

BOARD MEMBERS

SANDRA I. ARKIN
Chair
DELORES CHAVEZ-HARMES
Vice Chair
KIM-THOA HOANG
Secretary
GARY BROWN
JORDAN GASCON
P. DARREL HARRISON
JAMES LASSWELL
LOURDES N. SILVA
ROBERT SPRIGGS JR.
GARY I. WILSON
SUSAN N. YOUNGFLESH



EXECUTIVE OFFICER
PAUL R. PARKER III

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775
www.sdcounty.ca.gov/clerb

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its April 10, 2018 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 (8)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

16-073

1. Death Investigation/Officer-Involved-Shooting – On August 5, 2016, David Moya threatened to kill his mother while at their Santee residence. Deputies arrived, stood outside of the front door, and yelled into the residence requesting Moya to come to the front door. At that time, Moya used a compound bow to shoot an arrow at them. Shortly thereafter, Moya fired an additional arrow at the deputies from an open second-floor bedroom window. Deputies 1, 2, and 3 fired at Moya with rifles and he disappeared from sight. Moya was later found lying obviously dead on that bedroom floor. The cause of death was penetrating gunshot wound of head and the manner of death was homicide. For death certification purposes, a "homicide" manner is not synonymous with murder or manslaughter and implies no criminal culpability.

Board Finding: Action Justified

Rationale: Upon their arrival at the scene, the dispatched deputies requested a Psychiatric Emergency Response Team (PERT), however no teams were available. As the initial responding deputies stood immediately outside of the residence's front door calling into the residence for Moya to come to the front door, he appeared on a staircase landing inside of the residence and, using a compound bow, shot a four-bladed razor-tipped arrow at the deputies. The arrow struck the front door area inside the residence and deputies immediately retreated. The deputies were uninjured and requested emergency back-up. Multiple deputies arrived and set up a perimeter around the residence. Deputies were unable to contact Moya via telephone and he did not respond to numerous verbal announcements to exit the residence. The Special Enforcement Detail (SED) and a Crisis Negotiation Team (CNT) were requested and

-continued on next page-

responded. As SED personnel were in the process of moving into position, movement was observed from inside the residence. The blinds and the window to a second-floor bedroom above the garage suddenly opened and Deputy 1 saw a person, later confirmed to be Moya, armed with a bow appear in the window. Deputy 1 believed the person was aiming the bow at him. He yelled for Moya to drop the weapon and, fearing for his safety and that of his fellow deputies, fired one rifle round at Moya. Inside of a minute later, Moya reappeared at the upstairs window armed with the bow and arrow and shot an arrow towards the deputies in the street. At that time, Deputy 1 fired another round at Moya, Deputy 2 fired three rounds at Moya, and Deputy 3 fired two rounds at Moya. Cameras were deployed and showed Moya lying unresponsive on the upstairs bedroom floor. Deputies subsequently entered the residence and death was confirmed without resuscitative efforts.

The actions taken by the responding deputies and the on-scene supervisor prior to the shooting event were within policy and geared towards ending the situation peacefully without the use of any force, let alone deadly force. A perimeter was established and PERT was requested. After deputies received no response to verbal announcements and attempts to contact Moya via telephone, SED and CNT were requested and responded. Unfortunately, prior to SED getting into position, Moya's actions posed a clear threat to on-scene deputies and nearby residents, thus resulting in the deputies' use of lethal force against Moya. The facts, evidence, and perceptions of each deputy justified the use of deadly force against Moya. Absent conflicting 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.

16-101

1. Death Investigation/In-Custody Suicide – On November 30, 2016, while in the custody of the San Diego Sheriff's Department at the George F. Bailey Detention Facility, Sergio Almejo hanged himself by the neck with a bed sheet attached to the top metal bunk in his cell. Almejo was transported to UCSD Medical Center where he was pronounced brain dead approximately 18 hours later. The cause of death was hanging and the manner of death was suicide.

Board Finding: Action Justified

Rationale: The evidence indicates that Almejo was properly classified upon his entry into the SDSD jail system after his August 31, 2016 arrest. Based upon Almejo's statements and history documented during previous bookings of safety concerns and prior protective custody housing while in state and county custody, Almejo was appropriately placed into protective custody. During his medical intake screening and subsequent interactions with SDSD medical personnel, to include psychiatric staff, Almejo never expressed suicidal intent and did not report a suicide attempt history. There is no evidence that Almejo expressed any concerns about his mental or physical wellbeing to his cellmate or any member of the SDSD, sworn or professional. Upon being advised that Almejo was found hanging in his cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel and their actions were lawful, proper, and justified.

