

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE POLICE STANDARDS COUNCIL**

In the Matter of)	
)	
GREGORY BRAEUER)	OAH No. 19-0146-POC
<hr/>)	Agency No. APSC 2018-34

DECISION

I. Introduction

In May of 2017, correctional officer Gregory Braeuer¹ had an altercation with a citizen while off duty, in which Officer Braeuer displayed his badge and a firearm and briefly required the citizen to get on the ground. The incident led to his resignation in lieu of discharge from the Alaska Department of Corrections, ending an eleven-year career. In January of 2019, the Executive Director of the Alaska Police Standards Council began proceedings to revoke Mr. Braeuer’s APSC correctional officer certificate. Through counsel, Mr. Braeuer contested the revocation and requested a formal hearing.

The gravamen of the Executive Director’s Accusation is that Mr. Braeuer engaged in, and was discharged for, conduct that was detrimental to the reputation and integrity of his correctional agency, that showed lack of respect for others’ rights, and that was dishonest. The alleged conduct underlying the discharge, and much of its context, was recorded on a GoPro camera mounted on the helmet of one of the participants, leaving little room for disagreement about what transpired. The dispute is over the significance and propriety of what Mr. Braeuer did.

This decision finds that the allegation of dishonesty is marginal, but that the officer’s conduct was otherwise significantly improper. It was detrimental to the reputation and integrity of the Department of Corrections and is conduct that creates reasonable doubt about his respect for the rights of others. Mr. Braeuer’s conduct is of the kind that, in other states, might lead to an extended suspension rather than a revocation of his certificate. In a state where revocation is the only remedy, however, revocation is the appropriate response to this incident. The Executive Director’s action to revoke Mr. Braeuer’s correctional officer certificate is sustained.

¹ Braeuer is pronounced like “Brower.”

II. Facts

A. *Background*

Gregory Braeuer became a correctional officer (CO) in 2005, after military service in the airborne infantry and work in the private sector of aviation.² His only employer as a CO has been the Alaska Department of Corrections, and his career there was generally successful until 2017.³ He was granted his APSC Basic Certificate as a Certified Correctional Officer on February 6, 2007.⁴

Mr. Braeuer lives on a gravel, semi-rural residential street with a posted limit of 15 miles per hour. Driveways enter the street from both sides. Just before 5:00 p.m. on May 29, 2017, Mr. Braeuer, his wife, and his 12-year-old daughter were in the cab of his pickup truck, to which a trailer was attached. The pickup was stopped at the entrance of his driveway, nose out, but had not yet entered the roadway. At the same time, Devarge Walker was leading a group of three sport ATVs into the neighborhood to visit a friend's house.⁵

Both Mr. Braeuer and Mr. Walker appear to be large, fit men, but Mr. Walker is both taller and heavier by a noticeable margin.⁶ While the two gentlemen may have crossed paths before in connection with Mr. Braeuer's CO employment, it does not appear that they knew each other.⁷ On the day in question, Mr. Braeuer was wearing street clothes. Mr. Walker was wearing full-length clothing, gloves, and a helmet that concealed his entire person. On the helmet was mounted the GoPro camera that is the source of most information about the events that followed.⁸

B. *The Event*

The following is an account of the confrontation that followed, drawn solely from the video. As Mr. Walker approaches the Braeuer driveway on his ATV, he is traveling far in excess of the posted limit.⁹ The Braeuer vehicle comes into view, stopped at the mouth of the driveway. The Braeuer vehicle starts forward and pulls partway across the road before stopping again. There is the appearance that the vehicle has moved for the purpose of impeding the ATV's progress. Walker comes to a halt and waves for the vehicle to proceed.

² Braeuer testimony; APSC Ex. J.

³ *Id.* He was generally given "high acceptable" ratings.

⁴ APSC Ex. C.

⁵ The paragraph is sourced from the GoPro video (APSC Ex. I), APSC Ex. F and H, and Braeuer testimony.

⁶ APSC Ex. F, p. 6; Thomas testimony; GoPro video.

⁷ APSC Ex. F, p. 5; Braeuer testimony.

⁸ GoPro video.

⁹ While several witnesses reported this, my finding is based primarily on direct observation of the video.

