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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its April 11, 2017 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

a) **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable)

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (7)

ALLEGATIONS, FINDINGS & RATIONALE

15-034

1. Death Investigation/Officer Involved Shooting - Deputy 1 shot and killed Gary Kendrick on March 27, 2015.

Board Finding: Action Justified

Rationale: The decedent had a medical history significant for depression, and had reportedly been drinking alcohol heavily, having marital problems, and threatened to kill himself. On March 27, 2015, he armed himself with a shotgun and told his wife he would shoot himself if police responded. A neighbor tried to intervene and the decedent threatened to shoot the neighbor. Rescuers were called and the decedent was found sitting in a grassy area near his residence, gun barrel to his chin, with a vodka bottle nearby. Deputy 1 approached and took cover at the corner of a garage. He instructed Kendrick to drop the weapon and the decedent called for the deputy to shoot him. Kendrick raised the gun in the deputy's direction and Deputy 1 fired three times. Kendrick sat up and raised the gun again so Deputy 1 fired again, killing him. Kendrick had a BAC of .28%. Individuals sometimes commit crimes with the specific intention of provoking a law enforcement response. "Suicide by Cop" encompasses those who are contemplating suicide and want to provoke police to kill them. The evidence

showed Deputy 1 was faced with a situation of imminent danger when Kendrick pointed his shotgun at the deputy; his responsive reactions were lawful, justified and proper.

16-009

1. Death Investigation/Excessive Force – Deputies 1 and/or 2 allegedly used excessive force on the aggrieved, resulting in his death.

Board Finding: Not Sustained

Rationale: A review of this case was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions involving Death. Additionally, a signed complaint was received on behalf of the aggrieved, in which the complainant alleged that Deputies 1 and/or 2 used excessive force on the aggrieved while incarcerated, which later resulted in his death after he was released from custody. The aggrieved was arrested on December 6, 2015 and booked into San Diego Central Jail (SDCJ) for possession of drug paraphernalia and ammunition. During medical intake, the aggrieved disclosed a number of medical issues, but was ambulatory with normal speech and thought processes, and determined to be fit for booking. On December 11th, a use of force incident occurred involving Deputy 1. This incident was captured on surveillance video and did not appear to be sufficient to cause the severity of injuries that ultimately resulted in the aggrieved's death, 22 days later. Medical documentation from this force incident did not show any symptoms of trauma. Additionally, the aggrieved allegedly stated to the complainant following his release from custody, that the force incident occurred while at George Bailey Detention Facility (GBDF), and not at SDCJ. There were, however, no documented incidents of force used against the aggrieved while at GBDF. The aggrieved was seen in medical and at local hospitals on several occasions for various medical emergencies, but neither of the two x-rays taken on 12/16 and 12/20 following the one documented force incident, showed the fractured rib that ultimately resulted in the aggrieved's death. It was not until 12/27 – four days after the aggrieved was released from custody - that an imaging report identified a left tenth rib fracture. The Medical Examiner reported that it was possible that the decedent sustained this rib fracture from the documented incident that occurred while in custody at SDCJ, but given his multiple medical issues, the symptoms from the injuries could have been masked by the symptoms of his natural disease. Additionally, the aggrieved was released from custody on 12/23, and his whereabouts and activities from 12/23 to 12/27 were unknown. The Autopsy Report documented that the cause of death was Hemorrhagic Shock due to a displaced rib fracture, but because of the ambiguity as to when and where this injury took place, the manner of death was undetermined. There was insufficient evidence to either prove or disprove the allegation.

16-030

1. Misconduct/Procedure – PO 1 released a probationer to the complainant's address when she had allegedly advised that she would release him to a treatment facility.

