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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 15, 2023, meeting held in person. 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 (9)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

22-027/VIESCA

1. Use of Force Resulting in Great Bodily Injury – Deputies Michael Lee and Brittany Palmer used force towards Eric Viesca while serving a Court Order on 02-01-22.

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. According to SDSL documentation, on 02-01-22, Deputies Lee and Palmer responded to Eric Viesca's residence to serve a Domestic Violence (DV) Temporary Restraining Order (TRO)/Order for Removal. As stated in the Court Services Bureau (CSB) Training Manual, the purpose of a TRO is to prohibit a defendant from specific activity and must be served personally. According to SDSL documentation, deputies arrived at the residence, knocked and announced themselves as the San Diego Sheriff's Department, verified Viesca's identity and entered the apartment. Deputy Lee explained the terms of the TRO/Move out Order and told Viesca that he must comply, or he would be arrested. Viesca questioned their authority, told the deputies to leave the house and even called 911 to report that the deputies were in his home. Deputies allowed Viesca ample time to retrieve his personal items. Viesca was instructed that once he exited the apartment, he could not re-enter. Once Viesca exited the apartment, he made his way back into the apartment, against deputy commands. Deputy Palmer pushed open the door while Viesca attempted to close it. Deputy Lee then arrived, entered the apartment, and attempted to arrest Viesca for violating the court order. Viesca resisted arrest, so Deputy Lee dropped him to the floor where they wrestled. Viesca remained non-compliant to deputy commands and became

assaultive as he attempted to grab Deputy Palmer's body worn camera, thrashed his body on the floor and kicked his legs. Deputy Lee placed his knee on Viesca's upper body to prevent him from getting up and finally handcuffed Viesca. Viesca complained of pain, so paramedics were contacted, medically assessed Viesca and transported him to the hospital for treatment. Viesca was medically cleared and booked into San Diego Central Jail with charges of resisting an officer and violation of a domestic violence order. Given the totality of circumstances, the force that Deputies Lee and Palmer used to apprehend Viesca was reasonable and within SDSO policy. Addendum F, Use of Force Guidelines stated that the preservation of order and the observance of law are best achieved through voluntary compliance rather than force or compulsion. In this incident, deputies provided Viesca with many opportunities to comply voluntarily with the terms of the Court order. Furthermore, Use of Force Guidelines states that deputies may only use a level of force they reasonable believe is proportional to the reasonable perceived level of actual threatened resistance. Viesca's behavior escalated as he first defied deputies' commands, violated his court order, resisted arrest and became combative towards deputies. The force used was necessary to apprehend Viesca. There was no evidence of any violation of policy during this use of force. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 2 forced entry into Viesca's residence.

Board Finding: Sustained

Rationale: According to SDSO documentation, deputies had a valid civil court order to serve and remove Viesca from his residence. Deputies 1 and 2 went to Viesca's address, knocked, and announced, "Sheriff's Department." Viesca answered the door and verified his identity. Deputy 1 said they had "paperwork", placed his hand on the door, his foot inside the doorway and told Viesca to open the door. As Deputy 1 attempted to enter the apartment, Viesca verbally expressed and physically signaled for him to stop. Both deputies stated they had the right to enter, went inside, then explained their purpose for being there. Given that Viesca did not consent, this is considered a "forcible" entry. SDSO Court Services Bureau (CSB) P&P states, "It should be noted that "forcible" in this context means any non-consensual entry whether it is simply opening the door, use of a key or actual physical force. As stated in the Court Services Bureau (CSB) Training Manual, the purpose of a TRO is to prohibit the defendant from specific activity, and it must be served personally. CSB P&P states that the Sheriff's shall serve all processes and notices in the manner prescribed by law. According to CSB Section D.3, Orders for Forthwith Removal, if at the time of service of the Order for Removal, the respondent and/or restrained person refuses to comply to allow the deputies to enter, a forcible entry may be made if: (A) Probable cause exists to believe the subject of the Order for Removal is inside and (B) The requirements of "knock and notice" per Penal Code section 844, have been complied with. Furthermore, the California Peace Officer Legal Sourcebook (CPOLS), states Forcible Entry of Premises/"knock and notice" is as follows: Penal Code §844 Breaking into House to Arrest, requires you to convey to the occupant who you are and what your purpose is. Specifically, before you enter you must: knock, identify yourself as a police officer, explain your purpose, demand entry, and then wait a reasonable period before entering. A civil order can only be legally enforced if a subject is informed of the purpose for service. The simple statement made of "paperwork" by the deputy, did not "explain the purpose" of the contact as required by policy. Furthermore, deputies demanded access within seconds; there was no reasonable period allotted prior to entry. The evidence confirmed deputies did not comply with the requirements of knock and notice as required by policy, and there were no exigent circumstances that applied. Deputies 1 and 2 provided confidential statements to CLERB, which were considered in arriving at the finding. Confidential legal opinions by CLERB Outside Counsel were provided and considered in arriving at the finding.

