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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 April 12, 2022, meeting held via the Zoom Platform. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

DEFINITION OF FINDINGS	
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 (10)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

21-014

1. Death Investigation/Traffic Pursuit – Deputies 1-3 pursued a stolen vehicle that subsequently collided with another vehicle resulting in the death of Isabella Nicole Calhoun.

Board Finding: Action Justified

Rationale: On 02-12-21, at approximately 9:58pm, deputies received notification of a stolen vehicle in the vicinity of the SDSA Spring Valley Storefront. Deputy 2 soon located and followed the stolen vehicle while waiting for additional units (Deputies 1 and 3) to arrive in anticipation of a high-risk vehicle stop. Deputy 2 activated his emergency lights to initiate a traffic stop when the stolen vehicle suddenly stopped, however, the vehicle sped away and then failed to yield at a stop sign. The stolen vehicle increased its speed from 45 to 60 mph and drove through a red light. The stolen vehicle passed in-between stopped vehicles at a red light and traveled at its highest rate of speed of 90mph while approaching a red light at Jamacha Road. Deputy 2 observed at least four other vehicles having the right of way and driving through the intersection. The stolen vehicle went into the left turn lanes, braked for a split second just before it collided into Nicole Calhoun's vehicle. Responding deputies removed Calhoun from her vehicle and initiated aggressive lifesaving efforts. She was transported to Scripps Mercy Hospital where she was later pronounced

deceased shortly upon arrival due to blunt force trauma. Upon review of all known evidence, deputies initiated the pursuit in compliance with SDCS P&P 6.43, Vehicle Pursuit, which states that a pursuit may be initiated when an individual clearly exhibits the intention of avoiding police contact or arrest by using a vehicle to flee; and the deputy has reasonable suspicion that the individual has committed a crime. Deputies must consider all public safety factors applicable to the particular facts and circumstances, and may consider other applicable public safety factor conditions such as location familiarity, traffic, roadway conditions, speed, time of day, vehicles involved, juvenile occupants, seriousness of the offense and its relationship to community safety, etc. A pursuit may be discontinued at any time at the discretion of the initiating deputy and when the danger posed by continued pursuit, to the deputy, the suspect, or the community, is greater than the value of apprehending the suspect(s). Per the Automatic Vehicle Location (AVL) records, the lead patrol vehicle pursued at speeds of 52, 43 and 69 mph; the secondary unit at speeds of 86, 61, 66, and 27 mph; and the final vehicle, tracked speeds of 61, 75, 84, and 86 mph. Additionally, surveillance video footage from two nearby businesses were analyzed based on known landmarks and determined the pre-impact speed of the stolen vehicle into Calhoun's vehicle was a minimum of 81mph and a maximum of 95mph. The pursuit lasted approximately 2 minutes and 13 seconds, with the last 13 seconds being crucial as the suspect significantly increased his speed while attempting to run a red light at the intersection; albeit Deputy 2 decreased his speed per the AVL records. Body Worn Camera (BWC) evidence detailed the continual assessment of public safety factors to include location, traffic, road conditions, and speed in compliance with SDCS policies. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of SDCS sworn personnel.

POLICY RECOMMENDATIONS:

1. It is recommended that SDCS modify P&P Section 6.43 – Vehicle Pursuit, to mandate that deputies shall not initiate or participate in a pursuit in which the only known offense at the time of the initiation or subsequent participation is a non-violent crime, to include a stolen vehicle.
2. It is recommended that SDCS modify P&P Section 6.43 – Vehicle Pursuit, to indicate that when initiating a pursuit, a deputy must not only consider all public safety factors applicable to the particular facts and circumstances, but “shall” (as opposed to the current standard of “may”) consider the applicable public safety factors listed in the P&P.

21-038

1. Death Investigation/In-Custody Drug Related – Jonathan Robert Whitlock died while in the custody of the San Diego County Sheriff's Department (SDCS) on 04-27-21.

Board Finding: Not Sustained

Rationale: On 02-13-20, Jonathan Robert Whitlock was arrested by San Diego Police Department (SDPD) officers for Arson: Inhabited Structure/Property Penal Code PC§ 451 and Health & Safety Code HS§ 11550 Under Influence of Controlled Substance. On 04-27-21, Whitlock was housed at the George Bailey Detention Facility (GBDF) when he was witnessed, by inmates, to go unresponsive and stop breathing. Inmates moved Whitlock to the floor and started CPR. Deputies responded within two minutes and took over life-saving measures. Another deputy responded within three minutes and administered one dose of Naloxone. Jail medical staff responded, administered two additional doses of Naloxone and one dose of Epinephrine. The automated external defibrillator (AED) was utilized, however did not advise a shock. Records indicated during life-saving measures, a faint pulse was felt briefly. Fire/paramedics responded and continued advanced life-saving measures. Paramedics administered an additional six doses of Epinephrine and transported Whitlock to a hospital. Despite continued advanced life-saving efforts, Whitlock was unable to be revived and his death was pronounced, in the emergency department, by a doctor at 6:43pm. Detectives interviewed inmates who provided testimony that Whitlock took fentanyl approximately 20 minutes before he went unresponsive. When questioned by detectives, about the fentanyl and where it came from, several inmates identified a person of interest. According to SDCS

