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# County of San Diego

## 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 November 12, 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](http://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 (17)

#### ALLEGATIONS, BOARD FINDINGS & RATIONALES

##### 20-092/FLORES (Death)

1. Death Investigation/In-Custody Homicide – Incarcerated Person (IP) Javier Solis Flores died while in the custody of the San Diego Sheriff's Office (SDSO) while he was housed at the South Bay Detention Facility after he was assaulted by fellow IPs.

Board Finding: Action Justified

Rationale: Incarcerated Person Javier Solis Flores was incarcerated within the SDSO jail system after his 03-12-20 arrest. On 09-09-20, Flores was assaulted by four other IPs housed in the same module as Flores. After the assault, another IP escorted Flores back to his assigned jail cell and placed him into his bed. Approximately 35 minutes later, detention deputies performed a safety/security check and found Flores down and unresponsive on his bunk bed with obvious traumatic injuries to his face and head. Deputies attempted to revive Flores, but were unable to do so, and summoned additional deputies, jail medical/health staff, and paramedics. Advanced cardiac life support where initiated and Flores was transported to a local hospital where he was diagnosed with a traumatic head injury. Flores was given a poor prognosis, was pronounced deceased on 09-11-20, and remained on life support, pending organ and tissue donation. All four suspects involved were classified as a high security/classification. Flores and the suspects were appropriately housed together, as they had the same/similar criminal charges and had the same security/classification levels. According to California Title 15 Minimum Standards for Local Detention Facilities Article 5-Classification and Segregation §1050 titled "Classification Plan" facility shall develop and implement a written classification plan designed to properly assign inmates to housing units according to the categories of sex, age, criminal sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive

behavior, risk of being sexually abused or sexually harassed, and other criteria which will provide for the safety of the inmates and staff. Housing unit assignment shall be accomplished to the extent possible within the limits of the available number of distinct housing units or cells in a facility. According to DSB P&P Section R.1 titled 'Incarcerated Person Classification,' is to screen, assess and house incarcerated persons in a manner that will protect the safety of the community, staff and other incarcerated persons. There was no evidence to support an allegation of procedural violation or misconduct on the part of Sheriff's Department sworn personnel. The evidence showed the act of classifying and housing IP Flores with four suspects who assaulted him occurred, and was lawful, justified and proper.

2. Misconduct/Procedure - SDSO failed to implement safety protocols to prevent incarcerated persons from manipulating jail cell doors.

Board Finding: Not Sustained

Rationale: In review of the circumstances involving Flores' death, it was noted that two of the four suspects who assaulted Flores, should not have had access to the dayroom. At the time of the incident, only IPs from the top tier of the module, and those designated as inmate workers, were authorized to leave their cells for dayroom activities. The IPs housed in the bottom cells were supposed to remain locked in their cells, with no access to the dayroom. With that protocol being in place, two of the assaulting suspects should have been confined to their cells in the bottom tier, adhering to the lockdown directive. This lockdown was intended to limit the number of IPs in the dayroom and maintain separation between IPs based on their housing tier. Therefore, the fact that two of the four suspects were able to access the dayroom indicated a breach of security protocols; allowing them to access Flores when they should have been segregated and confined as per the lockdown measures for the bottom tier. In review of deputy interviews, it was learned that incarcerated persons sometimes use various techniques to manipulate their jail cell doors to make them appear locked when they are not. Though it remained undetermined how the IPs unsecured their jail cell door, it was suspected that they may have "jimmied" the locking mechanism. In review of Flores' death case, CLERB recommends that the SDSO execute prevention measures preventing IPs from manipulating their jail cell doors. There was insufficient evidence to either prove or disprove an allegation of deputy misconduct.

#### **POLICY RECOMMENDATION:**

1. CLERB recommends that SDSO execute prevention measures to eliminate/reduce unsecured cell doors.

#### **22-070/MUSSER** (Death)

1. Death Investigation/Traffic Pursuit – Deputies 1-4 pursued a vehicle that was allegedly involved in a commercial burglary that subsequently collided with a traffic pole, resulting in the death of Kory B Musser on 06-17-22.

Board Finding: Action Justified

Rationale: On the early morning of 06-17-22, deputies received a radio call regarding a burglary alarm at a gated community's area in the City of Vista. Deputies 1 and 3 located Kory B Musser seated in a parked vehicle on scene. When deputies approached and attempted to contact Musser, he started the vehicle and fled the scene. Deputies 1 and 3 activated their emergency lights to initiate a traffic stop; however, Musser sped away and traveled at an unsafe high rate of speed through a residential neighborhood. During the pursuit, Musser failed to yield at a red light and drove through the intersection with his speed estimated to be approximately 65 miles per hour before he struck a light pole. The pursuit lasted about one minute, one second and covered about one mile. Deputy 3 immediately approached Musser and found him semi-unresponsive and trapped inside the vehicle, with pool chemicals spilling into the vehicle and out into the roadway. In the Body Worn Camera (BWC) recording, one could see the fumes of the chemicals on the roadway and in the bed of the vehicle and could hear the responding deputies coughing. Deputy 3 immediately attempted to rescue Musser; however, he was unable to access the vehicle due to the noxious fumes of spilled chemicals. Fire personnel subsequently responded and removed Musser from the vehicle and initiated aggressive lifesaving efforts. Despite medical intervention, Musser succumbed to his injuries and his death was pronounced while on scene. Upon review of all known evidence, deputies initiated the pursuit in compliance with SDSO P&P Section 6.43 titled 'Vehicle Pursuit,' which states that a pursuit may be initiated when an individual clearly exhibits the intention of avoiding police contact or arrest by using a

vehicle to flee; and the deputy has reasonable suspicion that the individual has committed a crime. Deputies must consider all public safety factors applicable to the particular facts and circumstances. A pursuit may be discontinued at any time at the discretion of the initiating deputy and when the danger posed by continued pursuit, to the deputy, the suspect, or the community, is greater than the value of apprehending the suspect(s). The involved deputies' BWC recordings detailed the continual assessment of public safety factors to include location, traffic, road conditions, and speed in compliance with SDO policies. There was no evidence to support an allegation of procedural violation or misconduct on the part of SDO sworn personnel.

### **23-029/KINZENBAW** (Discharge of Firearm)

1. Discharge of Firearm – Deputy Carlos Ramirez-Ochoa discharged his firearm and injured Brenton Kinzenbaw.

#### **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 03-09-23, late in the evening, Deputy Ramirez-Ochoa observed a stolen vehicle at 1127 Oro Street and called for backup. A second deputy arrived on scene on 03-10-23 and parked his vehicle in front of the reported stolen vehicle. The deputies approached the vehicle, which was occupied by Kinzenbaw, and who reversed and backed into Deputy Ramirez-Ochoa's patrol vehicle. Kinzenbaw then placed the vehicle in drive and accelerated forward toward Deputy Ramirez-Ochoa who was in front of the vehicle on the passenger side and attempted to retreat towards the second deputy's patrol vehicle. Deputy Ramirez-Ochoa fired his weapon at Kinzenbaw. Kinzenbaw sustained a gunshot wound, fled the scene, crashed the stolen vehicle and hid in a nearby shed. Deputies located Kinzenbaw, placed him under arrest, and transported him to a nearby hospital where he was treated for his injuries. According to the Memorandum of Understanding, Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Incidents, "The purpose of this agreement is to conduct independent investigations, provide consistency in inter-agency investigations within San Diego County and outline the circumstances for conducting criminal investigations and independent review of all law enforcement related: a. Discharges of a firearm (excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal) b. Deadly force incidents that result in serious bodily injury or death." As this incident involved SDO, the San Diego Police Department (SDPD) was the primary investigating agency. SDPD conducted a comprehensive scene investigation, interviews of involved parties, and a ballistics analysis. This evidence was received from SDO and considered in this investigation. Additionally, numerous SDO reports, and body worn camera (BWC) footage, was reviewed. SDO P&P Addendum Section F, Use of Force Guidelines, regarding the use of deadly force stated, "Deputies may only use lethal force when they reasonably believe, based on the totality of the circumstances, that lethal force is necessary to defend against an imminent threat of death or serious injury to the deputy or to another person; or to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the deputy reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended." Additionally Penal Code Section 835a provides a legal standard regarding the use of force, and stated, "That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force." Deputy Ramirez-Ochoa discharged his firearm 9 times during the incident. California law and SDO P&P clearly defines when an officer may use deadly force, and how those incidents should be evaluated. In this case, when evaluating the totality of circumstances presented to Deputy Ramirez-Ochoa, the facts showed he reasonably believed he was at risk of great bodily injury or death, and that the force used was within policy and justified. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 did not activate his body worn camera (BWC).