22-137/HURST

1. Misconduct/Procedure – Deputy 3 and other unidentified deputies failed to house Hurst in a "medical module."

Board Finding: Action Justified

Rationale: In a statement to CLERB, Hurst reported that he was housed in a unit that was not appropriate for his medical condition. Hurst stated, “*On 10-03-22, I was moved to 5B which is not a medically medical module, jeopardizing my health and safety. I am wrongfully classified in-house outside of a medical module, I feel, as though I am being discriminated against, and wrongfully accused of rule violations to continue to keep me locked down, and not properly housed. By being housed outside a medical module, my diagnosis of vascular necrosis is exalibrating [sic] my condition.*” According to Hurst’s jail documents, Hurst was involved in an incident where he incited other incarcerated persons to disobey deputies’ instructions. When deputies confronted Hurst, Hurst became boisterous and disrespectful towards the deputies. Additionally, Hurst used his wheelchair to defy deputies’ actions. Hurst was in violation of numerous jail rules and regulations. As such, Deputy 3 wrote a Rule Violation Report against Hurst. Hurst was escorted out of the module and was placed in disciplinary isolation/separation, pending a disciplinary hearing. According to Hurst’s Classification documents, based on his criminal history, criminal sophistication, prior prison incarcerations, and his current jail incident involvements, he was classified accordingly and noted to be a high-level inmate, classified as a Level 5. Incarcerated persons with disabilities are entitled to reasonable accommodations. Hurst was not wheelchair bound and did not have any ambulatory assistive devices prior to his incarceration. After being medically evaluated, Hurst was administered a walking cane. There were numerous notes and witness accounts in Hurst’s medical file, by both medical staff and deputies, that noted Hurst did not use his cane, nor any assistive devices to ambulate or walk. A sergeant notated that Hurst was ambulating and exercising during daytime. Despite numerous documents notating Hurst was non-compliant with his cane, a nurse practitioner issued Hurst a wheelchair. Medical records and detailed information about the nature of Hurst’s disability were reviewed during this investigation. The disciplinary isolation/separation jail cell was a reasonable accommodation for Hurst. There was no need for structural alteration to accommodate Hurst. He was assigned to a lower level/tier, lower bunk cell that provided easy mobility and was without barriers that would prevent Hurst further injury. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 3 “wrote-up” Hurst.

Board Finding: Action Justified

Rationale: Hurst alleged that on 10-03-22, he “*was written up by Deputy 3 after refusing a medical evaluation,*” which was his “*right.*” According to a rule violation report, Hurst was written up for failing to treat facility staff in a civil fashion, for failing to obey staff instructions, for threatening/assaulting or attempting to intimidate other incarcerated person(s) and/or any member of the jail staff, for taking part in aggressive and/or boisterous activity, and for engaging in activity that impaired and/or interfered with the operations of the facility. When Deputy 3 announced that he would be conducting an unscheduled search of the module, Hurst refused and incited other incarcerated persons. When confronted and instructed to stop, Hurst became boisterous and disrespectful towards deputies. Hurst was written up, removed from housing, and placed in disciplinary separation. Jail documents and medical records verified that on 10-03-22, Hurst did not refuse a medical evaluation, but refused to comply with a module search. For this reason, Hurst received a rule violation report. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 did not approve a Rule Violation Report.

Board Finding: Unfounded

Rationale: According to Hurst, he received disciplinary action that was not approved by a sergeant. In his letter to CLERB, Hurst stated, “*I was given a segregated house in order by Deputy 1, which was not approved by a sergeant. On 10-22-22, Deputy 1. Unless if I was a suspect in a battery, the lockdown was never approved by a sergeant.*” In review of jail documents, an incident report and a SDSA Crime Incident Report documented a fight Hurst participated in. Hurst was identified as one of eight suspects in the attack. As such, Hurst was served with a rule violation report and a crime report was written naming Hurst as a suspect in the case. The rule violation report was written and served by Deputy 1. The rule violation report was reviewed and approved by Deputy 2. The evidence showed that the alleged act did not occur.

4. Discrimination/Racial– (Deputy) “D. Ramirez” called Hurst a derogatory name.

Board Finding: Unfounded

Rationale: According to Hurst, he alleged that someone referred to him as “a nigger.” Hurst explained, “*I was moved to 5B after D. Ramirez told me to shut the fuck up nigger.*” Sheriff’s records verified that there was no “Deputy Ramirez” assigned to Hurst’s module or working at SDCJ on the date of the incident. In review of jail records, it was noted that it was a fellow incarcerated person (I/P) who likely called Hurst a derogatory name and not a deputy. The evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Harassment - Unidentified deputies “harassed” Hurst about his wheelchair.