records, a thorough search was conducted by 22 sworn staff, in the module where Whitlock was housed, in accordance with SDSD DSB P&P Section I.41 Inmate Cell Searches, unscheduled searches, for the purpose of providing a safe and secure environment free of contraband. Initially, a K-9 was requested for the search, however, denied due the potential presence of fentanyl. Additionally, and in compliance with SDSD DSB P&P Section I.52 Inmate Searches, all the inmates were patted down, stripped searched, and body scanned, which included clothing exchange. During the search of all four quads, and each inmate, no drugs were found. Although several inmates identified a person of interest, detectives were unable to obtain any physical evidence or a confession. Without a confession or physical evidence, there was not enough probable cause for an arrest or connection of Whitlock's death to any one person. On 04-28-21, the San Diego County Medical Examiner's Office (SDCMEO) conducted an autopsy. Whitlock's toxicological test results detected fentanyl and fentanyl metabolites. Whitlock's cause of death was acute fentanyl intoxication, with obesity as contributing, and the manner of death was accident. According to SDSD records, Jail Inmate Management System (JIMS) Area Activity Logs and corroborated through jail surveillance video, deputies took immediate and appropriate action in compliance with policy as they recognized and responded to Whitlock's medical emergency. Additionally, they completed all required safety and security checks timely, in accordance with SDSD DSB P&P Section I.43 Inmate Count Procedure and Section I.64 Safety Checks of Inmates in Housing Units and Holding Cells. Additionally, records indicated Whitlock was classified and housed in accordance with policy throughout his incarceration. Although SDSD has implemented and taken measures to deter drugs from entering their jails, Whitlock acquired fentanyl which consequently contributed to his death. A SDSD News Release, "Stopping Drug Smuggling in County Jails," dated 04-19-21, outlined some of the methods used to intercept drugs and provide education, such as Body Scanners at all intake facilities and George Bailey Detention Facility and inmate screening and flagging of potential smugglers. Despite all interdiction efforts, there is no doubt that Whitlock, while as an inmate in the custody and under the care of the SDSD, acquired and took fentanyl, which resulted in his death. As such, Whitlock's death was preventable. As the investigation failed to confirm how the fentanyl entered the detection facility, the evidence was insufficient to prove or disprove misconduct on the part of SDSD sworn personnel.

POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff Department revise Detention Services Bureau (DSB) P&P Section I.50 Body Scanners and X-Rays, as it pertains to Subsection III C and mandate that body scans be completed to include inmates transferred between facilities.

21-044

1. Misconduct/Procedure – Unidentified deputies returned mail addressed to Complainant Roditi.

Board Finding: Action Justified

Rationale: Jeanne Gold reported that on 04-19-21 she mailed three 10" x13" envelopes with "case material" to Jack Roditi, but one was returned to her and labeled "unable to forward." SDSD Documentation showed that Roditi received several notices that explained the reason certain contents of mail were unacceptable. On 06-24-21, a letter/postcard was returned to Gold due to an "unknown substance" (scents, fluids, etc.) and "watermarks, stains, heavy cologne." On 07-02-21, 08-10-21 and 08-14-21 letters and/or postcards were returned to sender (Gold) due to "glue, glitter, ribbon, string or bows, stickers"; further explanation was provided and stated, "multiple stickers-only sticker allowed is USPS stamp." DBS P&P, P.3 Inmate Mail states that incoming U.S. Mail will be rejected if the mail is marked with paint, crayon, glitter, labels, cloth, string, watermarks, stains, lipstick, cosmetics, perfume, or stickers. Evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified deputies removed a section of correspondence addressed to Complainant Roditi.

Board Finding: Not Sustained

Rationale: Jeanne Gold reported that some of the pages she sent to Jack Roditi were removed. She explained that she mails him “case materials” and the last page was removed. SDDS Documentation showed mail was returned to sender, there was no documentation that noted portions of the mail were removed. There was insufficient evidence to either prove or disprove the allegation. Also see Rationale #1.

3. Misconduct/Procedure – Unidentified deputies failed to return Complainant Gold’s phone calls.

Board Finding: Not Sustained

Rationale: Jeanne Gold reported that she called the jail to ask questions on several occasions but was directed to the Sheriff’s Office and/or told that someone would call her back. In addition, she said that she was not able to leave a message for command staff and did not receive any callback. Gold did not provide any dates or names pertaining to this allegation. Due to the volume of inquiries received by SDDS, there was insufficient information for CLERB to investigate this matter further. There was insufficient evidence to either prove or disprove the allegation.

4. False Reporting – Deputies 1 & 2 reported that Complainant Roditi refused cell mates.

Board Finding: Action Justified

Rationale: Jeanne Gold reported that deputies approached Jack Roditi with a new cell mate, and the cell mate refused to be bunked with Roditi, but deputies claimed Roditi was the one who refused a cell mate. According to SDDS documentation, Roditi received four rule violations because he refused a cell mate. On 05-02-21, Deputies 1 & 2 reported that Roditi refused to take any new cell mates and used profanity towards them. Pursuant to DSB P&P O.3 Inmate Rules & Regulations, Roditi was in violation of the following categories: 102-Inmates shall obey staff instructions, 105-Inmates shall not take part in boisterous activity, and 701-Inmates shall not engage in any activity that impairs or interferes with the operation of the facility. Evidence showed that Roditi refused a cell mate on more than one occasion; therefore, deputies did not produce a false report, but evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. False Reporting – Deputy 3 reported that Complainant Roditi refused cell mates.

Board Finding: Action Justified

Rationale: Jeanne Gold reported that deputies approached Jack Roditi with a new cell mate, and the cell mate refused to be bunked with Roditi, but deputies claimed Roditi is the one who refused a cell mate. Gold alleged that the deputy was not truthful in his report. According to SDDS documentation, Roditi received four rule violations because he refused a cell mate. On 05-04-21, Deputy 3 reported Roditi refused his cell mate and was warned by the deputy of the repercussions, but Roditi responded that he did not care. Pursuant to DSB P&P O.3 Inmate Rules & Regulations, Roditi was in violation of the following categories: 102-Inmates shall obey staff instructions, 105-Inmates shall not take part in boisterous activity, and 701-Inmates shall not engage in any activity that impairs or interferes with the operation of the facility. Evidence showed that Roditi refused a cell mate on more than one occasion; therefore, deputies did not produce a false report, but evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Retaliation –Deputy 3 placed Complainant Roditi in “solitary confinement.”

Board Finding: Action Justified

Rationale: Jeanne Gold stated that Jack Roditi was moved to “solitary confinement” (Administrative Segregation/Ad-Seg) as a form of retaliation due to her initial on-line complaint to SDDS. SDDS documentation showed that Deputy 3 warned Roditi he would be moved to Ad-Seg if he continued to refuse a cell mate. Roditi was moved to Ad-Seg on 05-04-21 because he refused to accept cell mates four times within two months and because he showed aggression towards deputies. DSB P&P Section J.3 defines Ad-Seg as separate and secure housing and is designated for inmates that are pending a hearing and/or investigation for a rule violation and for those that fail to adjust/conform to minimum standards.

