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# County of San Diego

## 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 October 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](http://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).

b) Conference with Legal Counsel – Anticipated Litigation: Per Government Code 54956.9(d)(4), based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

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 (6)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 17-058

1. Death Investigation/Officer-Involved Shooting – Deputy 1 shot and killed Jonathon Coronel on 07-05-17.

Board Finding: Action Justified

Rationale: Jonathon Coronel was a member of the Vista Homeboy Street Gang. Deputy 1 had been informed that there was an outstanding felony warrant for the arrest of Coronel. On 07-05-17, Sheriff's deputies broadcasted that Coronel had been located, and he was sitting in the front passenger seat of a vehicle in the city of Vista. A deputy briefly followed the vehicle, and Coronel fled to avoid being arrested. A foot pursuit ensued, which involved several deputies. Deputy 1 was in an area near where Coronel was spotted, and he responded to assist with the arrest. Coronel's physical description was broadcasted, and it was noted that he reached down to his pants waistband and had tried to pull something out. Coronel had been described as possibly armed and dangerous. The Vista Homeboy Street Gang had threatened Deputy 1 and other members of the Vista Sheriff's Department in retaliation for a prior Officer-Involved shooting. When Coronel was located, he had removed his shirt and wrapped it over his right arm.

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As Deputy 1 approached him, he noted Coronel was in a crouching position, with his arms behind his back. Coronel quickly brought his hands forward, pointing towards Deputy 1, holding what Deputy 1 believed was a gun wrapped in a tee-shirt. Deputy 1 considered Coronel's actions as an imminent threat and shot Coronel. Coronel died at the scene, and after an immediate pat down, no firearm was found. The cause of his death was listed as Multiple Gunshot Wounds; the manner of death was determined a Homicide. The actions of Deputy 1 were justified and reasonable under SDSD Policy and Procedure guidelines Section 8.1 entitled, "Use of Firearms/Deadly Force:" It is the policy of the San Diego County Sheriff's Department that deputies shall use deadly force only as a last resort and only after the deputy reasonably believes that the force used is necessary, was in defense of human life, including the deputy's own; or, was in defense of any person in immediate danger of death, or the threat of serious physical injury; or, to apprehend a fleeing felony suspect, if the felony involves death or serious physical injury or the threat thereof, or the deputy has reasonable cause to believe there is substantial risk that the suspect, if allowed to escape, would pose a significant threat of death or serious physical injury. The facts, evidence, and perceptions of Deputy 1 justified the use of deadly force against Jonathon Coronel. Deputy 1 separated from the Department on 08-06-18. Absent conflicting witness statements or videos of the shooting event, 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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#### **17-149**

1. Misconduct/Procedure – Deputy 1 refused to take a crime report from the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that a Homeowners Association (HOA) Committee Chairman and Committee Bookkeeper, prepared a ballot for assessments to the complainant's properties for maintenance and repair (improvements excluded) of a road system, and that the ballot was distributed using the United States Postal Service, which made it "possibly a mail fraud case." The complainant alleged that the HOA association is fraudulent and the Courts were negligent in taking action against this fraudulent entity. The complainant reported that on 11-22-17, he went to the Valley Center substation and spoke to Deputy 1 who refused to look at/accept his paperwork and replied, "I would not know what to do with it." Sheriff's Policy Section 6.71 entitled, "Crime Case Reports," states that a Crime/Incident Report shall be completed for felony and misdemeanor crimes. Upon legal counsel's review of this complaint, it was determined that while the complainant alleged that a crime had occurred, based upon the complainant's description of events, it did not meet the elements of a crime and their assessment deemed it civil in nature. Deputy 1 was not required to take a crime report and his actions were lawful, justified and proper.

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#### **18-034**

1. Death Investigation/Drug-Related – Deputies 1-3 utilized force during their arrest of Oscar Leal when he became unresponsive and stopped breathing.

