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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 January 8, 2019, 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 insufficient evidence 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 (3)**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****17-033**

1. Death Investigation/Officer-Involved Shooting (OIS) – Deputies 1 and 3 shot and killed Jeroen Peter Koornwinder.

Board Finding: Action Justified

Rationale: On 05-10-17, Jeroen Koornwinder was the driver of a vehicle that was trespassing on the Barona Indian Reservation and failed to stop for Tribal Enforcement officers and also San Diego Sheriff's deputies. When confronted by deputies, Koornwinder stuck his hands in his pockets, put his hands on his waistband, and reached into his truck. Koornwinder's behavior was erratic, unpredictable, and consistent with someone having mental health issues and/or being under the influence of a controlled substance. Deputies 2 and 4 deployed less-lethal beanbags that were unsuccessful in stopping the suspect. As Koornwinder used his vehicle as a weapon, Deputies 1 and 3 deployed lethal force. Seventeen projectiles were recovered from Koornwinder's body, including to his right shoulder, chest area, neck, and back of brain and skull (each 00 buck round contains nine .32 caliber projectiles). One projectile was located in the fabric of Koornwinder's t-shirt. The cause of death was multiple gunshot wounds and the manner of death was homicide. Toxicology revealed the presence of methamphetamine, amphetamine and cannabinoids. The facts, evidence, and perceptions of Deputies 1 and 3 justified their use of deadly force against Koornwinder; who did so in self-defense and the defense of others. Video evidence corroborated deputy, victim, and witness statements. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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17-066(a)

1. Misconduct/Procedure - Deputy 1 would not allow the complainant to place the hotel security officers under Citizen's Arrest.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 would not allow him to place the hotel security officers under Citizen's Arrest after they unlawfully assault, battery, kidnapping, and imprisonment. While at a hotel resort, the complainant was placed under Citizen's Arrest by the hotel security officers for public intoxication and battery. He was detained, and Sheriff's deputies were summoned to the scene. When the Sheriff deputies arrived on scene, they took the complainant into custody. The complainant demanded that Deputy 1 also arrest the security officers; he requested that the hotel security officers be placed under Citizen's Arrest as well for their assault, battery, kidnapping, and imprisonment against him. Additionally, the complainant advised that he wanted to press charges against the security officers. The complainant alleged that Deputy 1 did not oblige his request which violated the law. According to SDDS P&P Section 6.110, entitled, "Private Person Arrest, states in part, the deputy may accept custody if they are satisfied that the private person's arrestee committed the offense and the arrest is supported by probable cause. It is a crime for a California peace officer to refuse to arrest or refuse to receive a person for arrest where a duty to arrest exists. However, effective 01-01-02, Penal Code Section 142 was amended by the addition of subsection (c) which states: *"This section shall not apply to arrests made pursuant to Section 837. Section 837 is the authority for private persons to make arrests. Therefore, officers are no longer subject to felony arrest for failing to accept a private person's arrest. According to the aforementioned Penal Codes and SDDS Policy & Procedure, Deputy 1 was not legally obligated to accept the complainant's Citizen's Arrest on the security officers if he was not satisfied that the security guard committed the alleged offense, pursuant to California Penal Code Section 142(c). Deputy 1 and two other deputies provided information during the course of CLERB's investigation that conflicted with the information reported by the complainant. Absent any additional audio or video recordings of the contact between the complainant and the deputies or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.*

2. Misconduct/Truthfulness - Deputy 1 lied to the complainant when he said he was not arresting him, and that the hotel staff had arrested him.

