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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 February 14, 2023, 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	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
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 (6)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

21-102/ROJAS

1. Discharge of Firearm – Deputy 1 discharged his firearm and injured Omar Rojas on 09-28-21.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 09-28-21, the San Diego Sheriff's Department (SDSD) received a 911 call regarding Omar Rojas brandishing a knife and acting erratically and who committed an act of vandalism. Deputy 1 responded, and Rojas fled into a residential neighborhood. Deputies subsequently set up a perimeter around the backyard of a residence where Rojas was observed. Based on a review of hours of BWC footage, the deputies involved made numerous attempts to communicate with Rojas to surrender peacefully. Further, deputies appeared to attempt to de-escalate the situation by setting a perimeter and requesting additional resources such as a K-9 unit. Deputy 1 was forced to discharge his firearm in defense of his life, based on the actions of Rojas when he advanced towards Deputy 1 and aimed a rifle in his direction. It was determined that Deputy 1 fired approximately twelve rounds in two separate volleys, both of which appeared to be justified; and that Rojas sustained non-life threatening injuries. SDSD P&P Addendum Section F, Use of Force Guidelines, regarding the use of deadly force stated, "Deputies may only use lethal force when they reasonably believe, based on the totality of the circumstances, that lethal force is necessary to defend against an imminent threat of death or serious injury to the deputy or to another person; or to apprehend a fleeing person for

any felony that threatened or resulted in death or serious bodily injury, if the deputy reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Additionally Penal Code Section 835a provides a legal standard regarding the use of force, and stated, “That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” The rifle Rojas possessed was later determined to be a rifle style pellet gun, however, based on the appearance of the gun and the totality of the circumstances, it is undoubtably objectively reasonable that another deputy, in the same situation and presented with the same threat, would have made the same legally justified decision to discharge their firearm. The deputies quickly secured Rojas and medical responded to provide aid. Rojas was transported by ambulance to a local area hospital for treatment and was discharged at a later date. Given all the aforementioned information, the evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

22-032/HAVINS

1. False Arrest – The San Diego County Probation Department imposed a “probation hold.”

Board Finding: Unfounded

Rationale: Havins stated in his complaint to CLERB “... in Court (east County Superior Court of California), the D.A. made reference to A.B. 1950 and the fact that I was not on probation, and the Judge lifted the falsely imposed probation hold.” Havins was referring to Assembly Bill No. 1950 (AB 1950), which, on 09-30-20, amended Section 1203a and 1203.1 of the Penal Code (PC), relating to probation. In summary, AB 1950 restricted the period of probation for a misdemeanor to be no longer than one year, except as specified, and the period of probation for a felony to be no longer than two years, except as specified. Court records indicated Havins was arrested on 02-09-21, and according to the Felony Complaint document dated 02-16-21, was charged with eleven different violations including eight felony counts and three misdemeanor counts of crimes several of which were related to illegal firearm possession. It should be noted, none of the arresting charges were related to probation, or a “probation hold,” or charges which indicated a violation of PC 1203.2(b)(1), which stated, in part, “... if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of the person’s supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring them before the court ...” Upon a review of the associated Court documents, it could be determined Havins was not held in custody on a “probation hold”, and further, no prima facie could be made showing the Probation Department engaged in any misconduct. Further, Havin’s previously submitted a complaint regarding his arrest occurring on 02-09-21, which was subsequently investigated by CLERB in case 21-032. In that complaint, Havins’ included that SDSO deputies illegally conducted a search. In that case it was determined the SDSO deputies’ actions of searching the complainant was justified, as a search warrant was signed and issued by a Judge, further affirming the defendant’s arrest and detainment was unrelated to his probation status. The evidence shows that the alleged act or conduct did not occur.