Board Finding: Action Justified

Rationale: Oscar Leal was arrested per Health and Safety Code §11550(a) [Use/Under the Influence of Controlled Substances] when he showed signs and symptoms of being under the influence of methamphetamine. While being transported to the Vista Detention Facility, he became increasingly agitated, thrashed his body and kicked the inside of a patrol vehicle. For control compliance, and consistent with the Use of Force guidelines, listed in the SDSD Addendum F, Deputy 2, deployed Oleoresin Capsicum (pepper spray) on Leal for about 3-4 seconds, and per policy, notified the Communications Center of the use of force. Leal became more agitated, and violently kicked and rocked the patrol vehicle. Upon arrival to the detention facility, Leal remained agitated and kicked the vehicle doors. He also started to hit his head against the plastic divider within the patrol vehicle. To gain control and to prevent Leal from injuring himself, Deputy 2 deployed a second burst of Oleoresin Capsicum for about 2-3 seconds. The Oleoresin Capsicum had direct contact with Leal's forehead. In order to be evaluated for booking, deputies at the Vista Detention Facility decided to place Leal on a gurney to facilitate his medical assessment and to prevent him from injuring others. As he was being removed from the patrol vehicle, Leal first appeared to thrust himself towards deputies and then dropped his weight to a partial kneeling position. Deputies 1 and 3 placed Leal face down on the ground and used their weight and hand control to gain compliance. Leal was able to kick his legs free a few times and continued to kick. Consistent with the Use of Force guidelines, listed in the SDSD Addendum F, Deputy 1 attempted to apply maximum restraints to Leal Ankles. A cordcuff was placed on Leal's legs, and while attempting to secure the cordcuff to Leal's handcuffs, he became unresponsive and stopped breathing. As per video footage, two minutes and eleven seconds elapsed from the moment Leal was removed from the vehicle to the moment he stopped breathing. Resuscitative efforts were immediately initiated by Sheriff's deputies and jail nursing personnel.

Paramedics arrived moments later and took over resuscitation efforts. Leal was transported to Tri-City Medical Center where despite efforts, he failed to respond; his death was pronounced minutes after arrival to the emergency department. The cause of death was Sudden Cardiac Death due to Acute Methamphetamine Toxicity, agitation, physical altercation, and prone restraint. Contributing cause of death included arteriosclerotic cardiovascular disease. Because the physiological arrest (cardio-respiratory) occurred during an altercation with deputies, which included physical exertion and prone restraint, the manner of death was classified as homicide. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

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### **18-048**

1. Death Investigation/In-Custody Suicide – While in the custody of the Sheriff’s Department at the South Bay Detention Facility, Michael Patrick Sullivan hanged himself by the neck on 03-18-18.

Board Finding: Action Justified

Rationale: As per CLERB Rules and Regulations Section 4.3, CLERB shall have authority to review, investigate, and report on the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department, arising out of the performance of official duties, regardless of whether a Complaint regarding such death has been filed with CLERB. While in the custody of the San Diego Sheriff’s Department at the South Bay Detention Facility (SBDF), Michael Patrick Sullivan hanged himself by the neck with a braided bed sheet attached to the vent in the ceiling of his cell. During his medical intake screening and subsequent interactions with SDSD medical personnel, Sullivan never expressed suicidal intent and did not report a suicide attempt history. There is no evidence that Sullivan expressed any concerns about his mental or physical well-being to other inmates or any member of the SDSD, sworn or professional. The evidence supported that Michael Patrick Sullivan was properly classified upon his entry into the SDSD jail system after his 01-25-18 arrest. Because of his charges included a crime against a child under 14 years of age, Sullivan was correctly housed in Protective Custody (PC). He had a yellow wristband identifying him as “keep Separate” and was in the PC housing at the South Bay Detention Facility. He was not in Enhanced Observation Housing; therefore, security checks were standard checks. As per Detentions Policy 1.64, evidence showed that safety checks were conducted once within every hour. Upon being advised that Sullivan was found hanging in his cell by a sergeant, sworn and medical personnel expeditiously responded, cut him off the ligature suspension, and immediately initiated life-saving measures. He was pronounced dead when he failed to respond to resuscitative efforts. The cause of death was hanging, and the manner of death was suicide. 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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### **18-068**

1. False Reporting – A Sheriff’s Senior Volunteer Officer reported that the complainant was driving in the wrong direction of traffic.

