

BOARD MEMBERS

MARYANNE PINTAR
Chair
NADIA KEAN-AYUB
Vice Chair
BONNIE KENK
Secretary
DR. R. LEE BROWN
EILEEN DELANEY
ANDREW HAYES
ARIANA FEDERICO MONDRAGON
TIM WARE
GARY I. WILSON
VACANT
VACANT



EXECUTIVE OFFICER
VACANT

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 January 30, 2024, 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 (8)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

22-037/BAKER (Inv. Setzler)

1. Death Investigation/Homicide – Incarcerated Person Derek Thomas Baker was assaulted by his cellmate while in the custody of the Sheriff's Department and subsequently died.

Board Finding: Sustained

Rationale: On 01-17-22, 56-year-old Derek Thomas Baker was arrested by the San Diego Police Department (SDPD) and booked into San Diego Central Jail (SDCJ) on a warrant. Baker was a convicted sex offender, 290-registrant, who failed to register as ordered by the court. Due to his registrant status and age, he was classified as a protective custody (PC) incarcerated person (IP). On 03-04-22, an inmate status report documented Baker having issues with his cellmate so he was moved to a new cell with IP Patrick Ferncase. IP Ferncase had been in custody since 12-21-21 for Attempted Murder, Assault with Force and Elder Abuse, and was also classified as PC. On 03-12-22, a security check was conducted at approximately 12:06pm and noted no issues/concerns. Around 12:58pm, an inmate in the dayroom notified a deputy of a "man down." Deputies found Baker lying on his cell floor, face down on his stomach with blood surrounding his head and upper torso. At approximately 12:59pm, medical assistance was requested for Baker who was conscious and breathing. Ferncase was removed from the cell and continuously monitored by deputy observation. Paramedics arrived on scene to treat and transport Baker to a hospital where he was admitted to the Intensive Care Unit. Baker's condition continued to decline and on 03-29-22 his death was pronounced. Jail surveillance video corroborated this information and shadow movements were last

observed through Baker and Ferncase's cell window at 12:48pm. Ferncase provided the following voluntary statement to detectives, "...me and my celly, we weren't getting along, kept calling me names, and what not. One thing led to another and we ended up boxing, and he's a different race so I ended up stomping him out." Following this incident, and due to Ferncase's propensity for violence, inability to coexist and the extreme nature of his actions was classified to be housed in A/S (Administrative Separation) with KSA (Keep Separate All) status. On 03-30-22, an autopsy was conducted and concluded Baker's cause of death was blunt force head trauma with acute bronchopneumonia, diabetes mellitus, type I, and hepatic cirrhosis contributing, the manner of death was homicide. The District Attorney's Office charged and is currently prosecuting Ferncase for Baker's murder. The evidence supported that Baker was properly classified upon his entry into the SDSA jail system and thereafter when he expressed concerns for his physical well-being. Baker was subsequently housed with another PC cellmate, but one who was a violent offender. While there was no violation of the classification policy, the SDSA failed to implement reasonable measures in housing together two PC inmates, one an elderly low-level (3) sex offender with the other a high-level (5) violent offender. The evidence supported the allegation and the act was not justified.

USES OF FORCE RESULTING IN GREAT BODILY INJURY (1)

23-105/NAKHO (Inv. Wigfall)

1. Use of Force Resulting in Great Bodily Injury – Deputies Matthew Addenbrooke, Stephen Maxin, Daniel Michel, Andrew Paulino, Angela Peratis, Gilberto Trevino, and Whitney Worthington used force towards Steve Nakho during a welfare check.

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. On 06-26-23, deputies responded to a home where it was reported Nakho was in the backyard and "talked to himself, yelled, acted erratically, but had no known mental diagnosis." Deputies responded and attempted to speak with Nakho who fled. At that time, Nakho's mother told deputies that Nakho was in violation of his restraining order. Deputies later verified two active Criminal Protective Orders with Nakho as the restrained party and the mother as the protected party. Deputies requested back up and later found Nakho as he stood at the top of a staircase at his mother's apartment complex. SDSA documentation showed Nakho was nonresponsive to deputies, waved a spatula and made incoherent statements. Deputies believed his actions/behaviors were consistent with someone being under the influence of a controlled substance. Nakho reported to CLERB that after he jumped the fence to flee deputies, he "barricaded" himself because he was in fear due to past encounters with law enforcement. He said he "waved the spatula and told deputies to leave him alone and go away." Deputies attempted to de-escalate the situation as they provided him with several warnings, told him he was under arrest and gave him many opportunities to comply, but they were unsuccessful. Deputies deployed bean bags from a specialty munitions shot gun as it was deemed the safest options given Nakho's position at the top of the stairs and his combative history with deputies. A deputy deployed four rounds and Nakho was apprehended. As deputies escorted Nakho to a patrol vehicle, he resisted and Nakho was then placed in a WRAP device. Paramedics arrived, evaluated, and transported Nakho to the hospital. where he was later cleared to be booked into jail. SDSA P&P Use of Force states employees shall not use more force in any situation than is reasonably necessary under the circumstances. In addition, Addendum F, Use of Force Guidelines states that 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. The guidelines also state that a WRAP restraint may be used on violent suspects who, by kicking pose a threat to themselves or others. Nakho was non-compliant and resisted deputy's efforts to apprehend him. Deputies assessed the situation and used less lethal force to arrest Nakho. The force used was reasonable given the totality of circumstances. Body Worn Camera (BWC) was reviewed and corroborated deputy reports. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 5 and 6 responded to a welfare check of Nakho.