Board Finding: Unfounded

Rationale: According to Hurst, he reported, “*I am wheelchair-bound, and I am continuously harassed by deputies, threatening to deprive me of my wheelchair.*” In review of the numerous Incident Reports written regarding Hurst, many of the “information only” reports documented that Hurst demanded a wheelchair but was noted to be ambulatory without the need of a cane or wheelchair. Sworn and professional noted that Hurst was able to ambulate without any assistive devices during his incarceration. At the time of his arrest, Hurst was not in possession of a cane nor a wheelchair. Nonetheless, Hurst demanded a wheelchair while in custody due to his medical condition. Jail medical staff issued Hurst a walking cane, and subsequently a wheelchair. Due to safety concerns, deputies documented Hurst’s failure to use his ambulatory devices as directed by jail medical staff. Staff documented Hurst’s lack of compliance as a precautionary measure and not harassment. Staff’s documentation of concerns did not violate Hurst’s civil, statutory, or constitutional rights, but was to maintain safety and consistency within the jail. Hurst did not produce any evidence to support the allegation that he was being “harassed” by deputies. A review of evidence did not reveal any act that a sworn staff member treated the complainant unjustly or acted in retaliation. The evidence showed that the alleged act or conduct did not occur.

22-139/SLIM

1. Misconduct/Procedure – Deputy 1 demanded Rami Slim’s identification.

Board Finding: Action Justified

Rationale: According to Rami Slim, Deputy 1 asked Slim to hand over his identification, more specifically, his driver license. Without hesitation, Slim gave Deputy 1 his identification in the form of his passport. Slim explained that he called the jail a day earlier to ensure that his passport was an appropriate form of identification for the visit. The purpose of SDSO Detention Services Bureau Policies and Procedures (DSB P&P) Section P.9 titled “Social Visiting,” is to establish guidelines for permitting incarcerated person social visits. All visitors must give required personal information. For the security of the institution and for the protection of the public, only those visitors with the following types of valid photo identification shall be allowed to visit incarcerated persons in the custody of the Sheriff: Driver’s license, federal, state, and local issued government identification card (any state), military identification, passport, U.S. immigration identification (including visas), and other listed forms of identification. Deputy 1 was served a SERF and provided information during CLERB’s investigation that was considered in arriving at the finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Deputy 1 demand to see Slim’s identification prior to his visit did occur, and it was lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 informed Slim of California driving laws.

Board Finding: Action Justified

Rationale: Slim alleged that Deputy 1 held his passport and proceeded to inform him that it was illegal to drive without a driver license. Slim alleged that Deputy 1 “escalate the situation” by adding that he was in violation of the law. Deputy 1 is a detention deputy and a POST certified peace officer within the state of California. When Deputy 1 asked Slim for his driver license, Slim presented his passport. Deputy 1 informed Slim that in California, you must have a valid driver’s license in your possession to legally operate a motor vehicle. Deputy 1 was served a SERF and provided information during CLERB’s investigation that was

considered in arriving at the finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Driving without a valid license in California is a violation of the law. Deputy 1 informed Slim of California driving laws did occur, and it was lawful, justified, and proper.

3. Illegal Search and Seizure – Deputy 1 demanded to search Slim’s vehicle.

Board Finding: Action Justified

Rationale: Slim alleged that Deputy 1 stated, “I’m going to now search your vehicle to make sure you aren’t bringing in any narcotics to the facility!” Slim explained that the vehicle he had drove was not his personal vehicle, but was his father’s vehicle, and he did not know what, if anything, was in his father’s vehicle. During an on-scene investigation at the LCDRF, it was noted that the visitor’s signs at the parking lot entrance and another at the entrance to the jail’s visitor lobby informed visitors that, “All persons, property and vehicles are subject to search.” Deputy 1 provided information during CLERB’s investigation that was considered in arriving at the finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. According to SDSD P&P Section 2.51 titled “Arrest, Search and Seizure,” employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures. Deputy 1’s demanded to search Slim’s vehicle that was parked on jail grounds did occur, and it was lawful, justified, and proper.

4. Misconduct/Retaliation – Deputy 1 canceled Slim’s visits.

Board Finding: Action Justified

Rationale: Slim reported that when he denied Deputy 1’s request to search his father’s vehicle, that Deputy 1 informed him that she would cancel his visits for 30 days. Eventually, Slim reported that Deputy 1 threatened, “Oh okay, we’ll make it 90 days then!” Deputy 1 provided information during CLERB’s investigation that was considered in arriving at the finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. During an on-scene investigation at the LCDRF, it was noted that two visitor parking lot signs were posted and read, “All persons, property and vehicles are subject to search.” According to the SDSD website regarding facility visits, the visitation terms and conditions explain that visits are subject to change or cancellation due to facility security of disciplinary reasons. Social visits are a privilege, and as such, may be suspended as part of a disciplinary action. At the discretion of the facility watch commander, visitors may have their visit privileges suspended for any violation of the visit rules. Violations may result in an up to a 60-day suspension of privileges. According to SDSD DSB - LCDRF Green Sheet Section P.9.L titled Social Visiting, any “inappropriate behavior” will be grounds for immediate termination of the social visit and any future contact visit. The act of canceling a visitor’s visiting privileges was within the privy of the SDSD. The evidence showed that the alleged act did occur, and it was lawful, justified and proper.