Roditi continued to violate DSB P&P O.3 Inmate Rules and Regulations, category 701-Inmates shall not engage in any activity that impairs or interferes with the operation of the facility. Per SDDS documentation, Roditi was placed in Ad-Seg as a result of his rule violations. There was no evidence that deputies acted in retaliation, but evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Procedure – Unidentified deputies did not respond to Complainant Roditi's grievance/request for review.

Board Finding: Unfounded

Rationale: Jeanne Gold reported that Jack Roditi submitted a grievance/requested a review, but he did not receive a response from SDDS. On 06-26-21, Roditi wrote a grievance in response to the "Contents Unacceptable Notice" he received due to an "unknown substance" and/or "watermark, stain, heavy cologne" on his mail. A sergeant responded to Roditi's grievance and stated that the mail was rejected for safety reasons due to the contents being stained with an unknown substance. There was no evidence of any additional grievances written by Roditi. In addition, SDDS documentation showed that Roditi received several "Ad-Seg" reviews because he continually refused to comply with jail operations. Evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Procedure – SDDS refused books that were mailed to Complainant Roditi.

Board Finding: Action Justified

Rationale: Jeanne Gold reported that she mailed Jack Roditi books, but they were refused due to "spiral binding." Gold stated that the publisher, American Law Institute, said the books were "perfect bound." According to SDDS documentation, Jack Roditi received a "Contents Unacceptable Notice", dated 05-06-21 that noted the contents were "returned to sender" due to "spiral bound" (plastic or metal.) DSB P&P, P.3 Inmate Mail states that softcover books with wire and/or spiral binding are not usually allowed inside the facility due to their construction. Evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

9. Misconduct/Procedure – SDDS did not deliver Complainant Roditi's (legal) mail.

Board Finding: Action Justified

Rationale: Jack Roditi reported that around 06-03-21, his mother sent him legal materials that were marked "legal mail", but he only received 3 out of the 4 envelopes she sent. In addition, Jack Gold stated he had trouble receiving his "legal mail" as it takes more than a month to receive the materials. According to SDDS P&P, Section P.3 Inmate Mail, Confidential/Legal Mail is authorized correspondence between inmates and state/federal courts, any member of the State Bar or holder of public office, the Citizen's Law Enforcement Review Board (CLERB), Internal Affairs, and other specified authorized agencies. Although Roditi was a Pro Per inmate (acted as his own attorney), DSB P&P N.7 Pro Per Inmates states each Pro Per inmate may be authorized a legal runner/paralegal, investigator and/or a person authorized to aid them, and who is subject to approval by the court. There was no evidence that Gold was approved by the court to aid Roditi with his case; therefore, although Gold labeled the materials "legal mail" it was not authorized as such. Evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

10. Misconduct/Procedure – SDDS "mishandled" Complainant Roditi's (legal) mail.

Board Finding: Unfounded

Rationale: Jack Roditi reported that around 06-03-21, his mother sent him legal materials that were marked "legal mail", but he only received 3 out of the 4 envelopes she sent. Roditi reported he was concerned his mail was "mishandled." In addition, Roditi stated he had trouble receiving his "legal mail" as it takes more than a month to receive the materials. There was no evidence that Roditi's mail was mishandled. Roditi received several "Contents Unacceptable Notices" that explained why he did not receive some of his mail. The evidence showed that the alleged act or conduct did not occur. Please see allegation #1 & #9.

21-051

1. Death Investigation/In-Custody Suicide – Inmate Lester Daniel Marroquin, while in the custody of the Sheriff's Department, committed suicide via water intoxication on 05-30-21.

Board Finding: Action Justified

Rationale: Inmate Lester Daniel Marroquin was booked into Sheriff's custody on 12-18-20. He was housed at the Sheriff's San Diego Central Jail. Marroquin had a psychiatric medical history significant for mental illness and during his incarceration he had been placed in the jail's Safety Cells 11 times and had been housed in the jail's Enhanced Observation Housing (EOH) unit 17 times for expressing and attempting suicide on numerous occasions. On 05-30-21, after having been cleared from the Safety Cell and the EOH unit, Marroquin was transferred to his housing unit in Administrative Segregation housing. He was housed alone. While performing a routine Safety/Security check in the housing unit, deputies found Marroquin down and unresponsive in his jail cell. Upon being discovered, deputies and medical staff immediately performed life-saving measures until relieved by fire department personnel. Despite their efforts, Marroquin was pronounced deceased at the facility. The evidence indicated that Marroquin was properly classified upon his entry into the SDSD jail system after his arrest. Due to Marroquin's documented assaultive history, his current arrest charges, and his volatile psychiatric history, Marroquin was clad in jail issued green attire (greenbender) and was placed in Administrative Segregation housing. In review of the evidence, deputy submitted reports, jail surveillance video recordings, and medical records, it was obvious to the Department, sworn staff and medical staff, that Marroquin was a danger to himself. Marroquin was incapable of looking after his own health or caring for himself properly. Based on his prior incarcerations and his documented history of numerous suicide attempts, the Department, as a whole, attempted to intervene and protect Marroquin from himself. There was an emphasis in this investigation on the assessment and decision-making of sworn staff and medical staff, an important issue, which predominated this case, as it was medical staff who carried the role of determining if Marroquin was safe to remove from the Safety Cell, EOH, and to be placed in Administrative Segregation housing. There was particular need to be clear about the boundaries of sworn and professional roles, medical vs sworn staff, as CLERB does not have jurisdiction to evaluate the roles of Sheriff's medical staff, particularly in the duties and responsibilities in relation to the care of people who have mental disorders. According to SDSD DSB P&P Section M.4 titled, "Suicide Prevention and Focused Response Team," the SDSD recognizes that suicide prevention is a collaborative effort of all employees regardless of professional discipline or job title. Once Marroquin was cleared to be placed in Administrative Segregation housing, deputies performed their hourly safety/security checks in accordance with in SDSD DSB P&P Section I.64 titled, "Safety Checks: Inmates, Housing and Holding Areas." Upon being found down and unresponsive in his cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. The evidence showed that the alleged act or conduct that occurred was lawful, justified and proper.