Board Finding: Action Justified

Rationale: Complainant Nakho reported that on 06-26-23, his mother called 911 to have paramedics dispatched to help him, as he suffered a “psychological breakdown.” 911 emergency dispatch audio was reviewed and confirmed Nakho’s mother reported her son needed “medical attention” and she was transferred to paramedics. The mother reported Nakho was uninjured, but screamed loudly, talked to himself, was having a “mental breakdown,” and may be on drugs. Deputies were dispatched to perform a welfare check based on the information provided to them from Dispatch. Given that a medical emergency was not reported, deputies were dispatched to respond, assess the situation, and contact medical as needed. Deputies 5 and 6 also provided confidential statements that were used in the recommended findings. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputies 3,5 and 6 failed to utilize de-escalation techniques with Nakho.

Board Finding: ~~Unfounded~~ Not Sustained

Rationale: Complainant Nakho reported that deputies did not take any “precautionary measures” to restrain him and could have “shot him with pepper spray or used a taser.” Nakho stated he would have complied with paramedics (versus law enforcement.) Addendum F, Use of Force guidelines defines de-escalation as actions taken in an attempt to stabilize an incident in order to try and reduce the immediacy of a threat at by obtaining more time, tactical options or resources to resolve an incident. The goal of de-escalation is to gain voluntary compliance of subjects, when feasible, and or to potentially reduce or eliminate the need to use force on a subject. De-escalation does not require that a deputy risk their safety or the safety of the public. The evidence showed deputies exhausted their de-escalation efforts as they provided Nakho several opportunities to comply, warned then told him he was under arrest, and asked Nakho if there was anything they could do for him to comply, but all without success. ~~The evidence showed that the alleged act or conduct did not occur.~~ There was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force – Deputy 3 “fired four rounds” at Nakho.

Board Finding: Action Justified

Rationale: Complainant Nakho stated deputies fired 4 rounds towards him, 2 shots hit his leg, 1 shot hit the left side of his torso and the last shot hit his left arm, which requires surgery. Nakho stated deputies used “excessive force” and broke his arm. See Allegation #1. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

PRIORITY (0)

ROUTINE (6)

23-078/HUNTER (Inv. Klew)

1. Misconduct/Procedure – Unidentified deputies “failed” to provide Incarcerated Person (IP) Hunter a “Disciplinary Hearing.”

Board Finding: Action Justified

Rationale: Complainant Norvel Hunter alleged he was placed on “lockdown” on 03-02-23 and “did not receive a write up or have a disciplinary hearing.” DSB Policy, O.1, Disciplinary Action outlines the processes for Rule Violations, Disciplinary Action, Administrative Separation and a Disciplinary Hearing Officer’s Responsibilities, with limitations and an appeal process. According to SDSD records, a Housing Separation Order dated 03-03-23, was written by Deputy [redacted] and approved by Deputy 3, “pending a hearing or investigation for a rule violation or criminal act.” The Disciplinary Hearing Officer, Sergeant [redacted] determined, “It is the Disciplinary Hearing Officer’s opinion that the incarcerated person’s presence at the disciplinary hearing would be disruptive.” On 03-05-23, Deputy [redacted] documented Hunter’s numerous rule violations occurring daily or weekly and determined Hunter required placement

into Administrative Separation due to his failure to adjust and conform to the minimum jail standards. Hunter's wristband was changed to reflect his new classification status and he was offered a copy of the J-72, which he refused. Based upon all known evidence, there was no violation of policy and the evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Intimidation – Deputies 1 and 2 threatened to use force against Hunter.

Board Finding: Unfounded

Rationale: Hunter alleged Deputies 1 and 2 refused to provide water and threatened to forcefully insert a catheter to obtain a urine sample. Due to Health Insurance Portability and Accountability Act (HIPPA) restrictions, pertinent information documented regarding this event is confidential and will not be disclosed. This incident was documented in compliance with sheriff's rules and regulations and Hunter was found to not be credible in his recall of this event. The evidence showed that the alleged act or conduct did not occur.

