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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

1600 PACIFIC HIGHWAY, SUITE 251, SAN DIEGO, CA 92101
TELEPHONE: (619) 238-6776 FAX: 1 (619) 894-8310
www.sdcounty.ca.gov/clerb

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its **August 7, 2025**, meeting held in person. **Any changes or additions to staff's recommended findings are bolded in red.** 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	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
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 (13)

Amended 9/10/2026

ATTENDANCE: Five (Mendelson, Fasano, Brown, Kean-Ayub, Ware)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

21-009/OLIVER (DoF)

1. Discharge of a Firearm – Deputies Bryson Benavente, Tony Bernal, Michael Cruz, Nicolas McGregor, and Robert Simpson discharged their firearms at Gianni Oliver on 01-31-21.

Board Finding: **Deferred**

Staff Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 01-31-21, Barona Tribal Enforcement requested assistance from the San Diego Sheriff's Office (SDSO), regarding a call for service on the Barona Reservation. SDSO deputies met with Barona Tribal Enforcement and learned that a female individual, [redacted], was possibly being held hostage by her boyfriend, Gianni Oliver. Deputies were also informed Oliver may be armed and was "shooting guns" at the property earlier in the day. Deputies planned to surround the home and call out the residents. When deputies arrived at the residence and made announcements, [redacted] appeared at the front door but would not leave the home. Deputies moved closer to the entrance of the home and began communicating with [redacted]. [Redacted] continued to deny anyone else was in the house, however, an SDSO helicopter observed a second individual on the second floor of the residence. Given [redacted]'s contradictory statements,

and safety concerns based on the original call for service, deputies began searching the home. During the search, Oliver emerged from a stairwell, which led to the second floor of the residence, and began firing his gun toward deputies inside the residence. As a result, Deputy Bernal discharged his firearm at Oliver. During the initial exchange of gunfire, [redacted] suffered non-life-threatening gunshots. Deputies moved to [redacted] and evacuated her from the residence. While moving [redacted], Oliver again fired his weapon, this time from a position near the balcony of the second floor of the residence, at numerous deputies and [redacted]. During this second incident, Deputies Benavente, McGregor, Simpson, and Cruz, discharged their weapons at Oliver. Oliver remained barricaded in the home and ultimately surrendered to law enforcement personnel without further incident. Neither Oliver nor any deputies were injured. At the time of the incident, SDSO P&P Addendum Section F, Use of Force Guidelines, was the current P&P in place. Regarding "lethal force", Addendum Section F stated, *"Lethal force: refers to any force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm. Deputies may only use lethal force when they reasonably believe, based on the totality of the circumstances, that lethal force is necessary to defend against an imminent threat of death or serious injury to the deputy or to another person; or to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the deputy reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. In situations where lethal force is necessary to defend against an imminent threat of death or serious injury to the deputy or to another person, deputies may use any method of force which is necessary and objectively reasonable to neutralize the threat in defense of human life. When using deadly force, a deputy shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the deputy has objectively reasonable grounds to believe the person is aware of those facts. A deputy shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the deputy or to another person. Thus, deadly force may not be used on a person who poses only a danger to themselves."* The provided evidence clearly established, in both exchanges of gunfire, deputies were justified and within P&P in defending themselves, and the victim, by discharging their firearms. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

AYE: 3

NAY: 2 (Brown, Mendelson)

23-067/HEIMARK (Death)

1. Death Investigation/In-Custody Medical – Incarcerated Person Paul Arthur Heimark died while assigned to the Hospital Guard Unit at Alvarado Hospital on 06-26-23.

Board Finding: Approved

Conclusion: This case was reviewed in accordance with CLERB Rules & Regulations, Section 4.3 Complaint Not Required: Jurisdiction with Respect to Specified Incidents. Per CLERB Rules & Regulations 16.1, at the conclusion of a matter before the entire CLERB, CLERB shall deliberate and adopt a final report ("Final Report") with respect to the case or matter under consideration. This report shall include findings as to the facts relating to any case, as well as an overall conclusion as to any case as specified in Section 16.2 (Findings). On 06-14-23 Richard Heimark was arrested by SD County Probation per a court order and booked into San Diego Central Jail. During the medical screening process, Heimark was sent to 2nd Stage Medical and was cleared to continue the booking process. Heimark was treated for a respiratory concern and referred to higher level of care. Nursing staff requested Heimark be put into medical isolation and a physician's assistant determined Heimark needed to go to the emergency room. At 8:50pm, a nurse completed an Emergency Room Referral. Heimark was taken to the hospital and admitted at 9:47pm, for evaluation. Physicians determined Heimark needed acute care and admitted him into the Hospital Guard Unit (HGU). On 06-24-23, Heimark was transferred from the HGU to the ICU (Intensive Care Unit) unit for observation. On 06-26-23, Heimark experienced a medical emergency and despite lifesaving measures, Heimark was pronounced deceased at 8:55pm. The San Diego County Medical Examiner's office determined the cause of death was pneumonia and the manner of death was natural. In compliance with SDSO policies, Heimark was transported to a hospital for evaluation and continued care until his death. A review of all known evidence revealed no policy or procedural violations on the part of sworn personnel.

AYE: 5

NAY: 0

24-079/CHAVARRY (Routine)

