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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 November 9, 2021, meeting held via the BlueJeans Platform. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was 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 (8)**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****20-114**

1. Death Investigation/In-Custody Drug Related – Antonio Miguel Gonzaba died while in the custody of the San Diego County Sheriff's Department (SDSD) on 11-24-20.

Board Finding: Action Justified

Rationale: On 10-04-19, San Diego Police Department (SDPD) officers arrested Antonio Miguel Gonzaba for multiple related sex crimes, robbery, burglary, and other violent offenses. On 11-18-20, Gonzaba pled guilty to the most serious crime and was facing an approximate 35-year prison sentence. On 11-24-20, Vista Detention Facility (VDF) deputies were conducting a safety check when they discovered Gonzaba unresponsive in his cell. Sheriff deputies along with jail medical staff, responded, began life-saving measures and 911 was activated. Two doses of Naloxone were administered, with negative results. When paramedics arrived on scene, they initiated advanced cardiac life support (ACLS). Despite aggressive

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attempts at resuscitation, Gonzaba could not be revived, and his death was pronounced, via radio, by a doctor with Tri-City Hospital. Prior to Gonzaba being discovered unresponsive, jail surveillance video captured inmates passing items to Gonzaba under his cell door. Detectives conducted interviews with the inmates involved, all of whom denied any passing of illicit substances. Following the incident, a strip search was conducted with the involved inmates, and one was found to be in possession of methamphetamine. That inmate was charged, however, refused to talk to detectives. According to a review of jail documents and jail surveillance video recordings, security checks were performed in a timely manner and in compliance with San Diego Sheriff's Department Policies and Procedures (SDSD P&P). An autopsy was performed on Gonzaba's body, by a San Diego County Medical Examiner. No trauma or foul play was noted and Gonzaba's cause of death was determined to be fentanyl, bupropion, gabapentin, and trazodone toxicity with hypertrophic cardiomyopathy listed as a contributing condition. The manner of death was listed as accident. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

21-013

1. Misconduct/Procedure – San Diego Police Officers (SDPD) failed to transport the complainant to a hospital.

Board Finding: Summary Dismissal

Rationale: On 02-06-20, Oscar Chavez was arrested by the SDPD and booked into the San Diego Central Jail. The complainant stated the arresting officer declined his request to be taken to the hospital. CLERB has no authority over members of the SDPD, per CLERB Rules & Regulations 4.1 Complaints: Authority. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – An unidentified deputy failed to summon jail medical staff.

Board Finding: Not Sustained

Rationale: The complainant stated he advised an unidentified deputy in a hallway that his blood pressure was high, that he felt sick, anxious and asked them to summon medical personnel to his holding cell, but no one ever responded. Jail video surveillance was reviewed and showed the complainant in a holding cell, but offered no other evidentiary evidence. Prior to the holding cell placement, the complainant was screened by medical personnel and provided with a red wristband signifying he was a medical inmate. This colored wristband is utilized when the health of an inmate could be adversely affected if the inmate is exposed to simple physical stress, per DSB P&P section M.21 Medical Wristbands. An Intake Deputy provided information during the course of CLERB's investigation that was also considered in arriving at the recommended finding. There was insufficient evidence to either prove or disprove this allegation.

3. Misconduct/Procedure – Jail Medical staff did not provide medication or monitor the complainant for his high blood pressure.

Board Finding: Summary Dismissal

Rationale: The complainant stated that medical did not re-check his blood pressure, nor did they provide him with medication to bring down his blood pressure. Jail Medical staff are non-sworn employees of the SDSD in which CLERB has no authority per CLERB Rules & Regulations 4.1 Complaints: Authority. The Review Board lacks jurisdiction.

21-023

1. Misconduct/Medical - Unidentified jail medical staff refused to provide the complainant with medical treatment.

Board Finding: Summary Dismissal

Rationale: The complainant stated that he had injuries after his arrest and the intake nurse refused to provide him medical treatment. Jail medical staff are non-sworn members of the San Diego Sheriff's Department, over whom CLERB has no authority per CLERB Rules & Regulations 4.1 Complaints: Authority. The Review Board lacks jurisdiction.