Board Finding: Summary Dismissal

Rationale: According to the complainant’s written statement, she alleged that a Sheriff’s Senior Volunteer lied in her report to Deputy 2. The complainant stated, that the Senior Volunteer Patrol Officer reported that she was driving in the wrong direction of travel; she reported that the complainant was driving westbound in the eastbound traffic lanes. According to the Arrest Report, Deputy 2 responded to investigate a report of a wrong way driver. Per the description of the call, a Sheriff’s Senior Volunteer Officer had observed the complainant’s vehicle driving the wrong direction. When addressed by deputies, the complainant did not seem aware of her poor driving. Deputy 2 began to fill out a DS-427 (Driver Reexamination) for the complainant based on the Senior Volunteer’s observation of the complainant driving the wrong way and her being unaware of her poor driving. Sheriff’s Senior Volunteer officers are not equipped with Body Worn Cameras. There was no further evidence to confirm or refute the allegation that the complainant was driving in the wrong direction of travel. According to SDSD P&P Section 6.90, entitled, “Volunteer Patrol Program (VPP),” the Sheriff’s Department will actively and enthusiastically enlist the aid and support of senior citizens in the furtherance of the Department’s mission. The use of a volunteer patrol force to augment and assist Department personnel is in keeping with this policy. A force of Senior Citizen Volunteers (minimum age 55 years) which augments and assists regular patrol deputies in contract cities and in the unincorporated areas of San Diego County. Duties do not include or involve “bonafide” law enforcement crime activities or law enforcement criminal investigative activities. The volunteer’s duties may include, but are not limited to: Reporting suspicious persons and activities. Volunteers of the SDSD are non-sworn personnel, who CLERB does not have jurisdiction to investigate. The Review Board lacks jurisdiction per CLERB Rules and Regulations 4.1, Authority.