Board Finding: Action Justified

Rationale: The complainant alleged that PO 1 informed her that she would release her fiancé to a treatment facility, but instead released him to the complainant's address. One probationary condition required that the probationer report any change of address to his probation officer within 72 hours of release. The probationer was released on 2/8/2016, and on 2/10/2016, during his 48-hour check in, the probationer reported to PO 1 that he was residing in a home with the complainant. The complainant contacted PO 1 prior to her fiancé's release with questions about his release date and case disposition, but was informed by PO 1 that due to confidentiality issues, she could not discuss the probationer's case without written permission. The complainant confirmed that she was informed as such in her complaint to CLERB. During this contact, and during the 2/10 meeting, PO 1 received permission from the complainant for the probationer to temporarily reside with her, so she approved the probationer's residency with the complainant. The evidence showed that the probationer was released to the complainant's home with her approval, and this act was lawful, justified and proper.

2. Misconduct/Procedure - PO 1 released a probationer to the complainant's address allegedly against the complainant's will.

Board Finding: Action Justified

Rationale: The complainant alleged that PO 1 released the probationer to her residence against her will. PO 1 reported that the probationer was released to himself, and later reported, pursuant to his probation condition, that he was residing with the complainant. PO 1 spoke with the complainant about this living situation and received confirmation that she was supportive of the probationer living with her. PO 1's approval of the complainant's temporary residency was lawful and proper.

3. Illegal Search & Seizure – PO 1 allegedly confiscated personal property from the complainant during a compliance check.

Board Finding: Unfounded

Rationale: The complainant alleged that PO 1 removed her hat, jewelry and other personal property from her person during a compliance check involving her fiancé, and never returned the items. PO 1 confiscated drugs and other contraband from the probationer's reported residence that belonged to the probationer, but stated she did not confiscate any of the complainant's personal property as alleged. The complainant admitted to owning a floral bag located at the scene which contained contraband, but reported that the contents belonged to the probationer. The complainant was also found to be under the influence of a controlled substance during the compliance check and was arrested by SDPD. Another factor impacting the complainant's credibility was her report to CLERB that PO 1 had made statements about the probationer's status, only to later report that PO 1 would not discuss the probationer's status due to confidentiality issues. These conflicting and questionable statements by the complainant sufficiently provided a preponderance of evidence that the alleged act in question did not occur.

16-037

1. Misconduct/Procedure – Deputy 1 allegedly stated to the complainant that he “ordered” medical staff to discontinue the complainant's pain medication “as a means of discipline” for conflicting with staff.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 stated to him that he “ordered” medical staff to discontinue his pain medication to discipline him for conflicting with staff. During a search of the complainant's cell, deputies found excessive medications that had apparently been “cheeked” (hidden) by the complainant during medicine distribution and hoarded. Deputy 1 denied making this statement to the complainant reporting that he has no authority to change or discontinue any medical services provided to inmates; that this authority was completely within the purview of medical staff. The complainant had also alleged in a grievance that the medications found in his cell were “planted” as part of a conspiracy between detentions staff and medical personnel. The complainant, however, has a documented history of hoarding medication and other contraband. The complainant's history of hoarding and making unsupported accusations against detentions staff negatively impacted his credibility; the preponderance of evidence then showed that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 allegedly instructed medical staff to enter into the complainant's medical file that pain medication was stopped due to the complainant violating the jail's “Zero Tolerance” policy.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 instructed medical staff to enter adverse information in his medical file. Deputy 1 denied this allegation, stating that he has no authority to instruct medical staff on matters related to an inmate's medical care. Deputy 1 further stated that he did not have access to medical files of inmates since they are privilege communication between doctor and patient. Medical records documented that medical staff entered all information regarding the complainant into medical records. The complainant had also alleged that the medications found in his cell were “planted” as part of a conspiracy between detentions staff

and medical personnel. The complainant, however, has a documented history of hoarding medication and other contraband, casting doubt on this and other allegations, while compromising his credibility. The preponderance of evidence then showed that the alleged act or conduct did not occur.

3. Misconduct/Procedure – Deputy 2 allegedly failed to respond to the complainant’s multiple grievances regarding the cessation of his pain medication.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 2 failed to respond to his multiple grievances regarding the cessation of his pain medication. Medical treatment provided to inmates is a function performed by medical staff. Sworn members of the sheriff’s department are not involved in the decisions related to an inmate’s medical regimen, and as such, the Review Board lacks jurisdiction over this allegation of the complaint. This matter, however, will be forwarded to the department for further review of this allegation.