1. Excessive Force - Deputies 1-6 restrained IP Maurice Chavarry during the booking process on 04-16-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Maurice Chavarry, alleged that on 04-16-24, deputies forcibly restrained him against his will during the booking process at San Diego Central Jail (SDCJ). He stated that deputies aggressively forced him onto a gurney and held him down while his vital signs were taken, despite his refusal to submit to the medical procedure. According to the SDSO booking sheet, Chavarry was transported to jail by California Department of Corrections and Rehabilitation (CDCR) Parole Agents for booking following a parole violation. During the intake process, medical staff attempted to obtain Chavarry's vital signs, which he refused. As a result, he was medically rejected from booking and transported by the Parole Agents to a hospital for further evaluation. Hospital medical records reflect that Chavarry continued to refuse a physical examination and refused to allow medical staff to obtain his vital signs. Upon Chavarry's return to SDCJ, deputies responded to the medical area when Chavarry was heard raising his voice. The accompanying Parole Agents briefed deputies on the earlier medical rejection and their return from the hospital. Body Worn Camera (BWC) footage showed Deputy 2 informing Chavarry that SDSO policy required medical screening prior to being accepted into jail custody. Chavarry was directed to sit on a nearby gurney and complied. He was secured using seatbelt-style restraints by deputies. While medical staff attempted to take his vital signs, Parole Agents were seen holding Chavarry's lower body. Chavarry moved his limbs and sang loudly, which disrupted the attempts to obtain an accurate reading. Medical staff then attempted to reposition the blood pressure cuff to his upper arm. After continued disruption, Deputies 1 and 3 instructed that IP Chavarry be placed into a holding cell to await compliance with the screening process. Chavarry subsequently returned to the medical area, cooperated with staff, completed the screening, and received medical clearance for booking. According to Title 15 of the California Code of Regulations, Section 1207, *"All individuals must undergo medical screening at intake when being booked into a detention facility. This includes the collection of vital signs to assess whether the individual is medically stable for custody."* SDSO DSB P&P M.9 states, *"All individuals presented by arresting agencies shall be medically screened prior to acceptance for booking at a Sheriff's detention facility. Individuals who require urgent and immediate medical care shall not be accepted for booking."* SDSO DSB P&P M.32 states, *"A medical gurney or stretcher (gurney) is primarily used for the securing and/or transport of incarcerated person for medical purposes. Not all medical incidents will require the use of the gurney. Sworn staff should consider other options (i.e., wheelchair, request health staff to the scene, etc.) and make the best determination for securing and/or transporting an incarcerated person. On occasion, the gurney may be used for non-medical reasons to facilitate an incarcerated person's movement due to their behavior or uncooperative nature."* Additionally, MSD P&P E.2.1. states, *"Screening is performed on all inmates upon arrival at the intake facility to ensure that emergent and urgent health issues are met."* This investigation included a review of the complainant's signed statement, relevant SDSO records, applicable state regulations and department policies, and BWC footage from six deputies present during the incident. Medical documentation from both the jail and hospital were examined to verify the sequence of events related to the complainant's medical screening. Video footage was reviewed in its entirety and synchronized with incident timelines provided in associated reports. Observations regarding compliance with policy were drawn directly from the visual and audio evidence, as well as documentation from SDSO staff. The investigation clearly established that the allegation was not true as alleged. IP Chavarry was held down by Parole Agents and not SDSO deputies. By a preponderance of the evidence, the investigation showed the alleged act did occur but was lawful, justified, and proper.

AYE: 5

NAY: 0

24-091 & 24-111/WILLIAMS (Priority & Routine)

1. Illegal Search & Seizure – Deputies 1 and 2 searched Priscilla Drake-Williams' person and vehicle on 06-14-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Priscilla Drake-Williams alleged that she was "sexually assaulted" by Deputies 2 and 1 during a search of her person and vehicle at the George Bailey Detention Facility on 06-14-24. The complainant

claimed this conduct violated Penal Code §243.4, Sexual Battery, and constituted an illegal search, and infringed upon her Fourth Amendment right against unreasonable search and seizure. On 06-14-24, Drake-Williams was observed engaging in behavior inconsistent with facility rules, including suspected unauthorized communication with an inmate. She was detained and ultimately placed under arrest for violations of Penal Code §4570, Unauthorized Communication with an Inmate, and Penal Code §148(a)(1), Resisting, Delaying, or Obstructing a Peace Officer. As part of the arrest process, she was searched by Deputy 2 and a female deputy, Deputy 1. Drake-Williams alleged that Deputy 2 touched her rear and front pants pockets, and that Deputy 1 “*touched all [her] private areas*” during a follow-up search in the lobby. Per Detention Services Bureau Policies and Procedures Section I.16, Screening of Persons Entering a Detention Facility, all persons entering a detention facility—including public visitors—are subject to screening and search for the purpose of maintaining institutional security and preventing the introduction of contraband. Compliance with these search procedures is a condition of entry into secure areas of the facility. Additionally, Policy and Procedure Section 2.51, Arrest, Search and Seizure, affirms that searches incident to arrest are permissible when performed in a manner consistent with law and department policy. A review of CCTV footage, deputy reports, confidential witness statements, and the complainant’s own account found no indication that any intimate body parts were touched for the purpose of sexual arousal, gratification, or abuse. Under California Penal Code §243.4(a), sexual battery requires touching of an intimate part, against the will of the person, while unlawfully restrained, and for a sexual purpose. The evidence further supports that the search was conducted lawfully, consistent with SDSO policy and applicable state law. By a preponderance of the evidence, CLERB determines the investigation disclosed sufficient evidence to prove the allegation was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 3 “failed to intervene” on 06-14-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Priscilla Drake-Williams alleged that Deputy 3 violated departmental policy and legal obligations by failing to intervene during Deputy 2’s detention, search, and citation of her at the George Bailey Detention Facility on 06-14-24. See Rationale #1. According to Drake-Williams’ own account and supporting documentation, Deputy 3 was not the initiating or primary officer involved in the detention or search of her person. Deputy 3 entered the visitation room at the instruction of another deputy for the sole purpose of escorting Drake-Williams out, which he did without incident. The encounter escalated only after Deputy 2 approached and made contact with Drake-Williams. At that time, Drake-Williams was lawfully detained based on observed behavior consistent with a violation of jail rules—specifically unauthorized communication with an inmate. The search of her person was initiated by Deputy 2 and ultimately conducted by Deputy 1. Review of CCTV did not show any evidence that Deputy 3 observed, participated in, or ignored any unlawful conduct. Sheriff’s Policy 2.57, Duty to Intercede, states, “*Sworn staff employees have tremendous authority and that authority must be balanced with responsibility to meet the high standards of the communities we serve. Office training, expectations, and practices require intervention when sworn employees witness or have knowledge of criminal activity (i.e., misdemeanor or felony crimes) or potential excessive force by any office employee or sworn law enforcement officer.*” Deputy 3 also provided a confidential statement to staff and the Review Board that was taken into consideration for the recommended finding. There was no evidence that the detention or search conducted by Deputies 1 and 2 were unlawful. The available CCTV footage, Deputy reports, and the complainant’s own narrative did not contain evidence that corroborated an allegation of misconduct. Deputy 3’s role was limited, actions procedural, and presence non-confrontational. There was no observable misconduct that would have triggered a duty to act under department policy or legal precedent. By a preponderance of the evidence, CLERB determines the investigation disclosed sufficient evidence to prove Deputy 3’s actions were lawful, justified and proper.