5. Discrimination/Other – Deputy 1 conducted a criminal history check on Slim.

Board Finding: Action Justified

Rationale: Slim alleged that Deputy 1 performed a criminal history check on him prior to his visit and noted that he had a criminal history. In a telephonic interview, Slim explained he suspected Deputy 1 ran a criminal check on him prior to his visit, noted his criminal history, and singled him out and approached him based on that information. Slim reported that he did not volunteer to disclose his criminal history as he did not want to incriminate himself or have Deputy 1 judge him based on his past. Deputy 1 provided information during CLERB’s investigation that was considered in arriving at the finding, however, that information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. According to SDSD P&P Section 6.24 titled “CLETS/NCIC/DMV/LOCAL/eARJIS,” information obtained from any automated files shall be retrieved using an audit trail which clearly links the request for the information to a valid criminal investigation. According to SDSD Section 7.6 - Use of CLETS-NCIC-ARJIS and Local Information: Information derived from this source shall only be used within the course of official duties as designated by the Sheriff’s Department. Deputy 1 conducting a criminal history check on Slim did occur, and it was lawful, justified, and proper.

6. Misconduct/Intimidation – Deputy 1 touched her department issued duty weapon while interacting with Slim.

Board Finding: Not Sustained

Rationale: According to Slim, he reported that Deputy 1 placed her hand on her gun while she spoke with him. Slim perceived this as an act of intimidation, as if to purposely attempt to escalate the situation. Deputy 1 provided information during CLERB’s investigation that was considered in arriving at the finding, however, that information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. There was no Body Worn Camera available to view. In the jail surveillance video recording of Deputy 1’s interaction with Slim, the recording was not clear enough from the distance/placement of the camera to confirm or refute the allegation that Deputy 1 purposefully or inadvertently touched her weapon. According to SDSD P&P Section 8.1 titled Use of Firearms/Deadly Force, deputies, in carrying out their duties, shall, when feasible, apply de-escalation techniques before resorting to the use of a firearm. As a general rule, deputies shall not remove a firearm from the holster or display firearms unless there is sufficient justification. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that Deputy 1 inappropriately touched or handled her department issued duty weapon while she addressed Slim.

22-149/WEATHERSPOON

1. Misconduct/Procedure – Unidentified deputies did not follow safety standards for serving food to Incarcerated Persons (I/P).

Board Finding: Not Sustained

Rationale: The complainant, Andrew Weatherspoon reported that unidentified deputies did not provide incarcerated persons the correct Personal Protective Equipment (PPE) while they served food. According to SDSD Documentation, Andrew Weatherspoon was arrested on 07-13-20 and booked into San Diego Central Jail (SDCJ) with several violent felony charges. On 11-14-22, Weatherspoon was assigned to Jail Based Competency Treatment (JBCT). According to SDSD policy, JBCT is designated for those incarcerated persons who receive a “Restore to Competency” court order. According to PEN§ 1370, this occurs when a defendant is found mentally incompetent to stand trial. San Diego Sheriff Department (SDSD) Incident Report stated that on 11-13-22 Weatherspoon complained to a deputy that the designated server did not utilize gloves to serve the meals. According to SDSD documentation, a deputy reported he pushed the food cart in the module with a new set of gloves and pulled the food cart out afterwards with a used set of gloves. He also stated he felt Weatherspoon tried to disrupt and manipulate the JBCT program. Although, Detentions Services Bureau (DSB) Policy & Procedure (P&P) states in section K.11 Compliance with Health Laws that all Food Services Division (FSD) personnel will comply with all applicable federal, state and local health laws, which includes wearing disposable gloved when touching food, we do not have enough information to determine if this incident occurred. Given the lack of information such as dates, deputies involved, etc. CLERB was unable to thoroughly investigate this manner. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 1 blamed Weatherspoon for a “missing” lunch.

Board Finding: Not Sustained

Rationale: The complainant, Andrew Weatherspoon stated that on 11-16-22, he was short one meal while he served lunch in his module and Deputy 1 “antagonized” him and “assumed” he stole a meal or gave it away. SDSD DSB P&P states that each jail facility maintains a monthly meal count sheet to track the number of meals served to incarcerated persons. According to policy, meals served to incarcerated persons are to be actual counts of meals served to incarcerated persons via a tray system or bulk feeding. In addition, SDSD P&P states that employees shall be courteous and prohibit coarse, profane, or violent language. Deputy 1 provided confidential statements during the course of CLERB’s investigation that were considered in arriving at the finding. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 “locked” Weatherspoon in his cell.

