INTERNAL AFFAIRS
ADMINISTRATIVE INVESTIGATION
AUDIT

CASE DETAILS	
Complainant Name	SCSO Self-Initiated
Case No.	22-IA-0004
Type of Investigation	Internal Affairs – Use of Force Administrative Investigation
Incident Date	May 6, 2022
Date/Origin of Complaint	May 9, 2022 (SCSO Self-Initiated)
Date IA Sent to IOLERO	November 1, 2022 (Re-sent February 16, 2023)
Date Preliminary Audit Returned to SCSO	April 18, 2023
Date Audit Becomes Final if SCSO Provides No Response	May 9, 2023

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SUMMARY

This Audit addresses a Use of Force administrative investigation conducted by the Sonoma County Sheriff's Office (SCSO) in connection with a deputy's physical take-down tackle of a person which resulted in serious bodily injury.

As discussed below:

1. Every Use of Force review should include an interview of the involved deputy absent a compelling reason to the contrary. The deputy was not interviewed in this matter and therefore we must conclude that the investigation was **INCOMPLETE**.

2. A preponderance of the record evidence that was compiled in the investigation does not show that the deputy's use of force either did, or did not, comply with law or policy. Therefore we **DISAGREE** with the **EXONERATED** finding and conclude the finding should be **NOT SUSTAINED** on the current record.

3. We **RECOMMEND** (i) that Use of Force administrative investigations address *all* applicable requirements—Fourth Amendment reasonableness, proportionality, de-escalation, specific training, any other policy applicable to the incident under review, and (ii) all Use of Force administrative investigations include a substantive interview with the involved deputy.

MATERIALS REVIEWED

All materials provided by SCSO in the AIM system were reviewed in connection with this Audit. A full list of this material is attached as **APPENDIX A**.

FACTUAL BACKGROUND

I. INCIDENT REPORT

On May 6, 2022 at approximately 8:16 p.m., Deputy Cole Aikens was on patrol when he responded to a radio dispatch about an intoxicated person trying to hurt people at a multi-business shopping center located at 4840 Old Redwood Highway. The suspect, later identified as Ryan Uhl, reportedly tried to punch in the window of a coffee shop, tried to enter multiple vehicles, hit someone in the face, and was actively assaulting bystanders. While driving to the scene Dep. Aikens heard further radio reports that Mr. Uhl had jumped onto a vehicle, started punching the windshield and was assaulting "everyone in the area". (Incident Report at 1–2).

SCSO helicopter "Henry-1" arrived and advised that Mr. Uhl was in the driveway of a service station challenging people to fight, that his pants were down and he was tripping over a curb and fighting a bystander. (Incident Report at 2). At this point Dep. Aikens responded Code 3 due to the risk of harm to bystanders and property. Dep. Aikens further believed Mr.

Uhl may have been attempting a carjacking based on reports that he had tried to enter vehicles. (*Id*.).

When Dep. Aikens arrived on scene, Mr. Uhl was sitting on the ground but then stood with his pants around his ankles, approached and then struck a bystander. (Incident Report at 2). Dep. Aikens exited his vehicle and ordered Mr. Uhl to get on the ground but he did not comply. (*Id*.).

Dep. Aikens then used a running tackle taking Mr. Uhl to the ground "to prevent [him] from further attacking anyone, prevent his escape, and [to] detain him". (Incident Report at 2). Dep. Aikens landed on top of Mr. Uhl. Deputy Vrabel and Dep. Tamayo, who arrived just behind Dep. Aikens, assisted in handcuffing Mr. Uhl. (*Id*.). Mr. Uhl appeared unconscious, his eyes were open and his body limp, and the deputies placed him into a side "recovery" position and requested Code 3 medical assistance. (*Id*.).

Mr. Uhl was later diagnosed with a fractured skull and bleeding in the brain resulting from his head striking the ground when he was tackled.

II. <u>VIDEO OF THE INCIDENT</u>

Dep. Aikens activated his Body Worn Camera (BWC) immediately after tackling Mr. Uhl, and the deputy's arrival and takedown were recorded during the 30-second soundless "buffering mode". Dep. Aikens later recorded on his BWC the service station surveillance video showing Mr. Uhl's erratic actions prior to the deputy's arrival as well as the deputy's use of force. Henry-1 also recorded video showing Mr. Uhl's actions at the service station and the deputy's use of force, but the impact of Mr. Uhl's head on the ground was blocked from view by trees.

The facts set out by Dep. Aikens out in the Incident Report (as summarized above) are consistent with these video sources, each of which is summarized below.