3. False Arrest – Deputy 2 arrested Drake-Williams on 07-11-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Priscilla Drake-Williams alleged that Deputy 2 violated her constitutional rights under the Fourth and Fourteenth Amendments during a traffic stop, detention, search, and arrest on 07-11-24. She claimed the encounter was retaliatory, as it occurred the morning after the Sheriff’s Internal Affairs Unit acknowledged receipt of her prior complaint related to her 06-14-24 detention at the George Bailey Detention Facility. See Rationale #1. On 07-11-24, Deputy 2, supported by additional deputies in multiple unmarked vehicles, conducted

a traffic stop of Drake-Williams near her residence. The stop was part of an ongoing investigation into identity fraud and narcotics-related offenses involving Drake-Williams. According to the complainant's own account, Deputy 2 informed Drake-Williams that she was being arrested for identity theft and intent to distribute drugs. After stopping her vehicle with emergency lights, officers detained and handcuffed Drake-Williams and conducted a search of her vehicle. She was later booked into custody and held pending prosecutorial review. Although the District Attorney ultimately declined to file charges, the available information does not indicate that the arrest was made without a legal basis at the time. Under the Fourth Amendment and applicable case law—including *Terry v. Ohio*, 392 U.S. 1 (1968) and *Whren v. United States*, 517 U.S. 806 (1996)—law enforcement officers may initiate a traffic stop based on reasonable suspicion or probable cause that a traffic or criminal violation has occurred. Additionally, under the automobile exception (*Carroll v. United States*, 267 U.S. 132 (1925)) to the warrant requirement, officers may search a vehicle without a warrant if they have probable cause to believe it contains evidence of a crime. Miranda warnings are only required prior to custodial interrogation, not merely during arrest. Applying the facts to these standards, the deputies believed they had a lawful basis to stop Drake-Williams due to the ongoing criminal investigation involving identity fraud and drug activity. Deputy 2 initiated the stop, detained the complainant, and conducted a vehicle search, which, according to available records, was carried out under the framework of the automobile exception. The timing of the stop, though close to her Internal Affairs complaint, was not outweighed by the probable cause provided in the reports. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 failed to mirandize Drake-Williams on 07-11-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Priscilla Drake-Williams alleged that during her arrest on 07-11-24, Deputy 2 and other deputies violated her constitutional rights by failing to advise her of her Miranda rights. See Rationale #3. The complainant asserted that the absence of a Miranda warning rendered the arrest improper. On 07-11-24, Deputy 2 and assisting deputies conducted a traffic stop on Drake-Williams near her residence in connection with an ongoing investigation into suspected identity fraud and narcotics-related offenses. Deputies initiated the stop using emergency lights, detained Drake-Williams, placed her in handcuffs, and conducted a search of her vehicle. She was transported to a detention facility for booking. Per Drake-Williams, she invoked her right to remain silent at the scene. Available documentation, including deputy reports and the complainant's own account, does not reflect that any custodial interrogation took place after her arrest. Under *Miranda v. Arizona*, 384 U.S. 436 (1966), law enforcement officers are required to inform individuals of their Fifth Amendment rights—commonly known as "Miranda rights"—only when two conditions are met: 1. The individual is in custody, and 2. The individual is subject to interrogation. Although Drake-Williams was taken into custody, the evidence did not indicate she was questioned while in custody. Her own statement reflects that she was not interrogated after invoking her right to remain silent. With the absence of documentation or statements showing that custodial interrogation occurred, CLERB finds, by a preponderance of the evidence, the investigation proved the alleged actions were lawful, justified and proper.

AYE: 5

NAY: 0

24-100/CHATTMAN (Routine)

1. Misconduct/Procedure – Deputies 2 and 5 failed to conduct security check(s) on 07-04-24.

Board Finding: Unfounded

Staff Recommended Finding: Unfounded

Rationale: Complainant Anthony Chattman alleged on 07-04-24, at approximately 4:30am, he was assaulted by four other incarcerated persons. Chattman alleged, *"During this time Sheriff's Deputies 2 and 5 did not conduct a security check of IPs as is required every 30 minutes by walking through module..."* Chattman alleged he and other IPs *"were left with no choice but to defend ourselves by any and all means necessary because Sheriff's Deputies 2 and 5 et.al Control Booth officer did not conduct their security walk through of module..."* An Area Activities Summary report and CCTV footage verified that security checks were completed hourly and within a mandated 60-minute time frame and the deputies' actions were consistent with direct personal viewing of the IPs as required by policy. SDSO DSB P&P Section I.64 Safety Checks policy states, *safety checks will be conducted*

at least once within every 60-minute time period, unless the unit was MOB, WPSU or PSU. Chattman was housed in a mainline housing unit that required security checks every 60 minutes. By a preponderance of evidence, CLERB determined the investigation disclosed sufficient evidence to prove the allegation did not occur.