Board Finding: Action Justified

Rationale: The complainant, Andrew Weatherspoon stated Deputy 1 was in “direct violation of the Sheriff’s Department guidelines and California Corrections Regulations” because he allegedly locked him in his cell from 11-17-22 to 11-20-22. Deputy 1’s Incident Report showed that he placed Weatherspoon on by-pass because he believed he would be disruptive during JBCT program. Deputy 1 reported Weatherspoon would have access to the dayroom when JBCT did not have program. According to SDSD Division Inspectional Services, by-pass is the process of securing a door from the control tower. When the control tower releases all the cell doors for dayroom or some other activity, the cell doors on by-pass remain secured. Deputy 1 provided confidential statements during CLERB’s investigation that were considered in arriving at the finding. Although, Weatherspoon was not placed on “lockdown”, his access to program was restricted due to his behavior which kept him “locked” in his cell while other I/Ps had program. Please note that it is common practice for JBCT I/Ps to remain “locked” in their cells throughout the day unless the control deputy opens their cell door as needed to abide by daily jail standards. There was no evidence presented that showed a violation of policy on behalf of Deputy 1. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 2 “mocked” Weatherspoon.

Board Finding: Not Sustained

Rationale: The complainant, Andrew Weatherspoon stated that Deputy 2 “mocked him.” He reported that on 11-17-22, Deputy 2 told him to take out the trash in his cell, but Weatherspoon said he would do it later. Weatherspoon reported deputies would open his cell door and he would close it. Weatherspoon stated Deputy 2 instructed him to lie down on his bunk and he responded, “I respectfully decline sir.” According to Weatherspoon, he asked the deputies why they harassed him and said Deputy 2 mocked him when he responded, “I respectfully decline sir” and walked away. According to SDSD Incident Report, on 11-17-22 Deputy 1 conducted scheduled cell/module cleaning for JBCT at SDCJ. Deputy 1 explained that all incarcerated persons (I/Ps) in JBCT program are to be compliant and allow the I/Ps and deputies to clean their cells to ensure everyone complies with Jail Standards. He also reported that Weatherspoon refused anyone inside his cell to clean it and continued to close the door “in the deputy’s face.” The incident report stated that Weatherspoon said the deputy “has it out for him” and yelled profanities at the deputy. Deputies 1 and 2 provided confidential statements during CLERB’s investigation that were considered in arriving at the finding. Although there was an interaction between Weatherspoon and Deputy 2, there was no evidence regarding comments/actions (if any) were taken by the deputy. There was insufficient evidence to either prove or disprove the allegation.

23-028/JENSEN

1. Criminal Conduct – Mail Processing Center (MPC) deputies “stole” Lennox Sawyer’s book.

Board Finding: Unfounded

Rationale: Jensen stated, “Either a dishonest Deputy or a female trustee (all trustees are convicted criminals) is stealing SD Sheriff’s Dept Inmate’s mail, including magazines and books:” Jensen stated she ordered a book by Stephen King titled “Fairy Tale” for Sawyer. In Jensen’s written statement, she stated the book was ordered on 01-17-23. Jensen included Amazon Order screenshots of the book order in her complaint according to the documentation provided, the book was ordered on 02-13-23 and delivered on 02-22-23 to Las Colinas Detention and Reentry Facility (where all jail mail is processed). SDSD records produced an incoming property receipt with description of property “Fairy Tale” dated 02-22-23. The book was shown as delivered to Sawyer’s housing unit on 02-22-23 and signed by Lennox Sawyer as received. The evidence showed the alleged act or conduct did not occur.