Surveillance Video

The service station surveillance video shows Mr. Uhl physically fighting with various persons in front of the service station office. At one point Mr. Uhl pulled his pants down exposing his genitals and made what appears to be sexual movements with his hips. Mr. Uhl appears intoxicated, falls down more than once, and eventually lies on his back next to a curb with his pants down. When Dep. Aikens pulled into the parking lot Mr. Uhl stood up (with pants still down) and physically assaulted one of the bystanders just as the deputy was exiting his vehicle. Mr. Uhl began to back away from the bystander and Dep. Aikens tackled him on a run from a distance of approximately 10 to 15 feet. The deputy wrapped his arms around Mr. Uhl's shoulders in a "bear hug". As they fell (Mr. Uhl falling backwards) the deputy placed his left forearm against the ground and his right arm came out from behind Mr. Uhl, resulting in the deputy's body landing on top of Mr. Uhl. Because of the direction of their motion, the deputy slid up towards Mr. Uhl's head. Mr. Uhl's head hit the concrete pavement.

Helicopter Video

Henry-1 video shows Mr. Uhl initially standing near a vehicle in an adjoining parking lot. He then crossed into the service station lot and began to interact with various persons. Mr. Uhl then pulled down his pants, made sexual gestures, and fought with bystanders at the service station as described above. When Dep. Aikens arrived Mr. Uhl got up from the ground and tried to punch the bystander, and Dep. Aikens tackled Mr. Uhl. The moment Mr. Uhl's head hit the ground is obscured by trees.

COMPLAINT ALLEGATIONS

SCSO conducted an internal Use of Force (UOF) Review on May 20, 2022. *See* 22-UOF-0184. In the UOF Report, the Watch Commander described the incident as follows: "Upon arrival, the suspect was actively assaulting a victim. The deputy tackled the suspect. The suspect hit his head on the ground and lost consciousness and transported via EMS to the hospital." (*Id*.). The UOF Report identified Mr. Uhl's injury as a "serious bodily injury" pursuant to Gov't Code § 12525.2(d) and concluded it was reportable to the California Department of Justice.

On May 9, 2022, SCSO Internal Affairs separately asked the Investigator to conduct an Internal Affairs administrative investigation (22-IA-0004) to determine whether the force used by Dep. Aikens "violated Sheriff's Office Rules and Regulations, Office-Wide Policy, Division Polic[y] and/or State Law", with specific reference to SCSO Policy 300. (IA Report at 2).

The IA Report notes that there were no specific allegations of misconduct against Dep. Aikens. (IA Report at 2).

THE IA INVESTIGATION

I. THE INVESTIGATIVE PROCESS

Preliminarily we address the question of what standards and procedures govern a SCSO administrative investigation that is not based on a specific allegation of officer misconduct.

SCSO conducts administrative investigations of complaints alleging misconduct by officers, including alleged improper use of force, under the "Personnel Complaints" procedures set out in SCSO Policy 1010. (*See* Policy 1010; Policy § 300.11). Policy 1010 outlines procedural requirements concerning, for example, evidence gathering, interviews and report preparation. It also identifies the investigative outcome categories—sustained, exonerated, unfounded, frivolous, not sustained—in accordance with Penal Code § 832.5, § 832.7 and § 832.8.

SCSO also conducts administrative investigations—such as the one under review here—that are *not* based on a specific allegation of misconduct, but nevertheless evaluate whether officer actions were compliant with law and SCSO Policy.

Specifically, SCSO Policy 300 provides that a supervisor completing a "use of force report" may "initiate an administrative investigation [for a use of force incident] if there is a question of policy non-compliance or if for any reason further investigation may be appropriate". (§ 300.7(h)). Alternatively, if after reviewing the supervisor's UOF Report the Use of Force Lieutenant determines that use of force may be "potentially outside the parameters of [the use of force] policy", the Lieutenant will assign the matter to Internal Affairs for additional investigation "to determine if there were any violations of [the use of force policy], or any other policy." (§ 300.7.1).

SCSO also conducts administrative investigations pursuant to Critical Incident Protocol 93-1, which provides for administrative investigations in cases involving use of force resulting in serious bodily injury in order to determine "whether or not an employee has violated employer agency rules, regulations or conditions of employment". (SCSO Policy 305; Critical Incident Protocol § I.B; § III.B.).

Neither Policy 300 nor the Critical Incident Protocol specify the standards and procedures to be followed in administrative investigations not based on a specific allegation of misconduct.

In the absence of specific SCSO policy to the contrary, we interpret Policy 300 and the Critical Incident Protocol as applying the same procedural and substantive safeguards and requirements that are set out in Policy 1010, including the burden of proof, investigative outcome categories, and "clearly establish" standards. Policy 1010 specifically refers to "administrative investigations", and although it addresses complaints of misconduct, we see no reason why the "administrative investigation" procedures outlined in Policy 1010 should not be applied to "administrative investigations" conducted under the Critical Incident Protocol or Policy 300. All administrative investigations have the common purpose of determining compliance with law and SCSO Policy, and they should all be governed by the same procedural and substantive standards. Indeed, in this case, the IA Report recommended a finding of "exonerated", a dispositive category specifically defined in SCSO 1010 and Penal Code § 832.5(d)(3) and applicable to personnel complaints. (IA Report at 13, 15). [1]

II. INVESTIGATIVE RECORD

The Investigator reviewed the Incident Report, surveillance video from the service station, Dep. Aikens' BWC video, and video from Henry-1. Dep. