

County of Santa Clara

Office of the Sheriff
Internal Affairs Unit

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Laurie Smith
Sheriff

FN2018-00752

Notification:

On June 12, 2018, the Internal Affairs Unit received a voicemail from [redacted] who is currently being housed at the Elmwood Correctional Facility in M3B. [redacted] alleged that he was arrested and beaten for "no apparent reason," and as a result of that confrontation, his ribs were broken and his lung was punctured on March 13, 2018.

A review of the Sheriff's Office Incident Admin report system and IA Pro, the incident was documented. The Sheriff's Office case number is 18-072-0150T. Deputy Franzman #2234 and Deputy Little # 2230 were working together in a plain clothes assignment for the Transit Patrol Division. Both deputies also submitted a Blue Team reports for their use of force.

On July 9, 2018, I was assigned to this case for review.

Investigation:

On July 9, 2018, I went to the Elmwood Correctional Facility and met with [redacted] in M3B. I activated my digital recorder and introduced myself; I explained that I was from the Internal Affairs Unit. [redacted] wanted information on how to file a lawsuit against the county and also wanted to file an internal affairs complaint for excessive force.

Statement

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[redacted] provided a recorded statement to Detective Navarro #1667 on March 14, 2018. During [redacted] recorded statement, he told Detective Navarro that he knew that Deputy Franzman and Deputy Little were "the cops," and he saw "their badges." [redacted] knew that he had a warrant so he ran from the deputies.

On July 9, 2018, when I spoke to [redacted], he was not truthful to me during his recorded statement and it conflicted to what he told Detective Navarro.

told me that he was visiting his cousin at the RV when her dog began to bark. cousin told him to go see what was making the dog bark. walked around from the passenger side of the RV and saw the "two officers." told me that he knew that he had a warrant; therefore, he took off running. After running from the "officers," he fell to the ground. One of the officers jumped on top of and had his hands behind his back and pushed down on his ribs. The plain clothes deputy told to "stop resisting."

used the phrase "officers," during the beginning part of the interview. told me that while he was on the ground he began to move around "like a fish out of water," because he couldn't breathe and that he did not try to strike any of the deputies. also told me that he had two witnesses. He later told me his witness was the lady who lived in the white two-story house (later identified as . The other witness was another lady who lived in the same house named

told me that he was struck on his head and upper body by the plain clothes deputy. Once uniformed deputies arrived to assist Deputy Franzman and Deputy Little, they asked him if he needed medical attention, which was provided to him.

After finished his uninterrupted account of what happened, I asked clarifying questions. told me when he was first contacted; the plain clothes deputies did not wear a badge, had no "Sheriff" marking on them, and never identified themselves. I asked if he saw any firearms on the plain clothes deputies and asked again if he saw a badge on them. said, "No." This contradicts what he told Detective Navarro on March 14, 2018, when said he saw Deputy Franzman and Deputy Little's had their badges on them.

I asked when he started to run from the deputies, if they yelled anything to him. said they yelled, "Stop!" but he didn't hear anything to the effect of "Sheriff's Office." I asked what he thought to himself when he heard the plain clothes deputy yell, "Stop." said, "I kind of knew they were the police."

I started to confront on his inconsistencies. I asked him when the plain clothes deputy first contacted him if he thought they were "the police." said, "No." I asked, "Why did you run then?" became uncomfortable and asked me to rephrase the question. I told that if he didn't know they were the police and they didn't have badges or "Sheriff Markings," on them but he knew he had a warrant..." then said, "Yeah-yeah, you're right. Something told me they were the cops, but I didn't see a badge."

Prior to confronting I asked him to be truthful to me because I needed a complete account of what had happened. After giving several opportunities to tell me the truth, he continued to deny that he saw a badge when he was first contacted, and when I confronted him, only alluded that "something told me they were the cops." Based on initial statement to Detective Navarro and his statement to me, I believe that did in fact see Deputy Franzman and Deputy Little's badge hanging from their lanyards and knew they were peace officers. Additionally, knew he had a warrant and took flight from the deputies who were trying to detain him.