Mr. Braeuer gets out of the driver's side door of his vehicle and advances at a walk toward Walker. It is not a menacing advance, but rather conveys that he wants to speak with the ATV rider. Walker starts again and turns his ATV toward the open portion of roadway that remains unblocked. Braeuer motions casually for him to stop, and the ATV comes alongside Braeuer at an idle after Braeuer has walked eight paces. As they close, Walker says "What?" Braeuer responds, without raising his voice, "I said this ain't a racetrack," at the same time moving his hand to the ATV handlebar in a gesture of restraint. The gesture is gentle and perhaps unconscious, but a close examination of the video shows that Braeuer's hand happens to land on Walker's gloved hand. Again, I do not interpret Braeuer's tone or body language—including the restraining gesture going to the handlebar—as aggressive. (In this assessment, I differ strongly from the Executive Director, who regards Braeuer as the "first aggressor" because of the hand to the handlebar¹⁰). However, Braeuer conveys some irritation and is plainly seeking to communicate displeasure.

Walker instantly knocks the hand away and yells "Get the fuck off my bike." Braeuer looks momentarily stunned, but within two seconds he reaches back for the handlebar, this time aggressively, and grasps it firmly, starting the sentence "I'm tellin' you right now, it's not a racetrack!" This is an escalation by Braeuer. By the time he is halfway through the sentence, Walker has further escalated and is dismounting and swinging at Braeuer. The two have a few seconds of physical altercation. Braeuer does not immediately disengage and at one point steps forward again into the struggle. Then Braeuer staggers backward, seemingly from a shove. No one is hurt. Only Walker's words are understandable during the tussle, repeating "Get the fuck off my bike" and then shouting, twice, "The fuck wrong with you?" While this is happening, Braeuer's wife has emerged from the truck and walked to the front of it, but she is several yards from the altercation. She seems exasperated but not tense or fearful.

Braeuer is now away from Walker and Walker is not pursuing him. Braeuer turns his back on Walker and strides briskly to his truck. He opens the driver's side door and spends seven seconds rooting around inside the vehicle. Walker remains beside his ATV at the spot where they first met, but at one point yells again, "Don't touch my shit!" Braeuer straightens up and comes back out from the truck's door with a handgun in his right hand, pointed at the ground. He advances quickly, ordering, "Get on the ground, right now!" A second later, continuing to

¹⁰ My assessment is shared by the responding State Trooper, who reviewed the video and likewise concluded that the flagdown and hand to the handlebar did not make Braeuer the first aggressor.

advance, he chambers a round (with the barrel coming up momentarily in Walker's direction, then going back down), saying "Do it right now, get on the ground." Walker removes his helmet and places it on the ground, while the camera continues to record. Braeuer raises his voice further and yells "Get on the ground!" A few seconds later, continuing to insist that Walker get on the ground, he says, "This is my badge, get on the ground." A metal badge is in his left hand.¹¹ Walker crouches down on the ground. Braeuer then talks to him calmly for a few moments, asking where he is going. Eventually, Walker gets up again and there is some more yelling involving both Walker and his companions, but there is no further violence. The ATVers remount and continue to their destination, which takes less than 20 seconds to reach. When they arrive, Walker takes his own firearm from his backpack and apparently chambers a round, but does not go back to reengage. He laughs with his companions about Braeuer's "mean weave," which seems to be a reference to Braeuer's ability to dodge all of the punches he threw.

A few details about what has been seen and heard on the video have been clarified by subsequent witness statements and testimony. We know that Mr. Braeuer retrieved the gun and badge when he went to his vehicle; he did not have them on him in the first part of the altercation.¹² We know that the firearm displayed was a personal one, not a state-issued weapon.¹³ We know that the badge was Mr. Braeuer's metal DOC badge issued to him in his capacity as a corrections officer.¹⁴ We know that, mostly off camera, a number of other people were in the vicinity the altercation, including the two other ATV riders, a neighbor who came to the end of his driveway with a handgun, a young person in her front yard, and a neighbor on her porch.¹⁵

One detail that has been reported, and that both the Executive Director and Mr. Braeuer believe to be true, is not borne out by the video. Both sides believe Mr. Braeuer verbally identified himself as an "officer" (without specifying what kind) during the confrontation.¹⁶ This did not occur, and hence their respective positions on whether it was appropriate are not germane to the case.

¹¹ This can be seen by freeze-framing the video about the time of the demand, but is more apparent later when the left hand comes closer to the camera.

¹² *E.g.*, Braeuer testimony.

¹³ *E.g.*, APSC Ex. G.

¹⁴ APSC Ex. G; Johnson testimony.

¹⁵ APSC Ex. H.

¹⁶ *E.g.*, colloquy between AAG Galbraith and Mr. Braeuer, hearing file 2019-07-15_13.51.57.ogg at 38:00. The parties appear to disagree over which way this statement would cut, if it had been made.