22-039/LOZANO

1. Excessive Force – Unidentified deputies assaulted Edward Lozano.

Board Finding: Unfounded

Rationale: In his written statement to CLERB, Lozano reported that he was assaulted by unidentified deputies. Lozano stated he was “*having flashbacks (PTSD) seeing 4-5 deputies whipping out their expendable nightsticks asking where did he get the pruno getting hit in my legs with a nightstick when I was in the hospital a bunch of bruises on my leg, stomach and arms I had 10 to 15 cuts on my feet knees inside my fingers that are not consistent with the fall I had an x-ray taken at Bonita Kaiser. Results came*”

in foos not broken, but my tendons are messed up (tendinitis). They asked if I had my foot ran over or stomped I say no. They said the injury is not consistent with a fall! Arrive at hospital 03-29-22 but incident occurred the day before, 03-28-22.” Jail surveillance video recordings and written incident reports were reviewed during the course of CLERB’s investigation. Jail medical records and hospital medical records were reviewed and revealed that Lozano experienced an acute medical incident that contributed to his injury. The learned medical information is privileged, per The Health Insurance Portability and Accountability Act (HIPAA) and cannot be publicly disclosed. Lozano’s recount of events was without merit, and he lacked credibility. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel. The deputies who responded to the medical emergency acted within policy and procedure and law. The evidence showed that the alleged act or conduct did not occur and there was no prima facie showing of misconduct.

22-101/HURST

1. Misconduct/Medical – Patrick Hurst was accepted for booking into San Diego Central Jail while unable to walk.

Board Finding: Summary Dismissal

Rationale: Hurst alleged “due to a hip fracture at the time of arrest and booking, I was incapable of walking and was still accepted in the Central Jail which is against San Diego Sheriff’s Procedures.” As per SDSO P&P DSB Q.1 entitled “Intake Information”, prior to accepting an arrested person into a Sheriff’s detention facility, the arrested person shall be medically screened by a facility registered nurse. The registered nurse conducting the screen indicates if the individual is “fit for jail”. According to SDSO Medical records, Hurst was cleared as “fit to continue booking process” and received medical clearance on 06-01-22. Medical decisions/actions, to include “fit for booking” status, are made by medical staff who are non-sworn personnel and do not fall under CLERB’s jurisdiction. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Unidentified deputies misclassified Hurst.

Board Finding: Unfounded

Rationale: Hurst stated, “I was not properly classified and have been housed in a maximum-security module.” SDSO records showed Hurst was classified as “5-Maximum”. According to SDSO Detention Policy R.3, Inmate Classification Code-Descriptor Definitions, to be categorized as a 5-maximum, “This incarcerated person must have a combination of two of the following: current assaultive charges, prior assaultive history, are deemed an institutional behavior problem or an escape risk. Incarcerated persons classified as assaultive or escape risks (Greenbander) will be classified as a minimum level 5.” According to a DIS SERF response, Hurst had a prior assaultive felony and was deemed an institutional behavior problem. As such Hurst’s classification was in accordance with policy. The evidence showed the alleged act or conduct did not occur.

3. Misconduct/Procedure – SDSO detained Hurst after his charges were dismissed.

Board Finding: Action Justified

Rationale: Hurst stated, “I was initially booked on vandalism and trespassing. The DA initially rejected the case, and I was supposed to be released. I was then held against my will, where a bail was then revoked without reason.” SDSO records showed Hurst was being held for charges related to previous arrests. According to SDSO records as of 12-19-22, Hurst had three active cases and proceedings were still underway. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 locked Hurst down after he slipped and fell on 07-26-22.

Board Finding: Unfounded

Rationale: Hurst stated, “I slipped and fell on 07-26-22 and received no medical attention, instead I was written up and locked down for boisterous activity, disrespect to staff, and interfering with jail operations.” According to SDSO records, on 07-26-22 Deputy 1 was conducting soft count when Hurst and another

incarcerated person, Deondre Perkins, yelled obscenities from inside the cell. They were both written up for the following violations: disrespect to staff, boisterous activity, and delaying jail operations. SDSD Medical Records showed Hurst was seen in his housing for a sick call on the evening of 07-26-22 and assigned a cane. As per M.15 entitled, "sick call", incarcerated persons shall have access to appropriate medical and mental health services on a daily basis. The evidence showed Hurst was locked down due to his behavior. The evidence also showed Hurst was seen and treated on 07-26-22 by Medical Staff. The evidence showed the alleged act or conduct did not occur.