2. Misconduct/Procedure – Deputy 4 failed to monitor a housing module.

Board Finding: Unfounded

Staff Recommended Finding: Unfounded

Rationale: Complainant Chattman alleged Deputy 4 did not “observe other IPs still out of their assigned cells” after they received their morning meal. The time between the initial altercation starting and the time deputies arrived in the house module was less than 4 minutes. Chattman admitted in his sworn statement he heard the Control Booth deputy “radio for additional back up and gave a verbal order to get down.” Deputy 2 reported he was notified by the Control Deputy of the fight in the module. Control Deputy 4 noted on the Area Activity Report on 07-04-24 at 04:35am. “IPs fight” in the house module. According to CCTV video, the doors to breakfast opened at 4:23am. IP’s retrieved breakfast items and returned to the vicinity of their cell by 4:27am. Several cell doors remained open. The first altercation in the house module occurred at approximately 04:30am. SDSO POST Orders for GBDF Control Deputy states, the control deputy will visually monitor activity from the Deputy Station, relay that information to House Floor Deputies, and log all activities. SDSO DSB P&P I.63.G GBDF Facility Security-Housing Units states, individuals are released from their cells when breakfast meals arrive on the housing floor. At the conclusion of the breakfast meal, they will be instructed to return to their cells and remain on lockdown until 07:00am. Per DSB P&P K.15.Green Sheet, Serving Times and Distribution of Meals, “Mainline and Protective Custody Housing (Houses 1-4, 6B, 6C): All in-custody individuals will have opportunity to exit their cells or quads and sit at tables in the dayroom unless prohibited by the COVID-19 (COOP).” Based on policies I.63.G and K.15.G the inmates were permitted to be outside their cells to retrieve their breakfast items until the conclusion of the breakfast meal. Based on the investigation, the Control Deputy made appropriate notifications, in a timely manner, and documented the fight per policy requirements. By a preponderance of evidence, CLERB determined the investigation disclosed sufficient evidence to prove the allegation did not occur.

3. Misconduct/Procedure – Deputies 2 and 5 failed to provide medical care to IP Chattman.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: IP Chattman alleged he and his cellmate were “placed back into our assigned cell without being offered providing medical attention” after the altercation on 07-04-24. After a review of the CCTV video, Chattman was seen walking unaided multiple times. There were several opportunities for Chattman to indicate he needed medical care from deputies who were standing in the module near his cell. At approximately 10:16am, an unidentified deputy and medical personnel with a supply cart stopped by Chattman’s cell. Later that morning, Chattman was seen walking up and down the stairs delivering lunch meals. SDSO records showed Chattman refused medical treatment on 07-07-24 after Deputies 5 and 2 asked Chattman if he wanted medical care. Chattman’s Sick Log documents he received “face to face” medical care on 07-06-24 and a wellness check on 07-08-24. There was no mention of medical aid needed associated with the fight at GBDF. Chattman submitted over ten (10) Sick Call/Health Care J-212 requests prior to 07-04-24 demonstrating he had knowledge of how to obtain medical care if he needed. SDSO DSB P&P Section M.1 Access to Care policy, states IP’s “shall have quality and timely access to care for their medical, dental and mental health needs. Additionally, Section M.15 Sick Call, stated, “Sick Call Requests (J-212) forms are available to all incarcerated persons on a daily basis in their housing units. Sick call requests are deposited by the incarcerated person into the secure medical mailbox provided in the housing unit. Facility health staff is responsible for collecting the sick call requests from the housing units each night after hard count.” Chattman had several opportunities to access care and had knowledge of how to access and process sick call requests. By a preponderance of evidence, the evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 placed IP Chattman in Disciplinary Separation.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: IP Chattman alleged he “...spent 13 days on lockdown inside of my assigned cell without any of my

personal property because GBDF Cpts, Lts, Sgt's and deputies did not the job and they all knew that IPs Chattman and Dulay (cell mate) were victims of the incidents." Chattman was involved in a gang related physical altercation with several other IPs that resulted in the house module being placed on a 72-hour security lockdown. CCTV of the housing module depicted Chattman engaging in the physical altercation. Per SDSO documents, Chattman was found to be in violation of IP Rules and Regulations and received a 10-day disciplinary separation order. SDSO DSB P&P Section O.1, Disciplinary Actions/Disciplinary Separation Cell, stated, *"Placement into disciplinary separation cell. This means the loss of module property items except bedding, clothing, legal papers, and personal correspondence (unless the incarcerated person has violated correspondence regulations, in which case correspondence may be suspended for no longer than 72 hours without a review and approval by the watch commander or designee) and hygiene items, unless such items are being destroyed by the incarcerated person. A Bible, Koran or other sacred material, legal items and mail shall be the only allowed reading material (no other books or periodicals). Placement into disciplinary separation shall not exceed 10 days for each hearing."* By a preponderance of evidence, CLERB determined the investigation disclosed sufficient evidence that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure – Deputies 1, 3, and/or unidentified failed to process confidential/legal mail.

Board Finding: Unfounded

Staff Recommended Finding: Unfounded

Rationale: IP Chattman alleged mishandling of confidential legal mail by various deputies. According to Chattman's sworn statement three pieces of sealed confidential legal mail addressed to CLERB between 07-05-24 and 08-23-24 did not make it to the CLERB office. His complaint documented how he gave the mail to deputies to inspect, then Chattman sealed them for mailing. The investigation identified that Chattman was transferred from GBDF to VDF on 08-02-24. Additionally, one of the pieces of undated mail was addressed to an outdated CLERB address. Another written correspondence dated 09-20-24 and postmarked 09-23-24, was received by CLERB. According to the CLERB records, Chattman called the CLERB office and spoke with CLERB staff numerous times between 09-17-24 and 10-07-24 about filing a complaint. On 10-15-24 CLERB staff met with Chattman at VDF to retrieve his signed complaint. SDSO DSP P&P Section P.3 Incarcerated Persons Mail policy states, *"The IP will seal outgoing mail that comes within the purview of confidential/legal mail in the presence of the deputy. Under no circumstances will a deputy accept a piece of sealed confidential/legal mail from an IP."* Chattman provided testimony that deputies followed the confidential mail procedure by inspecting the confidential/legal mail and having Chattman seal it in front of them. By a preponderance of evidence, CLERB determined the investigation disclosed sufficient evidence to prove the allegation did not occur.