2. Excessive Force – Deputy 2 “ripped” the complainant’s medical alert necklace and key fob off from around her neck.

Board Finding: Action Justified

Rationale: According to the complainant’s written statement, Deputy 2 “ripped” the complainant’s medical alert necklace and key fob off from around her neck. She reported that Deputies 1 and 2 commanded she stop her vehicle. The complainant advised that she had a vehicle with keyless start ignition. She wore the key fob around her neck. According to the Arrest Report, the complainant refused to turn off and exit her vehicle. The complainant had her vehicle fob hanging around her neck on a lanyard. Her vehicle had a push start button and Deputy 2 believed removing the keys from inside the vehicle would disable the ignition and prevent the complainant from driving away. Deputy 2 advised that push button vehicles will only drive when the key is within a certain radius of the vehicle. Deputy 2 feared the complainant was going to drive away based on her repeated attempts to flee the scene. Deputy 2 believed the complainant would be a danger to the public...” According to Deputy 2’s BWC recording, the complainant was observed to drive away from the deputies. Upon reaching the complainant’s vehicle, Deputy 2 immediately opened the car door, grabbed the complainant’s left wrist, and demanded she gets out of the vehicle. The complainant complained about pain to her wrist. Deputy 2 invited the complainant to get out of the vehicle on her own free will, and advised that if she did not, he would use force to remove her from the vehicle. The complainant did not comply. The complainant repeated told Deputy 2, “Leave me alone.” Deputy 2 informed the complainant that if she did not exit her vehicle, he would use force to remove her from the vehicle. The complainant continued to refuse to comply. With his right hand, Deputy 2 grabbed and removed the complainant’s lanyard with the vehicle’s keyless fob from around the complainant’s neck. According to SDSD P&P Section 2.49 Use of Force, employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to Section ADDENDUM “F” Use of Force, It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. Deputies should choose the available force option, which is reasonable and necessary for the circumstances at the time. Hands-on control is used as a means of overcoming resistive or assaultive behavior. Soft hand control may be used to control subjects whose behavior does not demand more severe tactics. When a deputy needs to make an arrest or restrain an in-custody subject and the individual’s actions are actively resistant, reasonable compliance techniques such as arm locks and wrist locks may be necessary to obtain control and compliance. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Excessive Force – Deputy 2 “pulled” the handcuffed complainant up by her arm and “threw” her against his patrol vehicle.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 2 used excessive force when he arrested her. According to the complainant’s written statement, Deputy 2 opened the driver’s side door, grabbed her wrist, and removed her from her vehicle. After exiting the vehicle, Deputy 2 forcefully placed her wrist behind her back and threw her to the ground. The complainant advised that the ground was very hot. She was terrified, feared for her life, may have “blacked-out,” and was unsure if Deputy 2 kicked her while she was on the ground. Deputy 2 placed the complainant in handcuffs and “pulled” her up onto her feet and “threw” the complainant onto the hood of his hot patrol vehicle. During her detention, the complainant asked to have her handcuffs removed, stating that the handcuffs were worsening her injuries. Deputy 2 denied her request. The complainant advised that she has numerous previous injuries and was not as nimble. Deputy 2’s harsh handling had exacerbated her injuries. According to the Arrest Report, Deputy 2 reported that the complainant had assaulted him during her detention. Deputy 2 feared the complainant would continue to escalate her violent behavior based on her continued refusal to exit her vehicle. Deputy 2 pulled the complainant out of the vehicle by grabbing her left wrist and elbow. He took the complainant to the ground by using an “arm bar takedown.” He had the complainant stand up and escorted her to his patrol vehicle and secured her in the back seat. A review of Deputy 1’s BWC revealed Deputy 2 immediately placed his left hand on the complainant’s left wrist and commanded she step out of the vehicle. Deputy 2 instructed the complainant to unfasten her seatbelt. He advised the complainant that she was not going to drive away. The complainant refused and demanded, “Leave me alone. Leave me alone.” Deputy 2 said, “Step out of the car or I am going to take you out by force.” Deputy 2 was observed to remove the complainant from the vehicle. She was placed on the ground in a contoured seated position and was rolled over into a prone [face down] position. Her hands were placed behind her back and handcuffs were secured around her wrist. A review of Deputy 2’s BWC revealed Deputy 2 immediately opened the complainant’s car door, grabbed the complainant’s left wrist, and demanded she gets out of the vehicle. When the complainant complained of pain, Deputy 2 invited the complainant to get out of the vehicle on her own free will, but she did not comply. The complainant repeated told Deputy 2, “Leave me alone.” Deputy 1 was observed to go to the passenger

side of the vehicle, open the door, and unfasten the complainant's seatbelt. Deputy 2 informed the complainant that if she did not exit her vehicle, he would use force to remove her from the vehicle. The complainant continued to refuse to comply with his orders. With his right hand, Deputy 2 grabbed and removed the complainant's lanyard with the vehicle's keyless fob from around the complainant's neck. The complainant responded by slapping Deputy 2's hand with her right hand. He pulled the complainant out of her vehicle by her left arm and brought her down to the ground, immediately outside of her vehicle. The complainant was rolled over into a prone position, her hands were placed behind her back, and handcuffs were placed on her wrist. Once the complainant was secured, Deputy 2 put on gloves and offered to assist the complainant in rising to a standing position. Both Deputies 1 and 2 assisted the complainant with standing up. She was placed in the rear of Deputy 2's patrol vehicle and her back window was rolled down. He got into his vehicle, completed paperwork, and departed the scene with the complainant handcuffed and seated in the rear. At no time was the complainant observed to have "blacked-out" or lose consciousness, and at no time were Deputies 1 or 2 witnessed to kick the complainant. Neither Deputy 1, nor Deputy 2 were witnessed to "pull" the complainant up onto her feet. She was assisted into rolling over into a seated position and was assisted into a standing position. At no time were either Deputies 1 or 2 observed to "throw" the complainant onto the hood of their patrol vehicles. According to SDSD P&P Section 6.48 entitled "Physical Force," it shall be the policy of this Department whenever any Deputy Sheriff of this Department, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force shall only be that which the Deputy Sheriff believes necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate, or afford the Deputy control of, the confrontation incident. Addendum Section F, Use of Force Guidelines, shall constitute the operating Procedures Section of P&P 6.48. The Use of Force Guidelines shall be considered a component of the Department's Policy and Procedure Manual and as such, deputies will be held accountable for complying with its contents. The evidence showed that the alleged act or conduct did not occur.