C. Aftermath

During the confrontation, a neighbor called 911 to report a physical fight with someone having a firearm.¹⁷ Multiple Alaska State Trooper units responded, but the event was over when they arrived. Mr. Walker was charged with assault based on the altercation. This led to negative media attention when the video became available to the public, and the charges were dropped by the District Attorney's Office.¹⁸ Charges were also considered against Mr. Braeuer, but none were filed.¹⁹

The Department of Corrections put Mr. Braeuer on paid administrative leave and investigated the incident.²⁰ The investigator concluded that Mr. Braeuer had violated department policy regarding the use of his badge, that he had escalated a confrontation, and had inappropriately used a "violent gesture" when he retrieved a firearm and chambered a round.²¹ There was a formal investigative meeting in July of 2017 involving Mr. Braeuer, a union representative, DOC management, and a DOC human resources specialist.²² This led to an agreed "Letter of Dispute Resolution" on July 28, 2017, whereby Mr. Braeuer agreed to resign and to be "permanently ineligible to apply for positions within the Department of Corrections."²³ The letter also provided that he would be "immediately eligible to apply for all other state positions for which he meets the minimum qualifications."²⁴ The resignation was in lieu of termination.²⁵

D. This Proceeding

Mr. Braeuer was processed out with a Form F-4 specifying that he had resigned in lieu of dismissal and that de-certification was recommended.²⁶ The Form F-4 was sent to the APSC in September of 2018, a little more than a year after the resignation.²⁷

The Executive Director initiated this proceeding with a formal Accusation in January of 2019. Mr. Braeuer, through counsel, immediately filed a Notice of Defense, requesting the hearing to which he is entitled under the Administrative Procedure Act. The matter was sent to

¹⁷ APSC Ex. H. The reference to the firearm may have been to Mr. Braeuer's or to that of the neighbor.

¹⁸ Henley testimony.

¹⁹ Thomas testimony.

²⁰ Johnson testimony.

²¹ APSC Ex. F.

²² Braeuer Ex. B; Johnson testimony.

²³ Braeuer Ex. C.

²⁴ *Id.*

²⁵ Johnson testimony.

²⁶ APSC Ex. A, pp. 3-4. Another F-4 was later erroneously filled out, mistakenly indicating a voluntary resignation. APSC Ex. A, p. 2. It did not supersede the correct F-4. Johnson testimony.

²⁷ The delay in completing and sending in the F-4 is unexplained.

the Office of Administrative Hearings under a voluntary referral agreement.²⁸ By agreement of the parties, the hearing was held in Anchorage on July 15, 2019.

At the hearing, APSC Exhibits A through J (including the video at Exhibit I) and Braeuer Exhibits A through D were admitted without objection or restriction. Sworn testimony was taken from DOC Human Resources Manager Kari Johnson (who handled the personnel action); Probation Officer Troy Henley (who investigated the matter for DOC); Alaska State Trooper James Thomas (who responded to the altercation), and former corrections officer Gregory Braeuer.

III. Discussion

A. Mr. Braeuer's Conduct was Improper

Mr. Braeuer's altercation with Mr. Walker falls into three distinct phases.

In the first phase, Mr. Braeuer, acting as a private citizen, lawfully seeks to flag down and admonish an ATVer who was speeding down his residential street. His casually extended hand—possibly through nothing more than bad luck or misjudging the space—comes in contact with Mr. Walker's hand.

In the second phase, Mr. Walker reacts with excessive violence and hostility to the contact. Mr. Braeuer becomes angry and both men, in turn, escalate the physical tussle, first Mr. Braeuer by grabbing the handlebar forcefully and then Mr. Walker by starting to swing. Mr. Braeuer at one point steps forward, back into the fray. None of this reflects well on either man, but it all happens very quickly and it is purely a tussle between private citizens.

The third phase is the problematic one. It starts with the physical violence being over. Mr. Braeuer has separation from Mr. Walker and is sufficiently unthreatened that he is able to, and does, turn his back and walk away. He leans into his vehicle—again, sufficiently unthreatened that he was willing to open the door to a vehicle containing his 12-year-old, and spend a number of seconds bent over into the vehicle—and he retrieves a firearm and a badge. He then uses these in combination to gain dominance over the person who has disrespected him.

This was a violation of the terms under which the badge was issued to Mr. Braeuer. DOC Policy & Procedure 202.15, Sec. II-C provides:

²⁸ The applicable agreement is the Memorandum of Agreement for Adjudication Services dated February 11, 2019, which is not specific to this case. It provides that the 120-day hearing-and-proposed-decision track in AS 44.64.060(d) does not apply to APSC referrals. Most other OAH procedures, including the proposal for action process after a proposed decision, do apply to these referrals.