AYE: 5

NAY: 0

24-122/SCHAPER (Routine)

1. Misconduct/Procedure – Deputy 1 confiscated an Incarcerated Person's (IPs) religious headgear.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Schaper stated that on 08-26-24 Deputy 1 confronted a Muslim IP about the Kufi (religious headgear) he wore. Incarcerated Person Schaper alleged, Deputy 1 *"confiscated Mr [redacted] kufi claiming that he had no religious headgear chrono."* Per a SDSO Incident Report, Deputy 1 stated he observed an IP, later identified as [redacted] not wearing a shirt. Deputy 1 ordered [redacted] to put on a shirt and [redacted] began yelling profanities at Deputy 1 while he walked around the dayroom. SDSO DSB P&P O.3 Section 502 stated, *"Incarcerated person(s) shall be fully clothed when moving outside the housing units."* SDSO DSB P&P O.3 Section 101 stated, *"incarcerated person(s) shall treat members of facility staff in a civil fashion."* Deputy 1 checked JIMS (Jail Information Management System) and noted [redacted] *"did not have a religious head cover JIMS Chrono."* Deputy 1 returned to the module and contacted IP [redacted]. Deputy 1 asked [redacted] to give him the religious cover he was wearing, [redacted] complied. During the inspection, Deputy 1 noticed, *"it was not a personal one, and it was one provided through the jail."* Deputy 1, *"Provided [redacted] with an inmate request form and gave him step by step instructions how to receive one."* Complainant Schaper reported he spoke to an unidentified sergeant on 08-27-24 and *"she confirmed verbally there was a headgear chrono but she also added that the corporal should have made inquiries how the IP received his kufi."* There was no record of this

conversation as alleged by IP Schaper. SDSO records confirmed there was not a Religious Chrono (approval order) for [redacted] on 08-27-24. Body Worn Camera confirmed the Kufi belonged to [redacted]'s cellmate. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified and proper.

2. Misconduct/Retaliation – Deputy 1 placed the module on lockdown.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Schaper stated IP [redacted], *“requested to speak to the teams Sergeant about the actions taken by Deputy 1. In retaliation, housing staff placed the entire unit on lockdown (group punishment), after other IP's started questioning the seizure.”* Per BWC, Deputy 1 stated *“We’re just gonna lock everyone down”* toward the end of his interaction with [redacted] who was becoming argumentative. Per SDCJ Green Sheet I.63.C.1 *“On Sunday through Thursday evenings the dayrooms will close and all incarcerated persons will lockdown for the night at 2200 hours following night count.”* At no time on BWC was [redacted] heard requesting a sergeant. Per CCTV the IPs were out at dayroom from 3:00 pm to 4:01 pm when they were locked down for dayroom cleaning. At approximately 7:15pm, the IPs were let back out in the dayroom and were locked down after the interaction with [redacted] at about 9:41pm. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 refused to provide SDSO's policies and procedures.

Board Finding: Action Justified

Staff Recommended Finding: Unfounded

Rationale: Complainant Schaper stated *“Deputy 1 refused to provide any copy of the department's policies and procedures to provide a legal justification for his actions, which seemed targeted. Other IPs were in the dayroom wearing religious headgear.”* Per BWC, Deputy 1 explained to [redacted] *“I just checked, you don't have any religious chrono”* and provided [redacted] forms to request one. [redacted] interrupted Deputy 1 and stated, *“I need a policy printout, I need everything, don't get bug eyed dog, policy printout, you heard me.”* Per BWC, Deputy 1 had [redacted] exit the module and explained the policy to him. According to SDCJ Green Sheet A.15.C.1, *“a copy of the Public Information Plan (policies) is kept in the 5th floor Counselors office.”* Deputy 1 provided a confidential statement that was taken into consideration. By a preponderance of evidence, CLERB determined the investigation proved the alleged act or conduct did not occur.

4. Misconduct/Procedure – Unidentified deputies failed to respond to IP Schaper's grievance.

Board Finding: Not Sustained

Staff Recommended Finding: Not Sustained

Rationale: Complainant Schaper stated, *“Custody staff failed to date to respond or even acknowledge the receipt or the content of my grievance.”* Schaper did not specify which grievance he was referencing, but had a total of six grievances filed, all of which included a response from SDSO personnel. Schaper is currently incarcerated at San Quentin State Prison and is eligible for parole in October 2027. By a preponderance of the evidence, CLERB determined the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

5. Misconduct/Procedure – Unidentified deputies “delayed” Schaper's correspondence.

Board Finding: Not Sustained

Staff Recommended Finding: Not Sustained

Rationale: Complainant Schaper stated, *“Jail staff has delayed the correspondence from your office (CLERB) by over 2 weeks...”* Schaper did not provide any specific dates or deputy names. Schaper submitted a complaint with CLERB signed 10-03-24 that was received and processed on 10-08-24. It is unknown which correspondence, if any, were *“delayed”* from CLERB. By a preponderance of the evidence, CLERB determined the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

AYE: 5

NAY: 0

24-125/GOLU (Routine)

1. Misconduct/Procedure - Deputy 1 instructed deputies not to take a report on 02-16-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Dorian Golu reported he called SDSO on 02-16-24 to request a crime report for vandalism of his water pipe by his neighbors and to report his neighbor was yelling at him. Golu stated deputies refused to take a police report at the direction of Deputy 1, stating the issue was not criminal. Golu disagreed and believed the matters were intentional criminal acts and harassment. On 02-16-24, deputies arrived at Golu's residence twice after Golu called to report his neighbor cut his water pipe. Golu was advised the matter was not criminal and suggested to address in civil court. Golu acknowledged in his complaint that a vandalism report for the same pipe by the same neighbor was taken on 12-04-23. Per California Penal Code 830.1(a) Sheriff's deputies have authority over public offenses, which are defined as violations of a law forbidding a particular act. Per SDSO P&P Use of Discretion Policy 1, when deputies are faced with a situation where discretion can be exercised, they can consult with supervision in making the appropriate decision. A crime report for the same pipe was completed in 12-04-23 and assigned to a detective. SDSO responded to Golu's two requests for calls for service on 02-16-24. Per San Diego County Code Compliance Division, Planning & Development Services Building Division and Department of Public Works, Land Development Division, Land Use and Environmental Group, they have not received a complaint by Golu about a cut drain. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