4. False Reporting – Deputy 2 reported that the complainant hit his upper arm, pushed him away, and/or slapped him.

Board Finding: Action Justified

Rationale: According to the complainant's written statement, she alleged that Deputy 2 falsely reported that she assaulted him. The complainant reported that Deputy 2 reported that she hit his upper arm, pushed him away, and/or slapped him. The complainant denied assaulting Deputy 2. She further advised that she was uninterested in hurting the deputies. According to the Arrest Report, Deputy 2 reported that the complainant slapped his arm with her open hand when he reached back in the car. The complainant had assaulted Deputy 2 and he feared she would continue to escalate her violent behavior based on her continued refusal to exit her vehicle. In Deputy 2's BWC recording, the complainant was witnessed to continue to refuse to comply with Deputy 2's orders to get out of her vehicle. With his right hand, Deputy 2 grabbed and removed the complainant's lanyard with the vehicle's keyless fob from around the complainant's neck. The complainant was witnessed to respond by slapping Deputy 2's hand with her open right hand. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 2 arranged to have the complainant's vehicle towed from the scene.

Board Finding: Action Justified

Rationale: The complainant advised that Deputy 2 arranged to have her vehicle towed from the scene and that her vehicle was damaged in the process. In the complainant's written statement, she reported the vehicle windshield was damaged when Deputy 2 had it towed. The vehicle was not damaged prior to the deputies and tow staff handling it. In a telephonic interview with the complainant, the complainant explained that the damage that her vehicle sustained consisted of physical damage to the bumpers. She suspected that a flatbed tow truck was not used to tow her vehicle. The complainant was asked to describe the damage; however, she was unable to, except to say that both the vehicle's front and rear bumpers had to be removed and repainted. When asked if she was able to provide CLERB with a repair invoice, written estimate of repair cost, or vehicle insurance claim, she advised that she was unable to provide any documentation of the damage. According to the SDSD Notice of Stored Vehicle document, dated 03-28-18, the complainant's vehicle, was seized on 03-28-18. Deputy 2 cited the vehicle for violation of Vehicle Code Section 22651(g) – Driver Incapacitated. The document did not note any damage prior to, or as a result of, the tow services. According to the Notice to Appear Citation, on 03-28-18, Deputy 2 cited the complainant for violation of California's Penal Code Section 148(A)(1), a misdemeanor. According to California Vehicle Code Section 22651(g), a peace officer may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances: (g) If the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal, or (h) (1) If an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody. According to SDSD P&P Section 2.5I entitled, "Arrest, Search and Seizure," employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in

accordance with law and established Department policies and procedures. According to SDDS P&P Section 6.36 entitled, "Impounded/Stored Vehicle Reporting," whenever a vehicle is removed and stored from public or private property by members of this Department, a notice of storage stating the removal, the authority and the location of the storage yard shall be mailed to the registered and legal owners within two business days, with a copy sent to the tow yard. According to SDDS P&P Section 6.37 entitled, "Towing Policy," when vehicles are towed and/or stored, the removal shall be in compliance with Vehicle Code 22651 or other lawful authority. Under no circumstances shall the act of towing and/or storing of a vehicle be used as a means of punishment against any citizen. All stored or impounded vehicles shall be inventoried prior to removal by a tow company. The removal of any vehicle during or after an arrest shall only be authorized in the following situations: A vehicle may be towed when a deputy arrests any person driving or in control of a vehicle for an alleged offense and the deputy is required or permitted to take and does take the person arrested before a magistrate without unnecessary delay. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Discourtesy – Deputy 2 forced the complainant to walk from his patrol vehicle to the patrol station after she said she was unable to do so.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she claimed Deputy 2 was discourteous towards her when he forced her to walk from his parked patrol vehicle at the patrol station, to the patrol station building after she said she was unable to do so. The complainant reported that Deputy 2 parked a great distance from the entrance of the patrol station, and she was unable to walk from the patrol vehicle to the station entrance without stopping. She asked Deputy 2 for a wheelchair, a cane, and a chair, but he denied her request. The complainant advised that she had numerous previous injuries and was not as nimble. According to Deputy 2's BWC recordings, Deputy 2 and the complainant arrived at the patrol station. Upon parking his vehicle in the secured parking area of the patrol station, the complainant informed Deputy 2, "I can't walk this far." Deputy 2 replied, "You can. I'll help you. I'll help you." When the complainant asked for a cane or a wheelchair, Deputy 2 denied her request. He informed the complainant that the patrol station did not have a wheelchair and that he would not allow her to use her cane, as she had already assaulted him. Deputy 2 repeatedly informed the complainant that he would assist her in walking to the patrol station entrance. Deputy 2 opened the patrol vehicle door, unbuckled the complainant, and invited her to step out of the vehicle. Deputy 2 assisted the complainant in stepping out of the vehicle and into a standing position, and escorted her into the patrol station. The estimated distance from the patrol vehicle to the entrance of the patrol station was approximately ten yards. While en route to the patrol station entrance, Deputy 2 stopped three to four times, allowing the complainant to rest. Deputy 2 was polite, patient, and dutiful when he spoke to and handled the complainant. According to SDDS P&P Section 2.22 entitled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Employees shall not use insolent language or gestures in the performance of his or her duties. According to SDDS P&P Section 2.48 entitled, "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Discourtesy – Deputy 2 laughed at the complainant while her injuries were being photographed.