#### **Board Finding:** Sustained

**Rationale:** During the investigation, it was noted that BWC footage was unavailable for Deputy 1. BWC was available for Deputy [redacted], which was critical evidence in making findings in this case. Regarding the

lack of BWC footage, Deputy 1 provided information in an interview with SDPD which was considered when making a finding. Additionally, a Sheriff Employee Response Form (SERF) was sent to Deputy 1, requesting a rationale, if any, as to why the BWC was not activated prior to approaching the stolen vehicle. The confidential statements made in the SERF were also considered in making a finding. SDSA P&P section 6.131, Body Worn Cameras, stated, "When responding to a call for service, a deputy/CSO shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. In situations where activation was not accomplished prior to arriving on scene, those reasons shall be articulated in writing via case related report, or if no report, in CAD. Deputies/CSO's should also begin recording prior to initiating any law enforcement related contact..." Additionally, Section 6.131 stated, "Law enforcement related contacts include but are not limited to the following: traffic stops, field interviews, vehicle tows, issuing of citations, issuing of parking tickets, detentions, arrests, persons present at radio calls who are accused of crimes, serving court orders or civil papers, investigative interviews, deputy initiated consensual encounters and private person initiated contacts of a confrontational nature." The evidence supports the allegation, and the act or conduct was not justified.

### **23-142/CHAVEZ** (Routine)

1. Misconduct/Procedure – Deputy 1 violated Sheriff's Policy 2.35, Operation of Vehicles.

**Board Finding:** Sustained **Not Sustained**

**Rationale:** Complainant Juan Chavez stated, "On 10-20-23 at around 3:00pm I was on a jail bus being transported from the superior courthouse located downtown to George Bailey Detention Facility. The driver Transportation Deputy Officer 1 was driving on the freeway extremely careless and in a very high speed during traffic hours." According to SDSA Policy 2.35 titled, Operation of Vehicles, Employees shall operate all county owned or maintained vehicles, or any vehicle being operated in the performance of their official duties, in a careful and prudent manner, and shall obey all laws of the state and all Departmental orders pertaining to such operation. According to the Automatic Vehicle Location (AVL) Report, Deputy 1's speed during transportation of the incarcerated persons (IP's) varied, but at times exceeded the posted speed limit(s). Deputy 1 stated in his Officer's Report, "I was traveling approximately 60 miles per hour in the Number Three Lane, when a Silver Toyota Prius quickly slowed down in the Number Three Lane in front of me. I was following the Prius at approximately 200 yards when it started slowing down. I immediately began controlled braking and slowing the bus down safely. I looked for an option to exit the Number Three Lane but was unable due to vehicles on both sides of the bus. The bus slowed down but continued forward colliding with the rear of the Prius at approximately five miles per hour." A California Highway Patrol (CHP) officer conducted an investigation and determined Deputy 1 was in violation of California Vehicle Code §22350 Unsafe Speed for the Prevailing Traffic Conditions, which states, in part, "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property." The CHP investigation was based on statements alone and did not include review of bus video or diagnostic test performed by the SDSA and San Diego County Fleet Services following the accident. The brake test conducted by the SDSA found that the stopping distance for the bus involved in the accident compared to another inmate transportation bus of the same year/make/model was found to have approximately 51 feet more stopping distance from a 40 mile per hour starting speed. San Diego County Fleet Services conducted a brake inspection and discovered the left drive axle slack adjuster had failed which resulted in loss of braking. SDSA reports noted, "The primary cause of the collision was determined to be 'other than driver' due to the reduced brake performance." According to the CHP Traffic Crash Report Deputy 1 was identified as the party at fault. Deputy 1 was offered an interview to provide additional or clarifying information but declined per his right as specified in the agreement between CLERB and the Deputy Sheriff's Association. The preponderance of evidence showed that Deputy 1 violated Sheriff's Policy 2.35 Operation of Vehicles and California Vehicle Code §22350 Unsafe Speed for the Prevailing Traffic Conditions ~~and the conduct was not justified.~~ **There was insufficient evidence to either prove or disprove the allegation due to faulty brakes.**

2. Misconduct/Procedure – Deputy 1 caused a bus accident that injured Incarcerated Person Juan Chavez.

**Board Finding:** Unfounded

Rationale: Complainant Chavez stated, "Around the said time the bus driver came to a sudden halt as we crashed into the back of a civilian's car causing me to hurt my head, my neck, my back, my hands and knees and feet. Do [sic] to me being a green bander I had my arms crossed up and chained up in waist chains and secured chains around my ankles and for those reasons I was not able to grab on to anything and that is why I was injured." Detention Policy 1.57 titled, Transportation of Incarcerated Persons: Greenband Transports, states in part, "Always use the restricted padlock leg chains and waist chains. The incarcerated person shall have their arms crisscrossed in front of them prior to having their hands cuffed with the waist chain cuffs." Review of bus video showed that at the time of the accident, Chavez's reaction was a flinch and then a lean forward where his forehead contacted the screen in front of him, however, it did not appear Chavez hit with any force. It also did not appear that Chavez was in distress or hurt. The video evidence refuted Chavez' allegation that he suffered injuries as a result of the accident. Following the accident Chavez was evaluated by jail medical staff and recorded no injuries from the accident. Chavez's recollection of the events was found not to be credible. The evidence showed the alleged act or conduct did not occur.

3. Misconduct/Procedure – SDO delayed assessing/treating IP Chavez following a vehicle accident.

Board Finding: Summary Dismissal

Rationale: Complainant Chavez stated, "From the freeway the bus pulled off to the side of the road to talk to the other driver where we were made to sit in pain for almost two hours. At no time were we asked if we were okay or if we needed medical attention." According to SDO records, the security deputy, on board the bus, stated, "I began to note the Incarcerated Person's names and booking numbers onto a bus seating chart. The I/Ps were quiet and cooperated with my task. I asked all 23 I/Ps their name and booking numbers individually noting each one and recording it onto the seating chart. At no time did any I/P complain of injury or ask for immediate medical attention. I noticed no signs of medical trauma or distress while I spoke to each I/P." Per CLERB Rules & Regulations 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. Due to the lack of identification of a specific deputy(s) CLERB lacks jurisdiction and the allegation is summarily dismissed.

4. Misconduct/Intimidation – Unidentified deputies "eyed" Chavez in a threatening manner.

Board Finding: Summary Dismissal

Rationale: Complainant Chavez stated, "When we got off the bus at GBDF there was a whole hallway lined up full of deputies. All the officers were standing very close to me making eye contact in a very threatening manner. The first thing the deputies asked me was if I wanted to sign a refusal form so that I would not get treated by medical staff, so I did not sign the refusal form." Chavez provided no identification of sworn personnel and the allegation was subjective in nature. See rationale #4.