Investigation continued:

On July 10, 2018, I went [redacted] in San Jose and contacted [redacted] (recorded interview). [redacted] told me that she knew [redacted] but had only known him for approximately one year. [redacted] told me that nobody by the name of [redacted] lived with her. [redacted] knows of [redacted] but doesn't know where she lives.

[redacted] statement was consistent to what she told Deputy Morrissey #1689 on March 13, 2018. [redacted] told me that [redacted] was resisting but was also being punched. When [redacted] was being punch on the ground, he was not handcuffed. [redacted] witnessed the physical altercation for approximately one minute.

Evidence:

While investigating [redacted] allegation of excessive force, I reviewed the Sheriff's Office incident report 18-072-0150T and all supplemental reports associated to it; as well as, the Blue Team use of force reports completed by Deputy Franzman and Deputy Little.

I reviewed all of the body worn camera footage that was recorded by Deputies Morrissey #1689, Craig #1869, Emeheiser #1742, Breit #1997, and Groba #1816. While reviewing all of the body worn camera footage, Deputy Franzman and Deputy Little had their badges hanging from a lanyard that was around their necks.

While reviewing that body worn camera footage, I saw the Sheriff's Office vehicle (16454) that was placed in while fire and County EMS were responding and eventually contacted [redacted] On July 10, 2018, I reviewed the patrol car camera system which has a view of the prisoner area and is audio equipped. [redacted] was provided medical attention in a timely manner by San Jose Fire and County EMS.

I reviewed Detective Navarro's audio recorded statement from [redacted] from March 14, 2018. I also reviewed all photographs that were submitted with the incident report. All of the injuries were consistent with what [redacted] reported and that were documented in the Sheriff's Office reports.

Force analysis:

During my review of this case, I am satisfied that Deputy Franzman and Deputy Little had a basis for a detention, were properly identified as sheriff's deputies who were working in a plain clothes assignment. I then analyzed whether the force used to seize [redacted] was legal and justified per department policy and the law.

Deputy Franzman 2234:

Upon contact with [redacted] and exiting his patrol vehicle, Deputy Franzman, documented that he had his Sheriff's badge displayed on his person, as well as, his firearm visibly displayed. Deputy Franzman approached [redacted] and said, "Sheriff's Office, secure your dog." When [redacted] started to run from Deputy Franzman, Deputy Franzman yelled two times, "Sheriff's Office, stop running!" While Deputy Franzman was running after [redacted] he yelled multiple times, "Sheriff's Office, stop running!"

After [redacted] fell to the ground on his stomach, he attempted to get up and continue running. In order for Deputy Franzman to prevent [redacted] from running anymore, he jumped onto [redacted] back. [redacted] moved his right arm underneath his body while in a prone position. Deputy Franzman documented that based on his training and experience, that it is common for subjects to carry weapons in the front waistband of their pants. Deputy Franzman believed [redacted] was attempting to retrieve a weapon. [redacted] left arm was in a 90 degree angle in a push up position. Deputy Franzman didn't want to gain leverage and grabbed his left hand. In response to Deputy Franzman grabbing his left hand, [redacted] rolled his body and trapped Deputy Franzman's left hand underneath his [redacted] body. Deputy Franzman carries his firearm on the right side of his body and not having access to the left side of his body places him in danger by having his firearm exposed.

Deputy Little attempted to take control of [redacted] right arm, but [redacted] continued to resist their efforts to control him by rolling back onto his stomach and attempted to tuck both of his arms underneath his body. [redacted] attempted to reach for the front of his waistband with his right hand. [redacted] continued to roll his shoulder side to side and shaking his head back and forth (this was also corroborated by [redacted] himself when I spoke to him on July 9, 2018).

[redacted] attempted to swing his right leg around Deputy Franzman's left leg. Deputy Franzman then punched [redacted] three to five times with a closed fist on [redacted] upper left shoulder blade. This level of force was ineffective. [redacted] placed his left hand behind his left knee and squeezed his thighs together. Deputy Franzman delivered two closed-fist punches to [redacted] back. This level of force was effective and caused [redacted] to release the pressure from his thighs and exposed his left wrist.