2. Criminal Conduct – Mail Processing Center (MPC) deputies “stole” Sawyer’s magazine.

Board Finding: Unfounded

Rationale: Jensen stated, "Either a dishonest Deputy or a female trustee (all trustees are convicted criminals) is stealing SD Sheriff's Dept Inmate's mail, including magazines and books:" Jensen stated Sawyer never received the November 2022 issue of Rolling Stone which was mailed on 10-20-22. In a telephonic interview with Rolling Stone Customer Service Representative, Emma, she stated the November 2022 issue was delivered on 11-29-22. The submitted documentation by Jensen included a grievance form which was dated 11-24-22. The form was written prior to the delivery of the November 2022 issue. SDSD DSB P&P P.3, titled, "Incarcerated Person Mail", establishes guidelines for uniform handling, screening, and prompt routing/delivery of mail. All incoming non-legal mail is routed to the Mail Processing Center (MPC) warehouse at Las Colinas Detention and Reentry Facility. MPC deputies work with Sheriff's Transportation Detail (STD) and detention facilities' staff to provide reasonable prompt delivery of incoming materials. According to the policy, incoming mail may be rejected if includes the following: marked with paint, crayon, glitter, labels, cloth, string, watermarks, stains, lipstick, cosmetics, perfume, or stickers (excluding U.S. postage stamps); mail depicting nudity, obscenities, suggestive images, or other offensive materials; and mail depicting weapons, gang references, criminal activity, codes, or markings. Furthermore, the policy states "Periodicals and new soft covered books delivered to the facility by publishers or bookstores via the U.S. Postal Service may be accepted". According to DSB P&P when incoming mail is withheld for reasons other than drugs/narcotics, MPC deputies will enter "MREJ" in the receiving incarcerated person's Jail Information Management System (JIMS) history. According to SDSD records Sawyer had five mail rejections from 2022. Mail rejection reasons included: stained/dirty, item containing glitter, and used hardcover book rejection. SDSD records did not show any rejections from January 1, 2023, to March 9, 2023. Furthermore, none of the mail rejections from October and December indicated a Rolling Stone Magazine rejection. There was one Unacceptable Notice for a Rolling Stone Tote Bag which was returned on 03-06-22. There was no Unacceptable Notice for a November 2022 issue of Rolling Stone. The evidence showed the alleged act or conduct did not occur.

3. Criminal Conduct –Trustees "stole" Sawyer's mail.

Board Finding: Summary Dismissal

Rationale: Jensen stated, "Either a dishonest Deputy or a female trustee (all trustees are convicted criminals) is stealing SD Sheriff's Dept Inmate's mail, including magazines and books:" Jensen stated she ordered a book by Stephen King for Lennox Sawyer which was delivered on 01-17-23 according to Amazon Delivery. Jensen also stated Sawyer never received the November 2022 issue of Rolling Stone which was mailed on 10-20-22. Per CLERB rules and regulations 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against Peace Officers or Custodial Officers employed by the County of San Diego in the Sheriff's Department. Trustees are not Peace Officers or Custodial Officers for the County of San Diego and as such CLERB lacks jurisdiction. The Review Board lacks jurisdiction.

4. Criminal Conduct – Unidentified Deputy "stole" Sawyer's mail.

Board Finding: Unfounded

Rationale: Jensen stated, "Either a dishonest Deputy or a female trustee (all trustees are convicted criminals) is stealing SD Sheriff's Dept Inmate's mail, including magazines and books:" Jensen stated she ordered a book by Stephen King for Lennox Sawyer which was delivered on 01-17-23 according to Amazon Delivery. SDSD records showed the Stephen King book was delivered and signed by Sawyer on 02-22-23. Jensen also stated Sawyer never received the November 2022 issue of Rolling Stone which was mailed on 10-20-22. *See Rationale 2.* The evidence showed the alleged act or conduct did not occur.

5. Misconduct/Procedure – Deputies failed to respond to Sawyer's inmate requests and grievances.

Board Finding: Unfounded

Rationale: Jensen stated, "My brother submitted, first an inmate request form "where is my book?" on January 25, 2023. No response was ever received from SDSD. On January 31, 2023, Lennox submitted an Inmate Grievance, J-22 Form. He never received a white copy back with the JIMS number etc. (as policy).

He did get the yellow copy attached with a response.” Per SDSA DSB P&P N.1 titled Grievances, states “Rejected Mail” is not grievable under this policy. The attachment provided by Jensen was a “Claim Against the County of San Diego” that Jensen filled out. The claim included a Grievance Form filled out by Sawyer on 11-24-22 but was marked as “an inmate request” by SDSA staff. The SDSA was received on 11-24-22 and noted “This is a request for materials allegedly not received from MPC. Request forwarded to MPC.” Beneath the response is an additional response from MPC that states, “Make sure your name and booking # are on the media.” The evidence submitted by Jensen included a response from SDSA staff, both in the housing unit and MPC. Furthermore, as per CLERB liaison, the claim that Lennan attached is an open with the department and was received on 03-29-23. The evidence also showed the written complaint on the Grievance Form filled out by Lennan was submitted prior to the November 2022 issue being shipped (11-29-22). The evidence showed that the alleged act or conduct did not occur.