Employees shall not accept private or special advantage from their official status as employees of the DOC. DOC . . . badges may not be used to coerce, intimidate, or deceive others or to obtain any privilege . . . not otherwise authorized in the performance of official duties.²⁹

When he brandished his badge outside a DOC facility to get an ordinary citizen to submit and crouch on the ground, Mr. Braeuer was coercing and intimidating the private citizen with his badge to obtain the upper hand in a personal confrontation, in violation of this standard. He was also violating the Correctional, Probation, and Parole Officer Code of Ethics, which likewise prohibits officers from using their “official position to secure . . . advantages” for themselves.³⁰

The misconduct with the badge was aggravated the use of a firearm. Mr. Braeuer made a deliberate choice to reenter a confrontation that was over, and effectively ordered a citizen to submit at gunpoint. He did this in a way that gave the appearance that he was acting on behalf of the government.

The Executive Director further contends that the use of the badge was dishonest. On this score, I am not fully convinced. To be sure, flashing a CO badge in a public street is misleading—others are likely to assume it is a police officer’s badge, and that, in fact, is what Mr. Walker assumed.³¹ But Mr. Braeuer did not say anything untruthful to Mr. Walker about the badge nor about the type of officer he was, and it is plausible that all he meant to convey was, “I am an important person and law enforcement officer, not to be messed with” rather than “I am a police officer.” A finding of dishonesty is not clearly supported on the limited factual record in this case, and is unnecessary to resolution of the case.³²

B. Mr. Braeuer’s Explanation Is Unpersuasive

By way of general background for the way he approached the situation, Mr. Braeuer says that he thought the street in front of his house was a private road, based on the fact that the residents pay for plowing and maintenance.³³ However, Mr. Braeuer never told Mr. Walker that he was trespassing, and hence it seems clear the Mr. Braeuer knew the street was a public right of way.

²⁹ See APSC Ex. F, p. 7. Errors in the quotation in the record have been corrected using the published standard, found at <https://doc.alaska.gov/pnp/pdf/202.15.pdf>.

³⁰ 13 AAC 85.230(c)(5).

³¹ APSC Ex. E.

³² It is clear that Mr. Braeuer was not dishonest in any other way. DOC investigator Henley testified that the no untruths were told during the inquiry; the problem was poor judgment rather than dishonesty.

³³ Braeuer testimony.

With regard to the specific action of going to get his badge, Mr. Braeuer says, “I had one thing in mind, self-preservation.”³⁴ His longer explanation of his subsequent use of the badge, while he was advancing back toward Mr. Walker with his firearm, is in this hearing testimony:

Q: Why did you pull out your badge?

A: I pulled it out because of the way the situation was entailing between the people behind them, the neighbors, these people. I wanted to identify myself as a law enforcement officer so that this didn’t get into a more serious situation. I wanted to try and defuse the situation or deescalate it however— Basically I just wanted to get control of the situation and stop it and then back it down. This was going way out of hand real fast.

Q: Were you trying to detain Mr. Walker?

A: No.

Q: Okay. Did you intend to violate policy when you pulled out the badge?

A: No.

Q: When you said “This is my badge,” were you talking just to Mr. Walker or, or—

A: Everybody around who’s— I didn’t know who they were and I didn’t know if, I don’t know what the neighbors knew, I hadn’t even talked to these neighbors really, the ones across the street. I didn’t know if they knew who I was or whatever. So, I was just kind of saying, okay, look, I’m a law enforcement officer, let’s get everything settled down.³⁵

I accept that Mr. Braeuer wants to believe this, and has convinced himself that this is so. But an objective watcher of the video cannot reasonably put this explanation on it. We see a man who was an angry and willing participant (albeit not the instigator) in a physical fight, even stepping forward once to get back in the struggle. Ultimately he is shoved away. He is not content for the confrontation to end this way. Though not under threat anymore—we know this from a variety of circumstances, including the fact that he turns his back—he makes a deliberate choice to renew the confrontation using his badge and gun in tandem. It seems clear that this was an angry decision meant to end the confrontation in a position of dominance. Were it truly motivated by a desire to “get everything settled down,” it would show extraordinarily poor judgment, because marching forward and introducing a firearm into a physical tussle that has already ended with no injuries, with the area crowded with bystanders, is neither safe nor deescalatory.