21-054

1. Misconduct/Procedure – Deputies 1 and 2 arrived on scene "unaccompanied" by PERT.

Board Finding: Action Justified

Rationale: The complainant stated when she arrived at her client's home, she found Barnes gravely disabled and was concerned for her mental health and/or possible drug use. The complainant called the Sheriff's non-emergency number and asked for a Psychiatric Emergency Response Team (PERT) to respond and evaluate Barnes. SDSD documentation showed that the complainant did request PERT, but deputies arrived without them. SDSD Patrol Procedures Manual, Policy 23. States that PERT requests are coordinated through the Communications Center and deputies will be dispatched if PERT Team is not available. SDSD Emergency Services Dispatchers were questioned and provided the following relevant information. One Dispatcher reported that if PERT is available, PERT is dispatched; otherwise, only deputies will respond. Another Dispatcher stated that a PERT unit was not available at the time of the

incident, so patrol units were dispatched and made aware of the reporting party's initial request for PERT. The dispatcher also reported after patrol units respond and evaluate, they may request a PERT unit if it is deemed beneficial to do so. Deputy 2 provided information during the course of CLERB's investigation that was also considered in arriving at the recommended finding. The evidence showed PERT was not available at the time the request was made by the complainant, and deputies were within their right to respond without them. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 2 approached Barnes and instructed her to place her hands behind her back.

Board Finding: Action Justified

Rationale: The complainant stated that two deputies approached Barnes and pushed her up against the hood of a patrol vehicle. The complainant reported that the deputies asked Barnes to put her hands behind her back then tried to “forcibly” place her hands behind her back. According to SDSA documentation, Barnes had a previous encounter with deputies where she was not compliant, under the influence, had weapons on her person, and engaged in a physical altercation with deputies. Deputy 1 and Deputy 2 were aware of Barnes' history. Deputy 2 reported as he exited his patrol vehicle Barnes appeared to be under the influence and he was concerned that they were both standing in the middle of the roadway on Alpine Blvd. Deputy 2 was also concerned that Barnes could have a weapon concealed in her baggy clothing. The deputy used verbal commands and arm guidance to move Barnes away from the street and ensure she was not carrying any knives. Because Deputy 2 was aware of Barnes' history of carrying weapons, he stated it was imperative to gain control and escort her out of the road and to prevent her from reaching inside of her sweater. Deputy 2 reported he wanted to make the scene safe to evaluate Barnes. Barnes then pulled away from the deputy and kned him in the groin area. Barnes continued to resist and failed to comply. Deputy 2 attempted to escort Barnes away from the street, but she immediately pulled away and became combative. Deputy 1 arrived on scene and assisted Deputy 2. The sergeant reported that when he grabbed Barnes by the arm, she pulled away from him. These statements were corroborated with BWC. Deputies had reasonable suspicion to detain Barnes due to the nature of the call, her demeanor, and her history. The moment Barnes resisted deputies; they had the authority to detain her for resisting an executive officer. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Excessive Force – Deputy 1 punched Barnes multiple times.

Board Finding: Action Justified

Rationale: The complainant reported as deputies restrained Barnes, Deputy 1 punched the aggrieved in the face/mouth area three times. The complainant stated she was shocked and disgusted in what she believed was Sgt's excessive use of force. According to SDSA documentation, Barnes had a previous encounter with deputies where she was not compliant, under the influence, had weapons on her person, and engaged in a physical altercation with deputies. Deputy 1 was aware of Barnes' history. Per SDSA documentation, Deputy 1 reported he witnessed Barnes pull away from Deputy 2, so he attempted to place her hands behind her back, but she pulled away from him too and then they all fell to the ground. Deputy 1 reported Barnes tried to stand up and she moved her left hand towards her waistline, which prompted him to strike her face with his hand. Deputy 1 reported he feared Barnes would reach into her waistline and produce a dirk or dagger. Deputy 1 stated Barnes exhibited unusual strength, continued to resist, and was not compliant to verbal commands. Deputy 1 reported he administered more closed fist hand strikes as she continued to reach into her waistline. SDSA Addendum F, Use of Force Guidelines explains that deputies should chose a force option which is reasonable and necessary for the circumstances. It also states, “Subjects must not gain the advantage in a physical confrontation; therefore, deputies may need to use a force option that exceeds the subject's force level.” In addition, a fist strike to a subject's face when reasonable and necessary is not prohibited, per Addendum F. Barnes was not compliant and actively resisted deputies; therefore, her actions warranted the use of force that was administered to subdue her. Barnes continued to move and twist her body around while she was on the ground while deputies attempted to detain her. Per Addendum F, Use of Force Guidelines there was no violation of policy during

this use of force incident. Deputy 1 utilized an amount of force that was reasonable and necessary to subdue Barnes who exhibited unusual strength while under the influence of methamphetamine. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputies 1 and/or 2 failed to utilize de-escalation techniques.

Board Finding: Unfounded

Rationale: The complainant stated, “There were zero engagement techniques used and zero de-escalation techniques.” SDDS documentation and BWC showed when Deputy 2 arrived on scene, Barnes was in the middle of the roadway, so he attempted to verbalize commands with Barnes for her to get out of the street. Addendum F, Use of Force Guidelines states when verbalization proves ineffective, arm guidance may be used. Deputy 2 grabbed Barnes by the arm and placed one hand on her back/shoulder area to guide her toward the patrol vehicle. BWC showed that Deputy 2’s immediate actions were to ensure everyone was safe and out of the road. In addition, Addendum F, Use of Force Guidelines, de-escalation is defined as actions taken in an attempt to stabilize an incident in order to try and reduce the immediacy of a threat. De-escalation techniques *should* only be used when it is safe and feasible to do so. (The word *should* means that deputies were not mandated to use de-escalation techniques.) Please note, Addendum F Use of Force Guidelines, De-escalation policy was updated on 12-31-21 to, “De-escalation techniques shall only be used when it is safe and feasible to do so.” The nature/location of the call and Barnes’ history with deputies did not deem a safe and feasible environment for all parties involved in the incident. Deputy 2 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did not occur.

5. Criminal Conduct – Deputies 1 and/or 2 violated Barnes’ constitutional/civil rights.

Board Finding: Unfounded

Rationale: The complainant stated that she believed several of Barnes’ constitutional rights were violated. During CLERB’s investigation, the complainant elaborated that the rights violated were unreasonable search and seizure, false arrest, direct violent actions and/or failure to intervene. The Fourth Amendment prohibits “unreasonable” searches and seizures of people. A “seizure” of a person occurs when a peace officer physically applies force with the intent to restrain. SDDS documentation showed that a seizure took place, but evidence showed that the deputies’ actions were reasonable. Deputy 2 was aware of Barnes history with deputies and history of drug use; therefore, due to safety reasons, and the nature of the initial call the deputy had reasonable suspicion that she had a concealed weapon on her person which led to his actions to gain control of her. In addition, Deputy 2 stated he wanted to escort her out of the road. Furthermore, the complainant alleged that deputies violated their constitutional duty to protect Barnes’ civil rights in Title 18, U.S.C., Section 242 by either direct violent actions or failing to intervene. Title 18, Section 242 states, “It is a crime for a person acting under color of any law to willfully deprive a person or privilege protected by the Constitution or laws of the United States.” There was no evidence that deputies violated any constitutional and/or civil rights by their actions. Deputies responded to a call and acted upon their knowledge and experience with Barnes. Deputy 2 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did not occur.

21-058

1. Death Investigation/Drug-Related – David Sawyer was contacted, searched, and found in possession of methamphetamine by Deputy 1. While being placed under arrest, Sawyer attempted to flee and ingested the methamphetamine. Paramedics were contacted and Sawyer was transported to a hospital where he was pronounced deceased.

Board Finding: Action Justified

Rationale: David Sawyer was a 55-year-old Caucasian male who resided in the El Cajon area with his elderly mother. Sawyer had several health issues, suffered a traumatic brain injury about 20 years ago

and had an extensive history of illicit drug use. On 06-21-21, at approximately 11:50 am deputies responded to a call of an intoxicated male swinging a rake and banging on a house. Deputy 1 arrived on scene and approached Sawyer, who was sitting inside of his vehicle. Deputy 1 engaged in dialogue with Sawyer, where he consented to be searched by the deputy. The deputy allowed Sawyer to grab his cane from the back seat of his convertible, as he had trouble standing up on his own. Deputy 1 searched Sawyer and found a plastic sandwich bag with methamphetamine on his person. Sawyer denied it was methamphetamine and the deputy placed the bag of methamphetamine on the trunk of the car and gave Sawyer a verbal command to give him his hands. Sawyer then grabbed the bag from the trunk and attempted to quickly walk/limp away from the deputy. Sawyer was able to take about four to five steps until Deputy 1 reached out and grabbed Sawyer's arm/shoulder, which caused Sawyer to plunge towards the ground. Sawyer laid face down on the pavement with his forearms tucked under his chest. Deputy 1 gave verbal commands to Sawyer to place his hands behind his back, but Sawyer attempted to lift himself up from the ground so the deputy used force and applied downward pressure with his hand on the back of Sawyer's head to gain control and ensure Sawyer would not try to escape again or attack him. Pursuant to SDSD P&P Use of Force Addendum F, Force Options, "Subjects must not gain the advantage in a physical confrontation; therefore, deputies may need to use a force option that exceeds the subject's force level." Sawyer actively resisted the deputy when he attempted to escape and averted from placing his hands behind his back by giving himself leverage with his arms as he tucked them under his chest/torso area when he fell on the ground. The force used by Deputy 1 was in accordance with SDSD policies and was applied in a reasonable manner for him to gain control of Sawyer. Deputy 1 reported he noticed Sawyer had the bag of methamphetamine in his mouth, told him to let go and ripped the bag away from Sawyer. A second deputy arrived on scene and assisted; the deputies continued to give Sawyer verbal commands to place his hands behind his back. Sawyer ultimately complied and was handcuffed. The second deputy dispatched for paramedics and notified a supervisor about the use of force. As reported by deputies and as observed on Body Worn Camera, Sawyer had an abrasion on his forehead due the use of force. After Sawyer was handcuffed, he seemed cooperative and was engaged in dialogue with the deputies. Sawyer expressed his concerns about his family, the consequences for his actions, and even thanked the deputies for the way they spoke with him. Sawyer agreed to allow the paramedics to transport him to the hospital and signed the citation with a promise to appear in court for possession of a controlled substance. Medics transported Sawyer to Alvarado Hospital's Emergency Department where he was observed and treated for the ingestion of methamphetamine, unstable vital signs, and cardiorespiratory and neurological status. Sawyer subsequently became unresponsive, resuscitative efforts were administered, but he was pronounced deceased at 4:03 pm. Based on the autopsy findings, the cause of death was toxic effects of methamphetamine with a contributing factor of hypertensive cardiovascular disease; obesity, and the manner of death was determined to be an accident. According to all available evidence, deputies followed procedure during their interaction with Sawyer. Deputies responded to a radio call, Deputy 1 asked for consent to search, and reasonable force was used to gain control of Sawyer after he attempted to escape and was not complaint to verbal commands. Deputies ensured that Sawyer received medical attention to treat the scrape/abrasion on his forehead and be monitored for the methamphetamine he ingested. An autopsy noted an abrasion to the decedent's forehead (which was a result of the use of force), but no trauma was noted within the skull. Deputy 1 and a Department Information Source also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of the Sheriff's Department sworn personnel.

21-078

1. Use of Force Resulting in Great Bodily Injury – Deputies 1 and 2 used force to effect the arrest of Jacqueline Marcia Blakeney.

Board Finding: Action Justified

Rationale: There was no complaint of misconduct, and this case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According to Blakeney's San Diego Sheriff's Department (SDSD) Arrest Report, Blakeney was involved in