2. Misconduct/Procedure - Unidentified deputies refused to provide the complainant with a wheelchair.

Board Finding: Not Sustained

Rationale: The complainant stated that he asked the deputies who searched him at intake for a wheelchair and they refused, however, he failed to describe or provide any further identifying information. Also, the complainant refused to provide access to his medical records which limited the scope of investigation. Jail surveillance video showed that Mascorro was placed into a wheelchair by a San Diego Police Department Officer once he arrived at the San Diego Central Jail vehicle sallyport area. The officer pushed Mascorro in the wheelchair until they arrived at the body scan room, where Mascorro stood up and walked without any assistance. Booking paperwork confirmed the complainant was medically screened and cleared for booking in accordance with Detention Services Bureau (DSB), Policy & Procedure (P&P), M.9 Receiving Screening. This policy specified that any arrestee who has any immediate/emergent medical needs will be refused and sent to an emergency department for clearance prior to booking. Absent medical records and audio evidence, there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Intimidation – Deputy 1 and/or 3 threatened the complainant.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 and 3 threatened to call a K-9 to attack/torture him because he asked for a wheelchair and threatened to break his arm if he did not get up. Jail surveillance video showed that Deputies 1 and 3 interacted with Mascorro when he was in a holding cell and the complainant in an exaggerated fashion, fell to the floor. While the video did not have audio capabilities, there were no visible signs or actions that deputies threatened the inmate. In accordance with the SDSA Canine P&P Manual, canines are not authorized for uses of force in the detention facilities. Deputies 1 and 3 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding; deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. The complainant was found not to be credible in his recall of these events and the evidence showed that the alleged act or conduct did not occur.

4. Excessive Force - Deputies 1 and 3 grabbed the complainant's arm and dragged him.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 and 3 grabbed and twisted his wrist from his "broken" arm and dragged him to the fingerprint area. DSB P&P Section I.89 Use of Force, requires that all use of force incidents be documented with a report. There was no evidence that Mascorro's arm was twisted or that he was dragged. Jail surveillance video confirmed that Deputies 1 and 3 assisted Mascorro off of the holding cell floor by grabbing onto his arms and lifting him up. The deputies then escorted the complainant from the cell to the fingerprint area as they walked beside him, held his arms and sat him down on a bench. Deputies 1 and 3 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding; deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. The complainant was found not to be credible in his recall of these events and the evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Procedure - Deputy 2 denied the complainant's request for Protective Custody (PC).

Board Finding: Action Justified

Rationale: The complainant said that he requested to be placed in protective custody because he had been attacked in jail before, but they refused; he also reported this information to a Classification Deputy. PC is the voluntary or involuntary placement of an inmate into separate and secure housing when there

is a verified threat against their life. SDSA records confirmed that a Classification Deputy interviewed the complainant who reported he was previously assaulted and did not want to return to a specific jail; the facility restriction was documented in accordance with policy. Furthermore, DSB P&P, Section J.3 Segregation: Definition and Use, explains that inmates shall be segregated when they are classified for safety and/or security reasons, are pending disciplinary action, or for investigative purposes. The complainant's safety concern was granted without the need to be placed in PC. Deputy 2 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding; deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. SDSA records confirmed the complainant was properly interviewed and classified with restrictions in place for his protection. The evidence showed the actions that occurred were lawful, justified and proper.

6. Misconduct/Procedure - Unidentified deputies refused to provide the complainant with writing tools.

Board Finding: Action Justified

Rationale: The complainant stated that he does not have any full names or badge numbers of deputies because they refused to provide him anything to write with. DSB P&P Section Q.7 Inmate Processing explains that inmates are searched, and all property inventoried; therefore, they are not permitted any items on their person during the booking process. In addition, DSB P&P Section I.52 Inmate Searches explains that all inmate searches shall be conducted with the purpose of providing a safe and secure environment for inmates and staff. Therefore, inmates would not be provided with an instrument that could be used as a weapon. Deputies 1 and 3 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding; deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. The evidence showed the conduct that occurred was lawful, justified and proper.

21-025

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-6 used force to subdue and handcuff Inmate Marius Anthony Migdalski.

Board Finding: Action Justified

Rationale: According to jail documents, Inmate Marius Migdalski was incarcerated at the San Diego Sheriff's Department's San Diego Central Jail. On 01-06-21, at 4:21pm, Migdalski was booked into custody for obstruct/resist executive officer and one count of vandalism over \$400. On 01-06-21, Deputy 3 conducted a security/safety check in the holding cell when Migdalski exited the cell against Deputy 3's instructions and pushed his body past Deputy 3 as he entered into the hallway. Deputy 3 instructed Migdalski to stop, but Migdalski continued down the hallway. Migdalski crossed the hallway diagonally and grabbed a large push broom. According to Deputy 3, it appeared Migdalski attempted to use the push broom as a weapon, and a struggle over the push broom ensued. Migdalski's assaultive behavior escalated as he began to kick and punch Deputy 3. During the struggle, Migdalski picked up Deputy 3's fallen, large metal flashlight and used it against him; Migdalski used the flashlight to strike Deputy 3 on his left thigh, the left side of his head, and once to the back of his head. Deputies 1,2,4,5, and 6 responded to the incident and Migdalski was subdued and placed in handcuffs. Jail surveillance video recordings of the incident were reviewed. The force executed by the deputies to subdue and arrest Migdalski was captured in the jail surveillance video recordings, as well as noted in the numerous reports submitted by the involved deputies. The deputies' reports mirrored what was witnessed in the jail surveillance video recordings. The force used against Migdalski was noted to be minimal, necessary, and objectively reasonable to effect the arrest and overcome resistance. No deputy was witnessed to strike Migdalski in the face or jaw. The SDSA notified CLERB that Migdalski lost a tooth after the incident. The evidence showed that the alleged act did occur, and it was lawful, justified and proper.