3. Excessive Force – Deputies 1 and 2 “restrained” Hunter.

Board Finding: Unfounded

Rationale: Hunter alleged Deputies 1 and 2 threatened and/or utilized force to obtain a urine sample from IP Hunter. See Rationale #2.

4. Misconduct/Retaliation – Unidentified deputies “refused” to provide Hunter with breakfast and lunch.

Board Finding: Not Sustained

Rationale: Hunter reported when he returned from a medical emergency, deputies retaliated against him by not providing the meals he had missed. DSB Policy K.15 states meals will be served three times in any 24-hour period with a maximum of 14 hours between the evening meal and the breakfast meal, and that each facility will establish meal schedules according to their physical plant requirements and staffing. At the facility where Hunter was incarcerated, the designated meal times were 3:30am for breakfast, 10:30am for lunch and 4:00pm for dinner. Due to his feigned medical emergency, Hunter missed the breakfast and lunch meals and did not return to the detention facility until approximately noon. Incarcerated Persons who are outside their assigned housing during meal service may request a meal from staff, however, those type of sack meals are not tracked. There was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Retaliation – Unidentified deputies failed to provide Hunter access to a shower.

Board Finding: Not Sustained

Rationale: Hunter alleged, “I did not shower the entire time while being at module 6A, this was also out of retaliation. I was there from 03-02-23 to 03-07-23 and 03-12-23...” DSB Policy L.11, Personal Hygiene states that upon assignment to a housing unit an incarcerated person will be allowed a shower and additional showers at least every 48 hours thereafter. On the designated dates, IP Hunter was placed into Administrative Separation for his inability to conform to the minimum standards. Per DSB policy J.3, Administrative Separation shall consist of separate and secure housing, but shall not involve any other deprivation of privileges, other than is necessary to obtain the objective of protecting the incarcerated person, staff, or public. Hunter's IP History Report documented his refusal for a shower on 03-05-23. Additionally, an Inmate Status Report documented that while Hunter was on lockdown, he was given access to the dayroom specifically to shower but spent his hour in the Dayroom on the telephone and never once utilized the shower. While Hunter was found not to be credible in his recall of this event, there was insufficient evidence to either prove or disprove the allegation.

6. False Reporting – Unidentified deputy documented Hunter refused shower(s).

Board Finding: Not Sustained

Rationale: Hunter alleged, “I am aware that deputys falsely documented in the system that I refused which I absolutely did not.” Hunter failed to provide any evidence to support his accusation and was found not be

credible in his recall of these events. Hunter's IP History Report documented a refusal for shower on 03-05-23. There was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – An unidentified deputy housed Hunter in an unclean cell.

Board Finding: Summary Dismissal

Rationale: Hunter alleged, "Deputy [redacted] placed me in cell 118.... While being placed in cell 118 I immediately noticed there was human feces, urine, hair, and bacteria all over the bunks, desk, floor, walls, sink, toilet, etc." In CLERB case 23-025, Hunter also included allegation that he was placed in an unclean cell. SDS DSB P&P Section L.4, Housekeeping Plan, establishes a policy to ensure a written housekeeping plan exists for each facility. According to the policy, the facility green sheet outlines the housekeeping plan for GBDF. According to the Green Sheet for GBDF, "An in-custody individual work crew supervised by the Support Services or Medical Rover shall do all general cleaning, as described under In-custody Worker Duties. Facility workers are non-sworn personnel and as such CLERB lacks jurisdiction. An incident report was identified which stated Hunter was refusing to shower until he spoke with a Lieutenant about his cell conditions. The incident report indicated staff were responsive to Hunter's request. The Review Board lacks jurisdiction.

8. Misconduct/Procedure – Deputy 3 did not act on Hunter's grievance.

Board Finding: Not Sustained

Rationale: Hunter alleged he notified Deputy [redacted] of the uncleanliness of the cell, and "... he just walked away." Further, Hunter alleged, "On 03-08-23 I gave (Deputy 3) a grievance informing him about the shower situation and the cell filled with bio-hazard. He took a look at the cell and confirmed he witnessed the conditions... I believe deputys [sic], corporals, and sergeants [sic] worked in cohort to carry out this cruel and unusual punishment on me. I am almost certain he did not file the grievance because of this." See Allegation #7. No evidence could be identified which showed Hunter submitted a grievance on 03-08-23, however, the incident report dated 03-08-23, indicated staff were responsive to Hunter's verbal request. There was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Unidentified deputies "refused" to provide Hunter with shoes.