Board Finding: Unfounded

Rationale: According to the complainant, Deputy 2 was discourteous when he laughed at her. In her written statement, the complainant reported that Deputy 2 laughed at her while he photographed her injuries while at the patrol station. She reported that photos were taken of the injuries she sustained to her hands and wrist, but the injuries she sustained on her face were not photographed. While the photos were being taken, the complainant said Deputy 2 was laughing at her and mocked her. According to Deputy 2's Arrest Report, while en route to the patrol station, the complainant repeatedly complained that Deputy 2 about a broken foot, wrists, and shoulder. Deputy 2 asked the complainant several times if she would like for him to call for paramedics to evaluate her. The complainant refused medical attention each time he asked. Deputy 2 did not notice any visible injuries on the complainant; however, he took photographs of her and her extremities, and entered them into evidence. In viewing Deputy 2's BWC recordings, once in the patrol station, Deputy 2 escorted the complainant to the booking window, removed his handcuffs from around her wrist, and allowed her to sit on a stool at the booking window. Once the handcuffs were removed, the complainant pointed out an injury to her wrist, which she advised was due to the handcuffs. Deputy 2 advised he would take photos of her wrist. Deputy 2 BWC recording documented the complainant's behavior. The complainant consistently complained, was demeaning, and made demands to staff. Deputy 2 sat down to interview the complainant at the booking window; however, the complainant refused to answer his questions and continued to make derogatory remarks to Deputy 2. Deputy 2 took pictures of the complainant as she sat on the stool outside the

booking/processing window. Deputy 2 took pictures of the complainant's wrist, feet, and her head on his cell phone. At no time was Deputy 2 witnessed or heard to laugh at the complainant. Deputy 2 acted professional and dutiful in his interaction with the complainant. In viewing the eight photographs that Deputy 2 took of the complainant, Deputy 2 photographed a frontal picture of the complainant, from her waist to her head, her lower arms, wrist, and hands, with her torso, legs, and feet in the background. The photos depicted ecchymosis (discolored bruising) and swelling to the complainant's left wrist, which was said to be due to the handcuffs. Photo #2 was of the complainant's lower extremities, from her thighs to her feet. Her shoes were off, and her ankles, feet, and toes were without bruising or swelling. There was a small ecchymosis noted to the complainant's left-outer leg, under her knee. Photo #3 was out of focus and was angled towards the left side of the complainant's left-outer leg, under her knee and illustrated the quarter-sized ecchymosis. Photo #4 was of the left side of the complainant's face. Photo #5 was of the right side of the complainant's face. Her face was without bruising, defects, or swelling. Photo #6 was of the complainant's full body. She was seated, was unhandcuffed, her shoes were removed, and was pointing at her left ankle. Photo #6 was out of focus and was of the complainant's lower left leg. The complainant was seated, and the picture was captured from behind. According to SDSD P&P Section 2.22 entitled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Employees shall not use insolent language or gestures in the performance of his or her duties. According to SDSD P&P Section 2.4 entitled "Unbecoming Conduct," employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee. According to SDSD P&P Section 2.48 entitled, "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. According to SDSD P&P Section entitled "Addendum F – Use of Force," in all cases where force is used, photographs will be taken of the suspect regardless of injuries. Photographs will also be taken of where the force was applied. The evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Discourtesy – Deputy 2 "threw" a document at the complainant while she sat on a bench.

