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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 August 9, 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 (8)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

21-053/ALEMAN (DEATH)

1. Death Investigation/In-Custody Drug Related – Jerry Aleman, while an inmate at George Baily Detention Facility, was found unresponsive in his cell on 06-09-21.

Board Finding: Not Sustained

Rationale: The evidence supported that Aleman was properly classified upon his entry into the SDCSD jail system after his arrest for outstanding felony warrants, identity theft, false personation, and possession of stolen property. The evidence showed all safety checks and counts were in accordance with policy. The evidence showed an incarcerated person transferred from San Diego Central Jail (SDCJ) to George Bailey Detention Facility (GBDF) on 06-09-21. The new transfer was body scanned prior to transfer and yielded a negative result. The evidence suggested the drugs arrived once the new transfer arrived in the module. The evidence showed on 06-09-21 drugs entered the jail and Aleman subsequently overdosed. For CLERB case #21-038/Whitlock, CLERB recommended SDCSD to update its DSB P&P 1.50 entitled Body Scanners and X-Rays to require body scans be completed to include incarcerated persons transferred between facilities. The department responded on 05-04-22 that they declined to implement CLERB's recommendation. CLERB encourages the department to revisit this recommendation. Aleman

appeared to be assaulted, however after several interviews with incarcerated persons, it was determined the hits to his face were attempts at revival. The evidence indicated there was a delay by incarcerated persons to use the callbox to alert deputies for help. The evidence showed due to jail politics there was only one person in charge of each race to approve callbox use to alert deputies. This person is called the “shot caller”. The evidence suggested at the time of the incident, the “shot caller” for the white race (which Jerry was) delayed allowing the callbox to be used to alert deputies for help. When the deputies were alerted of Aleman being “man down,” sworn personnel expeditiously responded and immediately initiated life-saving measures. The cause of death was acute fentanyl intoxication, and the manner of death was accidental. Although SDSA has implemented numerous measures to deter drugs from entering its detention facilities, there is no doubt that Aleman while as an incarcerated person in the custody and under the care of the SDSA, either acquired or possessed and subsequently consumed fentanyl, which resulted in his death. According to the SDSA News Release, “Stopping Drug Smuggling in County Jails”, dated 04-19-21, the SDSA is active in their attempts to intercept drugs into the facilities. Some efforts being made are the use of body scanners at all intake facilities and GBDF, inmate screening and flagging of potential smugglers. Also, the mail processing center has special equipment for drug detection, drug detection K-9’s, and a “no questions asked” drug drop box. SDSA also provides drug education and awareness in the facilities. Additionally, in accordance with DSB P&P I.41, Inmate Cell Searches and DSB P&P L.2 Sanitation and Hygiene Inspections, cell searches and inspections were performed in an effort to provide a safe and secure environment free of contraband. Despite all drug reduction and elimination efforts, fentanyl contributed to Aleman’s death, and, therefore, this death was preventable. In an effort to prevent in-custody jail deaths, in May 2022, CLERB recommended SDSA naloxone doses for incarcerated persons access in the dorms. This recommendation was approved 05-26-22 and as of 06-17-22 all people in custody at SDSA jails have easy access to naloxone. Furthermore, in May 2022 CLERB also recommended SDSA Update Detentions Services Bureau Policy I.87, entitled, “Detention Canine Program,” and its Detentions Canine Manual to include said P&P. The P&P should indicate that the fentanyl canine will be used for searches of contraband in all areas; to conduct sniffs of all persons entering a facility to include visitors, incarcerated persons, and staff; and to conduct sniffs of persons already inside of a facility, to include visitors, incarcerated persons, and staff. This policy recommendation is still pending a response from the SDSA. The investigation failed to definitively determine how the fentanyl contributing to Aleman’s death entered the detention facility, there was insufficient evidence to either prove or disprove misconduct on the part of SDSA sworn personnel.

