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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its August 23, 2022, meeting held via the Zoom Platform. 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 (4)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

21-075/FELIX

1. Illegal Search and Seizure – Deputies 1-3 entered the complainant's home.

Board Finding: Action Justified

Rationale: According to the complainant's statements, deputies responded to a call for service regarding a welfare check for a report of a suicidal person in the residence. Complainant Felix said Deputy 1 "asserted the call as a reason to enter the house and suggested, in her position demanded to come in. Unfortunately, most of my recollection or account of this event incident is my intuition. I lost most of my blood and previous brain concussion or injury make it impossible to visualize the night of the shooting and time in the hospital where I was arrested the next day 01-07-20 somethings I can't visualize or clearly remember for years." Complainant Zoch stated she allowed entry for deputies to check on Felix's welfare. Sheriff's Communication records confirmed a 911 call to the San Diego Sheriff's Department (SDSD) by Felix's mother who lived out of state; she reported Felix texted her that he was suicidal and had cut himself and was bleeding. A review of almost 60 text messages between Felix and his mother corroborated this information. It is illegal for a peace officer to physically enter into an area where a person has a "reasonable expectation of privacy" in order to conduct a search or for the purpose of seizing something

unless, they have a warrant; an emergency or exigent circumstances exist; or they have obtained a valid consent, which is what Syria Zoch authorized. The evidence showed deputies entry into the residence was lawful, justified and proper.

2. Excessive Force – Deputies 1-3 shot the complainant multiple times.

Board Finding: Action Justified

Rationale: According to Felix, “During the shooting pulled out a black powder antique replica pointed at the ground floor of my living room. Inside my jacket I found the item. It is now evidence in the case.” Felix reported being shot while laying down on his chest and that he walked/stepped backward during the shooting to avoid being shot in the head. Zoch said she went to a bedroom and reported she heard a female say, “he has a gun” then heard four to five shots. Ballistics confirmed twenty-one shots were fired, with nine of those impacting Felix. All associated documents and Body Worn Camera (BWC) evidence confirmed that Felix denied having any weapons on his person. Just as Deputy 1 approached Felix to conduct a pat down search, Felix retrieved a concealed firearm from his jacket, while stepping away, and using both of his hands to manipulate the weapon in a way that resulted in all three deputies independently perceiving a deadly threat, therefore justifying their use of force. It should be noted that even though Deputy 3 fired significantly more rounds than Deputies 1 and 2, a review of all evidence, to include positioning of all deputies, and information provided in Deputy 3’s confidential statement supported the recommended finding. All evidence also indicated that the number of rounds fired were in compliance with training. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Excessive Force – Deputy 3 fired his gun although Felix posed no threat.

Board Finding: Unfounded

Rationale: Zoch stated, “I was 10 feet behind Deputy 3 who had his gun in the air in his right hand looking at Felix who was lying on his right side in semi-fetal position, right arm on floor beside his body, hand palm-side up, & left hand below his left hip, fingers spread, Nothing in his hands. Deputy 3 looked left behind the TV which faced east, then at Felix again lying on left side of fireplace, not moving; is on the floor bleeding, already shot full of bullets, he cannot get up, doesn't move and is not a threat to them. I thought he was dead. Then Deputy 3 lowers his gun at Felix firing five more shots into his chest area...” BWC evidence, Deputy Reports, and Deputy 3 provided confidential information during the course of CLERB’s investigation that conflicted with information reported by Zoch. The evidence showed that the alleged act or conduct did not occur.

4. Excessive Force – Deputy 3 pointed his gun at complainant Zoch.

Board Finding: Action Justified

Rationale: Zoch stated after Deputy 3 shot Felix, “he then turns to his right and & points the gun at me. He looks at me, and I keep looking into his eyes, he looks down at my right hand holding my cell phone; I’m still. He blinks at me then turns back to his left; gun pointed at Shane.” It would be appropriate for law enforcement to have their weapons drawn to assess any threats during and/or following an officer-involved shooting. Deputy 3 provided information during the course of CLERB’s investigation that supported the recommended finding. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

21-113/HERNANDEZ (DEATH)

1. Death Investigation/In-Custody Suicide – Inmate Rafael Hernandez hanged himself while in the custody of the Sheriff’s Department at the San Diego Central Jail (SDCJ) on 10-13-21.

Board Finding: Action Justified

Rationale: Rafael Hernandez was arrested by the San Diego Police Department (SDPD) on 10-24-20 for burglary. Based on the criteria, Hernandez was properly classified as a high-risk inmate who had several rule violation reports and a history of being placed in the Enhanced Observation Housing (EOH). Hernandez had a long history of substance use disorders and psychosis. Hernandez was admitted to Jail Based Competency Treatment on 04-30-21 under court order for competency evaluation and involuntary medications, and was subsequently released by a Qualified Mental Health Professional (QMHP) on 07-23-21. Medical staff are non-sworn personnel over whom CLERB maintains no authority regarding their care/decisions. Hernandez continued on with mental, medical, and dental care and a psychiatric evaluation was conducted on 09-30-21, at which point Hernandez reportedly denied suicidality, had family support, was aware of a pending court hearing on 10-14-21, and was motivated for release. On 10-13-21, Hernandez was last seen alive when he received his medications by jail staff at 8:30pm. Security checks were done at approximately 9:48pm (at which time there were no signs of anything unusual or concerning) and 10:15pm, when deputies discovered Hernandez hanging and unresponsive in his cell. Deputies made entry to render aid and performed life-saving measures along with medical staff until relieved by fire personnel. Hernandez was transported to a hospital where his condition deteriorated, and the San Diego Sheriff's Department (SDSD) compassionately released him from their custody on 10-15-21; Hernandez subsequently died on 10-17-21. The Medical Examiner's Office ruled the cause of death as hanging, and the manner of death as suicide. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel

22-092/AYALA

1. Illegal Search & Seizure – Unidentified deputies impounded Ayala's vehicle.

Board Finding: Summary Dismissal

Rationale: On 08-10-22, Alfredo Ayala reported that he privately purchased a used vehicle last year and registered it with the Department of Motor Vehicles (DMV). Ayala said the vehicle was parked at a closed business located in Poway. Ayala stated unbeknownst to him, the vehicle was used in a crime and impounded by the Poway Sheriff's Department as evidence. According to Sheriff's records, the vehicle in question was involved in a pursuit with the San Diego Sheriff's Department's (SDSD) High Intensity Drug Trafficking Area Tactical Narcotics Team, was abandoned by the driver, and then impounded by SDSD on 08-03-21. CLERB Rules & Regulations 4.1.2 Complaint; Jurisdiction, specifies that CLERB shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint. The complaint filed on 08-10-22 was untimely and CLERB lacks jurisdiction to investigate the vehicle impoundment that occurred on 08-03-21.

2. Misconduct/Procedure – The SDSD failed to notify Ayala that his vehicle was impounded.

Board Finding: Action Justified

Rationale: Ayala reported SDSD failed to notify him of his vehicle being impounded and Ayala learned of this almost a year later when contacted by RoadOne Towing Company that he owed in excess of \$2,000 for storage fees. Ayala believes he is being monetarily penalized as the victim of a crime. See rationale #1. Ayala provided a Notice of Pending Lien Sale by RoadOne Towing as evidence. According to SDSD P&P 6.36 Impounded/Stored Vehicle Reporting, and in accordance with VEH§ 14602.6. Vehicle Impoundment: The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. SDSD was in compliance with law/policy when they notified the legal registered owner of the vehicle impoundment on 08-03-21. The Notice of Pending Lien document supplied by Ayala lists someone else as the registered owner and identified Ayala as an "Interested Party". While Ayala contends that he was the owner of the vehicle, he failed to provide proof of insurance and pay the associated fees to the Department of Motor

Vehicles for his private purchase of this vehicle until 08-10-22. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

22-096/POCKLINGTON

1. Criminal Conduct – Deputy 3 engaged in sexual activity in public.

Board Finding: Summary Dismissal

Rationale: On 08-03-22, Pocklington alleged in the past year, Deputy 3 engaged in sexual activity with an unknown female civilian staff member while in public. A request for associated records was made to the San Diego Sheriff's Department who responded that this case was opened on December 20, 2020 and that an Internal Affairs (IA) investigation concluded on April 23, 2021. Furthermore, there were no associated criminal or civil investigations that would allow tolling of the one-year timeline as specified by the Peace Officer Bill of Rights. CLERB was unable to independently investigate the dates provided by SDSD as IA investigative materials are confidential. CLERB Rules & Regulations 4.1.2 Complaint; Jurisdiction, specifies that CLERB shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint and there were no exemptions for tolling. The complaint was untimely and CLERB lacks jurisdiction to investigate.

2. Misconduct/Retaliation – Deputy 3 threatened an unidentified deputy's career.

Board Finding: Summary Dismissal

Rationale: Pocklington alleged Deputy 3 threatened the career of a deputy working a perimeter assignment at a detention facility who contacted Deputy 3 while engaged in sexual activity. On 08-05-22, the complainant was asked to identify the unknown perimeter deputy, but this information has not been forthcoming to date. **See Rationale #1.**

3. Misconduct/Procedure – Unidentified deputies failed to investigate a crime committed by Deputy 3.

Board Finding: Summary Dismissal

Rationale: Pocklington alleged Sheriff's command staff conducted an Internal Affairs (IA) investigation and determined Deputy 3 had created a hostile work environment, however, Deputy 3 was never investigated for penal code violation 314, Lewd Act in Public (PEN§ 314. Indecent Exposure). **See Rationale #1.**

4. Misconduct/Procedure – Deputies 1 and 2 “avoided/altered” Internal Affairs investigations.

Board Finding: Summary Dismissal

Rationale: Pocklington also alleged that Deputies 1 & 2, “purposely avoided or altered IA investigations to avoid SB 1421 requirements in order to hide from the public and media lawful discovery. Deputy 3 is just one case where the charge of pc-314 was never a finding to avoid SB-1421. Please investigate misconduct by Deputy 3 of committing a lewd act in public and Deputies 1 & 2 in violating SB-1421 by altering how IA's are investigated.” **See Rationale #1.**

End of Report

NOTICE

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.