Board Finding: Unfounded

Rationale: According to the complainant's written statement, she alleged that Deputy 2 was discourteous towards her when he "threw" a document at her while she sat on a bench outside of the patrol station. The complainant reported that upon being released from custody, she sat on a bench in front of the patrol station. As she sat waiting for a ride, Deputy 2 exited the patrol station, walked over to her, and "threw" a Department of Motor Vehicle document at her, saying he forgot to give it to her. After doing so, he returned to the patrol station. According to Deputy 2's Arrest Report, while at the patrol station, Deputy 2 released the complainant from custody with a signed notice to appear. Deputy 2 gave the complainant a copy of the citation and explained the document to her. During CLERB's investigation, surveillance video recordings of the exterior of the patrol station were requested from the SDSD to either confirm or refute the allegation that Deputy 2 "threw" a document at the complainant while she sat on a bench outside of the patrol station, after she was cited and released. In an Inter-Departmental Correspondence from CLERB's liaison, he advised that the surveillance video recordings were not available as the surveillance video recordings were not stored that long. From previous investigations, it was advised that station surveillance recordings are stored for 60 days. As such, there was no surveillance video recordings of the exterior of the patrol station available. Prior to re-contacting the complainant as she sat on the bench outside of the patrol station, Deputy 2 turned on his BWC as he exited the building. According to Deputy 2's BWC recording, upon exiting the patrol station, Deputy 2 found the complainant seated on a bench with an unknown male addressing her. Deputy 2 said, "Ma'am, I forgot to give you some paperwork. That's yours okay. I'm going to put it right there for you." With that, Deputy 2 set the paperwork on the bench next to the complainant. Deputy 2 re-entered the patrol station front lobby and turned off his BWC. According to SDSD P&P Section 2.22 entitled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Employees shall not use insolent language or gestures in the performance of his or her duties. The evidence showed that the alleged act or conduct did not occur.

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**18-081**

1. Death Investigation/Drug-Related – Earl McNeil was arrested by National City Police Department (NCPD) and transported to San Diego Central Jail. NCPD officers and SDSD deputies utilized force against McNeil who became unresponsive and subsequently died.

Board Finding: Not Sustained

Rationale: NCPD police officers arrested and transported Earl McNeil to the San Diego Central Jail to be booked into custody for being under the influence of unknown substances, resisting arrest, and threatening an officer with force. NCPD police officers placed McNeil in a WRAP restraining device and had placed a spit hood over his head as he had spat at officers during his arrest. While in the jail sally port, Sheriff's deputies assisted the NCPD police officers in removing McNeil from their patrol vehicle and in controlling McNeil. Sheriff's deputies used force for control compliance and to protect McNeil from injuring himself. As McNeil continued to spit and saturate the spit hood, the spit hood became ineffective. For this reason, Sheriff's deputies placed an additional spit sock over McNeil's head. As McNeil continued to spit, and blood and saliva emanated through both spit socks, Deputy 1 placed McNeil's tee shirt over McNeil's face, covering his nose and/or mouth. The act of obstructing the nose and/or mouth was a violation of SDCSD policy Addendum F, entitled, "Use of Force Guidelines," which states that a subject's mouth and/or nose shall never be obstructed. McNeil was medically screened, and due to his agitation, suicidal statements, and overall condition, he was deemed unfit for jail. Paramedics were summoned to the jail so that McNeil could be transported to a hospital. While McNeil was in the ambulance, still in the jail Sally Port, and no longer under the control of the Sheriff's deputies, he went into cardiorespiratory arrest. Cardiopulmonary resuscitation was initiated and McNeil was transported to UCSD Medical Center. Despite medical intervention, McNeil failed to improve, and his death was pronounced 16 days after his admission to the hospital. The cause of death was listed as Hypoxic-Ischemic Encephalopathy (a type of brain dysfunction that occurs when the brain does not receive enough oxygen, or blood flow for a period of time. Hypoxic refers to a lack of or insufficient oxygen; ischemic refers to a low blood flow; and encephalopathy describes brain disorder, damage or malfunction), due to Resuscitated Cardiorespiratory arrest (when the heart or the lungs stop functioning), due to Methamphetamine Toxicity, Agitation, and Respiratory Compromise. The manner of death was listed as homicide. According to the Medical Examiner's opinion, the deputies' actions were contributory to McNeil's death; however, their actions were not the direct cause of his death. As such, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 placed a tee shirt over Earl McNeil's nose and/or mouth.