Board Finding: Action Justified

Rationale: Upon being arrested, the complainant alleged that Deputy 1 told him that he was not arresting him, that the hotel staff had arrested him and that he (Deputy 1) did not have any say in the matter. Initially, hotel security officers had placed the complainant under Citizen's Arrest for public intoxication and battery. In accordance with California law, Deputy 1 accepted custody of the complainant as a Citizen's Arrest. During the course of Deputy 1's investigation, he determined that the complainant was intoxicated, a misdemeanor that occurred in his presence. As such, Deputy 1 arrested the complainant for 647(f) P.C. Drunk in Public. Ultimately, it was Deputy 1 who arrested the complainant for public intoxication, not the security officers. It was undetermined if Deputy 1 told the complainant, "that he was not arresting him, that the hotel staff had arrested him;" however, if Deputy 1 made an untrue statement to the complainant, doing so was not a violation of law or SDDS P&P. SDDS P&P Section 2.46 entitled "Truthfulness," states, "When asked by the Sheriff, the Sheriff's designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete." The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure - Deputy 1 never read the complainant his Miranda Rights.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 never read him his Miranda Rights when he was arrested. In 1966, the U.S. Supreme Court decided the case of *Miranda v. Arizona*, declaring that whenever a person is taken into police custody, before being questioned, he or she must be told of the Fifth Amendment right not to make any self-incriminating statements. There are two prerequisites that must be met before a deputy must issue a Miranda warning to a suspect: The suspect is in custody and the suspect is under interrogation. In the complainant's case, he was not under interrogation. According to Deputy 1's Arrest Report, the complainant was not questioned, and no spontaneous statement was noted in Deputy 1's Arrest Report. Therefore, a Miranda Warning was not needed. Though a Miranda Warning was not necessary in this case, according to Deputy 1's Arrest Report, he nevertheless did attempt to read the complainant his Miranda Rights. According to Deputy 1's Arrest Report, he claimed that whenever he attempted to read the complainant his Miranda Rights, the complainant "was belligerent to the point where he was loud and

angry.” In his report, Deputy 1 explained that the complainant would “yell over” his voice and not allow him to speak. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure - Deputy 1 did not verbally place the complainant under arrest and he did not inform the complainant of the charges for which he was being arrested for.

Board Finding: Action Justified

Rationale: The complainant claimed that Deputy 1 did not verbally place him under arrest and that Deputy 1 did not inform him of the charges brought against him. According to Deputy 1’s Arrest Report, and as stated above, whenever Deputy 1 attempted to speak with the complainant, the complainant would “yell over” his voice and not allow him to speak. Regardless of Deputy 1’s reasoning for not verbally placing the complainant under arrest or for not inform the complainant of the charges, deputies are not required to explain to an arrestee why they are being arrested or what offense they have committed that they are being arrested for. The complainant had a misunderstanding that Deputy 1 was required to inform him of his charges. The right to notice instead comes later, after the arrest has occurred. A person arrested must be given a probable cause hearing, ordinarily within 48 hours of their arrest. The government will have to inform the suspect of the reason for the arrest then. Per the complainant, he was notified of the charges against him upon his arrival to jail. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure - Deputy 1 did not obtain written statements nor complete a Citizen’s Arrest Declaration.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 1 accepted his arrest as a Citizen’s Arrest by the hotel’s security officers; however, Deputy 1 did not require the hotel staff to provide him with a written statement. In addition to the drunk in public arrest, the complainant was arrested for California Penal Code Section 242, a misdemeanor offense that did not occur in Deputy 1’s presence. According to SDSD P&P Section 6.110, entitled, “Private Person Arrest,” in effect at the time of the incident reads as follows: If a private person has made an arrest or wants to make an arrest and requests that a deputy receive the arrestee, the deputy may accept custody if they are satisfied that the private person’s arrestee committed the offense and the arrest is supported by probable cause. When a private person notifies a Deputy Sheriff of his/her desire to make a lawful arrest, for a misdemeanor not committed in a deputy’s presence, he/she shall advise the private person that they may make a physical arrest or file a crime report. Deputies shall obtain copies of any and all written reports completed by the arresting private person, or statements of guilt signed by the arrestee prior to accepting custody of a private person arrest. Deputies shall make a diligent effort to record the circumstances of the arrest as told to them by the arresting person. Prior to receiving an arrestee, the deputy shall verify the identity of the person making the arrest and ensure that the person making a private person’s arrest has completely filled out and signed the Citizen’s Arrest Declaration form (Pat 5). A copy of the Citizen’s Arrest Declaration form shall be mailed to the arresting person. When accepting a private person arrest, the deputy shall write a Case Report detailing the arrest. Any related citations and the Citizen’s Arrest and Declaration form will be scanned and electronically attached to the report. The original Citizen’s Arrest and Declaration form will be placed into evidence.” After the complainant was arrested, he was transported to jail where he was booked into custody. Deputy 1 did not ensure that the security officer completely filled out and signed the Citizen’s Arrest Declaration form. In his Arrest Report, Deputy 1 noted that at a later time he gave a Citizen’s Arrest Declaration to the hotel staff; however, the form was not returned to Deputy 1, nor was it turned into the SDSD. The evidence supported the allegations and the act or conduct was not justified.

