

County of Santa Clara
Office of the Sheriff
Internal Affairs Unit-Custody

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Laurie Smith
Sheriff

FN 2018-00612

NOTIFICATION OF COMPLAINT:

On April 25, 2018, the Sheriff's Office Internal Affairs Unit received an e-mail from Management Analyst Phu Trang who is assigned to the Grievance Unit for the Santa Clara County Sheriff's Office. The e-mail forwarded an *Inmate Grievance Form* (Grievance No. 18109) submitted on April 23, 2018 by Inmate Patrick Simmons (DYN418).

According to Mr. Simmons Santa Clara County Sheriff's Office Deputy Christopher Vorpahl #10888 used excessive force when he broke Mr. Simmons's right arm on November 16, 2017. Mr. Simmons wrote:

"When I was told to get on the ground I got on the ground and laid on my stomach and was not resisting. Officer Vorpahl got on top of me and told me to put my hands behind my back. He also asked me, what arm do I write with? I said my right. From there he put my right arm in an arm lock and broke my arm."

On November 16, 2017, at approximately 2125 hours, the Sheriff's Office Jail Crimes Unit began investigating this incident. Based on the evidence and statements of the parties, Mr. Simmons was listed as a suspect in a Sheriff's Office criminal investigation for violations of California PC 69(a) Violently Resisting an Officer and PC 243(b) Battery on a Peace Officer (17-320-0423J). The case was presented to the Santa Clara County District's Attorney's Office for review, and the District Attorney filed charges against Mr. Simmons for Assault on a Peace Officer.

On May 17, 2018, Lt. Valenzuela assigned the case to Sgt. Hunter #1917.

On January 14, 2019, the case was reassigned to me, Sgt. Glennon #2120.

INVESTIGATION:

I reviewed the original *Inmate Grievance Form* submitted by Mr. Simmons. I also reviewed the Criminal Report #17-320-0423J written by Jail Crimes Detective Barrera #2002, Supplemental Criminal Reports #17-320-0423J written by Deputy Vorpahl #10888, Deputy Dundic #10892, Deputy Simms #10953, and Deputy Dee #10556.

As part of the criminal investigation, Detective Barrera copied all relevant jail security surveillance video from Module 4B, Pod 3, at the Santa Clara County Main Jail on to DVD. I reviewed the surveillance video DVDs and all photographs from the criminal investigation.

On June 19, 2018, as part of Sgt. Hunter's Internal Affairs investigation, Sgt. Hunter interviewed Mr. Simmons accompanied by his Attorney, On the same date, Sgt. Hunter received a Medical Record Release Authorization from Mr. Simmons allowing Sgt. Hunter access to copies of medical records dated from November 17, 2017 through June 19, 2018.

I reviewed the Valley Medical Center medical records associated to Mr. Simmons received by IA, and the transcript/audio recording of Sgt. Hunter's interview with Mr. Simmons.

The following is a summary of my review of the interviews, evidence, documents:

Investigator's Note: The following summaries are not a verbatim translation or transcription. For the best record, please refer to the actual documents for the complete record.

CRIMINAL REPORT 17-320-0423J- Jail Crimes Detective Barrera #2002

Detective Barrera submitted the case to the Santa Clara County District Attorney's Office for DA Review. Based upon Mr. Simmons' size, strength, unpredictability, and violent behavior involving staff and inmates, Detective Barrera believed reasonable force was used by deputies against Mr. Simmons to bring the incident under control.

Detective Barrera believed Mr. Simmons's actions to be in violation of PC 69(a) Violently Resist an Executive Officer and PC 243(b) Battery on a Peace officer.