23-063/SCHOENEBERG

1. Misconduct/Procedure – Deputies 1 and 2 requested that Schoeneberg submit to field sobriety tests.

Board Finding: Action Justified

Rationale: The complainant, Wayne Schoeneberg, stated in his complaint to CLERB, “Despite my full cooperation and the absence of any signs of impairment or intoxication, Deputy 2 and Deputy 1 requested I submit to a series of field sobriety tests. I asserted my rights to remain silent and not offer any assistance in their investigation.” According to SDSA documents, on 06-02-23, a DUI checkpoint was set up in the city of Poway, CA, and that Schoeneberg was stopped at the DUI checkpoint. SDSA published a media release, dated 05-31-23, which advised a DUI checkpoint would be established in the City of Poway at an undisclosed location. The California Peace Officers Legal Sourcebook (CPOLS) is a legal reference that provides guidance in case law most applicable to peace officers in the course of their official duties. Information regarding DUI checkpoints obtained from CPOLS indicated “... ‘regulatory searches’ have been upheld by the United States and California Supreme Courts. For instance, ‘sobriety checkpoints’ are legal, at least where certain safeguards and guidelines are followed.” Additionally, “The California Legislature in 2012 adopted guidelines for ‘Sobriety Checkpoint Inspections.’ Vehicle Code section 2814.2 requires that drivers ‘stop and submit to a sobriety checkpoint inspection conducted by a law enforcement agency when signs and displays are posted requiring that stop’.” Based on a review of involved deputy reports, body worn camera (BWC) footage of the incident, and Schoeneberg’s video evidence, it was objectively reasonable to request Schoeneberg submit to field sobriety tests, based upon Deputy 2’s initial observations. No misconduct could be identified related to requesting that Schoeneberg submit to field sobriety tests at a DUI checkpoint. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. False Arrest – Deputy 1 arrested Schoeneberg.

Board Finding: Action Justified

Rationale: Schoeneberg stated in his complaint to CLERB, “... I was subsequently arrested for driving under the influence (DUI), an offense I did not commit, As evidenced by the attached breathalyzer results showing 0.00% BAC.” According to Deputy 1’s report of the incident, based on the observations of Schoeneberg at the DUI checkpoint, Schoeneberg was initially arrested for violation of CA Vehicle Code section 23152(A), Driving Under Influence of Alcohol or Drugs. Regarding probable cause, CPOLS stated, “‘probable cause’ always boils down to the same question: does an officer possess enough factual knowledge or other reliable information so that it is reasonable, in light of the officer’s training and experience, to believe ‘X’.” In this circumstance, Deputy 1 was advised by Deputy 2 that he smelled alcohol, and that Schoeneberg had glassy eyes. It should be noted, Deputy 2 did not clarify with Deputy 1 whether the odor of alcohol Deputy 2 smelt was emanating from Schoeneberg himself, or from his vehicle. However, Deputy 1 noted in his report of the incident, “I was unable to smell the odor of an alcoholic beverage from Schoeneberg’s breath. I noticed that Schoeneberg was chewing gum. I suspected the gum was masking the odor of an alcoholic beverage.” Further, Deputy 1 stated in his report, “Based upon my training and experience, I know that the odor of an alcoholic beverage as well as glassy eyes are the objective and subjective biological signs and symptoms

of being under the influence of alcoholic beverages.” Based upon the totality of the circumstances, Deputy 1’s decision to arrest Schoeneberg for driving under the influence, pending further investigation, did not appear to be unlawful. Additionally, confidential statements made in a Sheriff’s Employee Response Form (SERF) were considered in this finding. CA Vehicle Code section 23612, Implied Consent to Chemical Test, stated in part that a person arrested for driving under the influence of alcohol must either submit to a blood test or breath test and can choose which test they would like to submit to. In this incident, SDSA documents showed that Schoeneberg opted to submit to a breath test, which ultimately returned negative results for alcohol consumption. Subsequently, Schoeneberg was released pursuant to CA Penal Code section 849(b)(1), which allows a peace officer to release an individual from custody if the “officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.” Deputy 1 also provided Schoeneberg with a copy of certificate of release verifying that taking Schoeneberg into custody was a detention only, and that Schoeneberg was not being arrested or charged with a crime. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

23-064/MILLER

1. Use of Force Resulting in Great Bodily Injury – Deputy Michael Smith used a SDSA canine to apprehend Steven Miller.

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. According to documents received from SDSA related to the incident, on 05-29-23, deputies responded to a report of an individual, later identified as Steven Miller, armed with a “pistol” at the intersection of Broadway and Lemon Grove Avenue. The San Diego Sheriff’s Department (SDSD) Background Event (CAD) associated with this incident confirmed that responding deputies were provided with information that Miller was “walking with a pistol.” Among the deputies who responded to the call was Deputy Smith, who was assigned a SDSA canine. Body Worn Camera (BWC) footage captured this incident and showed deputies attempt to make contact with Miller and provide him numerous commands to stop. Miller was uncooperative and continued to walk away from deputies. Deputy Smith’s BWC footage showed him provide Miller with numerous advisements that he would be bit by the canine if he did not get on the ground. BWC footage showed Miller continue to walk away from the deputies, in the direction of bystanders outside of a storefront. Ultimately, a SDSA canine was used to apprehend Miller. SDSA Policies and Procedures (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 Departmental procedures, and report all use of force in writing.” Further, SDSA P&P, Addendum Section F, regarding the use of canines, stated in part, “Canines are typically used in search scenarios, for deputy protection and for apprehension of fleeing subjects wherein this degree of force is justifiable. Canines certified and approved for department use may be used under the following circumstances: For the protection of the handler, other law enforcement officers and citizens. To locate, apprehend or control a felony suspect when it would be unsafe for the deputies to proceed into the area. To locate, apprehend or control armed misdemeanor suspects.” A review of this incident, and current SDSA P&P, showed that, considering all the circumstances, Deputy Smith’s decision to utilize his canine to assist in the apprehension of Miller was justified. Had not Deputy Smith used the canine to stop Miller, it is reasonable to believe this could have escalated to a use of lethal force incident, given Miller’s lack of willingness to comply with deputies’ instructions, that Miller was believed to be armed with a handgun and that Miller was walking towards a group of bystanders. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