5. Misconduct/Medical – Medical staff did not properly treat IP Chavez.

Board Finding: Summary Dismissal

Rationale: Complainant Chavez stated, "Medical came and I was asked about my injuries. Then the nurse came and took notes and pictures of some of my injuries but not all. Then they said I would get pain medication. Then I was sitting in processing until 8:30pm in severe pain all night. When I seen the doctor I told him that I had hit my head in the bus and I said that I was injured. I had injuries to my head, my back, my neck, my hands and feet. The doctor told me I would be okay and that I would only get x-rays on my hands and feet. And he said that I did not need an M.R.I. for my head because if I did have a concussion on my head he said that my concussion would probably just go away and for me not to worry." Medical staff are non-sworn personnel over whom CLERB has no authority. The Review Board lacks jurisdiction.

**23-147/TAPIA** (Routine) **DEFERRED**

**23-151/HARVEY** (Routine)

1. Excessive Force - Deputies 1 and 2 used force on Incarcerated Person (IP) Coasa Leemont Harvey.

Board Finding: Action Justified

Rationale: In Harvey's complaint to CLERB he detailed, *"I was assaulted today by Deputy 1 and 2 in an elevator on my way to medical for having chest pains. Upon me entering the elevator, I was immediately slammed into the corner while I was already in shackles, cuffing my hands to my waist and leg chains around both angles. They were smashing me against the wall so hard that it heard something in my neck crack and I couldn't breathe. I told him I couldn't breathe, and Deputy 1 finally let some pressure off my neck and chest. They dragged me so fast off the elevator that I continue to stumble. I had to have x-rays on my neck and back from what they did to me. Why would they attack me like that when I'm already on my way to medical for chest pains? My neck and spine hurt so bad I can barely sleep. I felt my neck and ribs would break. I was assaulted."* According to deputies' reports, they were escorting Harvey to medical when Harvey became agitated. In the elevator, as witnessed in the jail's surveillance video recording, Harvey refused to face the wall and attempted to forcefully turn toward deputies. In response, a use of force ensued. Deputies 1 and 2 used force to push Harvey against the elevator wall, and to prevent further movement and to restrain him. When Harvey ceased resisting, the deputies continued to escort him to medical, using minimal arm guidance. Harvey was evaluated by jail medical/health staff and was cleared to return to housing. Jail surveillance video recordings were reviewed and coincided with what Deputies 1 and 2 documented in their written reports. The deputy used his forearm to apply pressure to Harvey's upper back area. No deputy was witnessed to apply pressure to Harvey's neck and/or chest area as alleged by the complainant. The force used was noted to be minimal, necessary, and objectively reasonable to detain Harvey and overcome resistance. The deputies were not witnessed to "drag" Harvey off the elevator as alleged by the complainant. The evidence shows the force utilized by deputies was lawful, justified and proper.

2. Misconduct/Retaliation – Deputy 1 assaulted Harvey because he asked for the deputy's identification.

Board Finding: Unfounded

Rationale: In his complaint to CLERB, Harvey asserted that Deputy 1 assaulted him following his request for Deputy 1's ARJIS number. Harvey posited, *"I believe I was attacked because I had previously asked Deputy 1 for his ARJIS number."* Harvey claimed that Deputy 1 pushed him against a wall in response to his request for identification. As documented in Deputy 1's written report and corroborated by surveillance footage from the jail, force was employed against Harvey due to his refusal to comply with instructions to face the wall during transport and his further attempt to disobey staff by turning away from the wall and facing the deputies. The evidence showed the alleged act or conduct did not occur.

3. Misconduct/Procedure – The San Diego Sheriff's Office (SDSO) failed to maintain the plumbing in the jails.

Board Finding: Summary Dismissal

Rationale: In his written complaint to CLERB, Harvey mentioned an issue with plumbing at the SDCJ. Harvey explained, *"I was placed in a temporary cell while they cleaned my [jail] cell of poop and pee from the cell next to me flooding in the tier yesterday and his toilet debris and juice was left in my cell, causing me to get sick."* According to Deputy 2's SDCJ Officer Report, an incarcerated person housed in the jail cell next to Harvey flooded the upper tier, causing "water" to go inside of Harvey's jail cell. This allegation did not involve the conduct of a peace officer(s) employed by the SDSO and/or the San Diego County Probation Department over which CLERB has authority. Harvey's complaints of jail facility structures, their defects, and unsanitary conditions did not specify deputy misconduct. As such, these types of allegations do not fall within the San Diego County Charter nor the authority granted to CLERB by the San Diego County Board of Supervisors based on Section 606(f) of the San Diego County Charter, which states that the duties of CLERB shall be established by the Board of Supervisors. Section 340.9 of the San Diego County Administrative Code defines the authority of CLERB. Specifically, § 340.9(a) which provides that CLERB shall have authority to "[r]eceive, review and investigate citizen complaints filed against peace officers " Section 340.9(c) goes on to state that CLERB shall have authority to "[p]repare reports on the results of any investigations conducted by the Review Board in respect to the activities of peace officers " As such, the Review Board lacks jurisdiction.

4. Misconduct/Procedure - Unidentified persons confiscated Harvey's personal property.

Board Finding: Not Sustained

Rationale: In his complaint to CLERB, Harvey alleged that unidentified persons confiscated his personal

property. Harvey reported, *"When I came back from them cleaning my cell, they had taken my 'keep-on-person' inhaler, all my writing paper, hygiene, products, and all the information you gave me to contact you and internal affairs and other agencies, including your cards and papers you gave me. They took my inhaler that I was cleared by the doctor to keep on person and took all of my contacts to let someone know about treatment and took all my papers to write and hygiene to keep myself clean."* According to jail documents, deputies placed Harvey in a temporary holding cell while his jail cell was cleaned by incarcerated workers. When an incarcerated person's jail cell is cleaned by others, their property may be confiscated or discarded for any number of reasons. The items may be unauthorized or contain contraband; items that are prohibited within the jail. IP's are allowed to possess only certain approved items. Anything not on the approved list, even if not dangerous, can be confiscated. Confiscating such items helps the SDSO to ensure the safety, security, and orderly operation of the jail. In review of Harvey's jail documents, Harvey did not submit any grievance regarding missing items. CLERB was unable to identify a subject deputy. As such, these types of allegations do not fall within the San Diego County Charter nor the authority granted to CLERB by the San Diego County Board of Supervisors based on Section 606(f) of the San Diego County Charter, which states that the duties of CLERB shall be established by the Board of Supervisors. Section 340.9 of the San Diego County Administrative Code defines the authority of CLERB. Specifically, § 340.9(a) which provides that CLERB shall have authority to "[r]eceive, review and investigate citizen complaints filed against peace officers...." Section 340.9(c) goes on to state that CLERB shall have authority to "[p]repare reports on the results of any investigations conducted by the Review Board in respect to the activities of peace officers." As such, the Review Board lacks jurisdiction.

5. Misconduct/Procedure – Deputy 1 refused to provide his "ARJIS" (identification number) to Harvey.

Board Finding: Not Sustained

Rationale: In his complaint to CLERB, Harvey reported, *"I asked Deputy 1 for his ARJIS number, and he continually refused to give it to me."* According to SDSO P&P Section 2.20 titled "Identification," while on duty, all employees shall furnish their first and last name or ARJIS number to any person requesting his or her identity, except when the withholding of such information is necessary for the performance of police duties. In review of Deputy 1's BWC recordings, Deputy 1 provided his last name to Harvey and was not witnessed to provide his ARJIS number. Deputy 1 provided information during CLERB's investigation that was also considered in arriving at the recommended finding. That information is privileged, per CLERB's agreement with the Deputy Sheriff's Association, and cannot be publicly disclosed. 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.