VIDEO SUMMARY (11/16/2017 Time marked 2109 hours):

Deputy Vorpahl was on the bottom tier of Pod 4B3 conducting a "welfare check" of each inmate in their cells. Mr. Simmons was the only inmate out of his cell and was sitting in a chair at the east end of the Pod and appeared to be watching television. Deputy Dundic was standing adjacent to the Module 4B Officer's desk in a secure area. Mr. Simmons suddenly stood up and charged toward Deputy Vorpahl. Mr. Simmons attacked Deputy Vorpahl with approximately nine (9) punches.

Deputy Vorpahl momentarily retreated backward and Deputy Dundic responded to assist. Mr. Simmons turned away from Deputy Vorpahl. Deputy Vorpahl advanced toward Mr. Simmons and Mr. Simmons went down to the ground. Deputy Vorpahl struck Mr. Simmons once in the head with his right arm, straddled and held him to the ground. Mr. Simmons continued to move arms/legs and contorted his body. Deputies Dundic, Simms, Dee assisted in restraining Mr. Simmons.

STATEMENT OF DEPUTY VORPAHL:

Deputy Vorpahl stated that as he conducted a welfare check of Pod 3, he was suddenly attacked by Mr. Simmons. Deputy Vorpahl sustained redness and swelling to the lower left back side of his head. Deputy Vorpahl also complained of pain to his left knee.

STATEMENT OF SUSPECT SIMMONS:

At approximately 2143 hours, Detective Barrera asked Mr. Simmons if he wanted to speak about the incident. Mr. Simmons screamed in pain and stated his arm was broken. He requested Detective Barrera speak with him at a later time.

Once evidence photos were completed, Mr. Simmons stated, "Alright man, I won't press charges man, I won't, he didn't have to break it, but ain't going to press charges man, he was putting my hand behind my back after, after the fight and everything and he broke it."

Detective Barrera told Mr. Simmons that he would contact him once he returned from the hospital. Mr. Simmons spontaneously stated, "I punched him, I assaulted the officer... I am tired of hearing the voices."

On November 17, 2017, at approximately 2107 hours, with their body cameras activated, Sergeant Perez and Detective Barrera contacted Mr. Simmons inside of Interview Room #1 on the 8th Floor of Main Jail North. This interview occurred after Mr. Simmons returned from Valley Medical Center where he received treatment for a broken arm.

Detective Barrera read Mr. Simmons his Miranda waiver and Mr. Simmons stated he understood each of his rights. Mr. Simmons provided the following statement.

When Mr. Simmons was first brought to jail, he was placed in protective custody because his matter was on the news. Since being in protective custody, the "PC gang members" have been acting strange by controlling Mr. Simmons. Inmates named, _____ and _____ were giving Mr. Simmons orders to punch a cop. Mr. Simmons heard _____ voice in his head every day.

On November 16, 2017, at approximately 2100 hours, during Mr. Simmons's program time an officer came into the Pod. Mr. Simmons punched the officer approximately 5 times using both his arms. Mr. Simmons stated his punches made contact with the officer. Mr. Simmons believed he knocked the officer onto the ground. Mr. Simmons described the officer as Caucasian, bald, stocky, and that his name started with a "V." As Mr. Simmons punched the officer, another officer entered the pod telling him to get on the ground. Mr. Simmons complied and got onto the ground.

Mr. Simmons told the officer, "I am sorry." The officer replied by saying "Sorry, for what?" The officer proceeded to lift Mr. Simmons's arm until he heard a snap. Mr. Simmons stated that the officer did not have to break his arm, even though the officer was upset.

Mr. Simmons believed once on the ground he placed his hands behind his back and no longer resisted. Detective Barrera informed Mr. Simmons that in the video his hands were not behind his back. Mr. Simmons explained that when the officers told him put his hands behind his back he then complied. Mr. Simmons was convinced he did not resist once he was on the ground.

Mr. Simmons stated he was 6'0" feet tall and 250lbs. Mr. Simmons agreed he was a big and strong person.

Mr. Simmons was apologetic for his actions and stated if the officer he attacked was present, he would personally apologize.