21-068

1. Use of Force Resulting in Great Bodily Injury – On 06-20-21, Luke Roberts fled the scene of a reported burglary. In order to apprehend Roberts, deputy use of force, including Taser and K-9 contact was utilized, which resulted in great bodily injury to Roberts.

Board Finding: Action Justified

Rationale: On 06-20-21, at approximately 1:08pm, an off-duty Sheriff deputy placed a call to the Sheriff's 911 Communications Center, to report suspicious behavior of a subject, Luke Roberts. The deputy reported the following: "Roberts, exited a parked vehicle, acting odd and possibly under the influence of a controlled substance. Roberts went car to car, looked into car windows and tried to open the doors. He was observed in one of the vehicles and exited with items in his hands." Sheriff's ASTREA (Aerial Support to Regional Enforcement Agencies) responded, located Roberts, and provided his location to Deputy 2 when he arrived on scene. Deputy 2 intercepted Roberts and informed him that he was being detained, directed Roberts to face away from him and place his hands behind his back. Roberts backed away. Deputy 2's body worn camera (BWC), with audio, captured the entirety of the incident. Deputy 2 continued to issue lawful commands for Roberts to stop, turn away from him and place his hands behind his back. Roberts fled, and a foot pursuit ensued. The California Peace Officers Legal Sourcebook (CPOLS), Section 2 titled, Search and Seizure Persons, states, in part, "You can base a detention on information you receive from an eyewitness, victim, police officer, dispatcher, or if accurate other official channels because the law generally considers such persons or sources to be automatically reliable. A suspect has 'no right to resist' a lawful detention. If the suspect does not stop, he has violated Penal Code section 148 by obstructing or delaying you in the performance of your duties and you may use whatever physical force is necessary to make him stop." Deputy 2 drew his Conducted Energy Device (CED), commonly referred to as a "Taser," and pointed it at Roberts. Roberts continued to run. An off-duty CHP officer joined the foot pursuit and tackled Roberts to the ground. Deputy 2 provided the following in his Arrest Report, "I gave Roberts commands to get onto his stomach. Roberts said he would comply, but he continued to struggle against our actions to safely detain him." Deputy 2's BWC captured his command's, warning Roberts he would be tased if he did not comply. Roberts continued to resist and Deputy 2 deployed his taser, in drive-stun mode, however, it was ineffective. SDSD P&P Addendum F Section titled, Use of Force Guidelines, states, in part, "As a force option, the CED shall only be used as a means of subduing and gaining control where there is an immediate threat justifying an intermediate level of force. The CED may be used in 'drive-stun' mode (placing the unit in direct contact with the suspect) if reasonable to protect the deputies or others from injury and to gain control of the suspect/inmate." According to the AXON Taser X2 User Manual, "Drive-stun mode is not designed to cause incapacitation and primarily becomes a pain compliance option." When K-9 Deputy 3 arrived on scene, he observed Deputy 2 and the CHP officer on the ground struggling with Roberts. Deputy 3 was heard on his BWC, "Stop fighting, Sheriff's Department with a canine, stop fighting or you're going to get bit, turn over or you're going to get bit." Deputy 3 provided the following statement in his Officer's Report: "Based on Roberts' assaultive actions, continued active resistance, refusal to comply with simple commands and the ineffectiveness of the CED, I determined the use of my canine partner would now be the safest option to detain Roberts. I deployed my K-9 partner towards Roberts' right leg and gave the bite command." SDSD P&P Addendum F Section titled, Use of Force Guidelines, states, in part, "Law enforcement trained canines are a viable intermediate force option when employed under the direction of their handlers for deputy protection and for apprehension of fleeing subjects wherein this degree of force is justifiable." Two additional deputies, 1 and 4 arrived on scene and assisted to apprehend Roberts. They applied direct downward pressure to Roberts person, to force his compliance and handcuff him. SDSD P&P Section 6.48 titled, Physical Force, states, "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." BWC and ASTREA video corroborated deputies documented reports of the incident and justification for the use of force. 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' actions were lawful, justified and proper.