a physical assault on another. She was determined to be the aggressor/assaulter, was arrested, and transported to the Las Colinas Detention and Reentry Facility (LCDRF) in Santee. Upon arriving at the jail, Blakeney refused to get out of the patrol vehicle. Paramedics were summoned to evaluate Blakeney as she had complaints of not feeling well. Upon medic's arrival, Blakeney was assisted onto a gurney, where she willfully slumped off the gurney. In an attempt to assist Blakeney, Deputy 2 unhandcuffed her. Blakeney "completely unprovoked," spat on Deputy 1. Blakeney's spit hit the left side of Deputy 1's face and shoulder. Being aware of Blakeney's lifestyle, Deputy 2 expressed a concern for the transmission of pathogens from exposure to Blakeney's bodily fluids and other potentially infectious materials. Deputy 2 held Blakeney's unhandcuffed left arm and attempted to pin it on the gurney, to prevent Blakeney from escaping, fearing she might physically assault him, Deputy 1, or the paramedics. According to the written reports, Blakeney wiggled and thrashed around and resisted their efforts in an effort to free herself from Deputy 2's grasp. Deputy 2 instructed Blakeney to stop struggling and to calm down. While restraining Blakeney's arm, Deputy 2 "heard a popping sound and Blakeney stopped fighting." When Blakeney ceased resisting, Deputy 2 was able to handcuff Blakeney's left arm to the gurney's rail. Blakeney was subdued and was medically assessed by the on-scene paramedics. Paramedics informed the deputies that Blakeney probably sustained a broken left arm. Blakeney was immediately transported to the hospital where she was medically evaluated and her injury was confirmed; she had sustained an upper left arm fracture. Blakeney was booked into custody while at the hospital and remained at the hospital while she was treated for her injury. Jail surveillance video was provided from the SDSD. The video recording was provided in a timely manner and clear; however, once the fire truck arrived on scene, the fire truck blocked the view of Deputy 1's patrol vehicle and the use of force involving Blakeney was unviewable. CLERB sought an interview and/or statement from the involved Santee Fire Department officers and paramedics; however, after many attempts they did not respond. Based on the evidence provided, the force used against Blakeney, was necessary, appropriate, effective, and reasonable for the circumstances at the time in gaining compliance. During the incident, Blakeney exhibited psychological intimidation, passive resistance, active resistance, and assaultive behavior towards the deputies. In response, the deputies executed hands-on control techniques. Once control was established, Blakeney was immediately evaluated by emergency personnel and was transported to the hospital for examination by a physician. The actions executed by the deputies were in accordance with SDSD Policies and Procedures and there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

2. Misconduct/Procedure - Deputies 1 and 2 failed to activate their Body Worn Cameras (BWC).

Board Finding: Action Justified

Rationale: During the aforementioned use of force, Deputies 1 and 2 did not activate their BWC during the incident and subsequent use of force. According to SDSD P&P Section 6.131 titled "Body Worn Camera," it is the intent of the Sheriff's Department to record all law enforcement related contacts, and other contacts deemed appropriate. When responding to a call for service, a deputy shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. Deputies should also begin recording prior to initiating any law enforcement related contact. Deputies shall activate the BWC to record all law enforcement related contacts. According to the policy, deputies shall begin recording prior to arriving to an incident if the call has the potential to involve immediate enforcement action upon arrival. In Deputy 1's written report, she documented that it was not her usual/typical practice to activate her BWC when booking an arrestee into jail. Deputy 1 reported that she believed "*Blakeney was only going to receive medical attention*" and she did not activate her BWC to be sensitive to the arrestee's medical information and privacy. The policy states that deputies shall be sensitive to patients' rights to privacy when in a hospital or medical facility setting and attempt to avoid recording persons other than the victim, witness or suspect. Though the policy advised deputies not to record patients during medical or psychological evaluations by a clinician or similar professional or during treatment, Deputy 1 had not yet escorted Blakeney to the jail's medical intake, as Blakeney refused to exit her patrol vehicle. Deputy 1 also stated, "*The use of force began unprovoked with the spitting and therefore I just reacted to the assault and did not have time to activate the BWC.*" Deputy 1 was at a SDSD facility when the incident occurred. The SDSD policy states that while away from department facilities, deputies shall keep their BWC powered on and in stand-by mode, anticipating law enforcement related contacts. In Deputy 2's written report, Deputy

2 reported that he had his BWC activated [turned on and in the standby mode] after his previous call of service. When he initially spoke with Deputy 1, he muted his BWC so he could collect information and to discuss “a possible action plan.” During the use of force, Deputy 2 looked down at his BWC and noticed that it was turned off. Deputy 2 explained that he was not sure if he had “turned it off earlier, to stop the recording from my other incident and start a new one and just forgotten to re start the camera, or if the camera was turned off during the melee [commotion] with Blakeney.” According to the policy, if for confidential or personal reasons, deputies feel the need to power-off their BWC momentarily (i.e. phone call, email or bathroom break) while away from department facilities, they need to remember to power-on and reactivate their BWC after their reasoning for powering-off has concluded. The record mode of the camera should be activated prior to actual contact with a citizen (victim/witness/suspect), or as soon as safely possible, and continue recording until the contact is completed. The policy also states that in situations where activation was not accomplished prior to arriving on scene, those reasons shall be articulated in writing via case related report, or if no report, in CAD. In accordance with the policy, both deputies articulated in their written reports why their BWC were not turned on. Though the policy as written at the time of the incident gives exceptions to situations when BWC’s need not be activated, CLERB believed that regardless of the setting, in a department facility or not, deputies confronting, or the potential to confront, a violent or assaultive suspect, or anticipating using force, shall activate their BWC’s to record the encounter. Though this was not done, there was no violation of the policy as it was written at the time of the incident.

POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff’s Department (SDSD) change SDSD P&P Section 6.131 titled “Body Worn Camera,” to direct that deputies *shall* begin recording prior to initiating any law enforcement related contact.

21-079

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 deployed his Sheriff’s Canine on Stephen Wayne Beshirs, which resulted in Stephen sustaining dog bites.

Board Finding: Action Justified

Rationale: Mrs. Beshirs had a restraining order against her husband, Mr. Beshirs; Mr. Beshirs was the restrained party in a served Domestic Violence Criminal Protective Order protecting Mrs. Beshirs. On 07-23-21, Mr. Beshirs was under the influence of alcohol when he used a replica gun and broke a window into Mrs. Beshirs’ motorhome. Once in her home, Mr. Beshirs assaulted Mrs. Beshirs. Sheriff’s deputies were summoned to the residence. Mr. Beshirs attempted to evade arrest and barricaded himself in a residential detached garage. Given Mr. Beshirs aggressive demeanor and his willfulness to evade apprehension, additional force and potential injury to the deputies would have been imminent. Mr. Beshirs had a tactical advantage due to knowing the property and layout of the residence which left deputies vulnerable to ambush. Additionally, Mr. Beshirs demonstrated an eagerness and desperation to avoid capture. Based on Deputy 1’s training and experience, coupled with the totality of the circumstances, the decision was made to deploy Deputy 1’s Sheriff’s Canine. The Sheriff’s canine unit quickly located Mr. Beshirs and engaged him, which resulted in Mr. Beshirs sustaining dog bites. Deputy 1 used a “break stick” to release the dog’s bite. Once Mr. Beshirs was detained, paramedics were summoned to the scene and Mr. Beshirs was transported to the hospital where he underwent medical treatment. Mr. Beshirs was arrested for assault with a deadly weapon with force, domestic violence battery, vandalism, and violation of a criminal protective order. After being treated at the hospital, Mr. Beshirs was transported to jail where he was booked into custody. Mr. Beshirs and Mrs. Beshirs were interviewed and provided a statement. Both parties reported that the use of the Sheriff’s canine was excessive, and that the injuries Mr. Beshirs sustained were unnecessary and unwarranted. In review of evidence in this case, which included numerous Body Worn Camera recordings, audio recordings, photographs, reports, and statements, the force used against Mr. Beshirs was necessary, appropriate, effective, and reasonable for the circumstances at the time in gaining compliance. During the incident, Mr. Beshirs exhibited active

