



SONOMA COUNTY SHERIFF'S OFFICE

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Sheriff-Coroner

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Law Enforcement Division

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HEIDI KEITH
Chief of Financial and
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July 24, 2023

VIA EMAIL

John Alden, Director
IOLERO

RE: Response to IOLERO audit of 21-AR-0001

Dear Mr. Alden,

Pursuant to Section D.1.j. of the July 2022 Operational Agreement between SCSO and IOLERO, we are providing a written response to IOLERO's preliminary audit in case no. 21-AR-0001. The incident under review was the use of a patrol canine to apprehend an individual who, at the time of the incident, was believed to be involved in an earlier reported armed carjacking. The administrative investigation into this matter concluded the canine handler acted within policy (specifically Use of Force and Canine policies).

IOLERO's audit concluded the deployment of the canine to apprehend the individual was not objectively reasonable and therefore violated prevailing law and SCSO policy.¹ The audit is laced with personal opinion, assumptions, and "public expectation" remarks. These may be relevant in assisting with policy and procedure review, but they do not benefit the investigator in determining whether or not a deputy's conduct is consistent with law and policy.

In regards to IOLERO's statements surrounding the deputy's perceived "red flags,"² these too must be judged from the deputy's perspective, or from the perspective of a reasonable officer on scene with similar training and experience, rather than with the 20/20 vision of hindsight.³ IOLERO concluded SCSO's high risk stop and "red flag" canine protocol (no such protocol exists) may have resulted in the deputy overlooking or unduly discounting clear discrepancies in vehicle color and suspect description.⁴ The Internal Affairs investigator clearly documents the deputy's explanations surrounding these discrepancies which, with the deputy's law enforcement training and experience, are reasonable. The deputy's explanation of his perceived threats and concerns (red flags) is a

¹ IOLERO audit of 21-AR-0001, Summary pg. 1

² Ibid., section II, pg. 21

³ Graham v. Connor, 490 U.S. 386, 396 (1989)

⁴ IOLERO audit of 21-AR-0001, Discussions and Conclusions pg. 14

culmination of the totality of circumstances which led to his decision to deploy his canine. The deputy's perception of danger cannot and should not be ignored.

IOLERO concluded the deputy's decision was based on an unsupported premise that the subject was an accomplice in the carjacking, ignored substantial compliance from the individual, and "failed to take into account the disproportionate level of force imposed by the canine when compared with the modest threat of flight or violence at the moment the dog was deployed."

SCSO's investigative record is clear, the deputy considered the subject to be involved in the carjacking based on reasonable factors known to him at the time. It is also incorrect to assume the deputy ignored the subjects "substantial compliance." Ultimately, the subject did comply with some directives issued by the deputy, however, as stated in the deputy's interview, the subject's demeanor and actions changed, prompting the use of the canine. The deputy articulated reasons he reasonably believed the individual was non-compliant, posed an imminent threat of violence, and needed to be subdued by the canine. IOLERO asserts its opinion in this matter and claims the individual did not objectively pose an immediate threat. It would be beneficial to know what training and experience the auditor possesses and relied upon to render such an opinion. It is common knowledge in the law enforcement profession individuals will use stall tactics while looking for avenues of escape or opportunities to launch an assault.

IOLERO's audit statements regarding the public's perceptions and expectations,⁵ have no bearing on a use of force review. While this information may be pertinent to IOLERO and the Community Advisory Council as it relates to policy recommendations, it cannot be used to determine if the deputy followed law and policy as it in place at the time of the incident. As stated in IOLERO's audit summary, the Fourth Amendment and SCSO Policy look at use of force from the deputy's perspective. Any subsequent administrative review of the use of force must be judged from the same perspective, and only that perspective as set by law and policy. Additionally, tactical considerations employed by the deputy, such as the order to kneel or crawl, should not be weighed against various public opinions. As documented in the Administrative Review, there was a reasonable explanation for such orders given the totality of the circumstances.

IOLERO speculated the subject would have or could have been "less angry and more compliant had he been directed to lay on the ground instead of crawling in which case use of a canine would have been obviated."⁶ The analysis of the force used, and tactical decisions made up to that point must be based on what actually happened, not what could have happened. With the benefit of hindsight, it is easy to critique the actions of the deputies on scene. However, this is not the standard in which use of force incidents are reviewed. "Reasonableness" makes "allowance for the fact that police are

⁵ Ibid., section IV. Public Perceptions pg. 23

⁶ Ibid., section III, pg. 23

often forced to make split-second judgments – in circumstances that are often tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”⁷

The Administrative Review Investigator determined the deputy employed significant de-escalation tactics and attempted to resolve the incident with minimal to no force. Conversely, IOLERO assumed the decision to deploy the canine was, in part, based on the “deputy’s growing impatience” with the subject.⁸ IOLERO erroneously assumed the deputy was frustrated, growing impatient, and abandoned all de-escalation efforts.⁹ The investigative record documented the deputy’s observations and perceived threats which were continually evolving. A de-escalation technique which may work at the beginning of the encounter, may become ineffective as the subject’s demeanor changes. This was the case in this incident. The subject was reluctantly compliant up until the point he was going to be in a position to be physically restrained. At that moment, his compliance stopped, his demeanor changed, and the deputy believed the use of the canine was required to safely take him into custody before his behavior escalated even further.

Based on the totality of the circumstances, we agree with the Internal Affairs Investigator’s findings that the canine deputy’s actions were within policy, therefore exonerating him of any wrongdoing.

While IOLERO’s analysis of this incident may be useful in evaluating future policy changes, it is not a proper assessment of the deputy’s conduct relative to the Sheriff’s Office training and policies at the time of the incident.

Sincerely,



SEAN JONES #1807
Professional Standards Bureau Lieutenant

⁷ Graham v. Connor, 490 U.S. 386, 396 (1989)

⁸ Ibid., Discussion and Conclusions, pg. 14

⁹ Ibid., Discussion and Conclusions, pg. 20