Deputy Franzman placed [redacted] left hand in control hold-lock; however, [redacted] pulled away from Deputy Franzman. As a result of [redacted] pulling away from Deputy Franzman, he applied more pressure. This level of force was effective and [redacted] relaxed his arm. Deputy Franzman was able to place [redacted] in a rear-twist lock and placed his left hand in a handcuff. Deputy Franzman positioned [redacted] left hand behind his back. Deputy Little positioned [redacted] right arm into a position for handcuffing and was subsequently secured in handcuffs.

Deputy Little #2230:

According to Deputy Little's report; Deputy Franzman identified himself as a sheriff's deputy and told [redacted] to secure his dog. As Deputy Little was exiting his unmarked patrol vehicle when he heard Deputy Franzman yell that [redacted] was running. Deputy Little drove his vehicle to the area where Deputy Franzman was chasing [redacted]. Deputy Little drove towards [redacted] which caused him to slow down. Deputy Little exited his car and saw Deputy Franzman on the ground with

Deputy Little grabbed [redacted] right arm and told him to place his hands behind his back. [redacted] broke free from Deputy Little's hold and placed both arms underneath his chest towards his waistband. Deputy Little believed that [redacted] was reaching for a weapon. Deputy Little struck [redacted] on his back with a closed fist two times. As a result of being punched, [redacted] right arm came out from underneath his body. Deputy Little told [redacted] "stop resisting!" [redacted] pulled away from Deputy Little's hold. [redacted] pulled his arm towards his chest and begun to pull Deputy Little down in the process. Deputy Little struck [redacted] on his right rib cage with his right knee. This level of force was not effective. [redacted] rolled over to his back and broke free from Deputy Little's hold. "pushed away from us and turned his body in an attempt to get up and run away." Deputy Little punched [redacted] with a closed fist on his stomach. Deputy Little grabbed [redacted] right arm and tried to place it behind him; however, [redacted] broke free from Deputy Little's hold and pushed away from him. Deputy Little attempted to place [redacted] in a carotid restraint, but he was sweating profusely and put his chin to his chest, which prevented Deputy Little from completing the carotid restraint. Deputy Franzman was able to place [redacted] in a twist lock. [redacted] then relaxed his arm. Deputy Franzman placed [redacted] into handcuffs.

Injuries to [redacted] :

As a result of [redacted] resisting Deputy Franzman and Deputy Little's efforts to effect his arrest, [redacted] suffered the following injuries where he was admitted into the hospital at the Valley Medical Center.

- 1 inch abrasion to the right temple,
- 1 inch abrasion to the left temple,
- 1 inch abrasion to the left eyebrow,
- 2 inch abrasion to both knees,
- Swollen bottom lip,
- A complaint of pain to the middle back,
- Fractured right ribs,
- Pneumothorax and subcutaneous emphysema of the right lung.

[redacted] received medical treatment from San Jose Fire, County EMS, and Valley Medical Center.

Legal points and authority:

I considered the following legal points and authority and applied them to the analysis of this incident;


- Sheriff's Office General Order 12.00, "Use of Force Policy,"
- California Penal Code section 834a, "Duty to Cooperate in Arrest,"
- California Penal Code section 835a, "Peace Office Use of Force to arrest,"
- Graham v. Connor 490 US 386, 396

Disposition:

In my analysis of this incident, I determined that Deputy Franzman and Deputy Little acted within the policy of the Sheriff's Office. _____ knew that they were peace officers or should have reasonable known they were peace officers. Deputy Franzman and Deputy Little were justified to use force under tense, uncertain, and a rapidly uncertain circumstance where they acted as any reasonable officer would do so. Based on my review of this case, Deputy Little and Franzman acted within policy and the force used was reasonable under the circumstances. Additionally, once _____ was under control, emergency medical attention was summoned and provided to _____ ; therefore, I find that Deputy Franzman and Little are **EXONERATED**.



Sergeant Roy Leonard #1875
Internal Affairs



Lieutenant Neil Valenzuela #1841
Internal Affairs