SUPPLEMENTAL CRIMINAL REPORT 17-320-0423J- Deputy Vorpahl #10888

Deputy Vorpahl had not been issued a department body worn camera at the time of this incident.

On November 16, 2017, Deputy Vorpahl worked as a Santa Clara County uniformed Correctional Deputy assigned to Main Jail North Module 4B. At approximately 2104 hours, Deputy Vorpahl entered 4B Pod 3 to perform a routine welfare check. Inmate Patrick Simmons (DYN418) was out for his evening program and sitting in the pod chair. Mr. Simmons sat with his arms crossed and appeared to be watching television.

As Deputy Vorpahl approached Cell #33, Mr. Simmons suddenly jumped to his feet and ran in the direction of Deputy Vorpahl. Mr. Simmons's fists were clenched as he began throwing multiple punches towards Deputy Vorpahl's head and face. Deputy Vorpahl put his hands up in order to defend himself and stepped backwards as Mr. Simmons attempted to punch Deputy Vorpahl. Deputy Vorpahl then stepped towards Mr. Simmons's direction in an attempt to subdue him. Mr. Simmons turned away from Deputy Vorpahl and both parties fell towards the ground.

Deputy Vorpahl landed on Mr. Simmons's back and Deputy Vorpahl's left arm was pinned under Mr. Simmons's head. Deputy Vorpahl punched Mr. Simmons once in the facial area with a closed right fist. Mr. Simmons turned his head in Deputy Vorpahl's direction and stated, "Fuck you!" Fearing that Mr. Simmons would attempt to head butt him or spit on him, Deputy Vorpahl placed his right forearm on the side of Mr. Simmons's head and held it to the ground in order to gain control.

Deputy Vorpahl ordered Mr. Simmons to stop moving his body. Deputy Vorpahl continued to feel his body contort and Deputy Vorpahl was unaware of where his arms and legs might have been. Deputy Vorpahl feared that with his arms and legs unrestrained Mr. Simmons had the ability to continue to be assaultive. Deputy Vorpahl's left arm remained pinned underneath Mr. Simmons. Responding deputies arrived and took over Deputy Vorpahl's position. Deputy Vorpahl was escorted from the module for medical clearance.

Deputy Vorpahl had no further contact with Mr. Simmons.

SUPPLEMENTAL CRIMINAL REPORT 17-320-0423J- Deputy Dundic #10892

The incident was partially audio/video recorded using Deputy Dundic's department issued Body Worn Camera. The camera was not initially activated at the time of incident due to the immediate response necessary during the assault on staff.

On November 16, 2017, Deputy Dundic was working as a uniformed Santa Clara County Correctional Deputy assigned to Module 4B at Main Jail North in San Jose.

At approximately 2104 hours, Deputy Dundic was standing behind the Module 4B Officer's Desk as Deputy Vorpahl conducted a welfare check inside of Pod 4B-3. During the welfare check, Inmate Patrick Simmons was programming by himself inside of the pod. Mr. Simmons was sitting on a chair located next to the hot water pot on the east end of the pod.

Mr. Simmons appeared to be watching TV with his arms crossed against his body.

Deputy Vorpahl was on the bottom tier near Cell #33 when Mr. Simmons, without provocation, suddenly stood up from his chair and attacked Deputy Vorpahl. Deputy Dundic saw Mr. Simmons throw multiple closed fist punches toward Deputy Vorpahl's head and facial area. Deputy Dundic did not know if any of Mr. Simmons's punches made contact with Deputy Vorpahl's person. Deputy Dundic was fearful for Deputy Vorpahl's safety because of the sudden and spontaneous attack by Mr. Simmons.

Deputy Dundic immediately notified (via pack set) North Control of an officer involved fight inside of Module 4B-3. Fearing for Deputy Vorpahl's safety, Deputy Dundic unlocked the door to Pod 4B-3 from the control panel and entered the module to assist in restraining Mr. Simmons.