21-071/PICKETT

1. Illegal Search & Seizure – Deputy 2 detained the complainant.

Board Finding: Action Justified

Rationale: In the complainant’s written statement, she advised, “*The deputy then asked me to vacate my van I asked him for what reason he said here had been an anonymous tip of a shady character in the vicinity.*” According to San Diego Sheriff’s Department (SDSD) audio and written records, Deputies 2 and 3 were dispatched to the complainant’s location, a private business, to conduct a welfare check, as the complainant’s vehicle was said to be disabled and her cell phone was inoperable. Though he was dispatched to the call as a welfare check of a stranded motorist, upon Deputy 2’s arrival on scene, he began investigating a possible law violation pertaining to the public use of cannabis. In review of Body Worn Camera (BWC) recordings, when Deputy 2 approached the complainant, she appeared, in his opinion, to cause a disturbance at the business. Additionally, the complainant’s vehicle was parked on private property. As such, during his interaction with the complainant, Deputy 2 detained the complainant, versus engaging in a consensual encounter, whereas the complainant would have been free to leave. Deputy 2 provided additional information in Sheriff’s Employee Response Forms (SERFs) which is confidential and cannot be publicly released. According to the Fourth Amendment of the United States Constitution, it is lawful for a peace officer to detain a person in a public place, without a warrant, so long as the peace officer has justified reasonable suspicion that the detainee may have been involved in some criminal activity. The evidence indicated that Deputy 2 believed that criminal activity may have been afoot, and the complainant was connected to that possible criminal activity, therefore he had reasonable

suspicion to detain Pickett. As such, there was no evidence to indicate that Deputy 2 improperly seized Pickett in violation of SDSD Policy and Procedure (P&P) 2.51 titled, "Arrest, Search and Seizure" or engaged in discriminatory practices prohibited by P&P 2.55 titled, "Non-Biased Based Policing." The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

2. Excessive Force – Deputies 1-4 used force to arrest the complainant.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "...he grabbed my arm and literally had me airborne ripping the rubber part completely out of my door I pleaded what's going on he says remain calm I smell marijuana she's on drugs throws me to the ground. Mind you I'm 53 and weighs 65 pounds (literally) the guy deputy panic I saw it in his face something he thought I was resisting I was trying to breathe I had two men sitting on me straight jacket and leg weight over excessive by the way! I literally had to scrape my face sideways in order to get air and they still broke my ribs. Those men abused their badge and humiliated and hurt me more mentally than physical abuse I endured [endured]." According to Deputy 3's SDSD report, while the complainant was being detained, she suddenly stood up, turned towards her vehicle, and began walking towards the driver's side door. The complainant said she was having "an anxiety attack." As she reached out to open the driver's side door. Deputy 3 instructed her to remain outside of the vehicle. The complainant disregarded his commands and opened the driver's side door. Deputy 3 grabbed the complainant's left arm to pull her away from the vehicle and a use of force ensued. Deputies 2 and 3 physically detained the complainant until additional deputies arrived on scene. Once on scene, Deputies 1 and 4 assisted with placing the complainant in a WRAP device. The complainant was medically evaluated on-scene by paramedics and transported to a hospital for further evaluation and treatment of minor abrasions to her face and wrists. BWC recordings and written reports were reviewed during CLERB's investigation. The complainant was in violation of resisting arrest, as she was being detained at the time of the incident. The force used to physically detain and arrest the complainant was in accordance with SDSD Policy and Procedure Section 2.48 titled "Treatment of Persons in Custody," Section 2.49 titled "Use of Force," Section 6.48 titled "Physical Force," and Addendum "F" titled "Use of Force." The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

3. Illegal Search & Seizure - Deputies 2 and 5 towed the complainant's vehicle.

Board Finding: Action Justified

Rationale: In the complainant's written complaint, she reported, "*Deputy reassured me not towe was necessary van was being picked up by my husband.*" It was released from the tow on 03-27-2021. According to the SDSD Impound Report, Deputy 5 took inventory and impounded the complainant's vehicle, in accordance with California Vehicle Code 22651 (h)(1) - Storage: Driver in Custody. The code section authorizes a peace officer to take possession of a vehicle if they have arrested the person driving or in control of the vehicle for an alleged offense and that person is taken into custody. Deputy 5 arranged for a tow service to take possession of the complainant's vehicle. Deputy 5 acted under the request of Deputy 2 and their actions were in accordance with SDSD P&P Section 6.34 titled, "Establishing Towing Services," and Section 6.36 titled, "Impounded/Stored Vehicle Reporting." The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