Board Finding: Sustained

Rationale: Per SDCSD reports, it was noted that Earl McNeil arrived to SDCJ wearing a spit hood utilized by NCPD officers. Despite having the spit hood in place, McNeil was able to successfully spit through it. Upon his arrival to the jail, Sheriff's deputies did not remove the spit hood, but placed a second spit sock over the first one. Throughout the reports, the spit socks were described as being ineffective as McNeil continued to successfully spit through both spit socks. Per the deputies Officer Reports the spit socks, were described as "soaked." McNeil was able to move the spit sock and repositioned it by biting into it. McNeil's actions prompted Deputy 1 to use McNeil's tee shirt as an "additional shield." Per his written report, Deputy 1 utilized McNeil's shirt to shield his mouth, preventing him from continuing to spit at deputies. According to SDCSD P&P Addendum F, entitled, "Use of Force Guidelines," a subject's mouth and/or nose shall never be obstructed. The policy does not consider the use of additional materials to be used as a shield or covering. The Medical Examiner's Autopsy report described the first spit sock as a 'spit hood,' which was saturated with bloody saliva, and along with the placement of a second spit sock and the shirt, compromised McNeil's respiratory and were contributory factors to McNeil's death. Dr. Campman also reiterated that McNeil's placement on the gurney compromised his respirations by having his head turned over the side of the gurney. The cause of death was listed as Hypoxic-Ischemic Encephalopathy (a type of brain dysfunction that occurs when the brain does not receive enough oxygen, or blood flow, for a period of time. Hypoxic refers to a lack of or insufficient oxygen; ischemic refers to a low blood flow; and encephalopathy describes brain disorder, damage or malfunction), due to Resuscitated Cardiorespiratory arrest (when the heart or the lungs stop functioning), due to Methamphetamine Toxicity, Agitation, and Respiratory Compromise. The manner of death was listed as homicide. CLERB recognizes that the use of McNeil tee shirt as a shield was to prevent a potential life-threatening disease, protecting Deputy 1 and his partners however, the placement of McNeil's tee shirt over the spit socks was in violation of policy and the conduct was not justified. Deputy 1 separated from the SDCSD on 08-19

#### **POLICY RECOMMENDATIONS:**

1. It is recommended that the Sheriff's Department develop policy to train deputies on the use of Universal Personal Protective Equipment (PPE) including the donning and doffing of gowns, disposable gloves, and the use of Full Face Shields when exposed to potential biological hazards, including blood and saliva.
2. It is recommended that the Sheriff's Department train deputies on how to inspect and if necessary, exchange new spit socks, with the use of PPE, for detainees wearing a spit sock, to prevent airway and breathing impairment by accumulated secretions, saliva or blood.

3. It is recommended that the Sheriff's Department add to the existing policy on Use of Force (Addendum F) a clause prohibiting deputies from adding additional items over spit socks to prevent respiratory compromise (ability to breath) to inmates.
4. It is recommended that the Sheriff's Department add to the existing policy on Use of Force (Addendum F) a procedure in the use of a WRAP restraining device, to include the monitoring of vital signs, body position, with special emphasis in the position of the subject's head to avoid breathing impairment, that may affect the level of consciousness.

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***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.