Prior to this incident, Deputy Dundic was aware Mr. Simmons had a history of assaultive and violent behavior against correctional staff and other inmates. Deputy Dundic wanted to keep an eye on him as Deputy Vorpahl was conducting his welfare check nearby.

As Deputy Dundic arrived to help, Mr. Simmons was lying face down on the ground with Deputy Vorpahl on top of him. Deputy Dundic approached Mr. Simmons from his left side. Due to Deputy Vorpahl's position of being on top of Mr. Simmons, Deputy Dundic noticed his arms and legs were uncontrolled and he continued to move.

Deputy Dundic feared that Mr. Simmons might use his arms/legs violently towards him or Deputy Vorpahl because he had just seen him throw punches at Deputy Vorpahl. Deputy Dundic punched him several times with a closed right fist to the back of both of his legs in an attempt to get him to bend his legs so that he could gain control.

At this time, Deputy Dundic heard Mr. Simmons yell "Fuck you." Deputy Dundic then saw Mr. Simmons right hand curled underneath him, so Deputy Dundic decided to gain control of his right arm, fearing he may try to push himself off the ground and continue to fight.

Deputy Dundic placed his left hand on top of Mr. Simmons's right hand and his right hand on his right wrist. Deputy Dundic applied pressure to Mr. Simmons's points of contact in the form of a wrist twist lock. Deputy Dundic's intention was to control his arm, tuck it underneath Deputy Vorpahl's upper torso and place Mr. Simmons's right wrist on the small of his back to eventually be secured in handcuffs.

Deputy Dundic was able to pull Mr. Simmons's right arm from underneath his body while giving him verbal orders to "stop resisting." Deputy Dundic noticed Mr. Simmons began moving his body away. Deputy Dundic felt Mr. Simmons attempt to pull away forcing him to apply additional pressure on his right arm to keep his arm under control.

Due to Mr. Simmons's assaultive behavior which Deputy Dundic witnessed him exhibit just moments ago, Deputy Dundic was afraid that if he lost control of his right arm, Mr. Simmons would continue his violent behavior against himself and Correctional staff. As Deputy Dundic was controlling Mr. Simmons's right arm, Deputy Dundic noticed his grip was slipping due to his hands being sweaty. Deputy Dundic had to adjust his grip a second time in order to maintain control of his right arm.

Once Deputy Dundic was able to gain full control of Mr. Simmons's right arm using the wrist twist lock, Deputy Dundic maintained control of his arm and no longer felt his resistance. Deputy Dundic immediately placed it on the small of his back. Assisting deputies responded and were able to assist in securing Mr. Simmons's arms with handcuffs. Deputy Dundic was relieved by assisting deputies once Mr. Simmons was restrained.

Deputy Dundic had no further contact with Mr. Simmons.

SUPPLEMENTAL CRIMINAL REPORT 17-320-0423J- Deputy Simms #10953

The incident was not audio/video recorded with Deputy Simms's department issued Body Worn Camera because he was working out of division and did not have his camera.

On November 16, 2017, Deputy Simms was working as a uniformed Sheriff's Correctional Deputy assigned to the 4C Module at the Main Jail Facility.

At approximately 2105 hours, Deputy Simms heard Deputy Dundic #10892 advise North Control of a deputy involved "415" occurring inside of Module 4B Pod 3. Due to the urgent and exigent tone of Deputy Dundic's radio traffic, Deputy Simms immediately responded to Module 4B Pod 3.

Upon arriving inside of 4B Pod 3, Deputy Simms saw Deputies Dundic and Vorphal on the ground in a physical altercation with Inmate Patrick Simmons. Deputy Simms took control of Mr. Simmons's legs and placed them into a figure four control hold. Deputy Simms maintained control of Mr. Simmons's legs until assisting deputies secured him into handcuffs and leg-shackles. Once Mr. Simmons's was secured into handcuffs and leg-shackles Deputy Simms was relieved by assisting deputies.