6. Misconduct/Procedure - Deputy 3 wrote a Rule Violation Report against Harvey.

Board Finding: Action Justified

Rationale: In Harvey's complaint to CLERB, he advised, *"Right before the end of the shift, I was given a disciplinary write up by Deputy 3 for having two toilet paper rolls, one extra outfit of clothing, pencils to draw that I allowed to have and for attempting to turn on deputies. then given a write up for it which will cause me to be on lockdown 24/7. I was moved to unit 4E but because deputy wrote me up a disciplinary for them attacking on the elevator."* Deputy 3 issued a Rule Violation Report citing several infractions, including disrespectful behavior towards staff, interference with facility operations, attempted aggression towards deputies in an elevator, possession of excessive items, unauthorized books, and misuse of materials. Harvey received a Disciplinary Rights Waiver and was placed in Administrative Separation pending investigation. According to SDSO DSB P&P Section O.1, disciplinary actions against inmates must be impartial and progressive, tailored to the severity of violations and the inmate's behavioral history. Disciplinary separation can last up to 10 days, during which certain personal property and reading materials are restricted to essential items only (e.g., religious texts, legal papers). The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

7. False Reporting – Deputy 3 falsified his written report.

Board Finding: Unfounded

Rationale: In Harvey's complaint to CLERB, he alleged that Deputy 3 falsified a report. Harvey reported,

*“...for attempting to turn on deputies. I never attempted to turn on anyone. I was trying to breathe because they had me smashed into the elevator wall so hard.”* According to Deputies’ 1, 2, and 3’s written reports, they documented that Harvey was “highly agitated” and that he attempted to turn and face them while in the elevator and after they instructed him to face the wall. In the jail surveillance video recording it was noted that Harvey aggressively jerked his arm away from Deputy 2, pushed his upper body away the elevator wall, and turned to his right to face Deputy 2. According to SDSO P&P Section 2.46 titled “Truthfulness,” all written and verbal reports shall be truthful and complete. The actions articulated in the deputies’ written reports coincided with the actions viewed in the jail surveillance video recording. The evidence shows that the alleged act or conduct did not occur.

8. Misconduct/Procedure – Unidentified deputies confined Harvey to disciplinary isolation for an extended period.

Board Finding: Action Justified

Rationale: In Harvey’s complaint to CLERB, he reported that he was confined to disciplinary isolation for an extended period of time. Harvey stated, *“...kept me on lockdown for more days than they were supposed to even after a lieutenant told him to take me off lockdown.”* In support of his allegation, Harvey submitted a handwritten IP Grievance form where he stated, *“I was over disciplined and was on lockdown from the seventh until today after a lieutenant took me off lockdown. I was supposed to only be on five days. They disregarded the lieutenant’s orders to let me off lockdown. This is all torture and violates my eighth amendment, cruel and unusual punishment.”* Disciplinary action is used to regulate an incarcerated person’s behavior within acceptable, humane limits. Disciplinary sanctions are imposed to punish the incarcerated person for his misconduct and to deter that incarcerated person and others from engaging in similar misconduct. According to jail documents, after the use of force incident, Harvey was placed in Administrative Separation on 11-07-23, pending a hearing or investigation for his alleged rule violation. On 11-10-23, Harvey underwent a hearing, was found guilty of the rule violations, and sentenced to serve five days in disciplinary separation. Harvey was released from disciplinary separation on 11-15-23. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

9. Misconduct/Medical – Jail medical/health staff refused to see or treat Harvey.

Board Finding: Summary Dismissal

Rationale: According to Harvey’s complaint, he alleged that jail medical/health staff had refused to see or treat him. Harvey wrote, *“I have also been refused medical since 11-07-23 when the use of force happened. I put in three health request slips for my neck hurting and chest pains but got no reply. I have been ignored and denied medical for almost a month. Please help me they are trying to kill me.”* 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. As such CLERB lacks jurisdiction to investigate further.

10. Misconduct/Procedure - Unidentified deputies failed to respond to Harvey’s grievances.

Board Finding: Unfounded

Rationale: Harvey stated that during his incarceration, he submitted Incarcerated Person Grievance forms but alleged that he had not received a response to his grievances. In his written complaint to CLERB, Harvey reported, *“I also put in an inmate grievance, but it was never answered.”* In review of Harvey’s jail booking file, Harvey had submitted ten handwritten Inmate Grievances during 10-11-23 to 12-01-23. All grievances were received by a sworn staff member, had been signed, and all were responded to. According to SDSO DSB P&P Section N.1 titled “Grievance Procedures,” incarcerated person(s) may submit written grievances directly to deputies or other employees at any time. Any deputy or other staff member who is presented with a written grievance will accept it. The deputy or other employee who initially receives a grievance will print their name, ARJIS number, date and time on the form. The second page will immediately be given to the incarcerated person as a signed receipt for the grievance. All inmate requests will be routed to the appropriate Detention Services Bureau personnel for timely review and response. Inmate request forms will be processed in an efficient and expeditious manner. The housing deputy may provide final disposition of various requests



without further processing. Inmate request forms shall be routed out of the housing area for actions only when the housing deputy is unable, or is not authorized, to provide the final disposition. The evidence showed that the alleged act or conduct did not occur.

11. Misconduct/Procedure – Unidentified deputies failed to protect Harvey.

Board Finding: Unfounded

Rationale: In his complaint, Harvey alleged that unidentified deputies failed to protect him. Jail documents revealed that Harvey was placed in Protective Custody and Administrative Separation during his incarceration after he expressed concern for his safety. An investigation was conducted and there was no active threat against Harvey. Nonetheless, jail staff allowed Harvey to remain in administrative separation due to his ongoing safety concerns. The evidence showed that the alleged act or conduct did not occur.

12. Misconduct/Retaliation – Unidentified deputies “overturned” the court’s recommendation that Harvey attend a drug treatment program.

Board Finding: Unfounded

Rationale: In his complaint to CLERB, Harvey claimed that as a result of the rule violation report written against him, he became ineligible for a drug treatment program. Harvey stated “...*the drug court judge was notified, and I lost the ability to go to a drug treatment program as was recommended by the DA in my case and the drug court screening counselor. Deputies purposely got both my recommendations overturned. They just have deputies attack me and get my recommendations overturned.*” In review of Harvey’s jail booking file, Harvey was released to a coordinated release program authorized by the San Diego Public Defender’s Substance Abuse Assessment Unit on 12-11-23.

### **New: Board Action – Requested Letter of Concern regarding mental health treatment**

#### **23-152/NEWTON** (Routine)

1. Misconduct/Procedure – An Oceanside Police Officer “disregarded Ray Newton’s safety.”

Board Finding: Summary Dismissal

Rationale: Complainant Newton stated an Oceanside Police Officer disregarded Newton’s safety when he transported him to the Vista Detention Facility. He stated the officer was “driving at high speeds.” According to CLERB Rules & Regulations, CLERB shall have the authority to investigate complaints filed against peace/custodial officers employed by the San Diego Sheriff’s Office or the San Diego County Probation Department. The Review Board lacks Jurisdiction.

