. Lane continued that it is like hello and friendly to get you when this stuff came to light.

Ms. Alexander stated the Sheriff mentioned the Fourth Amendment and the transparency issue.

Mr. Lane responded the Sheriff was adamant about that, there was no gray area with his comments and it was a bright line for him. Mr. Lane added that after the Board is done with the last few items, the Board will have to discuss the propriety of penalty, with the direction that the Board not substitute their judgment for his is a tough one based on the testimony and the fact that Mr. Lane doesn't feel the investigation was complete enough and the Sheriff did not seek out a meeting with Mr. Brown, but on the other side Mr. Brown is a big boy and he didn't come back and ask for a meeting with the Sheriff. Mr. Lane added that the Sheriff said he was going to listen to it and he didn't, and that doesn't sit well with Mr. Lane because he doesn't think the Sheriff was fully informed. Mr. Bruno agreed.

Dr. Duvall agreed because she wonders if Mr. Brown has sat and talked to the Sheriff

like he sat and talked to the Board, as loquacious as he was, if the Sheriff would have changed his mind; the Board will never know. Dr. Duvall added that Mr. Brown was a good witness.

Mr. Lane stated that as the Board plays this through in their minds, the county is very careful in what they do, and believes they tried to be careful this time too, and the Board has voted against the propriety of penalty in the past and that has been handled various ways too; sometimes the county says yes it was and they uphold it anyway. Mr. Lane continued that the Board always goes through these things carefully and deliberately and sometimes it doesn't make a bit of difference, and he says that to free the Board's minds on this a little bit because it is not a death warrant or a pardon either way; the Board is just weighing in on this.

Dr. Duvall stated that the Board is weighing in and not the definitive word, but they want to weigh in as good as they can.

Mr. Lane agreed and added as comprehensively and honestly as they can.

Dr. Duvall stated she still stands by her second.

Ms. Alexander moved to sustain 26.2.118. Dr. Duvall seconded.

Vote was called, motion carried. Ms. Alexander, Dr. Duvall, and Mr. Lane for. Mr. Bruno against.

**26.2.122 Abusiveness** – Employees shall not use abusive language or gestures toward a supervisor or superior officer of the Department. Superior officers shall not use abusive language or gestures toward subordinates. (*Violation subject up to a 5 day suspension.*)

Ms. Alexander posed the question of whether it was done jokingly or seriously.

Mr. Lane responded that the reason you don't engage in that sort of language is that people are going to take it different ways; it is totally subjective because it depends on the hearer not the person doing the talking. Mr. Lane added that he doesn't feel like Mr. Brown did not intend to be abusive, but the weird comment was "butt buddies," and he doesn't buy that it was a sexual slur, he thinks Mr. Brown was just giving them a hard time for being in such close proximity to one another.

Mr. Bruno stated that they were probably not doing what Mr. Brown wanted him to do, which was being out in the field.

Dr. Duvall questioned if it was Hattaway felt so abused.

Ms. Alexander responded yes and that it was a dictatorship.

Dr. Duvall added that granted it was one person, but Hattaway really felt verbally abused and in fear of reprisal.



Mr. Lane agreed.

Dr. Duvall stated that maybe somewhere in the middle there's truth; there's a thread of something there.

Mr. Lane commented that he couldn't deny that Hattaway felt what he felt, but at the end of the day he did not have any reprisal or any write ups during his time there; whether it was because he was such a fantastic officer and did things 100% right.

Dr. Duvall stated Mr. Brown's management style was described by Cobb as abrasive and intimidating; by Amrhine as direct; by Hattaway as a dictatorship and in fear of reprisal; other people said that Mr. Brown was the best person they worked for, and he takes care of his people; so there are some on both sides.

Ms. Alexander stated that it's like when you ask someone to give you a reference, you're not going to ask someone that you know is going to give a bad reference.

Mr. Lane stated that even if you're joking you can't say "you f-ers get out of here," that is not funny; and if he were the sensitive type he could certainly take offense to that.

Dr. Duvall asked if that was just male testosterone speaking.

Mr. Bruno added that the Board has heard a lot of testimony of both male and female that said it rolls of their back because it is the nature or culture.

Mr. Lane added they heard some testimony that there was one lady who was a hard charger and used some salty language as well, so it is not just a testosterone thing, but probably primarily is.

Ms. Alexander stated that she thinks leaders should set a good example.

Dr. Duvall comment that if it is the culture of the police department, it shouldn't be.