23-066/SMITH

1. Misconduct/Procedure – Unidentified officers “targeted” Jeremy Smith.

Board Finding: Summary Dismissal

Rationale: Smith stated, "I've been a target of aggressive and persistent police attention for the last two months." Smith provided the following information in response to CLERB questions. "The Carlsbad police and Oceanside police have been following me around and were at the Carlsbad library with me. The Carlsbad police exonerated me at the library. According to CLERB R&R Section 4.1 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. The alleged misconduct against Carlsbad and Oceanside police is submitted for summary dismissal per Section 15: Summary Dismissal, After reviewing the Investigative Report and records, CLERB may summarily dismiss a Case, upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed Summary Dismissal and may appear to argue for or against Summary Dismissal. Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the Complaint.

2. Misconduct/Procedure – Unidentified officers "swabbed" Smith's belongings and hands.

Board Finding: Summary Dismissal

Rationale: Smith stated, "This all started with the filing of a police report by a restaurant accusing me of meth dealing. At last count I've been swabbed 4-6 times. The first swab cleared me." See Rationale #1.

3. Misconduct/Procedure – Unidentified officers "followed" Smith.

Board Finding: Summary Dismissal

Rationale: Smith stated, "Despite my hand and belongings being swabbed with negative results, for the last 3 days all of my public transit have been policed with undercover drivers and UC passengers. All the way down to San Diego Metro and back and all bus and Sprinter trips since." See Rationale #1.

4. Misconduct/Procedure – Unidentified officers conducted an "ID check" on Smith.

Board Finding: Summary Dismissal

Rationale: Smith stated, "Today they followed me on my morning transit trips, including and ID check at the train stop El Camino Real." Smith reported it was the Sheriff that ID'd him at the train stop. Smith was not able to identify any sworn personnel. Request for records from the Sheriff returned a negative result. CLERB liaison reported Sheriff has had no detentions or arrests for Smith. See Rationale #1.

5. Misconduct/Procedure – Unidentified officers "filed" a warrant.

Board Finding: Summary Dismissal

Rationale: Smith stated, "Right now police at the library are rushing to file a new warrant upon seeing the CLERB." See Rationale #1.

23-072/MILGAZO

1. Misconduct/Procedure – Deputy 1 omitted evidentiary information from a report.

Board Finding: Summary Dismissal

Rationale: Michelle Milgazo stated, "I called the Poway Sheriff's, on June 7, 2022, to report a violation of the DVRO [Domestic Violence Restraining Order]. I provided Deputy 1 a screen shot of my phone records of the restrained party's number and several text messages from the number he has texted me from. No where in the police report does Deputy 1 reference those messages." Milgazo filed this complaint on 07-17-23, however, the incident giving rise to the complaint occurred on 06-07-22. Per CLERB R&R, section 4.1.2 Complaints: Jurisdiction. CLERB shall have jurisdiction in respect to all complaints arising out of incidents occurring on or after November 7, 1990. Notwithstanding the foregoing, CLERB shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the complaint was incarcerated or physically or mentally

incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. The exceptions to the one-year filing requirement were not a factor in this case. As such, this case is submitted for Summary Dismissal.

2. Misconduct/Procedure – Deputy 1’s report “contradicted” itself.

Board Finding: Summary Dismissal

Rationale: Milgazo stated, “The entire report contradicts itself on the times indicated.” See Rationale #1.

3. Misconduct/Procedure – Deputies 1 and 2 omitted a time of arrest.

Board Finding: Summary Dismissal

Rationale: Milgazo stated, “The entire report contradicts itself on the times indicated. Nor are there times indicated when Deputy 2 arrested Jason.” See Rationale #1.

4. Misconduct/Procedure – Deputy 1’s report was an “opinion” and not factual.

Board Finding: Summary Dismissal

Rationale: Milgazo stated, “The entire report leaves out the texts I provided and is a written opinionated report of Deputy 1 and not of facts.” 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.