resistance and assaultive behavior towards the deputies. In response, the deputies executed less-than-lethal control techniques. Once control has been established, Mr. Beshirs was immediately evaluated by emergency personnel and was transported to the hospital for examination by a physician. The actions executed by the deputies were in accordance with SDDS Policies and Procedures. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel. The deputies who responded to the scene acted within policy and procedure and law. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

21-106

1. Misconduct/Discourtesy – Deputy 1 implied and/or blamed that (Encinitas) “residents were the problem” on 05-20-20.

Board Finding: Summary Dismissal

Rationale: The complainant stated, in regard to the Safe Parking Program, “He (Deputy 1) said that Program, that he/she knew moved transients into most of our hotels and marketed them to migrate to Encinitas, had no impact whatsoever on crime and he/she implied the “residents were the problem “. On 10-07-21, CLERB received a signed complaint regarding allegations against Deputy 1. The incident giving rise to the complaint occurred on 05-20-20, however the complainant reportedly was not made aware until June of 2020 following the publication of a SANDAG (San Diego's Regional Planning Agency) report. 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 or the complaint clearly lacks merit.

2. Misconduct/Procedure – Deputy 1 showed unfair treatment to non-profit organizations.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “Deputy 1 appeared to be controlled by the powerful nonprofits.” See Rationale #1.

3. False Reporting – Deputy 1 “lied/misled the community” about crime statistics.

Board Finding: Summary Dismissal

Rationale: The complainant stated Deputy 1 lied and misled the community. See Rationale #1.

4. Misconduct/Procedure – Deputy 1 mismanaged the North Coastal Station when crime rose during the time period of 01-01-20 through 06-30-20.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “In sum, during 6 months from 01-01-20 to 06-30-20, Encinitas went from the #1 safest town in San Diego to the #1 fastest growing crime town in San Diego. This happened under Deputy 1's watch.” See Rationale #1.

5. False Reporting – Deputy 1 utilized “false information” which impacted contract renewals.

Board Finding: Summary Dismissal

Rationale: The complainant stated Deputy 1 utilized “false information” which impacted contract renewals. See Rationale #1.

6. Misconduct/Truthfulness – The “Sheriff”/Deputy 1 lied to the community.

Board Finding: Summary Dismissal

Rationale: The complainant stated, "When the Sheriff lied to the community this allowed the nonprofits and Mayor free reign to expand and continue exploiting our town for state grants and made the Mayor look better for her Senate Run." See Rationale #1.

7. Misconduct/Truthfulness – Mayor Blakespear "forced our Sheriff to lie/mislead us about crime."

Board Finding: Summary Dismissal

Rationale: The complainant provided a YouTube video link with his signed statement. The YouTube link was entitled "Cather Blakespear: She Forced Our Sheriff to Lie and/or Mislead Is About Crime [sic]." Per CLERB rules and regulations 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against Peace Officers or Custodial Officers employed by the County of San Diego in the Sheriff's Department. Mayor Blakespear is not a Peace Officer or Custodial Officer employed by the County of San Diego in the Sheriff's Department. The Review Board lacks jurisdiction.

8. Misconduct/Discourtesy – Deputy 1 "ignored" email correspondence from the complainant numerous times.

Board Finding: Unfounded

Rationale: The complainant stated, "I've tried infinite times to communicate with him and he/she'd ignore me." The complainant provided emails to Deputy 1 as evidence in communication attempts. The complainant's email to Deputy 1 on 10-06-21, stated "What do you say? I don't expect an answer, but only straight people are persistent in seeking the truth "first" seeing what their alternatives are". SDDS P&P 2.1 Rules of Conduct for Members of the SDDS, states, "All employees shall conform to Federal, State, and Local laws, as well as to the policies of this Department. It shall be the responsibility of all employees to familiarize themselves and comply with all such policies, orders, directives, rules and regulations of this Department". SDDS P&P 7.13 Sheriff's Use and Support of Information Technology has a section entitled E-mail usage which states, "E-mail is a recognized form of business communication and shall be accessed and answered in a timely manner." Deputy 1 provided confidential information during CLERB's investigation that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did not occur.

21-112

1. Misconduct/Procedure – Deputy 1 failed to write a report.

Board Finding: Not Sustained

Rationale: The complainant stated, "I was a victim of a hate crime while delivering for Axehire on October 14th at 6:45PM". According to the complainant, he pulled into a nearby homeowner's driveway to drop off a package nearby, due to lack of ample parking. When he returned to his vehicle, the homeowner returned home, blocked the complainant's vehicle, and accused the complainant of stealing packages. Once the homeowner moved his vehicle and the complainant drove away, the complainant yelled out the car window about being held captive due to his skin color and the way he looked. The homeowner followed him and smashed his rear window which had a sticker that said "DISCRIMINATION" with the word "nation" highlighted. According to the complainant he was a victim of vandalism, false imprisonment, and a hate crime. As per SDDS P&P 6.71 entitled "Crime Case Reports," A crime/incident report shall be completed for the following Uniform Crime Reporting: Part 2 Crimes: All other reported misdemeanor crimes. Deputy's Reports: An Officer's Report may be completed to report a miscellaneous incident or provide supplemental information when appropriate. According to BWC footage, Deputy 1 asked Osawa if he was looking to get the window replaced through insurance or prosecution. Osawa expressed concern about going through his insurance. After a brief discussion with Osawa, Deputy 1 went to his Field Training Officer (FTO) and discussed Osawa's desire for prosecution. Deputy 1 broadly explained the Citizen's Arrest process and