Board Finding: Not Sustained

Rationale: Hunter alleged, "Deputys [sic] also refused to give me shoes..." Regarding Hunter's allegation that he was not provided with shoes, an incident report dated 03-09-23, indicated that Hunter was placed in Enhanced Observation Housing (EOH), pending medical evaluation. SDS D Detention Services Bureau – Manual of Policies and Procedures DSB P&P, Section J.4, Enhanced Observation Housing (EOH) Definition and Use, stated, "Incarcerated persons who have been determined by the facility gatekeeper to warrant placement in the Detentions Safety Program (DSP) because they present an increased risk for suicide and who do not require placement in a safety cell as outlined in DSB P&P J.1, shall be temporarily housed in EOH for the purpose of receiving closer observation and assessment for permanent housing..." Additionally, the policy stated, "An incarcerated person placed into EOH shall have all their personal clothing, wristband, jewelry and other property removed... All incarcerated persons placed in EOH will be issued a safety garment, two safety blankets, and shower shoes... Shower shoes may be removed if they are used for any purpose other than as footwear. Documentation in an incident report is needed if shower shoes are not given." A review of Incident reports and the Inmate History Summary Report showed no indication that shower shoes were not provided to Hunter. Additionally, no other evidence reviewed indicated shower shoes were not provided. Hunter also included an allegation that deputies removed his clothing, however this was also related to his placement in EOH and there was no misconduct identified. There was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Harassment – Unidentified deputies "ripped" off Hunter's clothes.

Board Finding: Action Justified

Rationale: Hunter also included an allegation that deputies removed his clothing, however this was also

related to his placement in EOH (See Allegation #9) and there was no misconduct identified. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

11. Misconduct/Procedure – Unidentified deputies ignored Hunter’s requests for medical attention.

Board Finding: Summary Dismissal

Rationale: Hunter alleged, “I also told them about my extreme illness and they did nothing about it. I also filled out multiple medical requests while in cell 118.” CLERB Rules and Regulations, Section 4, Authority, Jurisdiction, Duties and Responsibilities of CLERB, provides that 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 this allegation is related to SDSO medical staff, CLERB lacks jurisdiction.

12. Misconduct/Intimidation – Unidentified deputies “threatened” to use force on Hunter.

Board Finding: Not Sustained

Rationale: Hunter alleged that on “(03-12-23)... deputys [sic] came to my cell (209) and told me I would go back to bio-hazard infested cell 118 in module 5B. I initially refused and told them I was in fear for me health and safety... they did not care and threatened to use force.” No incident reports could be identified which indicated a use of force occurred. An incident report dated 03-12-23, did indicate that Hunter refused to be escorted to his cell. However, the report did not indicate any force was used, or that deputies “threatened” to use force during the incident. There was insufficient evidence to either prove or disprove the allegation.

13. Misconduct/Intimidation – Unidentified deputies covered cell windows to “eliminate” witnesses.

Board Finding: Not Sustained

Rationale: Hunter alleged, “After that they started blocking every cell window in module 6A with black blankets to eliminate all witness.” Regarding the allegation that deputies “blocked” cell windows, there is no evidence which showed this to be factual. There were two incident reports dated 03-10-23 and 03-18-23 which indicated Hunter had covered up his own window with paper, obstructing deputies’ views into his cell. There was insufficient evidence to either prove or disprove the allegation.

23-101/CHAMBERS (Inv. Aldridge)

1. Misconduct/Procedure - SDSO staff served Chambers “spoiled” food.

Board Finding: Summary Dismissal

Rationale: During his incarceration, Chambers reported that he was served “spoiled” food. Chambers reported, *“I received another spoiled lunch tray. Deputy 1 seen the lunch but refused to smell it, which was not consumable. I am on a gastric diet per medical reasons and for some reason they’re never consumable when it comes to the sandwich slices of meat, that comes in the open sandwich bag inside a plastic sealed cardboard trough. I don’t think it’s right for the spoiled condition of this particular meal to be ignored.”* According to SDSO P&P Section 2.48 titled “Treatment of Persons in Custody,” employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. The purpose of SDSO DSB P&P Section K.1 titled “Provision of Nutritionally Adequate Diet,” is to establish guidelines for serving nutritionally adequate meals in all detention facilities. All incarcerated persons will be provided a diet which meets or exceeds Title 15 regulations. The purpose of SDSO DSB P&P Section K.25 titled “Safety and Protection Standards,” is to ensure safe working habits and safe operation of kitchen equipment are met. The Food Services Division supervisor is responsible for proper and safe food handling and meal preparation. The Food Services Division supervisor is also food service sanitation, safe food handling, and safe working habits. The SDSO Food Services Division is responsible for handling all meals in all detention facilities. The allegations against the Food Services Division staff are summarily dismissed, as CLERB does not have any jurisdiction against non-sworn staff. Pursuant to CLERB Rules and Regulations, Section 4.1 Complaints: Authority, stipulates that CLERB only has authority to investigate complaints filed against

peace/custodial officers employed by the San Diego Sheriff's Department. Food service, preparation, and distribution are made by non-sworn Food Services Division staff and as such CLERB lacks jurisdiction to investigate further.