21-090

1. False Arrest - Unidentified deputies arrested the complainant on 10-28-17.

Board Finding: Summary Dismissal

Rationale: The complainant stated that on 10-28-17, while at the Santa Sophia Catholic Church she was arrested by unknown sheriff Deputies and taken to the Las Colinas Reentry Detention Facility (LCRDF). The complainant stated she was at LCRDF for three days for being drunk in public but denied she was under the influence and denied she was charged with any crime; therefore, stated she was falsely arrested. The complainant also reported she suffers from a brain injury. Per CLERB Rules and Regulations, Section 4.1.2 Complaints, CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired. The Complainant shall bear the burden of demonstrating that he/she was prevented from timely filing a Complaint by reason of incarceration or physical or mental incapacity. Mental incapacity shall be proven by qualified medical opinion, and not based on the Complainant's unskilled observations or general averments. Physician's declarations should contain a comprehensive diagnosis of the Complainant's condition during the filing period and, additionally, should focus on whether the incapacity prevented the Complainant from filing a Complaint. The Review Board lacks jurisdiction as the complaint was untimely and the complainant failed to provide documentation for an exemption.

21-091

1. Excessive Force – Unidentified deputies utilized force to place the complainant into a safety cell on 10-28-17.

Board Finding: Summary Dismissal

Rationale: The complainant stated that she was placed into a “white rubber room” where three white female deputies tackled her, cut off her clothes with a razor, restrained her face down on a gurney and stomped on her bare feet with their boots. The complainant further explained she was at the Las Colinas Reentry Detention Facility (LCDRF) for 3 days for being drunk in public but denied that she was under the influence and was never charged. She stated she was upset and yelling because she felt she was falsely arrested and explained she suffers from a brain injury. Per CLERB Rules and Regulations, Section 4.1.2 Complaints, CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired. The Complainant shall bear the burden of demonstrating that he/she was prevented from timely filing a Complaint by reason of incarceration or physical or mental incapacity. Mental incapacity shall be proven by qualified medical opinion, and not based on the Complainant's unskilled observations or general averments. Physician's declarations should contain a comprehensive diagnosis of the Complainant's condition during the filing period and, additionally, should focus on whether the incapacity prevented the Complainant from filing a Complaint. The statement submitted to CLERB pursuant to this section shall be in writing and attested to under penalty of perjury as provided by Section 5.5 of these rules. The Review Board lacks jurisdiction as the complaint was untimely and the complainant failed to provide documentation for an exemption.

2. Excessive Force – Unidentified deputies cut the complainants clothes off with a razor and caused injury.

Board Finding: Summary Dismissal

Rationale: The complainant stated deputies cut her clothes off with a razor that resulted in a cut on her back. See Rationale #1

3. Misconduct/Procedure - Unidentified deputies utilized force and did not provide medical care.

Board Finding: Summary Dismissal

Rationale: The complainant stated she was left naked, had a cut on her back from the razor, and the bones in her feet were shattered/broken as a result of the stomping; she denied receiving any medical care after the incident. See Rationale #1.

21-109

1. Misconduct/Procedure – Classification deputies placed the aggrieved at the George Bailey Detention Facility.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “My son was moved to George Bailey before his “arrest” due to COVID-no courts”. On 10-12-21, CLERB received a signed complaint with an incident date of 01-17-20; no exemptions apply to this complaint. Per CLERB rules and regulations 4.1.2 Complaints, CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired. The Review Board lacks jurisdiction as the complaint was untimely.

2. Misconduct/Procedure – Unidentified deputies “tagged” the aggrieved with a wristband.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “Upon arrival (at GBDF), he was tagged with some kind of wrist band.” See Rationale #1.

3. Misconduct/Procedure – Unidentified deputies failed to protect the aggrieved.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “He was badly beaten, concussion, and his nose is now lopsided. He was set up by Guards, when inmates were done beating him they buzzed for the Guards”. See Rationale #1.

4. Misconduct/Procedure – SDSD released the aggrieved from custody without charges.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “He was taken to medical for a week and discharged-no charges.” See Rationale #1.

5. Misconduct/Procedure – SDSD released a mentally ill inmate without resources.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “George Bailey wanted to release a conserved mentally ill person to the street-in the middle of the night with other men. He had no phone, no money, no glasses. I had to fight to get him transferred to a psychiatric hospital in lieu of streets.” (See Rationale #1)

6. Misconduct/Procedure – SDSD failed to release funds.

Board Finding: Summary Dismissal

Rationale: The complainant stated, "he never received funds- see all attached. I did complain to jail at the time No Response!!" See Rationale #1.

7. Misconduct/Procedure – SDS D failed to respond to the complainant's various complaints.

Board Finding: Summary Dismissal

Rationale: The complainant stated, "Attached documents show various complaints without a response." See Rationale #1.

8. Misconduct/Medical – SDS D staff did not provide the aggrieved with medication(s).

Board Finding: Summary Dismissal

Rationale: The complainant stated, "he never received meds when in jail". See Rationale #1.

End of Report

NOTICE

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