SUPPLEMENTAL CRIMINAL REPORT 17-320-0423J- Deputy Dee #10556

Deputy Dee recorded the incident using his department issued Body Worn Camera.

On November 16, 2017, Deputy Dee was working as a Sheriff's Correctional Deputy at the Main Jail assigned to the 4C-2 position. At approximately 2105 hours, Deputy Dee heard radio traffic from 4B stating that they needed assistance for a "415" officer involved fight in pod 4B-3.

As Deputy Dee entered the 4B-3 pod, Deputy Dee noticed Deputies Dundic #10892 and Vorpahl #10888 on the ground struggling to gain control of Inmate Patrick Simmons. Deputy Dee immediately ran over to assist by grabbing his left wrist and placing his arm into an arm bar control hold. Deputy Dee was then able to place handcuffs onto his left wrist.

Deputy Dundic was able to gain control of Inmate Simmons's right arm and place it behind his back. This allowed him to secure Mr. Simmons's right arm into hand cuffs. Responding deputies then arrived and tapped him out. Deputy Dee had no further contact with Mr. Simmons.

IA INTERVIEW OF MR. PATRICK SIMMONS:

Investigator's Note: The following is a summary of the interview and is not a verbatim translation or transcription. For the best record, please refer to the digital recording of the interview in its entirety.

In November 2017, Simmons was housed on the 4th Floor of the Main Jail because he was having mental health issues. He was specifically housed in 4B2 which is a secure, indirect supervision dorm. According to Mr. Simmons, "I told mental health that I was hearing voices telling me to punch an officer, and - and, um, the voices were bothering me so much that they re-housed me to the eight floor to have me checked out by some medical doctors and nurses."

After approximately three days, Mr. Simmons was discharged from the 8th Floor and rehoused to 4B3. This particular pod was different from 4B2 because the inmates have direct contact with the deputies during their program time. Mr. Simmons felt he was being "set up" because he told staff voices were telling him to hit an officer.

On November 16, 2017, the same day he was transferred to 4B3, Mr. Simmons punched Deputy Vorpahl without provocation. Deputy Vorpahl was conducting door checks and "as soon as he came near me I - I just got up and I punched him."

Mr. Simmons and Deputy Vorpahl exchanged punches, he estimates Deputy Vorpahl threw four (4) punches at him. Next, Deputy Vorpahl ordered Mr. Simmons to the ground and he complied.

Mr. Simmons did not know Deputy Vorpahl or have any prior contact with him. Mr. Simmons estimated the entire event lasted a minute or two. The voices in Mr. Simmons's head told him to punch the deputy. He reported hearing the voices for weeks or even a month prior to the incident.

Mr. Simmons recalled placing his hands behind his back after being instructed to do so while lying on his stomach. While on the ground, Mr. Simmons recalled Deputy Vorpahl manipulating his body worn camera because he heard beeping. He was not sure if Deputy Vorpahl was attempting to turn the camera off or on. Simultaneously, Mr. Simmons remembered a verbal exchange between himself and Deputy Vorpahl. Mr. Simmons recalled from there he was threatened and put into an arm lock. Mr. Simmons described Deputy Vorpahl as "outraged" and "yelling." Mr. Simmons described the threatening as follows:

I immediately start to apologize and he was just like, "Shut up, why are you apologizing, why did you punch me." He started to threaten me. He asked me, "What arm do I write with?" I told him "My right arm" and he put me in some kind of arm lock, and I wasn't refusing at all, I said, "I'm not refusing." He said, "Let me see your arm, you're gonna regret what you just did, let me see your arm. You're not gonna be punching anybody else for a while."

Mr. Simmons reported his arm was broken by Deputy Vorpahl before any other deputies responded. Deputy Vorpahl broke his arm and immediately handcuffed him. He described the subsequent officer response as follows:

Sgt. Hunter: Okay. So it was just (Vorpahl) in there?