2. Misconduct/Procedure - Deputy 5 failed to respond to Golu's call for service on 08-20-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Golu reported Deputy 5 refused to send a deputy to stop the water noise disturbance coming from his neighbor's house. Per CAD reports, Golu called SDSO multiple times in August 2024 to complain about water noise from the neighbor's pool. During those events, Golu was advised to contact Code Compliance and advised SDSO units would not respond to calls related to pool water jet noise. Per California Penal Code 830.1(a) deputies have authority over public offenses, which are defined as violations of a law forbidding a particular act. Per SDSO P&P Use of Discretion Policy 1, Use of Discretion, when deputies are faced with a situation where discretion can be exercised, they can consult with supervision in making the appropriate decision. Golu was advised to call Code Compliance. Code Compliance has no complaint on file from Golu pertaining to the water jet noise from the pool. Golu acknowledged that he spoke to command staff and Internal Affairs. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

3. Misconduct/Procedure - Deputy 3 "threatened" Golu on 08-22-24.

Board Finding: Not Sustained

Staff Recommended Finding: Not Sustained

Rationale: Complainant Golu reported on 08-22-24, a deputy called Golu after responding to Golu's call regarding a loud pool party, and "threatened" him that if Golu called the dispatcher again he would "be in big trouble." Golu called SDSO dispatch twice on 08-22-24. This complaint referenced the second call about the pool party noise. Deputy 3 responded and advised the neighbor of Golu's complaint. Deputy 3 documented in CAD that he advised Golu SDSO would not respond to noise complaints over pool noise. Per Section 2.22, Courtesy, *Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited. Employees shall not use insolent language or gestures in the performance of his or her duties.* Deputy 3 provided a confidential statement during CLERB'S investigation that was considered in arriving at the recommended finding. This conversation was not recorded and by a preponderance of the evidence, CLERB determines the investigation disclosed there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure - Deputy 4 failed to respond to Golu's call for service on 08-24-24.

Board Finding: Unfounded

Staff Recommended Finding: Unfounded

Rationale: Complainant Golu reported on 08-24-24, Deputy 4 refused to send a deputy to investigate or call the neighbor about loud water jet noise coming from the neighbor's house. Per an email from SDSO there are no CAD records of a call for service on 08-24-24. Per August 2024 CAD reports, Golu called SDSO multiple times to complain about water noise from a neighbor's pool. During those events, Golu was advised to contact Code Compliance and advised SDSO units would not respond to calls relating to pool water noise. Per California Penal Code 830.1(a) Sheriff's deputies have authority over public offenses, which are defined as violations of a law forbidding a particular act. Per SDSO P&P Use of Discretion Policy 1, Use of Discretion, when deputies are faced with a situation where discretion can be exercised, they can consult with supervision in making the appropriate decision. There was no record via CAD of a request for service from Golu on 08-24-24. Golu was advised several times in the month of August 2024 that SDSO was not going to respond to pool noise complaints and was advised to call Code Compliance. Code Compliance had no complaint on file from Golu pertaining to the water jet noise from the pool. Golu acknowledged in his complaint that he also spoke to command staff about the issue. By a preponderance of the evidence, CLERB determines the investigation disclosed sufficient evidence to prove the allegation did not occur.

5. Misconduct/Procedure - Deputy 2 failed to take a report on 09-26-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Golu reported on 09-26-24, he called 911 for a "big triangular cut" on his property. Stating, *"trespass and damage my property at the street, to further expand their driveway pavement."* Per CAD reports at 09:38am, on 09-26-24, Golu reported a dispute over fence lines. Deputies arrived and determined it was a civil matter and referred Golu to civil court. Per California Penal Code 830.1(a) Sheriff's deputies have authority over public offenses, which are defined as violations of a law forbidding a particular act. Per SDSO P&P Use of Discretion Policy 1, when deputies are faced with a situation where discretion can be exercised, they can consult with supervision in making the appropriate decision. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

6. Misconduct/Procedure - Deputy 2 failed to take report on 09-26-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Golu reported on 09-26-24 at 3:30pm, he again called SDSO to report the neighbor's construction worker "violently pushed" him away when Golu told the worker to stay off his property. According to the review of the dispatch audio recording, when Golu called 911 he initially told the dispatcher the neighbor's worker *"tried to push me."* The dispatcher responded, *"He hit you? Is that right?"* To which Golu responded yes. A responding deputy arrived and watched videos recorded by both the neighbor and Golu of the incident. The deputy determined no battery occurred and admonished Golu numerous times that the complaint about the property line is civil. Per California Penal Code 830.1(a) Sheriff's deputies have authority over public offenses, which are defined as violations of a law forbidding a particular act. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

AYE: 5

NAY: 0

24-131/HACKETT (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Evan Carey, Edwin Cosby, and Jorge Nazario used force to effect the arrest of Freddie C Hackett on 08-01-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 08-01-24, Freddie C Hackett burglarized a residence, barricaded himself within the residence, and resisted deputies during the arrest. Verbal commands were given

by Sheriff deputies but proved ineffective. A Sheriff's canine was deployed. Following the deployment of the canine, body strikes were used as Hackett continued to resist, resulting in Hackett sustaining injury. Hackett was evaluated by emergency personnel and transported for medical care. According to the SDSO P&P Use of Force Guidelines, deputies may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance. To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. A review of evidence determined the force used was necessary, appropriate, effective, and reasonable for the circumstance based on Hackett's active resistance. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

AYE: 4

ABSTAIN: 1 (Fasano)