16-040

1. Excessive Force – Deputy 2 allegedly “slammed” the complainant’s head against the wall.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 “slammed” his head against the cell wall during a use of force incident. The complainant was arrested for HS§ 11550, Under the Influence of a Controlled Substance and PC§ 3453 (q), Flash Incarceration, and placed in a Sobering Cell after he refused to cooperate with deputies in order to complete the booking process. During several 6-hour checks, the complainant was observed to still be under the influence, as he continued to act erratically by yelling incoherently, followed by moments of silence. The complainant walked around in circles yelling that he shouldn’t be there, and when asked if he was ready to come out and complete the booking process, his responses were unintelligible and he was not cooperative. During one of the 6-hour checks, Deputy 2 contacted the complainant in order to clear him from the Sobering Cell. The complainant was initially compliant, but while being escorted out of the cell, he began to resist and pull away from Deputies 1 and 2, and they used force to control him. The complainant was pushed against the cell wall, but surveillance video of this incident did not show Deputy 2 “slamming” the complainant’s head against the wall as alleged. There were two other contacts at the Sobering Cell between Deputy 2 and the complainant, but video of these contacts was not retained, as no use of force incident had been reported. Deputy 2 tersely denied any other force incident involving the complainant. It is uncertain, however, as to whether or not the force alleged by the complainant occurred during either of these other contacts, leaving insufficient evidence to prove or disprove the allegation.

2. Excessive Force/Handcuffs – Deputy 2 allegedly placed handcuffs on the complainant extremely tight.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 placed handcuffs on him extremely tight. Deputy 2 denied this allegation, and there was no medical documentation showing injuries to the complainant’s wrist. Several days after being transferred to another facility, the complainant reported to medical that he had complained loudly at that time that his cuffs were too tight, but nothing was done. There was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – Deputy 2 allegedly twisted the complainant’s wrist so hard that it caused him to “scream for mercy.”

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 twisted his wrist so hard that it caused him to “scream for mercy.” Deputy 2 reported that he utilized a wrist flex hold on the complainant’s left wrist to gain better control of him and to keep him from pushing back toward him. Surveillance video captured this reported use of force and it appeared that excessive force was not used to control the complainant during this incident. Deputy 2 tersely denied any other force incident involving the complainant. There were, however, two other contacts

between Deputy 2 and the complainant, but video of these contacts was not retained, as no use of force incident had been reported. It is uncertain as to whether or not the force alleged by the complainant occurred during either of these contacts, leaving insufficient evidence to prove or disprove the allegations.

4. Misconduct/Discourtesy –Deputy 3 allegedly stated to the complainant, “Well at least we didn’t shoot you in the back,” or used words to that effect.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 stated to him, “Well at least we didn’t shoot you in the back,” or used words to that effect. The complainant was under the influence when he was arrested and placed in a Sobering Cell for several hours after being incarcerated. In his complaint to CLERB, the complainant did not identify a date or time the alleged statement was made; he was incarcerated for six days at the facility where the alleged statement was made before being transferred to another facility. Deputies 1 and 2 denied making this statement or hearing any deputy make this statement. There were several shifts with several deputies who may have come into contact with the complainant. With no dates, particular deputy identified, nor audio recordings of the facility interactions, it was highly improbable that a specific deputy would be identified, leaving insufficient evidence to prove or disprove the allegation.

5. Misconduct/Discourtesy – Deputy 3 allegedly stated to the complainant, “No one can hear you, so maybe your Black life does not matter,” or used words to that effect.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 stated to him, “No one can hear you, so maybe your Black life does not matter,” or used words to that effect. The complainant was under the influence when he was arrested and placed in a Sobering Cell for several hours after being incarcerated. In his complaint to CLERB, the complainant did not identify a date or time the alleged statement was made; he was incarcerated for six days at the facility where the alleged statement was made before being transferred to another facility. Deputies 1 and 2 denied making this statement or hearing any deputy make this statement. There were several shifts with several deputies who may have come into contact with the complainant. With no dates, particular deputy identified, nor audio recordings of the facility interactions, it was highly improbable that a specific deputy would be identified, leaving insufficient evidence to prove or disprove the allegation.