2. Misconduct/Procedure – Deputies 1 and 3 placed Incarcerated Person Newton into “isolation.”

Board Finding: Action Justified

Rationale: Complainant Newton stated he was placed in “isolation” and was “stripped” of all his privileges. San Diego Sheriff’s Office (SDSO) documentation showed that Newton was uncooperative during the booking process and was placed into a safety cell. Detention Services Bureau (DSB) P&P Section J.1 Safety Cells states that IPs may be temporarily placed in a safety cell when they are actively self-harming or actively assaultive. Policy also states that IPs in a safety cell shall be directly observed by sworn staff at random intervals not to exceed 15 minutes between checks and will have continuous medical assessments until they are cleared. Evidence showed that deputy actions were in accordance with policy. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

### **3. DEFERRED**

4. Misconduct/Procedure – Unidentified deputies “delayed and ignored” Newton’s request(s) to see medical.

Board Finding: Summary Dismissal

Rationale: Complainant Newton stated that detention deputies “delayed and ignored” his requests to see

medical. He stated that deputies did not offer any help and failed to provide him with first aid supplies for his bleeding foot. SDSO documentation showed that Newton complained to deputies that he needed medical attention, so deputies escorted him to medical. According to SDSO P&P M.1 Access to Care, any IP shall have quality and timely access to care for their medical, dental and mental health needs. SDSO P&P M.3 First Aid Kits states, each facility commander shall ensure first aid kits are stored in areas that make them immediately available for staff to respond to incarcerated persons in their housing units and are intended to be used in the absence of trained medical staff. Policy does not state that deputies should provide IPs with first aid kits. Jail medical records were reviewed and taken into consideration into this recommended finding. Newton failed to provide names and dates for the alleged incident and there was insufficient evidence to either prove or disprove the allegation. See Rationale #3. The Review Board lacks jurisdiction.

5. Misconduct/Procedure – Deputy 2 classified Newton as a “Greenbander.”

Board Finding: Action Justified

Rationale: Complainant Newton stated he has restricted access to medical care due to his classification status. He also stated he was “denied services due to the resources required to escort him.” Newton complained he was “heavily chained” and unable to help with passing out meals, cleaning, and had restricted access to dayroom. SDSO documentation showed that Deputy 2 reclassified Newton from a Level 5 IP to a Level 5 Greenbander, due to assaultive behavior. SDSO DSB P&P Section R.1 Incarcerated Person Classification states the Jail Population Management Unit (JPMU) assign individuals a classification and assign housing for all IPs. It also states under the subsection, Reclassification that JPMU will evaluate information they are provided to determine if an IP needs to be reclassified. SDSO DSB P&P Section I.51 Movement of Incarcerated Persons also states that IPs classified as Greenbanders will be escorted individually and by at least two deputies and will be chained at the waist and legs prior to leaving their assigned unit. These restrictions should not restrict access to medical care. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Unidentified deputy “mishandled” Newton, which resulted in an injury.

Board Finding: Summary Dismissal

Rationale: Complainant Newton complained that he fell off a transportation bus and an unidentified deputy “mishandled” him as he picked him up. Newton failed to identify dates or names associated with this allegation. Sheriff’s records were reviewed and showed Newton made several trips to court and in one instance complained to a detention’s deputy about a shoulder injury he acquired when he fell off a transportation bus. Medical records confirmed Newton was escorted to medical, where they found no injuries and prescribed Ibuprofen. Without further clarifying information, there was insufficient evidence to investigate further and insufficient evidence to either prove or disprove the allegation. See Rationale #3. The Review Board lacks jurisdiction.

7. Misconduct/Procedure - Sheriff’s Detention facilities provided “poor living conditions.”

Board Finding: Summary Dismissal

Rationale: Complainant Newton stated that the SDSO provided living conditions that were “poorly maintained.” Newton stated he was moved to a cell that had construction debris which caused him to “suffer” with his eyes and throat. See Rationale #3. The Review Board lacks jurisdiction.

**23-163/MEYERS** (Routine)

1. Misconduct/Procedure – Unidentified detention deputies failed to deliver IP Robert Lamar Myers’ book(s).

Board Finding: Sustained

Rationale: The complainant, Robert Lamar Myers, was incarcerated at the George Baily Detention Facility (GBDF). During his incarceration, he reported that books were ordered and sent to him; however, he never received the books, despite records indicating delivery of the book(s) to the Mail Processing Center (MPC), and that the book was later transferred to the GBDF. Myers filed multiple grievances reporting the issues. Despite receiving responses confirming that the books were delivered to the jail, detention deputies

concluded that Myers' claims regarding the books remained unresolved. The evidence supported that Myers' property was sent to GBDF but was not delivered to him. It is more likely than not that the failure of the books to be properly delivered to Myers was a result of loss due to deputy negligence, which constitutes misconduct. Though CLERB was unable to identify a subject deputy, CLERB is entitled to make findings against "peace officers or custodial deputies employed by the Sheriff's Department." CLERB's investigation showed a preponderance of evidence that supported the allegation that Myers' books were not delivered to him. The evidence supports the allegation, and the act or conduct was not justified.

2. Misconduct/Procedure – Unidentified detention deputies failed to complete a crime report for IP Myers' missing property.

Board Finding: Sustained

Rationale: According to SDO Detention Services Bureau (DSB) P&P Section Q.63 titled "Lost Incarcerated Person Money or Property Section," whenever an incarcerated person claims to be missing personal property or module property, the watch commander shall be notified. If the claim regarding personal property is not immediately resolved, a crime report shall be completed. The watch commander will ensure an investigation is conducted into the claim and a lost property crime report will be completed for lost/missing personal property within the shift hours. This report shall be routed to the Detention Investigations Unit once approved. A review of Myers' jail documents did not produce evidence of a lost property crime report. Though CLERB was unable to identify a subject deputy, the investigation found a violation of DSB P&P Section Q.63. See Rationale #1. The evidence supports the allegation, and the act or conduct was not justified.

3. Misconduct/Procedure – Unidentified deputies failed to respond to Myers' grievances.

Board Finding: Unfounded

Rationale: In review of Myers' handwritten grievances, his JIMS Grievance Reports, and his Appeal responses, Myers submitted 30 grievances. According to SDO DSB P&P Section N.1 titled "Grievance Procedure," incarcerated person(s) may submit written grievances directly to deputies or other employees at any time. Any deputy or other staff member who is presented with a written grievance will accept it. The deputy or other employee who initially receives a grievance will print their name, ARJIS number, date, and time on the form. Of the 30 grievances noted in Myers' booking file, all grievances had been processed according to policy and procedure. Myers provided no evidence to support his assertion, and the evidence indicated that all grievances were addressed by a deputy and/or a sergeant.

### **23-169/LEWIS** (Routine)

1. Misconduct/Procedure – Deputy 1 failed to "help" Mary and Daniel Lewis.

Board Finding: Unfounded

Rationale: Complainant Mary Lewis and son Daniel Lewis, reported that Deputy 1 responded to their tent; Mary and Daniel reside in a tent on a portion of land in Julian, and they claimed the deputy "did not help them." The complainants stated they told the deputy that the neighbor blocked the road, which disabled them from leaving the property. Mary reported that Deputy 1 told her that "nobody would help her" if she needed emergency assistance. Daniel alleged the deputy did not help them gain back access to the road and the deputies told them they needed to have the land surveyed. Daniel felt the deputy left them in an "unsafe" situation. SDO documentation and Body Worn Camera (BWC) showed Deputy 1, and two other deputies responded to the property on 12-11-24, when the Lewis' complained that the property owner blocked the road. Deputies stated the land needed to be surveyed before they took any action. On 12-16-23, Deputy 1 returned to the property with a Code Enforcement Officer to have the land surveyed which showed the Lewis' were on the property owner's land. Evidence showed that deputies responded and conducted their duties in accordance with policy and procedure. The evidence shows that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 and 2 failed to arrest the property owner.