17-045

1. Misconduct/Procedure – Deputy 1 refused to investigate crimes reported to him by the complainant.

Board Finding: Action Justified

Rationale: The complainant reported that in spite of evidence, Deputy 1 would not investigate criminal charges so this event should be investigated by the CLERB for failure to investigate a crime. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Sheriff's Policy & Procedure 6.71, Crime Case Reports, allows for an Officer's Report to be completed to report a miscellaneous incident or provide supplemental information when appropriate. The evidence identified by the complainant and reviewed by Deputy 1 was not false in nature and was done simply to document that a gun owner had not been in possession of his firearm for a period of time. The evidence does not support that false information was provided to a deputy or that the deputy wrote a false police report, but showed that the conduct that occurred was lawful, justified and proper.

2. Criminal Conduct – Deputy 1 engaged in a cover-up of criminal wrongdoing by peace officers.

Board Finding: Unfounded

Rationale: The complainant reported that in spite of evidence, Deputy 1 would not investigate criminal charges

because the involved parties are law enforcement officers so this event should be investigated by the CLERB for failure to investigate a crime and cover up criminal wrong doing. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There was no evidence presented that showed that this conduct occurred.

17-046

1. Misconduct/Procedure – Deputy 1 failed to adequately investigate an alleged crime against the complainant.

Board Finding: Unfounded

Rationale: The complainant reported that a caretaker forced him to give her his ATM number and that she subsequently withdrew money from his account without his permission. The complainant contacted the Sheriff's Department and Deputy 1 came to his residence to take a report. A month later the complainant was contacted and told he had no case and that his case was transferred to another deputy. The complainant said that Deputy 1 failed to adequately investigate a crime against him. Deputy 1 contacted the complainant on 3/13/2017 prior to his reporting of the specific crime by his caretaker on 3/14/2017. The contact was because of the complainant's many prior calls for service. When Deputy 1 spoke to the complainant in person on 3/14/2017, the complainant did not provide specifics about the crimes. Later that day, the complainant spoke with Deputy 1 twice and provided specifics so a report was taken, the complainant's social worker was called, and the complainant was taken to the hospital for his safety. Based on the information provided by the complainant, Deputy 1 determined it did not appear that the complainant was being intimidated into providing his caretaker with the monies he claims she took. Follow up calls were made on 4/25/17 and 5/5/2017. The complainant did speak with another deputy on 6/23/2017. Evidence in this matter shows that follow up was made to the complainant on multiple occasions even after the case was closed pending further information. A mandatory SOC 341 form was completed and the complainant's social worker was contacted since he was a dependent adult. There was no evidence to support the complainant's claims that the crimes were not adequately investigated.

17-130

1. False Arrest – Deputy 1 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant reported that he walked his girlfriend home and kissed her goodbye but was then contacted by deputies two blocks later and arrested for domestic violence. Deputy 1 and other deputies were dispatched to an argument between a male and a female. Upon the arrival of deputies, the complainant and his girlfriend were identified as the parties involved. Based upon statements made by the girlfriend and an independent witness, Deputy 1 determined that a verbal argument and physical confrontation had occurred and the complainant was the primary aggressor. Deputy 1 took the complainant into custody for battery of a person with whom he was in a dating relationship. The complainant was arraigned two days later and subsequently released from custody after his court appearance with no accusatory pleading filed charging him with an offense. Pursuant to Penal Code Section 849.5, the taking into custody of the complainant was deemed a detention only, not an arrest. Despite the fact that charges were not filed after the arraignment, Deputy 1's taking into custody of the complainant was supported by probable cause and his actions were lawful, proper, and justified.

2. Illegal Search or Seizure – Unidentified deputies detained the complainant at the Vista Detention Facility **without cause**.

Board Finding: Action Justified

Rationale: The complainant said he was arrested and detained without cause and then released from custody with no charges filed. After the complainant was taken into custody by Deputy 1, he was transported to and booked into the Vista Detention facility until his arraignment two days later. The complainant was subsequently released from custody after his court appearance with no accusatory pleading filed charging him with an offense. Pursuant to Penal Code Section 849.5, the taking into custody of the complainant was deemed a detention only, not an arrest. Despite the fact that charges were not filed after the arraignment, there was probable cause to support the complainant's detention pending his arraignment and the deputies' actions were lawful, proper, and justified.