16-042

1. Excessive Force/Canine – Deputy 3 deployed a canine unit after the complainant allegedly surrendered.

Board Finding: Action Justified

Rationale: The complainant reported he was a victim of excessive force by way of K-9 officers (dog), and other deputies after surrendering to them. Deputy 3 observed and recognized the complainant as a wanted felon. Deputy 3 and his canine partner apprehended the complainant after he fled on foot, hid in an apartment, and jumped out a window. As the dog made contact, the complainant reportedly grabbed and pushed down on the canine’s face until Deputy 3 interceded. Deputy 3 gave the complainant commands to stop resisting, but the complainant reportedly grabbed and pushed the deputy. Other deputies caught up to them at the secondary incident scene, and as the complainant fought against them, the canine was re-deployed. This produced immediate compliance and deputies gained control to handcuff the complainant when he submitted to their authority. Case law stipulates that a suspect has a duty to submit and may not resist an arrest. The evidence showed the deputies conduct, and deployment of a canine to effect a lawful arrest, was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 5 allegedly stood by and did not intervene after the complainant surrendered and continued to be beaten by Deputies 1-4.

Board Finding: Action Justified

Rationale: The complainant reported that unidentified deputies did not intervene or stop the deputies who were viciously beating him, and allowed them to continue until he was nearly dead. Ancillary deputies were on scene to maintain perimeter containment and to control access into the scene. Deputies 1-4 all had hands on the complainant in their attempt to subdue him. There was no documentation of injury to the complainant other than those caused by the canine. The force and injury reported by the complainant was refuted by the medical and photographic evidence. The complainant was found not to be credible in his recall of these events, and the preponderance of evidence indicated the actions of the deputies were lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 5 said, “Shut the fuck up before we blow your brains out.”

Board Finding: Not Sustained

Rationale: The complainant reported that as he told the deputies that he surrendered, they yelled, “Shut the fuck up before we blow your brains out.” Enforcing the arrest of a fleeing, felony warrant suspect is encompassed in the parameters of Sheriff’s Policy and Procedure 2.22, Courtesy, which allows for profanity when necessary to establish control during a violent or dangerous situation. Although the involved deputies denied saying and/or hearing any profanity during this incident, there was insufficient evidence to either prove or disprove this allegation.

4. Excessive Force – Deputy 5 pulled the complainant’s dreadlocks and slammed his head, while he was handcuffed and hogtied.

Board Finding: Action Justified

Rationale: The complainant said that deputies pulled his dreads and slammed his head while his legs were hogtied with his hands behind his back and the K-9 was biting his hands and hamstring. The documented application of force used by deputies was the canine deployment, elbow and knee strikes, sap strikes, bodyweight and flex controls due to the complainant’s resistance; all necessary, not excessive actions, to gain compliance and control. Paramedics treated the complainant for injuries consistent with the reported uses of force, and he was not hogtied as alleged. The complainant was found not to be credible in his recall of these events.

16-054

1. Death Investigation/Suicide - Deputies 1-4 encountered a medical emergency, when they discovered inmate Pedro Arellano lying face down on the floor next to his bunk with a bed sheet tied around his neck.

Board Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation, and an autopsy concluded that there was no evidence to indicate that Pedro Arellano was a victim of a crime. The cause of death was ruled "Anoxic Encephalopathy" (hanging) and the manner was "Suicide." The toxicology report indicated that in addition to the prescribed medications given to the decedent while in jail, Methamphetamine and Cannabinoids were also detected. The decedent failed to disclose his suicidal ideation and was not recognized or observed as being a potential suicide risk. The actions taken by deputies during classification, and subsequently upon discovery of his medical emergency, were lawful, justified and proper.

End of Report