21-096/CERNILIA

1. Misconduct/Procedure – Deputy 2 failed to assess a noise complaint.

Board Finding: Unfounded

Rationale: On 09-21-21, the complainant contacted the San Diego Sheriff's Department (SDSD) to report a noise disturbance on a toddler swim school located next to his residence. It was noted Cernilia wanted deputies to go to the residence because they held "illegal" swimming lessons in the morning hours. Cernilia reported he was "disturbed" by these lessons and wanted to file a disturbance. Cernilia also

stated that, “Deputy 2 initially declined to assess the noise complaint in person.” SDSD documentation noted that Deputy 2, while under the training of Deputy 1, spoke with Cernilia and advised this was a County Code issue. SDSD documentation and Body Worn Camera (BWC) showed that Deputy 1 went to the residence in question and spoke to the home/business owners of the swim school. BWC showed he addressed the concerns with the home/business owners and noted there was no law violation. Deputies 1 and 2 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. All evidence showed that the noise complaint was handled in accordance with policy; SDSD Communication Center Phone Manual which describes Criminal Vs. Civil Law and states that as a general rule law enforcement officers are responsible for the enforcement of criminal law only. Deputy 1 determined there were no violations of law in accordance with San Diego County Code, and no further action was needed. The evidence showed the alleged conduct did not occur.

2. Misconduct/Discourtesy – Deputy 2 was “unprofessional” in her interaction with the complainant.

Board Finding: Not Sustained

Rationale: See Rationale #1. The complainant stated Deputy 2 was “extremely unprofessional” and described their interaction as “unacceptable”. Cernilia reported Deputy 2 said the following things during their phone conversation: “If noise is decreasing your property value, then move”; “I cannot move the pool”; and “They can make all the noise they want from 7am to 10 pm.” SDSD P&P Section 2.22 Courtesy states employees shall be courteous and tactful in the performance of their duties. Tact is defined as “a keen sense of what to do or say in order to maintain good relations with others or avoid offense” and the definition of courteous is to be “polite, respectful, or considerate in manner.” SDSD documentation verified that Deputy 2 spoke with Cernilia and noted the complainant was uncooperative; he stated the pool was too close to his residence and became upset when Deputy 2 advised it was a County Code issue (civil in nature). The conversation between Deputy 2 and Cernilia was not recorded, and therefore the tone and demeanor was inconclusive with respect to the deputy’s level of professionalism. While there is no requirement for a deputy to record a phone call, some deputies do so if they feel it is needed for evidence or other reasons. Deputies 1 and 2 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Due to the lack of audio, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 1 was “unprofessional” in his interaction with the complainant.

Board Finding: Unfounded

Rationale: See Rationale #1 & #2. During the course of this investigation, CLERB had reason to believe that Deputy 1 was involved in the interaction between Deputy 2 and Cernilia. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence showed Deputy 1 acted in accordance with policy and the alleged conduct did not occur.

POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff’s Department (SDSD) expand Policy and Procedures Section 6.131 entitled, “Body Worn Camera (BWC)” to incorporate the use of BWC to record all law enforcement-related contacts/interactions (i.e., telephonic calls for service, deputy call-backs, etc.), not just those contacts arising out of in-person scene responses or in-person deputy-initiated contacts.

21-110/BOLDEN

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-3 used force toward Mark Bolden when being booked into the San Diego Central Jail.