2. Misconduct/Procedure – Deputies 1 and 2 failed to process Chamber's grievances.

Board Finding: Unfounded

Rationale: In his written complaint to CLERB, Chambers alleged that Deputies 1 and 2 failed to process his Inmate Grievances. Chambers advised, "As of 08-26-23, I've put in a grievance to sheriff 1 [Deputy 1] and he forwarded [the grievance] to the kitchen staff with no results. A couple days later I put in another grievance and was able to get that receipt, but was told it was also forwarded to kitchen staff. 09-09-23 I received another spoiled lunch tray. Staff advised me to give it to the sergeant or put it in the grievance box. No sergeant came through so I gave it to sheriff 1 [Deputy 1]." In review of Chambers' booking file, four Incarcerated Person Grievance forms were noted, with three of those grievances pertaining to his allegation of receiving spoiled food. The purpose of SDSA DSB P&P Section N.1 titled "Grievance Procedure," is to establish uniform procedures by which an incarcerated person has the opportunity for a formal administrative review of issues impacting conditions of confinement which personally affect the incarcerated person. If the grievance must be routed to another individual or unit for resolution (e.g. food services division), the person who initially received the grievance will make an entry into the "action taken" area of the grievance in JIMS. This entry will include the name of the person the grievance is being forwarded to, and the date and time it was forwarded. In review of the Chambers jail documents, all grievances were processed according to SDSA DSB P&P. The evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Procedure – SDSA failed to provide receipts to Chambers.

Board Finding: Unfounded

Rationale: During his incarceration, Chambers alleged that SDSA staff failed to provide him with receipts for his incoming property. Chambers advised that his family and friend sent him periodicals and pictures which he claimed he never received. Chambers advised, "I received a novel on 08-27-23 but the receipt says the novel was here in George Bailey on 08-16-23, 11 days after it arrived. Was sent to me by a loved one and she said she got confirmation of when or about the time. It should be here and I haven't received them. It's been weeks. My relative was surprised to find out I haven't gotten my pictures all this time later." According to Chambers' SDSA jail booking file, his file contained five SDSA Incoming and Outgoing Property Receipts. All receipts were signed by Chambers and by Sheriff's employees, confirming that he either received incoming property, or confirming that he authorized the release of his property. Additionally, a review of Chambers' jail documents revealed that he received property and released property during his incarceration. According to SDSA P&P Section 2.39 titled "Processing Property," property which has been gathered or received in connection with Departmental responsibilities will be processed in accordance with established Departmental procedures. Employees shall not conceal, falsify, destroy, remove, tamper with or withhold any property found or obtained in connection with the performance of their duties. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Procedure – SDSA failed to distribute Chambers' mail and emails.

Board Finding: Not Sustained

Rationale: In his letter to CLERB, Chambers stated that the SDSA failed to distribute his incoming mail and emails to him. Chambers advised, "Mail and emails were not being delivered for approximately two months." The SDSA website pertaining to detentions list what items are acceptable, and what items are unacceptable for mail. The site also advised that there is no limit to the amount of mail a person in custody may send or receive. SDSA P&P describe how incoming mail is received, processed, and delivered. The purpose of SDSA DSB P&P Section P.3 titled "Incarcerated Person Mail," is to establish guidelines for the uniform handling, screening and prompt routing/delivery of United States (U.S.) mail, incoming letters, new softbound books, periodical subscriptions (i.e., magazines, newspapers, etc.), confidential/legal mail, and electronic email messages. The policy dictates that incarcerated persons shall be allowed to receive and

possess U.S. mail, incoming letters, confidential/legal mail, and mail from official government agencies. They may also receive electronic email messages, periodicals, and new books. There shall be no limit on the amount of mail an incarcerated person may send, and no limit on the amount of mail that they may receive. Incoming U.S. Mail may be rejected for a variety of reasons, including mail that contains paint, crayon, lipstick, etc., or depicting nudity, obscenities, or other offensive materials, to include weapons, incite violence, riot, racism, or threats. 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 SDSD failed to distribute Chambers' mail and emails.