5. False Reporting – An unidentified deputy reported Hurst refused medication.

Board Finding: Unfounded

Rationale: Hurst stated, "the nurse and deputy's claimed I refused medication at the window which is false because I was locked down [sic]". Jail Medical Records showed Hurst refused medication in the evening of 07-26-22. Notes made on medical records are made by Medical Staff who are non-sworn personnel, CLERB lacks jurisdiction to investigate further. There were no records or evidence to indicate any sworn member noted medication refusal. The evidence showed the alleged act or conduct did not occur.

6. Medical/Misconduct – Nurse reported Hurst refused medication.

Board Finding: Summary Dismissal

Rationale: Hurst stated, "the nurse and deputy's claimed I refused medication at the window which is false because I was locked down [sic]". Jail Medical Records showed Hurst refused medication in the evening of 07-26-22. Notes made on medical records are made by Medical Staff who are non-sworn personnel, CLERB lacks jurisdiction to investigate further. The Review Board lacks jurisdiction.

7. Misconduct/Medical – Medical staff failed to properly treat Hurst.

Board Finding: Summary Dismissal

Rationale: Hurst alleged he had not received proper medical care, did not receive medical attention for a slip and fall, and was given a cane that led him to needing emergency medical assistance, which was not provided. Hurst stated, "I have not received any proper medical care because I have been diagnosed with Avascular Necrosis of the left hip bone." He also stated, "I slipped and fell on 07-26-22 and received no medical attention" and "I was given a cane after the fall that led me to needing emergency medical assistance that was not provided". Medical staff to include nurses are non-sworn personnel, CLERB lacks authority to investigate further. Medical decisions/actions, to include medical treatment and care, and medication reporting, are made by medical staff who are non-sworn personnel and do not fall under CLERB's jurisdiction. The Review Board lacks jurisdiction.

22-158/MEYER

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 deployed his Sheriff's canine on Peter Meyer, which resulted in Meyer sustaining dog bites.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. San Diego Sheriff's Department (SDSD) documentation showed on 11-06-22, Meyer was known to be shoplifting at a Target location in Vista. SDSD had knowledge that Meyer was known to be aggressive, evade officers, and carry knives. SDSD arrived while Meyer was exiting the store. Meyer saw deputies and fled on foot. Meyer ignored deputies' commands to stop running and get on the ground. Deputy 1 issued a warning to get on the ground or he will get bit, but Meyer continued to run. Deputy 1 deployed his canine unit, and a use of force ensued. Meyer was successfully apprehended by the canine and as a result sustained dog bites to his left arm. Meyer was transported to Palomar Medical Center where he was treated with three stitches then released to Vista Detention Facility. Meyer was booked for two outstanding felony warrants, obstruct/resist of peace

officer/emergency medical tech, petty theft, and possession of a controlled substance. Addendum F, Use of Force Guidelines states, "Canines are typically used in search scenarios, for deputy protection and for apprehension of fleeing subjects wherein this degree of force is justifiable." Furthermore, Use of Force Guidelines states canines certified and approved for department use may be used to locate, apprehend, or control a felony suspect when it would be unsafe for the deputies to proceed into the area or to locate, apprehend, or control armed misdemeanor suspects. Given all the evidence provided, the use of a canine was appropriate for this situation. The evidence showed the use of force was documented in accordance with policy and there were no violations committed by sworn members. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of the Sheriff's Department sworn personnel. The evidence showed the alleged act or conduct did occur but was lawful, justified, and proper.

22-162/PATTON

1. Misconduct/Procedure – A law library counselor "refused" to accept or process mail.

Board Finding: Summary Dismissal

Rationale: Patton stated, "She refuses to accept or process allowable pro per indigent legal mail; including mail to holders of public office." Patton's allegation(s), signed under penalty of perjury, did not establish a prima facie showing of misconduct arising out of the performance of sworn personnel. CLERB does not have jurisdiction to investigate complaints against SDDS professional staff. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. This complaint is submitted for summary dismissal per CLERB Rules & Regulations Section 15: Summary Dismissal, Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the complaint.

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.