Mr. Lane agreed.

Mr. Bruno agreed.

Dr. Duvall stated they've got it on both sides; yes there was some abuse, and no there wasn't.

Ms. Alexander moved to sustain. Mr. Lane seconded.

Ms. Alexander stated she doesn't care how many of them use it or if it is their culture, she thinks it is reprehensible.

Mr. Lane added that "shall not" is definitive to him.

Ms. Alexander stated that even though some may not say it is harassment, she just can't imagine that it exists.

Dr. Duvall stated that Mr. Brown testified the he doesn't use it around certain people because he knows they don't like it.

Mr. Lane responded exactly that Mr. Brown doesn't swear around him because he doesn't swear.

Dr. Duvall stated that culture is not an excuse for this.

Mr. Lane responded that is where he comes down on it; there is no excuse for it, and believes Mr. Brown didn't intended to do it, but when you say that kind of stuff you are going to offend somebody, people are too diverse for it not to happen; that's why you don't do it and why it is a policy. Mr. Lane added that he doesn't think the County Manager is going to hang his hat on this one, one way or the other too much.

Ms. Alexander stated she has always heard those that have to use that kind of language do not have a vocabulary developed strong enough to be able to express themselves.

Vote was called, motion carried. Ms. Alexander, Dr. Duvall, and Mr. Lane for. Mr. Bruno against.

### **Appropriateness of Penalty**

Mr. Lane stated that it was unequivocal on the Sheriff's part that Mr. Brown crossed a line that could not be uncrossed, and that the Sheriff had no choice, it was a hard decision, but clear in his mind.

Ms. Alexander agreed.

Dr. Duvall Agreed.

Mr. Lane stated he is not going to say the Sheriff shouldn't have terminated him, but that he should have done it differently; Mr. Lane would have sought out a meeting with Mr. Brown, but it's not the Sheriff's responsibility to follow him down; it would have been nice if he did, but not the Sheriff's absolute responsibility to do that. Mr. Lane stated it has colored his opinion of the investigation because it didn't happen.

Dr. Duvall asked if it was the Sheriff's responsibility to seek Mr. Brown out.

Mr. Lane responded that he believes you could make a case that it was not.

Dr. Duvall stated people have to take care of themselves, and when she is teaching at Stetson and some of her kids have problems, it is their responsibility to bring her their work; she is not going to go behind them and tell them they're close to failing because they didn't turn in an assignment. Dr. Duvall added adults are supposed to take care of themselves.

Mr. Bruno responded that at the same time, it was a process that if the Sheriff had been present at that meeting, he would have heard all of this, and that may have possibly

made a difference to him. Mr. Bruno wanted to know what the rush was.

Ms. Alexander responded that Mr. Brown could have asked for another meeting.

Dr. Duvall agreed that the Sheriff should have been at that meeting.

Mr. Lane stated knowing what the Board heard that the Sheriff knew at the time of the facts of this case, Mr. Lane feels that his judgment was what he thought he was correct, and Mr. Lane cannot disagree with that. Mr. Lane stated he doesn't feel like the Sheriff necessarily got all the facts.

Mr. Bruno agreed.

Ms. Alexander stated that if they have sustained most of the items or had a split vote, she would think that the Board is saying that the termination should be upheld.

Mr. Lane agreed and he is not trying to sway anyone's vote, but they can present an option that he could be given a suspension or some lesser option.

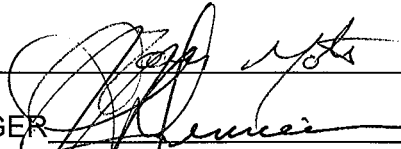
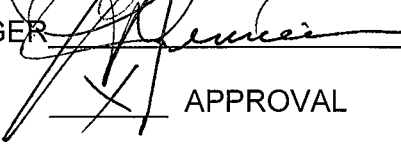
Dr. Duvall stated that violating someone's civil rights is serious.

Ms. Alexander moved to uphold the termination. Mr. Lane seconded the motion.

Vote was called. Motion carried 3 to 1. Mr. Bruno objected.

**V. BOARD'S RECOMMENDATION**

The Board voted 3 to 1 that Appellant's termination be upheld.

SUBMITTED BY:		DATE:	<u>5/1/18</u>
COUNTY MANAGER		DATE:	<u>5/1/18</u>
	<input checked="" type="checkbox"/> APPROVAL		
	<input type="checkbox"/> REJECTION		
	<input type="checkbox"/> MODIFICATION		