24-167/WILSON (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Aissamme Alviso, William Dupuy, Carlos Gonzalez, and Ivan Ortiz used force on Incarcerated Person (IP) Alvin Wilson on 09-29-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 09-29-24, at George Bailey Detention Facility (GBDF), Deputies Alviso, Dupuy, and Ortiz, attempted to move incarcerated person (IP) Alvin Wilson to "House 4A" for disciplinary separation, when Wilson, with his right hand, struck Deputy Alviso in the head. A use of force incident ensued, to gain control of Wilson who continued to punch Deputies Alviso, Dupuy, and Ortiz. During the incident, deputies used a takedown to place Wilson in a prone position. While in the prone position, Wilson continued to resist deputies attempts to restrain him by tucking his arms underneath his body. Four additional deputies, including Deputy Gonzalez, responded to assist. Deputy Gonzalez also used force against Wilson. After a significant struggle, deputies were able to successfully gain control of IP Wilson. Due to the force used by deputies, Wilson sustained injuries and was medically treated at a hospital. SDSO P&P Section 2.49, Use of Force, stated, "*Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Office procedures, and report all use of force in writing.*" Additionally, SDSO P&P Addendum Section F, Use of Force Guidelines, which was in place at the time of incident, stated, "*Hands-on control is used as a means of overcoming resistive or assaultive behavior. Soft hand control may be used to control subjects whose behavior does not demand more severe tactics. Hard hands control, powerful hand or leg strikes, etc., are techniques used to control more assaultive suspects... Striking techniques are those techniques that a deputy employs using personal body weapons, i.e., fists, hands, arms, elbows, legs, head, feet and knees. Strikes are techniques in which injury may occur. There is no expectation for a deputy to receive the first strike before employing striking techniques; however, the deputy must articulate the necessity and reasonableness for striking first. Unorthodox tactics such as head butting may be used to escape grappling holds when other personal body weapons are otherwise trapped by the attacker... Punching techniques may be necessary when a suspect/inmate is assaultive, or the subject exhibits signs of imminent physical attack. A fist strike to a subject's face when reasonable and necessary is not prohibited; however, it is preferable to use an open hand (palm heel) technique to reduce the likelihood of injury to the deputy's hand and subject's face.*" The evidence reviewed, including deputy reports and CCTV footage, showed the use of force was within SDSO's P&P, given Wilson's assaultive behavior and active resistance. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

AYE: 5

NAY: 0

24-177/RICHARDSON (Routine)

1. Misconduct/Procedure – Deputy 1 interfered with Daneille Richardson's "right to film" law enforcement activity on 11-23-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Danielle Richardson alleged Deputy 1, *"did not respect my right to film a traffic stop from a public sidewalk"* and gave her unlawful commands with respect to Penal Code 148, restricting where she could film deputies' actions from. Richardson's complaint stated, *"Deputy 1 is on scene and staring at me. He observes me just standing there for a minute and a half then suddenly demands that I leave the area. Nothing happened, I didn't make a threatening gesture". I didn't yell or cause a disruption. In fact, I was doing the opposite, just standing there silently."* A standard officer safety practice during traffic stops is to approach a vehicle from the passenger side. Per a deputy's Body Worn Camera (BWC), they contacted the driver from the passenger side of the vehicle within a few feet of where Richardson was initially filming from. Richardson stated, *"He pointed to a flag four houses down and said I had to stand over there."* Deputy 1 provided three different locations Richardson could film from, telling her, *"Dr Richardson, you can film down by the trashcan, or you can film up by the American flag or you can film across the street, move away from our investigation please."* Rather than moving to one of those locations, Richardson moved toward Deputy 1 to a location immediately adjacent to him. Richardson alleged, *"He charged at me saying that I have to move."* Per BWC and footage provided by Richardson, Deputy 1 walked toward Richardson while giving verbal commands. Richardson alleged, *"He then used his body and threatening tone of voice to physically force me far away from the scene."* Per BWC, Deputy 1's commands were monotone in nature and did not include any threatening language. As Deputy 1 approached Richardson, she walked backwards in compliance with his instructions while still filming. Richardson ultimately used two of the locations Deputy 1 recommended, filming both in front of and across the street from the detained vehicle. California PC 148(g) stated *"The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person."* Richardson was not prohibited from filming at any time during the encounter nor was she threatened with arrest for filming. Based upon a review of BWC and cellphone footage provided by Richardson, Deputy 1's actions were not in violation of PC 148(g). The investigation showed the actions that occurred were lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 accused Richardson of threatening his safety.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: Complainant Richardson alleged, *"Deputy 1 has a pattern and practice of claiming that I'm a threat to his safety."* Richardson further alleged, *"When I ask him why his safety is in jeopardy he doesn't say it's because of my presence. He says it's because he had to turn his back to the investigation. However, I didn't ask him to turn his back to anything. He could have and should have, continued his investigation while I silently, peacefully filmed. Furthermore, there was no imminent threat coming from his "investigation." In fact, all they were doing was citing a UPS driver for rolling through a stop sign."* Richardson told Deputy 1, *"I'm not a threat to your safety"* to which he explained *"You are, I have my back turned to my investigation right now because of you."* Richardson complained, *"The truth is, Deputy 1 says he's afraid for his life in order to justify giving me an unlawful command to stop filming him."* *"Then he lashes out at me and tells me it's not legal for me to stand on a sidewalk and silently film."* At no time during the encounter did Deputy 1 prohibit or restrict Richardson from filming or standing on the sidewalk. Richardson further alleged Deputy 1 *"acted well outside of the norm during this interaction. Typically, police respect my right to silently film. They are not afraid for their safety and they are able to conduct their investigation without difficulty or delay. I believe Deputy 1 can do the same, but chooses not to. The problem is that his choice violates our constitutional right to freedom of the press."* The United States Supreme Court relies on a "Reasonableness" standard when evaluating officer safety concerns. SDSO P&P Section 2.1, Rules of Conduct for Members of the San Diego County Sheriff's Office, stated, *"All employees shall conform to Federal, State, and Local laws, as well as to the policies of this Office. It shall be the responsibility of all employees to familiarize themselves and comply with all such policies, orders, directives, rules and regulations of this Office."* Deputy 1 verbalized his officer safety concerns to Richardson. CLERB determined the investigation proved the allegations were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 accused Richardson of committing a crime.