18-019

1. Misconduct/Procedure – Deputy 2 denied the complainant a professional visit with his client on January 22, 2018.

Board Finding: Action Justified

Rationale: The complainant attempted a professional visit at the jail, but was denied meeting with his client after providing his work identification, along with an out of state driver's license. Deputy 2 told him that if he produced his passport, they would approve the visit. Detentions Policy & Procedure P.15, Professional Contact Visits, specifies 20 different categories of professionals who shall be allowed contact visits with inmates in the course of their professional duties. The complainant's employment did not meet the criteria of the policy as defined, but was permissible upon approval of the Watch Commander. Deputy 2 provided information regarding the inmate's medical status and the complainant's identification that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 denied the complainant a professional visit with his client on January 23, 2018

Board Finding: Action Justified

Rationale: The complainant presented his passport as advised by Deputy 2, but was again denied a professional visit by Deputy 1. Detentions Policy & Procedure P.15, Professional Contact Visits specifies that professional visits for "Other Authorized Professionals," must be approved by the facility commander. Deputy 1 denied the complainant's visit on the orders of his superior officer, Deputy 2. Deputies 1 and 2 provided information regarding the inmate's medical status and the complainant's identification that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 repeatedly questioned the complainant about his criminal history.

Board Finding: Action Justified

Rationale: Deputy 1 repeatedly questioned the complainant about his criminal history. The complainant said that he denied having an alias and told them that he had never been arrested. Deputy 1 provided information regarding the information requested from the complainant. Per detention policies, for the security of the institution and for the protection of the public, only those visitors with valid photo identification are granted visitation. Security personnel may run the visitor's name through the wants/warrant system and authorized staff may perform a criminal history check. Questions asked of the complainant were those required by policy and were lawful, justified, and proper.

4. Discrimination/Racial – Deputy 1 racially profiled the African American complainant.

Board Finding: Unfounded

Rationale: Deputy 1, a Caucasian male, repeatedly questioned the African American complainant about his criminal history causing him to feel racially profiled. The complainant said that he denied having an alias and told them that he had never been arrested. Deputy 1 refuted the allegation as stated and provided information regarding the information requested from the complainant. Per detention policies, for the security of the institution and for the protection of the public, only those visitors with valid photo identification are granted visitation. Security personnel may run the visitor's name through the wants/warrant system and authorized staff may perform a criminal history check. Questions asked of the complainant were those required by policy and were lawful, justified, and proper and there was no evidence that racial profiling had occurred.

18-027

1. Excessive Force/Other – Deputy 2 grabbed and pulled the complainant's arm up over his head and behind his neck.

Board Finding: Not Sustained

Rationale: On August 17, 2017, at approximately 9:35 a.m., the complainant was at the Downtown Courthouse going through a metal detector when he said he was assaulted by Deputy 2. He said he placed his wallet, cell phone, and keys in a basket when Deputy 2 suddenly grabbed and pulled his arm up over his head and behind his neck causing intense pain. Deputies 1 and 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There were no identified witnesses to this event and surveillance video in place at the time of the incident expired within 60 days, well before the complaint was filed six months after the incident. The complainant said that he did not seek medical treatment and there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 and unidentified deputies stood by and failed to intervene in response to Deputy

2's use of force.

Board Finding: Not Sustained

Rationale: The complainant reported that four to five unknown deputies stood by and failed to take any action in response to Deputy 2's unprovoked and unnecessary use of force. Deputy 1 was assigned to the weapons screening position with Deputy 2 at the time of the incident. Deputies 1 and 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent an audio or video recording there is insufficient evidence to either prove or disprove the allegation.

18-036

1. Excessive Force – Deputies 1-4 assaulted the complainant on January 5, 2017.

Board Finding: Summary Dismissal

Rationale: This allegation was previously investigated in CLERB Case #17-010, and finalized by the Review Board on November 15, 2017.

2. Misconduct/Medical – Medical staff will not give the complainant his prescription opioid medications.

Board Finding: Summary Dismissal

Rationale: Medical personnel and/or medical decisions reside outside CLERB's jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority. This allegation of medical misconduct is referred to the Sheriff's Department as CLERB has no authority over non-sworn personnel.

3. Misconduct/Medical – "Palomar Medical" refused to take the complainant to a hospital for a broken back, fractured knee, torn meniscus, and a swollen cut eye, after he was assaulted by deputies.

Board Finding: Summary Dismissal

Rationale: Medical personnel and/or medical decisions reside outside CLERB's jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority. This allegation of medical misconduct is referred to the Sheriff's Department as CLERB has no authority over non-sworn personnel.

4. Misconduct/Medical – Unidentified staff refused to give the complainant an MRI for his hip and chest after he was assaulted by deputies on January 3, 2018.

Board Finding: Summary Dismissal

Rationale: Medical personnel and/or medical decisions reside outside CLERB's jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority. This allegation of medical misconduct is referred to the Sheriff's Department as CLERB has no authority over non-sworn personnel.

5. Misconduct/Medical – Medical staff will not give the complainant pain medication and/or antibiotics for a spider bite.

Board Finding: Summary Dismissal

Rationale: Medical personnel and/or medical decisions reside outside CLERB's jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority. This allegation of medical misconduct is referred to the Sheriff's Department as CLERB has no authority over non-sworn personnel.

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.