5. Misconduct/Procedure – SDSD “blocked” deposits to Chambers account.

Board Finding: Unfounded

Rationale: Chambers alleged that the SDSD “blocked” deposits to his account. Chambers' reported, *“Four months I haven't received no receipts for money placed on my books and for some unknown reason my parents and loved ones are not allowed to put money on my books through the sheriff website when I've been having the same financial report since June 2022. All it says is there's a block or the money has to two days approval. Which [has] never happened.”* According to the SDSD website, money is maintained on an incarcerated person's account from cash that they had at the time of arrest and through subsequent deposits from family and friends. Money can be deposited to an incarcerated person's account through the SDSD Commissary e-commerce website, which is noted on the website. The website describes how to deposit money to an incarcerated person's account. A review of Chamber's jail transactions confirmed that he received a number of deposits to his account throughout his incarceration. The purpose of SDSD DSB Section B.3 titled “Cash Controls and Operations,” is to establish controls and guidelines for cash operations within the detention facilities. The purpose of SDSD DSB Section B.5 titled “Money Orders and Checks,” is to provide a secure process for the receipt of approved checks, money orders or government checks/drafts and posting of funds for persons in custody. Detention facilities shall allow the public to place cash deposits on an incarcerated persons' account. In summary, money deposits received in-person at the jail, through the kiosk, or online are handled by the Custody Information Office, the Detention Facility Accountants, and/or the detention processing staff. Pursuant to CLERB Rules and Regulations, Section 4.1 Complaints: Authority, stipulates that CLERB only has authority to investigate complaints filed against peace/custodial officers employed by the San Diego Sheriff's Department. As such CLERB lacks jurisdiction to investigate further.

23-107/WILSON (Inv. Aldridge)

1. Excessive Force - Deputy 1 deployed his Conducted Energy Device and struck Incarcerated Person (IP) Shaw.

Board Finding: Action Justified

Rationale: The complainant, Nastassia Wilson, is the mother of the aggrieved, Ezra Isiah Shaw who reported his cellmate was aggressive and causing problems. Shaw was incarcerated at San Diego Sheriff's Department, George Bailey Detention Facility after his 07-18-23 arrest. On 08-30-23, Shaw and his two cellmates were within their jail cell. Shaw's cellmates were involved in a physical altercation. Deputy 1 attempted to de-escalate the situation verbally but resorted to using force when Shaw's cellmate continued to assault the other. During the assault, and in an attempt to disrupt the fight, Deputy 1 deployed his Conducted Energy Device (CED) towards the assailant, within the jail cell. When deployed, the CED fires two small-barbed electrodes intended to puncture the skin and remain attached to the target until removed. Shaw was not the intended recipient of the CED deployment; however, one of the CED electrodes struck Shaw, as he was in close proximity. During the tense situation, Deputy 1 purposefully discharged his CED, resulting in Shaw unintentionally being struck by one of the CED electrodes. Immediate medical assistance was provided to Shaw. Situational awareness is crucial in uses of force for deputies to accurately assess the situation, make informed decisions, and ensure the safety of all parties involved, and of those uninvolved. Understanding the totality of their surroundings, potential threats, and their ability to assess the risk will assist the deputy in responding most appropriately and effectively to the situation while minimizing harm. Training, experience, and effective communication play vital roles in developing and maintaining

situational awareness during a use of force like this. This investigation outlined the incident review and highlighted the importance of training and responsibility in the use of force. To prevent such incidents from occurring in the future, it is encouraged for the SDSA to continue reviewing their training protocols and procedures, emphasizing proper CED handling, and ensuring that all deputies undergo rigorous training to handle stressful situations most effectively. This investigation concluded that Shaw's injury was considered collateral damage. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Discourtesy - Deputy 1 made a snide remark to IP Shaw.

Board Finding: Not Sustained

Rationale: Wilson reported that when Shaw questioned Deputy 1 about being accidentally struck with the CED electrode, Deputy 1 had a smirk on his face and said, "Two for one." The statement "two for one" generally refers to when two items can be obtained for the price of one. According to SDSA Policy & Procedures (P&P) Section 2.22 titled "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. According to SDSA P&P Section 2.48 titled "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. Deputy 1 provided information during CLERB's investigation that was considered in arriving at the recommended finding, however, that information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. It was unclear where Shaw was when he alleged that Deputy 1 made the statement, or if there were any witnesses to collaborate the statement. At the time of this report, one cellmate was out of Sheriff's custody and the other was not interviewed. 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 made a snide remark to Shaw.