Board 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. In this matter, the complainant also submitted a signed complaint which provided CLERB the jurisdiction to investigate additional allegations. San Diego Sheriff's Department (SDSD) documentation showed that Bolden was arrested on 09-14-21 by the San Diego Police Department (SDPD) with charges of burglary and booked into the San Diego Central Jail. SDSD documentation showed that when Deputies 1-3 escorted Bolden to a holding cell, Bolden became non-compliant and refused to go to inside the cell. Deputy 1 reported he attempted to de-escalate this behavior by talking to Bolden about jail protocol, but Bolden actively resisted and became assaultive which led deputies to use force towards him. Deputies 1 and 2 stated they grabbed Bolden's foot/leg area and took Bolden down to the ground where they were able to gain control of his body. Deputy 3 also assisted as he applied pressure towards Bolden's upper back to ensure control. SDSD P&P Use of Force guidelines states employees shall not use more force in any situation than is reasonably necessary under the circumstances. Deputies provided verbal commands and arm guidance to maintain control over Bolden, but Bolden's behavior escalated from verbal non-compliance to active resistance and lastly ended in assaultive behavior towards Deputy 2 when he fell back towards the deputy and kicked him. Deputies responded to Bolden's non-compliance with hands-on control to stop his assaultive behavior. Bolden was treated by jail medical staff and transported to a hospital where he was surgically treated for a fractured jaw. Jail surveillance video corroborated deputies' statements. The use of force used towards Bolden was reasonable and appropriate given the totality of circumstances. The use of force was properly documented, and Bolden was medically treated in accordance with policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Excessive Force – Deputies 1 and 2 “tripped” the complainant while his hands were behind his back.

Board Finding: Unfounded

Rationale: See Rationale #1. Bolden alleged that an unidentified deputy used excessive force and tripped him while his hands were behind his back, which caused his jaw to hit the floor and fracture in three places. SDSD documentation showed that Deputies 1 and 2 grabbed Bolden's legs and took him to the ground. By definition, the deputies did not “trip” Bolden. The force utilized was necessary to maintain control of Bolden as he was non-compliant and assaultive. The evidence showed that the alleged act or conduct did not occur.

22-008/RUIZ (DEATH)

1. Death Investigation/In-Custody Medical - Rafael Ruiz died of natural causes at UCSD Medical Center on 02-11-22, following his incarceration at San Diego Central Jail (SDCJ)

Board Finding: Action Justified

Rationale: The evidence indicated Ruiz was properly classified upon his entry into the SDSD jail system after his arrest on 09-17-20. SDSD records showed Ruiz was provided medical care during his incarceration and continually monitored by Jail Medical Staff for COVID-19 signs and symptoms. SDSD Medical Records showed Ruiz refused the COVID-19 vaccine on 03-16-21 and 04-06-21 with no reason(s) stated. On 01-26-22 Ruiz tested positive for COVID-19 and was placed in a medical isolation cell. On 01-31-22, Ruiz complained of dizziness and was transported to UCSD where he was admitted. Ruiz was transferred to the Intensive Care Unit where he was sedated and intubated. On 02-11-22, Ruiz succumbed to his illness and was pronounced deceased by UCSD Medical staff. The cause of death was complications of COVID-19, with end stage renal disease and diabetes mellitus as contributing, and the manner of death was natural. SDSD Media Relations and Training Bulletins regarding COVID-19 showed SDSD took precautions to reduce the spread of COVID-19 and protect inmate populations as well as staff. Several protective protocols recommended by the Center of Disease Control were put in place such as policies on quarantining, wearing of personal protective equipment (PPE), and COVID-19 tracing and tracking. Care/Treatment of the COVID-19 virus is a medical issue and medical staff and their decision(s) reside outside CLERB's purview. There were and are numerous COVID-19 related deaths in all of San Diego County and although the SDSD implemented safety protocols, the spread of this virus was and

remains inevitable. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

22-029/ACHKAR

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-3 used force toward Wissam Achkar while he was incarcerated at the George Bailey Detention Facility.