6. Misconduct/Procedure - Deputy 1 did not conduct an investigation.

Board Finding: Unfounded.

Rationale: The complainant alleged that Deputy 1 did not perform an investigation regarding the circumstances of his arrest. According to Deputy 1’s Arrest Report, he clearly articulated that he collected relevant evidence pertaining to the incident, he interviewed witnesses, he viewed and analyzed the surveillance video, and he conducted follow-up duties. Evidence showed that Deputy 1 conducted an investigation into the incident that lead to the complainant’s arrest and therefore the allegation is unfounded. The evidence showed that the alleged act or conduct did not occur.

7. Misconduct/Procedure - Deputy 1 did not provide the complainant with a safety belt.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 did not provide him with a safety belt during his transport from the scene to jail. Deputy 1 was the driver and one of two occupants in his county issued patrol vehicle. Deputy 1 transported the complainant, who was his arrestee and who was seated in the rear passenger of the patrol vehicle. During the duration of the ride, the complainant alleged that Deputy 1 did not ensure that the available safety

belt/shoulder harness restraint equipment, which was installed in the vehicle, was used to secure him in the patrol vehicle. According to SDSD P&P Section 5.5, which states, "The driver of any county vehicle shall use and ensure all passengers use the available safety belt/shoulder harness restraint equipment installed in the vehicle before moving that vehicle. When transporting a violently combative prisoner, the seat belt need not be used, if during its placement on the prisoner it would create a potential injury situation to the deputy and/or prisoner." The complainant stated that he was not violent, nor combative, and he did not pose as a threat to Deputy 1; he was compliant and cooperative. According to Deputy 1's Arrest Report, Deputy 1 described the complainant as "belligerent, loud, and angry." Deputy 1 did not describe the complainant as "violently combative" or use any words to that effect that would describe the complainant as aggressive or physically confrontational. In viewing the hotel surveillance recordings of the complainant being placed in the rear of the patrol vehicle, one was unable to see if a seatbelt was used to secure the complainant in the vehicle. Deputy 1 submitted a statement that was considered in reaching the recommended finding. There was insufficient evidence to either prove or disprove the allegation.

8. Misconduct/Procedure - Deputy 1 questioned the complainant and he used a cellular phone to record part of their conversation.

Board Finding: Not Sustained.

Rationale: During his transport from the scene to jail, the complainant alleged that Deputy 1 questioned him and he used a cellular phone to record part of their conversation. Deputy 1 was the driver and one of two occupants in his county issued patrol vehicle. Deputy 1 transported the complainant, who was seated in the rear passenger of the patrol vehicle from the scene to jail. During the duration of the ride, the complainant alleged that Deputy 1 used a cellular phone, while he was driving, to record part of our conversation. The complainant alleged that Deputy 1 was in violation of California law. California Vehicle Code Section 23123, states that a driver shall not operate a vehicle while using a wireless telephone. This section, however, does not apply to an emergency services professional using a wireless telephone while operating an authorized emergency **vehicle**, as defined in Section 165, in the course and scope of his or her duties. SDSD P&P Section 7.4 entitled, "Cellular Phone/Other Wireless Electronic Devices - Use of Cellular Phones While Operating a County Vehicle," states in part, "Personal phones and Departmental phones shall not be used while operating a County vehicle without an appropriate hands free device. Although 23123(d) V.C. exempts emergency services professionals, the department's position is not to allow cell phone use without a hands free device. It is imperative that any mobile device that is used to conduct Department's business be utilized appropriately, responsibly, and ethically." Sheriff's policy restricts drivers of county vehicle from using their cell phones while operating a county vehicle. Deputy 1 submitted information that was considered in reaching the recommended finding. Absent any additional audio or video recordings of the contact between the complainant and Deputy 1, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure - Deputy 1 did not enter a recorded cell phone conversation into evidence.