Board Finding: Unfounded

Staff Recommended Finding: Unfounded

Rationale: Complainant Richardson stated, *"Finally, he claims that I'm committing a crime of interfering, obstructing, and delaying an officer. He is referencing a misdemeanor titled Penal code 148. However, when you read the details of what would justify a charge of PC 148, you will read about 148g. 148g explicitly says that the act of filming the police is NOT included as something that would obstruct or interfere with the duties of an officer. My complaints against 1 are: abuse of power, retaliation, violation of my first amendment right, incorrect interpretation of PC 148, lying with the intent to deceive, and behavior unbecoming of an officer."* Per Body Worn Camera evidence, Deputy 1 explained to Richardson she was an, *"Officer safety issue right now please, move away from us please."* Deputy 1 told Richardson she was *"Disrupting us, obstructing us and delaying us in our duties."* PC 148(a) (1) included the phrase *"Every person who willfully resists, delays, or obstructs" a peace officer "in the discharge or attempt to discharge any duty his or her officer or employment."* PC 148(g) stated *"The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person"*. At no time during the encounter was Richardson threatened with arrest, nor was she ever told to stop filming. Richardson was repeatedly told she was a "officer safety" issue with regard to her proximity to the law enforcement action, not the filming of the incident, and provided three different areas she could move to. "SDSO P&P Section 2.22, Courtesy, stated, *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. Coarse, profane, or violent language is generally prohibited. Employees shall not use insolent language or gestures in the performance of his or her duties.* Both BWC and cellphone footage showed Deputy 1 was concise in his commands, relayed the reason for the commands, provided alternative options for Richardson to comply with the commands and used the word *"please"* six different times while giving those commands. By a preponderance of the evidence, CLERB determined the investigation proved the alleged act or conduct did not occur.

AYE: 5

NAY: 0

24-192/AGUILAR (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputy Peter Vander Horn used force against Anthony Aguilar on 11-06-24.

Board Finding: Action Justified

Staff Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. Records related to the incident showed Deputy Vander Horn conducted a "consensual contact" with Aguilar and a companion. During the contact, a records check revealed Aguilar had a warrant for his arrest regarding illegal possession of a firearm. Body Worn Camera (BWC) showed Deputy Vander Horn told Aguilar, "Just turn around and put your hands behind your back." Aguilar responded, "really?" to which Deputy Vander Horn again said, "yeah, put your hands behind your back." Aguilar never complied with the order prompting Deputy Vander Horn to grab Aguilar's left hand. Body Worn Camera showed that immediately after grabbing Aguilar's hand, Deputy Vander Horn said, "stop, don't pull away" as a struggle ensued. Body Worn Camera showed Aguilar attempted to pull away and stepped backward away from Deputy Vander Horn. As the struggle continued, BWC showed Aguilar pushing Deputy Vander Horn in the chest with his right hand while facing him. Due to Aguilar's push, Deputy Vander Horn's BWC was deactivated. Per SDSO reports, Deputy Vander Horn used personal body weapons to gain control of Aguilar. SDSO P&P Section 11.13 stated *"Personal body weapons may be used to strike available targets to control an actively resistant or assaultive subject. Personal body weapons may include hands, fists, arms, elbows, legs, knees, feet, and head."* Aguilar had a warrant for his arrest regarding illegal possession of a firearm, indicating a propensity of being armed and in fact was in possession of a knife during the altercation. Prior to the use of force, Aguilar had about nine seconds to comply with Deputy Vander Horn's order to put his hands behind his back but never did. Per the initial BWC, Aguilar was seen both pushing and pulling against Deputy Vander Horn rather than complying. Aguilar was admittedly high on Methamphetamine during the contact. Witness Drane confirmed Aguilar was resisting Deputy Vander Horn. Deputy Vander Horn used one punch which allowed him to get Aguilar onto the ground and one knee strike, after a warning, when Aguilar continued to resist which allowed him to get Aguilar

into handcuffs. According to SDSO Use of Force guidelines, Deputy Vander Horn's use of force was appropriate and proportional to Aguilar's active resistance and assaultive behavior. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified and proper.

AYE: 5
NAY: 0

2. Misconduct/Procedure – Deputy 1 failed to activate his Body Worn Camera (BWC) as required by policy.

Board Finding: Sustained

Recommended Finding: Sustained

Rationale: During CLERB's investigation, it was noted Deputy 1 did not activate his BWC until well into his contact with Aguilar. SDSO P&P Section 6.131, Body Worn Cameras, stated, "*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 complete.*" Section 6.131 outlined types of law enforcement related contacts, which included consensual encounters. By a preponderance of the evidence, CLERB determines the investigation determined there is sufficient evidence to prove the allegation.

AYE: 4
NAY: 1 (Pintar)

25-068/BYWATER (Summary Dismissal)

1. False Arrest – Deputy 1 arrested Rachel Bywater on 02-27-23.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: Complainant Bywater alleged she was unjustly arrested on 02-27-23. Bywater was arrested on 02-27-23 and released on 10-03-23. Bywater filed CLERB complaint #23-090/Bywater on 08-10-23, regarding her incarceration with findings approved by the Review Board on 06-27-24. This complaint is untimely without exemption(s). The following CLERB rules apply, 4.1.2, Complaints: Jurisdiction, states 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. And Section 15: Summary Dismissal, states Summary Dismissal may be appropriate because the complaint was not timely filed. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputies placed Bywater on probation.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: Complainant Bywater alleged that she was "unjustly" placed on probation following her 02-27-23 arrest. See Rationale #1. Probation conditions are an order of the court and not done through the actions of deputies. CLERB does not have jurisdiction over the subject matter of the complaint. The Review Board lacks jurisdiction.

3. Misconduct/Procedure - Deputies harassed and released personal information without consent

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: This allegation was previously investigated and findings determined by the Review Board in CLERB Case #23-090/Bywater. No new evidence was presented and the Review Board lacks jurisdiction.

4. Misconduct/Procedure – Deputies "failed" to intervene when IP Bywater was harassed.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: See Rationale #3.

5. Misconduct/Procedure – Deputies placed IP Bywater in disciplinary segregation after reporting harassment by other IPs.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: See Rationale #3.

6. Misconduct/Procedure – Deputies did not bring IP Bywater breakfast.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: See Rationale #3.

7. Misconduct/Procedure – Deputies failed to provide IP Bywater medical care.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: See Rationale #3.

8. Misconduct/Harassment – Deputies “harassed” IP Bywater.

Board Finding: Summary Dismissal

Recommended Finding: Summary Dismissal

Rationale: See Rationale #3.

AYE: 5

NAY: 0

Adjourned 10:25pm

End of Report