³⁴ *Id.* (on cross-examination).

³⁵ *Id.* (on direct).

C. *APSC Action Is Both Appropriate and Required*

1. Discretionary Revocation

The Council's regulation at 13 AAC 85.270(a)(2) gives the Council *discretion* to revoke a correctional officer's basic certificate if the officer has resigned under threat of discharge for a reason that "is detrimental to the reputation [or] integrity . . . of the correctional agency where the officer worked". Mr. Braeuer resigned under threat of discharge. The deliberate use of a DOC badge to force a citizen to submit, in circumstances where the officer has no jurisdiction, no right to coerce the citizen, and only a personal reason for taking action, is detrimental to the reputation and integrity of the department. Notably, revocation on this ground does not require a showing that the employer's reputation was actually harmed; it simply needs to be the kind of conduct that, if known, would discredit the employing law enforcement agency.³⁶ Accordingly, the Council has discretion to revoke Mr. Braeuer's certificate.

A partly overlapping regulation, 13 AAC 85.270(b)(3), *requires* the Council to revoke the certificate of a correctional officer who has resigned under threat of discharge "for conduct . . . that is detrimental to the integrity of the correctional agency where the officer worked." The parties have not briefed the question of which of these parallel provisions supersedes the other in this circumstance. Since the result is the same, this aspect of the case will be evaluated as one in which discretion applies.

There are no reported Alaska cases involving misuse of credentials or inappropriate use of a firearm in conjunction with misused credentials. The Arizona licensing authority, which has a robust system for reporting disciplinary actions, provides examples that help to give perspective on the seriousness of this kind of violation.

In Arizona case 18-158, an off-duty officer identified himself as a police officer in an attempt to regain entry into a drinking establishment that had closed. He denied doing so when questioned by responding officers. No firearm was involved. This led to a two-year suspension.³⁷

In Arizona case 16-059, a lieutenant became involved in an argument with security at a casino, in the course of which he displayed his credentials in an attempt to coerce them. There was additional aggravating conduct (he tried to get a subordinate to cancel a call to the police

³⁶ *In re Bowen*, OAH No. 10-0327-POC (APSC 2011), at 14 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=4683>).

³⁷ Published at <https://post.az.gov/sites/default/files/documents/files/Integrity%20Bulletin%20Vol%2089.pdf>.

department about the incident, and he did not report it to his supervisor), but no firearm was used in conjunction with the badge. This led to a two-year suspension.³⁸

Alaska has no provision for suspension of certification; the Council’s only remedy is revocation. However, the Arizona cases show that the law enforcement community recognizes that misuse of credentials for personal advantage merits substantial punishment in the certification context. Moreover, Alaska does permit individuals whose certification is revoked to apply for reinstatement after one year, which means that revocation is not necessarily permanent.³⁹ Particularly given the opportunity to apply for reinstatement, these out-of-state examples suggest that revocation is an appropriate response in the context of the kind of conduct seen in this case.

In exercising discretion in this instance, the Council must bear in mind that Mr. Braeuer’s use of his credentials was premeditated, was accompanied by belligerent orders to a citizen to assume a subservient position, and was backed up by a threat of deadly force. All of these are aggravators. The Council should revoke in these circumstances.

2. Mandatory Revocation

The Council must revoke an officer’s certificate for conduct that “would cause a reasonable person to have substantial doubt about an individual’s . . . respect for the rights of others.” Mr. Braeuer did violate Mr. Walker’s rights by forcing him to the ground at gunpoint in a public way, and he did so while creating the illusion of state authority by using his DOC badge. To be sure, his action was brief and occurred in response to some provocation. On balance, the conduct probably does not prove that Mr. Braeuer lacks respect for the rights of others, but it does create, in reasonable observers, a substantial *doubt* about his respect for others’ rights. Accordingly, revocation is appropriate on this ground as well.

IV. Conclusion

The Executive Director has proved that Gregory Braeuer’s actions on May 29, 2017 both merit and require revocation of his Basic Certificate as a Certified Correctional Officer. The certificate is revoked.

DATED: September 27, 2019.

By: *Signed* _____

Christopher Kennedy
Administrative Law Judge

³⁸ Published at <https://post.az.gov/sites/default/files/documents/files/IntegrityBulletinVol71.pdf>.

³⁹ AS 44.62.550. Cf. 13 AAC 85.270(d), (e).

Adoption

The Alaska Police Standards Council adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of December, 2019.

By: *Signed* _____
Justin Doll
Chair, Alaska Police Standards Council

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]