Board Finding: Not Sustained

Rationale: The complainant said that Deputy 1 recorded part of his conversation and interactions with the complainant on his cell phone while they were en route to jail. Additionally, the complainant alleged that Deputy 1 did not enter the recording(s) into evidence, as required by SDSD P&P. SDSD P&P Section 2.40 entitled, "Abuse of Process/Withholding Evidence" which states, "Employees shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with, or withhold evidence or information, or make false accusations of a criminal or traffic charge." SDSD P&P Section 6.122 entitled, "Electronic Evidence Seizure and Handling: states, "All seized electronic devices, such as computers, smartphones, cellular phones, PDA's and digital cameras, as well as digital storage media, such as USB thumb drives, CD's, DVD's, external hard drives, etc., shall be processed in accordance with prescribed laws and established procedures." Deputy 1 submitted information that was considered in reaching the recommended finding. Since there were no additional audio or video recordings of the contact between the complainant and Deputy 1, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Truthfulness - Deputy 1 lied in his report when he stated that he could not read the complainant his Miranda Rights because the complainant would not allow him to.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 lied in his written report when Deputy 1 stated that he could not read the complainant his Miranda Rights because the complainant would not allow him to. The complainant stated that he was cooperative with Deputy 1 and the two conversed while en route to the jail. According to Deputy 1's Arrest Report, he advised that whenever he attempted to speak with the complainant, the complainant would "yell over" his voice and not allow him to speak. Deputy 1 submitted information that was considered in reaching the

recommended finding. Absent any additional audio or video recordings of the contact between the complainant and Deputy 1, or the testimony of an independent witness to these contacts, there was insufficient evidence to either prove or disprove the allegation.

18-012

1. Misconduct/Procedure – Classification deputies failed to issue the proper wristband to identify the aggrieved as being pregnant.

Board Finding: Action Justified

Rationale: The complainant reported that her “identification wristband was not marked properly for a pregnant female inmate and if she was properly marked as pregnant on the wristband, then the miscarriage would have been avoided.” Medical staff confirmed the complainant’s pregnancy during the intake process and the complainant was placed on pregnancy protocol. However, medical staff failed to inform classification deputies of the complainant’s medical condition and line staff had no way of knowing that she was pregnant. Medical staff are non-sworn personnel over whom CLERB has no jurisdiction and this issue was referred back to the SDSD for follow-up. SDSD expressed that since the date of this incident, protocol has been changed and medical screening entries are immediately placed in the computer system as the arrestee answers the questions to limit mistakes during the intake process. Classification deputies issued the complainant’s wristband based upon the information they had available and their actions were lawful, justified, and proper.

2. Excessive Force – Deputies 1 and 2 used force on a pregnant inmate that the co-complainant’s believed may have caused a miscarriage.

Board Finding: Action Justified

Rationale: The complainant stated, “I would like CLERB to review the incident that took place while I was housed at a detention facility that I believe led to the miscarriage of my unborn baby. During the incident that occurred on 10-21-18 the deputies slammed me down face down and struck me in the lower back area 3x. I believe as a pregnant inmate I should not have been slammed to the ground.” Video footage of this incident in the strip search area where force was used was unavailable. According to Crime Report #17155074, by Deputy 1 dated 10-21-17, during a visual body cavity search, the complainant took off her shirt and threw it at Deputy 2, striking her in the face and upper chest area. As Deputy 2 attempted to handcuff the inmate, the complainant turned aggressively toward the deputy and used her elbows to escape control. Deputy 1 grabbed the complainant by her head and applied downward pressure to force her to the floor, which limited her upper body movement. But the complainant thrashed her body back and forth and kicked her legs at Deputy 2’s knees several times. Commands were given to “stop kicking,” which the complainant ignored until Deputy 1 delivered three closed fist strikes to the complainant’s left back area; the force was effective in gaining control and handcuffs were applied by another deputy. Knowing she was pregnant, the complainant willingly fought with deputies. The complainant was taken to medical where she refused treatment stating she had no pain or injuries. Over a month later, on 11-24-17, the complainant experienced pelvic cramping and vaginal bleeding and was sent to a hospital, where she was evaluated and treated for a miscarriage. The complainant entered custody without any prenatal care and a history of alcohol and drug dependency; it was unknown if these factors and/or the force may have contributed to a miscarriage. The application of force on pregnant inmates is permissible by Sheriff’s policy and procedures, and the reasonable force utilized by Deputies 1 and 2 in response to the complainant’s aggression and non-compliance was lawful, justified, and proper.

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.