23-111/KELLEY (Inv. Wigfall)

1. Misconduct/Procedure – Deputy 1 placed Incarcerated Person (IP) Brian Kelley into a holding cell.

Board Finding: Action Justified

Rationale: Complainant Kelley stated he was "left for days" and freezing cold while shirtless, barefoot, and wearing swimming trunks. SDSA documentation confirmed on 07-15-23, Kelley was arrested by the San Diego Police Department with assault charges and booked into the San Diego Central Jail (SDCJ). Jail surveillance video showed Kelley was placed inside a booking/intake cell at approximately 3am on 07-16-23. Video also verified Kelley wore only shorts, amongst other IP's who were in their "street clothes." Several hours after Kelley was placed into the booking cell, he initiated a fight with another IP causing Deputy 1 to handcuff and remove Kelly from holding, and escort him to another cell. Incarcerated Persons remain in clothes worn during arrest until provided with jail issued clothing after completing the initial booking process. Video evidence showed Kelley dressed in jail issued clothing on 07-17-23. Deputy 1 followed protocol when he moved Kelley from the intake/booking cell to a holding cell on the second floor and there was no evidence of any policy violations. According to the California Department of Corrections and Rehabilitation (CDCR) website, Kelley was admitted into a California Rehabilitation Center on 05-11-24. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified deputies failed to provide meals and water to Kelley.

Board Finding: Not Sustained

Rationale: Complainant Kelley reported he was not provided any water and was only fed once a day while in the booking process. Evidence showed that Kelley was provided a meal as soon as he was placed inside the intake/booking cell, which also had running water. According to a departmental liaison, "The current booking process and area activity logs do not reflect whether meals are provided to IPs during booking.

Additionally, deputies do not log meals served during booking because it is not an option under the standard area activity log.” Detentions Services Bureau Policy & Procedure (DSB P&P) states that the Food Services Division will serve meals three times in any 24-hour period with a maximum of 14 hours between the evening and breakfast meal. Each facility should follow policy and provide the opportunity for each IP to receive a meal three times a day. There was insufficient evidence to either prove or disprove that Kelly missed a meal.

3. Misconduct/Procedure – San Diego Sheriff’s Department (SDSD) failed to “drug screen” Kelley.

Board Finding: Action Justified

Rationale: Complainant Kelley stated he was not provided a “breathalyzer” or “drug screen” to prove he was sober. Kelly’s arrest report verified a non-drug related offense. Detention Services Bureau Policy & Procedure (DSB P&P) Section M.9 Receiving Screening states that individuals that are severely intoxicated, exhibit symptoms of alcohol or drug withdrawal will be referred immediately for further evaluation, treatment and/or medical clearance at an emergency department. Kelley’s intake medical assessment was reviewed and used in these recommended findings. There was no evidence that showed Kelley was in need of a drug screen and SDSD’s actions were lawful, justified and proper.

4. Misconduct/Medical – Jail medical staff failed to provide Kelley with prescribed medications.

Board Finding: Summary Dismissal

Rationale: Complainant Kelley stated he did not receive his prescribed medications. Jail medical records were reviewed, but the contents are confidential in compliance with HIPPA (Health Insurance Portability and Accountability Act) laws. Detentions Services Bureau Policy & Procedure (DSB P&P) Section M.1 Access to Care also states that IPs shall have quality and timely access to care for their medical, dental and mental health needs. In accordance with CLERB Rules & Regulations Section 15 Summary Dismissal applies to this allegation since CLERB does not have jurisdiction over jail medical staff. The Review Board lacks jurisdiction.

5. Misconduct/Procedure – Unidentified deputies failed to provide Kelley with a “working” telephone to post bail.

Board Finding: Unfounded

Rationale: Complainant Kelley stated he was placed into a cell without a “working phone.” Kelley stated he spoke to someone from a bail bonds company that told him his father was able to pay his bail but was not able to speak to them. Jail surveillance video showed that the two intake/booking cells Kelley was placed, both had phones. Video also showed that Kelley used the telephone during the booking process. Detentions Services Bureau Policy & Procedure (DSB P&P) Section P.2 Telephone Access stated all incarcerated persons will be provided reasonable access to a telephone beyond those telephone calls required by Penal Code Section 851.5. Policy also states that telephones will be located in areas accessible to IPs during dayroom or recreation time when they are allowed outside of their assigned cells or dorm living units. According to Penal Code 851.5 Arrestee Phone Calls, an arrested person has the right to make at least three completed phone calls no later than three hours upon being booked, except where physically impossible. The evidence shows that the alleged act or conduct did not occur.

6. Misconduct/Procedure – Unidentified staff failed to provide Kelley with his attorney’s contact information.

Board Finding: Not Sustained

Rationale: Complainant Kelley stated he was at the George Bailey Detention Facility (GBDF) for months and did not have any contact with his Public Defender because “he failed to give him his information.” It is unknown who Kelley referred to in this statement. “He” could have referred to a deputy, SDSD staff member or the Public Defender himself. Without further clarification, CLERB was unable to investigate this allegation further. In addition, DSB N.5 Access to Courts/Attorneys/Legal Advice that personnel shall ensure incarcerated persons (IPs) have access to legal counsel/attorneys and inmate requests for legal assistance are forwarded to the facility Correctional Counselor. Correctional Counselors are then able to provide the

IP with the requested information. In addition, SDSD documentation showed that Kelley had visitations while he was incarcerated at GBDF which included a professional visit with his legal staff. There was insufficient evidence to either prove or disprove the allegation.