Board Finding: Action Justified

Rationale: Complainant Daniel Lewis alleged that the property owner attempted to "run him over with a

tractor.” He stated the tractor bucket “intentionally” hit him and when he fell to the ground, the property owner aimed towards him, but Daniel “rolled away at the last minute within inches of being under the tractor tire.” Daniel stated he declined medical attention in fear of leaving his mother alone with the property owner. Deputy 1 took photographs of Daniel’s alleged injuries and also noticed Daniel faking an injury. Deputy 1 stated he would submit the case to the District Attorney’s office. The evidence showed that deputies responded to the scene and interviewed the property owner and Daniel about the alleged incident. Review of the records associated with this incident refuted Daniels’ statement. According to SDSO P&P 2.51 and the California Peace Officers Legal Sourcebook (CPOLS), regarding Arrests, in order for an arrest to be valid, the arrest must be supported by probable cause. The evidence showed Deputy 1’s actions were lawful, justified and proper.

3. Misconduct/Intimidation – Deputy 1 “threatened” Mary and Daniel Lewis.

Board Finding: Unfounded

Rationale: Complainant Mary stated Deputy 1 arrived on the property on 12-16-23 with a Code Enforcement Officer and threatened the complainants. Daniel stated that Deputy 1 got within one inch of his face. Body Worn Camera (BWC) was reviewed and refuted the allegation. The evidence shows that the alleged act or conduct did not occur.

4. Misconduct/Intimidation – Deputy 1 threatened to arrest Daniel Lewis.

Board Finding: Not Sustained

Rationale: Complainant Mary Lewis stated that Deputy 1 responded to her location and stated he was going to arrest Daniel Lewis for trespassing. Mary Lewis did not provide a date for this interaction. The evidence showed Deputy 1 had several interactions with Daniel, and it was unknown which date this alleged incident occurred. Body Worn Camera (BWC) was reviewed from prior interactions between Daniel and Deputy 1, and there were no threats made to arrest Daniel. There was insufficient evidence to either prove or disprove the allegation.

### **23-173/ANDERSON** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Loui Castillo, Carlos Gonzalez and Jerry Sosa used force toward Ryan Anderson while he was incarcerated at the George Bailey Detention Facility on 10-26-23.

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. SDSO documentation showed that Anderson was arrested by SDPD on 10-10-23 and booked into custody. On 10-26-23 deputies approached Anderson to go to court. Anderson initially refused, but eventually complied and allowed deputies to escort him to a holding cell. Evidence showed Anderson took a “fighting stance” and lunged towards Deputy Gonzalez. Deputy Gonzalez stated that to prevent Anderson from assaulting him, he delivered two closed fist strikes to his face, grabbed him by the back of his neck/shoulder area and applied downward pressure and pushed him to the floor. Deputies Sosa and Castillo also used force and pulled Anderson down to the floor. Anderson was transported to a hospital and treated for his injuries. Anderson stated when deputies escorted him, he “put his foot forward” and the deputy jumped backwards. Anderson said he intimidated the deputy, so the deputy got scared and assaulted him. Anderson’s statements corresponded with deputy reports. SDSO P&P Addendum F, Use of Force Guidelines, states deputies may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonable perceived level of actual or threatened resistance. Jail surveillance video was reviewed and inconclusive due to poor or absent imagery. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

### **24-010/JOHNSON** (Priority)

1. Excessive Force – Deputies 1 and 2 allegedly utilized force against Incarcerated Person Dennis Johnson on 07-18-24.

Board Finding: Not Sustained

Rationale: Incarcerated Person (IP) Dennis Johnson said Deputy 2 denied him access to the breakfast meal and he responded with profanity. Deputy 2 handcuffed Johnson and during escort to a holding cell, the deputy reportedly punched and “smashed” IP Johnson’s head against a wall causing it to “bust open and bleed,” while Deputy 1 choked the complainant. Johnson said he went to medical where they took pictures and he went to the hospital for an MRI. SDSO documentation showed that a verbal warning was given to IP Johnson for failure to follow instructions on 07-18-24. Johnson’s movement history and hospital medical record did not corroborate his testimony. Surveillance video provided by the SDSO did not capture these events and was non-corroborating. There was insufficient evidence to either prove or disprove the allegation.

**24-012/AZIZ** (Routine)

1. Misconduct/Procedure – SDSO deputies placed the aggrieved in a cell with a “non-working” toilet.

Board Finding: Action Justified

Rationale: Complainant Laila Aziz stated, “On 01-12-24, the aggrieved was transferred from the jail’s medical unit to 5A cell 20. At this time, he alerted the deputies that the toilet did not work. The aggrieved was placed in the cell with two other individuals. They cannot use the bathroom and must wait for a deputy to transport them to the restroom. The deputies failed to transport them to the restroom, and the detainees were not allowed to relieve themselves for over 24 hours, from 01-14-24 1400hrs to 01-15-24 1700hrs.” According to SDSO records, in January 2024, there were two maintenance requests documented for a clogged toilet for Module 5A cell 20. On 01-11-24, the day prior to the aggrieved being placed in 5A cell 20, the toilet in that cell was “snaked” by maintenance staff and documented, “blockage cleared.” The second maintenance request was entered on 01-20-24. On 01-22-24, records showed, “blockage cleared.” Both maintenance requests were entered in the JIMS system in accordance with policy. Per Title 15 Article 15 - Facility Sanitation and Safety, The facility administrator shall develop written policies and procedures for the maintenance of an acceptable level of cleanliness, repair and safety throughout the facility. Such a plan shall provide for a regular schedule of housekeeping tasks and inspections to identify and correct unsanitary or unsafe conditions or work practices which may be found. SDCJ Detention Green Sheet G.1.C.1 Maintenance Procedures Policy, states in part, “Upon the discovery of any minor maintenance issues, deputies will submit a request for maintenance using the Facility/Area Notes section in JIMS. Examples of minor requests include but are not limited to: clogged toilets, light bulb replacements, sink water pressure, doors opening/closing too slowly, etc.” SDSO Detention Policy G.1 Maintenance Procedures, states in part, “Routine maintenance is performed by the Department of General Services, Facilities Maintenance, Monday through Friday (except holidays) during business hours.” A Department Information Source provided the following statement, “While it is possible Incarcerated Persons (IPs) might be placed in a cell and held for a period with a nonworking toilet, this scenario is highly unlikely. There are several other alternative options available to IPs housed in cells with a non-working toilet. For example, the IPs could be moved to cells that contain working toilets or transferred to another floor if housing is available. Furthermore, IPs can use the toilet in the temporary holding cells outside of the modules.” The evidence showed that deputies were aware of the “non-working” toilet in Module 5A Cell 20, that they entered maintenance request according to policy and provided the aggrieved and other IP’s in 5A Cell 20 access to toilets outside of the module when needed. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 3 “ignored” the aggrieved’s request to use the bathroom.

Board Finding: Unfounded

Rationale: Complainant Aziz stated, “On 01-15-24 at 1000hours, the aggrieved requested to use the bathroom. He asked Deputy 3, who ignored the request. A few hours later, he requested to use the bathroom again and asked Deputy 1. Neither officer allowed the aggrieved the opportunity to relieve himself.” Deputy 3 provided information during CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged and cannot be publicly disclosed. The video evidence refuted the alleged misconduct and showed that the alleged conduct did not occur.

3. Misconduct/Discourtesy – Deputy 1 did not “allow” the aggrieved access to the bathroom.

**Board Finding: Unfounded**

**Rationale:** Complainant Aziz stated, "On 01-15-24 at 1000hours, the aggrieved requested to use the bathroom. He asked Deputy 3, who ignored the request. A few hours later, he requested to use the bathroom again and asked Deputy 1. Neither officer allowed the aggrieved the opportunity to relieve himself." Deputy 1 provided information during CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged and cannot be publicly disclosed. The video evidence refuted the alleged misconduct and showed that the alleged conduct did not occur.