Board 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. San Diego Sheriff's Department (SDSD) documentation showed that on 02-07-22, Wissam Achkar was housed at the George Bailey Detention Facility when deputies used force towards him. Achkar did not comply with deputy commands, resisted deputies, and showed assaultive behavior towards them. As a result, Achkar sustained a fractured left cheek bone, swelling and redness to the right side of his face and scraped both of his knees. Deputies escorted Achkar for evaluation at Sharp Chula Vista Medical Center where he was treated for his injuries. SDSD documentation showed that Deputy 3 arrived at Achkar's cell and attempted to collect a razor, but Achkar refused the deputy's orders and stated he would not give up the razor until they gave him socks. Per policy, deputies are mandated to collect razors that are given to incarcerated persons. Deputy 3 and other responding deputies entered the cell to retrieve the razor. Achkar then stood up, took on a "fight stance" and clenched his fists. Achkar did not comply with Deputy 3's commands and pulled his arm away when the deputy attempted to place his hands behind his back. Deputies reported that Achkar continued to clench his fists at the deputies. Deputies 1 and 3 reported that to prevent Achkar from attacking them, they used force to take him down to the floor and administered hand strikes to gain control of Achkar as he thrashed his body on the floor. Deputy 2 assisted and restrained Achkar and deputies escorted him to be seen by jail medical staff. Per DSB P&P 1.89 Use of Force, sworn staff may use objectively reasonable force to overcome resistance and maintain or restore order. Achkar's actions displayed he was verbally non-complaint when he refused to obey deputies' commands; he actively resisted when Deputy 3 attempted to place his hands behind his back and showed assaultive behavior when he took a fight stance and clenched his fists. Deputies responded and used hands-on control technique to gain control of him (hand strikes and downward pressure) in accordance with Addendum F, Use of Force Guidelines. The use of force was properly documented, and a supervisor followed up with the investigation of the incident. In addition, Achkar was provided with medical treatment in accordance with policy. Jail surveillance video was reviewed and corroborated the associated documentation. Video captured when deputies walked inside the cell (where they were inside for less than one minute) and ultimately walked out and escorted Achkar (on foot) to medical. Given the totality of circumstances, the use of force was reasonable in accordance with policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

22-048/WILLIAMSON

1. Misconduct/Medical – Medical staff failed to treat Williamson.

Board Finding: Summary Dismissal

Rationale: Williamson reported his medical needs were not addressed and he frequently did not receive his blood pressure medication. Medical staff are non-sworn personnel and per CLERB Rules and Regulations 4.1 titled, Citizen Complaints: Authority, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. As such, CLERB lacks jurisdiction.

2. Misconduct/Procedure – The San Diego Sheriff's Department (SDSD) violated Williamson's constitutional rights.

Board Finding: Summary Dismissal

Rationale: Williamson reported that his constitutional rights were violated. He stated, "Many numerous infractions too numerous to list." Through the course of investigation, it was discovered the events given rise to the complaint occurred in 2019, when the complainant was incarcerated at George Bailey Detention Facility (GBDF). CLERB Rules & Regulations 4.1.2, Complaints: Jurisdiction, stipulates that 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. There were no exceptions applicable in this case. Therefore, CLERB lacks jurisdiction.

3. Misconduct/Procedure – SDSD provided unsanitary living conditions.

Board Finding: Summary Dismissal

Rationale: Williamson stated, "Toilet and sink plumbing over flowed, slept in unsanitary air, had to drink from fountain." See Rationale #2.

4. Misconduct/Medical – Medical staff failed to provide medication and/or checks.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Unidentified jail staff ignored Williamson's request for medical treatment.

Board Finding: Summary Dismissal

Rationale: See Rationale #1 and #2.

6. Misconduct/Procedure – Unidentified deputies "condone and initiate" violence between inmates.

Board Finding: Summary Dismissal

Rationale: Williamson stated, "I was struck in the face 2 hours before bailing out, inmate told to do it by deputies to keep me there when I fought back." See rationale #2.

7. Misconduct/Retaliation – Unidentified deputies removed Williamson's mattress.

Board Finding: Summary Dismissal

Rationale: Williamson stated, "filed a grievance mattress was taken by deputy when called to medical." See Rationale #2.

22-069/LENNOX

1. Misconduct/Procedure – Mail Processing Center deputies delayed and/or rejected Sawyer's mail.

Board Finding: Summary Dismissal

Rationale: On 07-19-22, Sawyer filed this complaint, signed under penalty of perjury. Upon review of the allegations against unidentified mail processing deputies, they were found to be identical to those previously investigated in CLERB case #20-087, dated 08-13-20 and finalized by the Review Board on 09-14-21. According to CLERB Rules & Regulations Section 16.5, Reconsideration of Final Report, CLERB may re-open an investigation if new evidence, not previously available, would alter the findings. Sawyer did not provide any new evidence that would alter/change the findings. As such, this case is submitted for summary dismissal.

2. Misconduct/Procedure – Mail Processing Center deputies "tampered" with Sawyer's mail.

Board Finding: Summary Dismissal
Rationale: See Rationale #1.

End of Report

NOTICE

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