23-121/SCHERFF (Inv. Wigfall)

1. Excessive Force – Deputy 1 used force towards the aggrieved.

Board Finding: Unfounded

Rationale: Complainant Jaclyn Scherff contacted 911 to report that the aggrieved experienced a “mental health crisis.” Scherff complained that a “motorcycle officer out of nowhere came up behind the aggrieved at a fairly quick walking pace and unnecessarily tackled her to the ground.” Body Worn Camera (BWC) was reviewed and showed Deputies 1, 2 and 3 responded to the scene and found the aggrieved wearing only a towel. She sat on the curb when Deputies 2 and 3 approached her and used arm guidance to handcuff the aggrieved. Deputy 1 was present to assist but did not use force. After handcuffing, deputies clothed the aggrieved and escorted her to a patrol vehicle. The evidence showed there was no use of force and the alleged act or conduct did not occur.

2. False Arrest – Deputy 2 and 3 arrested the aggrieved.

Board Finding: Action Justified

Rationale: Complainant Jaclyn Scherff reported that Deputies 2 and 3 told her they were taking the aggrieved to the hospital for a “5150 hold,” but instead she went to jail. 5150 hold refers to Welfare Institutions Code 5150. (WIC§ 5150) In custody 72-hour treatment and evaluation for mentally disordered person. WIC§ 5150 also states when a person, as a result of a mental health disorder, is a great danger to others, or themselves, or gravely disabled, a peace officer, upon probable cause take the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, etc. BWC was reviewed and showed deputies transported the aggrieved to a hospital for evaluation, but she was not admitted. CLERB did not have permission to access medical records. A Probable Cause Declaration (PCD) for a warrantless arrest was submitted by Deputy 2 and reported the aggrieved punched Scherff on the shoulder, threw an unknown object that broke a window, and made dents to a vehicle in the parking lot. Although Scherff did not want to press charges, deputies had the authority to arrest the aggrieved based on probable cause of a criminal act in accordance with SDSD P&P Section 2.51 Arrest, Search and Seizure and the California Peace Officer Legal Sourcebook Search and Seizure law. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. False Reporting – Deputy 2 wrote “false information in the report.”

Board Finding: Unfounded

Rationale: Complainant Jaclyn Scherff stated that deputy reports contained “false information.” She explained that deputies reported Scherff and the aggrieved were in a verbal altercation and the aggrieved “punched” her. Scherff stated, “Both of these statements are untrue and did not occur.” Body Worn Camera (BWC) showed Scherff admitted to Deputy 2 that the aggrieved punched her, more than once, in the arm and back area. With deputies present, the two subjects were also arguing back and forth. SDSD P&P Section 2.46, Truthfulness states that employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete. The contents of deputy reports corroborated with BWC evidence. The evidence showed that the alleged act or conduct did not occur.

24-001/SANFILIPPO (Inv. Bohan)

1. Misconduct/Procedure – Unidentified deputies placed the Aggrieved in “Solitary Confinement.”

Board Finding: Action Justified

Rationale: Valerie Sanfilippo stated, "It is illegal to punish the mental ill for behaviors resulting from mental illness. Please release my schizoaffective stepson from months of solitary confinement." According to SDDS records, the Aggrieved was classified appropriately and housed in separate housing based on his negative behavior, to include assaults on staff, escape attempts, slipping chains and his continued failure to conform and adjust to minimum jail standards. Per Detentions Policy J.3 Separation: Definition and Use, the following are types of incarcerated persons who may be placed into administrative separation housing: Those who have displayed a continual failure to adjust and conform to the minimum standards expected of those in mainline housing or designated special housing. The incarcerated person's behavior is either criminal in nature or disruptive to the safe operation of the facility. Those who have shown a propensity for violence towards other incarcerated persons and/or staff. Administrative separation shall consist of separate and secure housing, but shall not involve any other deprivation of privileges, other than is necessary to obtain the objective of protecting the incarcerated person, staff, or public. The evidence showed that the aggrieved's placement in separate housing did occur and was justified and proper.

2. Misconduct/Medical (I/O) – Medical staff did not answer the telephone.

Board Finding: Summary Dismissal

Rationale: Sanfilippo stated, "George Bailey medical refuses to answer phone." The alleged misconduct involved detention medical staff, over whom CLERB has no jurisdiction. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, 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 in the Sheriff's Department or the Probation Department. This complaint is submitted for summary dismissal per CLERB R&R Section 15: Summary Dismissal, Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the complaint.

SUMMARY DISMISSAL (0)

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.