4. Misconduct/Procedure – Deputy 2 failed to document a grievance.

**Board Finding: Sustained**

**Rationale:** Complainant Aziz stated, "The aggrieved filed a grievance on 01-15-24 at 7:04PM, signed by Deputy 2." The complainant and the aggrieved were unable to provide a copy of the grievance because the aggrieved reported he was not provided his copy of the grievance after Deputy 2 signed it. According to Detentions Policy N.1, Grievance Procedure, The deputy or other employee who initially receives a grievance will print their name, ARJIS number, date and time on the J-22 form. The second page of the J-22 form will immediately be given to the incarcerated person as a signed receipt for the grievance. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS. Deputy 2 provided information during CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged and cannot be publicly disclosed. There were no grievances in the aggrieved's records related to this incident and none signed by Deputy 2. The evidence supports the allegation and the conduct was not justified.

**24-015/DRYER (GBI)**

1. Use of Force Resulting in Great Bodily Injury – Deputies Andy Chen and Isaiah Harter used force to subdue and detain Incarcerated Person Gino David Dryer on 12-04-23.

**Board Finding: Action Justified**

**Rationale:** Incarcerated Person Gino David Dryer's case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. Dryer was incarcerated at the San Diego Central Jail. During his intake process, Dryer became non-compliant with deputies, refusing to comply with being stripped searched. Dryer "swatted" at a deputy, and a use of force ensued to subdue and detain Dryer. According to SDSO P&P Section Addendum F, deputies are authorized to use objectively reasonable force to overcome resistance. 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 objective of using force by deputies is to gain and/or maintain control of an individual(s) and the situation. In determining whether a deputy's use of force is reasonable, it is necessary to evaluate the facts and circumstances confronting the deputies at the time force was used. The circumstances surrounding the use of force, including whether Dryer posed an imminent threat to the safety of Corporal Chen or Deputy Harter, the severity of the offense at issue, and whether Dryer actively resisted arrest was considered. Dryer was subdued, arrested, and transported to the hospital for injuries he sustained. The use of force observed in the deputies' Body Worn Camera (BWC) recordings, coincided with what was documented in their written reports. Dryer sustained a laceration along his right eyebrow, approximately two inches in length and was mended with 13 sutures. In review of all evidence for this case, which included numerous BWC recordings, photographs, reports, and statements, the force used against Dryer was determined to be necessary, appropriate, effective, and reasonable given the circumstance and for deputies to gain compliance. During the incident, Ebert exhibited active and assault resistance toward deputies. In response, the deputies executed physical force control techniques. The actions executed by the deputies were in accordance with SDSO Policies and Procedures. There was no evidence to support an allegation of procedural violation or misconduct, on the part of sworn personnel. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

**24-016/MOWRY (GBI)**

1. Use of Force Resulting in Great Bodily Injury – Deputies Malek Rabadi, Jorge Solorzano, and Justin Williams

used force to subdue and arrest Steven Jay Mowry on 12-05-23.

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 12-05-23, Deputy Rabadi contacted Steven Jay Mowry, a transient, as he laid on the sidewalk in front of a business in the City of Vista. Deputy Rabadi approached Mowry because he did not appear to be breathing, and he wanted to check on his welfare. Upon being approached, Mowry woke up and was verbally aggressive and threatening towards Deputy Rabadi. A use of force ensued, additional deputies were summoned, and Mowry was subdued and arrested. Mowry was transported to a hospital where he was medically evaluated and was found to have sustained a displaced jaw fracture, an orbital fracture, and various other injuries. Deputy Rabadi provided a confidential statement that was considered in arriving at the recommended finding, however, that information is privileged, and cannot be publicly disclosed. In the end, Mowry was arrested for obstructing and resisting a peace officer with minor injury. According to SDSO P&P Section 2.49 titled "Use of Force," 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. According to Addendum F Use of Force Guidelines, it shall be the policy of this Department that any Deputy Sheriff, in the performance of his/her official law enforcement duties, who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. CLERB found that the force executed by Deputies Rabadi, Williams, and Solorzano was in accordance with San Diego Sheriff's Office Policy & Procedures. The force used was sufficient to detain Mowry and to safely effect an arrest.

2. Misconduct/Procedure - Deputy 2 failed to activate his Body Worn Camera (BWC).

Board Finding: Sustained

Rationale: In his written report, Deputy 2 explained, "As I exited my patrol vehicle, I double tapped my body worn camera (BWC) and believed it had been activated." As Deputy 2 initiated the use of force he stated, "Due to believing I may be getting into a use of force I looked down at my BWC and realized it was not properly activated. As a result, I activated my BWC." Deputy 2's BWC recording opened with him applying his gloves and addressing Mowry as he laid on the ground. A review of the Sonic Restaurant video surveillance recording was inconclusive due to an obstruction. According to SDSO P&P Section 6.131 titled "Body Worn Camera," when responding to a call for service, a deputy shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. Deputies should also begin recording prior to initiating any law enforcement related contact. Deputies shall activate the BWC to record all law enforcement related contacts. The record mode of the camera should be activated prior to actual contact with a citizen (victim/witness/suspect), or as soon as safely possible, and continue recording until the contact is completed. Deputies shall begin recording prior to arriving to an incident if the call has the potential to involve immediate enforcement action upon arrival. In situations where activation was not accomplished prior to arriving on scene, those reasons shall be articulated in writing via case related report. Per policy, Deputy 2 reported, "he 'attempted' to activate his camera. Deputy 2 failed to activate his BWC in violation of SDSO P&P. The evidence supported the allegation, and the act was not justified.

3. Misconduct/Procedure – Deputy 1 failed to photograph Mowry's injuries.

Board Finding: Sustained

Rationale: In review of Mowry's use of force incident, this additional allegation was drafted. The purpose of this allegation was to assess whether Deputy 1's action, or inaction, was a violation of the SDSO's policies and procedures. In review of the involved deputies' BWC recording, Deputy 1 offered to take photos for Deputy 2's report. After photographing the involved deputies' injuries, Deputy 1 she would not document Mowry's injuries by stating, "Umm, I'm not going to take pictures of him until..." Deputy 1 was observed to motion/gesture an open palm in front her face, rotating in a circular motion. Deputy 1's decision to not document Mowry's injuries was a violation of the SDSO's P&P Section 2.4 titled "Unbecoming Conduct," which states employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Office. Unbecoming conduct shall include that which tends to bring this Office into disrepute or reflects discredit upon the employee as a member of this Office, or that which tends to impair the operation and efficiency of this Office or employee. Deputy 1's decision and her actions reflected discredit

upon her as an employee and member of the SDSO, and did not reflect most favorably on the SDSO. The evidence supported the allegation, and the act or conduct was not justified.

#### **24-018/JEREZ** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputy Marcus Ballesteros-Perez deployed his canine to effect an arrest which resulted in Fabian Cristobal Abarca Jerez sustaining injuries.