Mr. Simmons: (Vorpahl) was in - we were in there, you know, for a few minutes before anyone came in there.

Sgt. Hunter: Okay. And by the time the other officers came in, you were already handcuffed?

Mr. Simmons: I was already handcuffed, arm was broken - I told him it was broken.

Mr. Simmons was treated at Valley Medical Center for a broken right arm. His fracture was in his upper arm and he was provided a brace for the fracture. Mr. Simmons stated the fracture did not properly heal using the provided brace and later required surgery. Mr. Simmons reported lingering shoulder pain as a result of the incident as well.

Disposition:

Based on Mr. Simmons's statements and security camera footage in combination with my own training and experience as a law enforcement officer, I believe Deputy Vorpahl and other responding deputies acted appropriately in response to Mr. Simmons's violent attack.

Mr. Simmons has a history of violent and assaultive behavior while incarcerated in Santa Clara County. In the prior 30 days to this incident, Mr. Simmons was involved in 5 other incidents of violence with staff and/or inmates.

Mr. Simmons's account of the incident on November 16, 2017 is not supported by the security video

evidence. This is understandable given Mr. Simmons's mental illness and reporting of hearing constant voices for a long period of time leading into the incident.

In reviewing the video, Deputy Vorpahl never manipulates or touches Mr. Simmons's right arm at any point during the use of force event. Mr. Simmons recounted a verbal exchange with Deputy Vorpahl over a matter of minutes, with only the two of them in the pod up until the point he was handcuffed. In fact, the video shows Deputy Dundic arriving to assist Deputy Vorpahl within seven (7) seconds of Mr. Simmons's first punch. Additionally, five (5) deputies were required to control and secure Mr. Simmons after attacking Deputy Vorpahl.

The only person who manipulates Mr. Simmons's right arm is Deputy Dundic. As Deputy Dundic stated, "Due to S01-Simmons's assaultive behavior which I witnessed him exhibit just moments ago, I was afraid that if I lost control of his right arm, he would continue his violent, behavior against myself and Correctional staff."

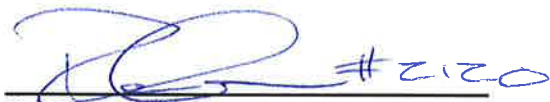
Deputy Dundic was scared for his safety and that of his partners. He utilized a pain compliance control hold on Mr. Simmons's right arm. He utilized this control hold to keep Mr. Simmons pressed and the ground and limited Mr. Simmons's ability to use his arms as leverage to get off the ground. Nothing in the video leads me to believe that Deputy Dundic was attempting to fracture Mr. Simmons right arm.

Mr. Simmons is 6'0" tall and weighs 250 pounds. He was larger than any Deputy trying to secure him. Pursuant to section 835a of the California Penal Code, deputies had the lawful authority and the lawful duty to use a reasonable amount of force necessary to overcome Mr. Simmons's resistance.

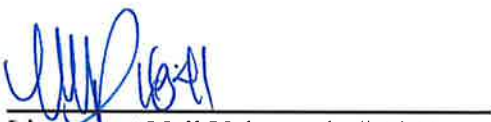
In *Graham v. Connor* 490 U.S. 386 (1989), the reasonableness in using force is tested based on officers being forced to make split-second judgements in circumstances that are tense, uncertain, and rapidly evolving.

Based on my review of this case, Deputy Vorpahl and Deputy Dundic acted within policy and the force used was reasonable under the circumstances. Additionally, once Mr. Simmons was under control, emergency medical attention was summoned and provided to Mr. Simmons.

A Preponderance of the evidence in this case indicates no misconduct by Sheriff's Office staff and I am recommending this case be closed with a finding of **EXONERATED**.



Sergeant Richard Glennon #2120
Internal Affairs Unit



Lieutenant Neil Valenzuela # 1841
Internal Affairs Unit