Osawa asked if there was another option since he was concerned about the effect on his insurance. As per SDSD P&P 6.110 entitled Private Person Arrest, "When a private person notifies a Deputy Sheriff of his/her desire to make a lawful arrest, for a misdemeanor not committed in a deputy's presence, he/she shall advise the private person that they may make a physical arrest or file a crime report." After the discussion, Deputy 1 asked if Osawa wanted him to get the information or if he wanted to prosecute. Osawa did not answer the question but based on his comments, it appeared he did not want to do a Citizen's Arrest due to potential attorney costs and potential for increased insurance premiums. BWC footage showed when Deputy 1 interviewed the homeowner to get his information, it was discovered the homeowner's foot was run over during the altercation and he broke the window as a reaction to the pain. Deputy 1 provided confidential information during CLERB's investigation that was also considered in arriving at the recommend finding. Though there was no violation of the law or Sheriff's policy for not taking a written report, a miscellaneous incident report could have been taken at the time of the incident which specified the events that occurred. BWC evidence was provided of a phone call on 10-15-21 from a Sergeant to Osawa which SDSD offered several times to send officers out and take a report following the incident, but Osawa declined. According to SDSD Policy and Procedure (P&P) Section 2.23 titled "Request for Assistance," when any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established Department procedures. Through the course of investigation, it was discovered a crime report was eventually written due to a follow-up on a complaint and the case will be prosecuted by the District Attorney. The case is currently scheduled for a misdemeanor readiness hearing on 05-01-22 at the San Diego Superior Court East County Regional Center. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure– Deputy 1 failed to investigate a "Hate Crime".

Board Finding: Not Sustained

Rationale: The complainant stated he was a victim of a hate crime while delivering packages on 10-14-21. As per SDSD P&P 6.101 entitled Hate Crimes, a hate or bias crime is "Any act of intimidation, harassment, physical force, or threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, national origin, religious belief, sex, age, disability, or sexual orientation, with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution or the laws of the United States or the state of California whether or not performed under color of law." As per PEN§ 422.55, "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) Disability (2) Gender (3) Nationality (4) Race or ethnicity (5) Religion (6) Sexual orientation (7) Association with a person or group with one or more of these actual or perceived characteristics. "Hate crime" includes, but is not limited to, a violation of Section 422.6." Penal Code 422.6 is the California Hate Crime statute that makes it illegal to interfere with another person's civil rights simply because of items 1-6 listed above. As per SDSD BWC footage, there was insufficient evidence to prove any crime had occurred. The suspect reported to SDSD deputies that his residence had prior issues with theft, and he believed Osawa was stealing his packages. There was insufficient evidence to prove the suspects actions were the result of racial bias. Furthermore, SDSD deputies did not feel the elements of crime were met that required a report to be taken. See *Rationale 1*. There was insufficient evidence to prove or disprove that a crime occurred.

3. Misconduct/Procedure – Deputy 1 failed to obtain information from a suspect.

Board Finding: Unfounded

Rationale: The complainant stated, "Also was told that no police report was taken the officer that arrived on the scene never got the other person information and body cam couldn't be found." BWC footage showed Deputy 1 obtained the name, date of birth, and phone number of the suspect. The evidence showed the alleged act or conduct did not occur.

4. Misconduct/Truthfulness – Deputy 1 lied to the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, "The officers who arrived on the scene completely disregarded my safety, lied to me, and told me they wrote the guy a ticket for vandalism which didn't happen also ignore the fact a false imprisonment occurred." The complainant also stated, "he also told me he gave the guy a ticket". BWC evidence showed Deputy 1 told Osawa "all I am going to do is give him a ticket, that's it." At the time of the incident, COVID-19 Booking Acceptance Criteria would not allow Citizen's Arrests to be booked for misdemeanor offenses, and only citations to appear in court could be given by SDSO. The evidence showed there may have been a miscommunication between Osawa and SDSO regarding the Citizen's Arrest Process. According to SDSO 2.46 entitled Truthfulness, "When asked by the Sheriff, the Sheriff's designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete". Deputy 1 provided confidential information during CLERB's investigation that was also considered in arriving at the recommend finding. There was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Discourtesy – Deputy 2 was disrespectful/unprofessional.

Board Finding: Not Sustained

Rationale: The complainant stated, Deputy 2 "insulted me verbally by saying this should be a learning lesson for you to not park in people's driveways. Also stated if he was the officer that arrived on scene he would of marked it as no more than a civil case left us to handle the insurance exchange. He was completely disrespectful and unprofessional to me when all I was trying to do is get the other person's info so I can get my car fixed". SDSO P&P Section 2.22 entitled Courtesy, states "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." Deputy 2 provided confidential information during CLERB's investigation that was considered in arriving at the recommend finding. There was no BWC or audio recordings of conversations between Deputy 2 and Osawa and as such there was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – SDSO reported to complainant that Body Worn Camera (BWC) could not be found for the incident on 10-14-21.

Board Finding: Action Justified

Rationale: The complainant stated he was told body cam footage could not be found. As per SDSO P&P 6.131 Body Worn Cameras, "When responding to a call for service, a deputy/CSO shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle." CLERB requested all BWC footage for the incident that occurred on 10-14-21. Initially CLERB was told Deputy 1' BWC was malfunctioning at the time, but the footage was later provided to CLERB. SDSO CLERB Liaison provided all associated BWC footage from all deputies that responded to incident. As per 6.131 BWC, Data Integrity, "It is incumbent upon deputies, CSO's, and supervisors to maintain the integrity of the BWC videos which are produced. The Field Operations Manual identifies those functions specific to entering metadata and labeling videos appropriately. Deputies, CSO's, and supervisors shall be responsible for ensuring BWC's are assigned to the correct user and that all metadata is entered correctly. To that end, each video that is produced shall be checked for accuracy by the producing deputy. Any discrepancies or missing data shall be corrected as soon as possible but no later than the end of each work week. Supervisors shall periodically review the metadata of deputies/CSO's within their assigned unit and are responsible for ensuring discrepancies are remedied in a timely manner." The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

End of Report

NOTICE

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