**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 the evening of 12-23-23, Fabian Cristobal Abarca Jerez, along with three others were participating in a residential burglary when they were discovered. Deputies with the San Diego Sheriff's Office (SDSO) were summoned and responded to the scene. Jerez and the three other suspects fled the scene, initiating a vehicle pursuit, which led to a foot pursuit. During the incident, deputies utilized a canine unit to assist them with the apprehension. The Sheriff's canine unit was deployed and bit Jerez. As a result, Jerez sustained dog bites and a right wrist fracture. Jerez was transported to a hospital where he was treated for his injuries. In review of the evidence, which included written reports, photographs, statements, and the BWC recordings, it was determined that the force used against Jerez was necessary, appropriate, effective, and reasonable for the circumstances in gaining compliance, as Jerez exhibited passive and active resistance towards the deputies. Using a canine in the apprehension of Jerez reduced the level of danger that deputies were exposed to while taking Jerez into custody. With the help of Sheriff's ASTREA, Deputy Ballesteros-Perez and his canine unit quickly located Jerez and engaged him. Based on the totality of the circumstance, Deputy Ballesteros-Perez deploying his canine to apprehend Jerez was the best and safest option for deputies. The actions executed by the deputies, to include the force used against Jerez, was in compliance with SDSO policy and procedure. Once control was established and Jerez was detained, he was immediately evaluated by emergency personnel and transported to a hospital for examination. After being medically treated, Jerez was transported to jail where he was booked into custody. Deputies arrested Jerez for burglary, attempted burglary, conspiracy to commit a crime, evading, obstruction and resisting arrest. There was no evidence to support an allegation of procedural violation or misconduct on the part of Sheriff's Department sworn personnel. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

#### **24-050/JACKSON** (Routine)

1. Illegal Search & Seizure – Deputy 2 initiated a traffic stop on Leon Gerard Jackson.

**Board Finding:** Action Justified

**Rationale:** In Leon Gerard Jackson's complaint he reported that he was on his way to his parent's house when a deputy attempted to initiate a traffic stop. Deputy 2 advised he was on routine patrol when he observed Jackson's vehicle being driven without a front license plate, a violation of the California Vehicle Code. Deputy 2 activated his overhead lights to conduct a traffic stop. Jackson ignored the emergency lights and sirens and failed to yield. According to Deputy 2, Jackson attempted to flee, and a high-speed vehicle pursuit ensued. Jackson reported that he "*didn't feel safe the way the officer [deputy] was acting,*" and "*it was a dark area, and nobody [was] around to see if things went wrong.*" For these reasons, Jackson refused to yield. At that point, Deputy 2 had probable cause to believe that a crime has been committed as he had witnessed a violation of the law, thus having grounds to detain Jackson and make an arrest. Refusal to yield to a peace officer's commands or attempts to evade law enforcement constitutes an obstruction of justice and resisting arrest and is justification for initiating a traffic stop. The evidence showed that the alleged act did occur, and it was lawful, justified, and proper.

2. Excessive Force – Deputies 1, 2, and 3 used force to arrest Jackson.

**Board Finding:** Action Justified

**Rationale:** Complainant Jackson reported that when he arrived at his parent's house, he exited his vehicle "*calmly,*" was compliant with deputies, and put his hands on the driver side door as instructed. Jackson reported that when deputies approached him, he was "*immediately spun to the ground and thrown on my*



face.” Jackson affirmed that he was “*punched more than 10 times*” in his face and deputies continued to assault him until his mother who witnessed the incident intervened. Body Worn Camera (BWC) recordings refuted Jackson’s statements and showed he was not compliant with deputies’ instructions. Jackson refused to place his hands above his head, to face away from deputies, and he yelled “What the fuck is wrong with you!?” In response, Deputy 2 drew his department issued gun, and pointed the gun at Jackson. Additionally, Deputies 1, 2, and 3 used physical force to subdue and arrest Jackson. According to SDSO P&P Section 2.49 titled, “Use of Force,” 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. According to SDSO P&P Section 2.50 titled, “Use of Lethal/Less Lethal Weapons,” Employees shall not use or handle lethal or less lethal weapons in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. In review of all evidence that was available, it was determined that the force used against Jackson was necessary, appropriate, effective, and reasonable in gaining compliance as Jackson exhibited passive and active resistance, and assaultive behavior toward the deputies. The actions executed by deputies were in accordance with SDSO Policies and Procedures. The evidence showed that the alleged act did occur, and it was lawful, justified and proper.

3. Misconduct/Procedure – Deputies 1, 2, 3 and/or other unidentified deputies ordered Jackson’s parents into their house.

Board Finding: Action Justified

Rationale: Upon Jackson’s arrival to his parent’s house, he reported that his parents were standing outside waiting for him. As the deputies arrived on scene following the vehicle pursuit, Jackson alleged that the deputies instructed his parents “*to go back in so they could not witness*” the incident. In review of BWC recordings, upon Jackson’s arrival at his parent’s house, the commotion and disturbance of his arrest alerted his parents of the events occurring in their front yard. As the deputies drew their lethal and less than lethal weapons, and seeing other persons emerge from the house, one of the deputies instructed Jackson’s parents to “Stay inside the house.” In situations where a suspect is being taken out of a vehicle at gunpoint, it’s crucial for deputies to prioritize public safety. The deputy’s instructions to stay indoors was to minimize risks and ensure everyone’s safety. Doing so helped control the scene and reduced the chances of any potential crossfire or other dangers. In review of all the BWC recordings, no deputies instructed Jackson’s parents to go back in “so they could not witness” the incident. The evidence showed that the alleged act did occur and was lawful, justified and proper.

4. Misconduct/Medical – Jail medical/health staff provided inadequate medical care to IP Jackson.

Board Finding: Summary Dismissal

Rationale: After a use of force and subsequent arrest, Jackson alleged that he sustained injuries to include head and eye injuries, and that he experienced “*floaters, vision, balance issues, motor skills, problems, and memory issues.*” Jackson alleged that as of the time of his complaint, the SDSO Detention Medical Services division was “*delinquent to provide MRI or CT scans and optometrist eye doctor due to head trauma incident.*” Jackson further alleged that if he “*wasn’t in custody, the services would have been done the same day for head trauma.*” Jackson’s court documents and medical records were reviewed but the information cannot be disclosed due to the Health Insurance Portability and Accountability Act (HIPAA) which protects the individual’s sensitive health information. 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. Decisions for medical treatment and care are made by jail medical staff and, as such, CLERB lacks jurisdiction to investigate further.

#### **24-130/MCCLENDON** (Summary Dismissal)

1. Misconduct/Procedure – San Diego Sheriff Office (SDSO) Records Clerks were “lazy” and failed to provide records to Charles McClendon.

Board Finding: Summary Dismissal

Rationale: Complainant Charles McClendon stated, “I’m a 76 y/o Disabled Veteran. I’ve requested assistance

BUT, some lazy clerk responded Thursday! I've followed the suggestions detailed in the attachment, only to be told that there no such records! Please, someone who is competent and willing to assist Me!" McClendon informed CLERB he had no complaint against sworn staff, only the "incompetent" clerks. CLERB Rules and Regulations (R&R) Section 4.1 Complaints: Authority, states "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." CLERB R&R also states in Section 15 that a Summary Dismissal may be appropriate when CLERB does not have jurisdiction over the subject matter of the complaint. Clerks are non-sworn personnel, and the Review Board lacks jurisdiction.

#### **24-161/MILLS** (Summary Dismissal)

1. False Arrest – San Diego Police Department (SDPD) officers arrested David Mills.

##### Board Finding: Summary Dismissal

Rationale: Complainant David Mills stated, "Original date Aug. 9, 23. On 5<sup>th</sup> & Broadway... Got arrested basically for police contact along with friend for criminal threat and for violation of probation." CLERB Rules and Regulations (R&R) Section 4.1 Complaints: Authority, states "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." CLERB R&R also states in Section 15 that a Summary Dismissal may be appropriate when CLERB does not have jurisdiction over the subject matter of the complaint. The complainant was provided the contact information for the Commission on Police Practices, the oversight Board for SDPD.

2. Excessive Force – SDPD officers drew their guns on Mills.

##### Board Finding: Summary Dismissal

Rational: Complainant Mills stated, "I was a passenger in the car waiting on 5<sup>th</sup> Street while my friend went to cash a check. My friend came back to the car stated call 911 and before I could 20 to 30 police drew guns on us and made us get out of the car. I feared for my life all these guns drawn on me for I had never experienced that before. I thought it is cruel unusual punishment." See rationale #1.

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***End of Report***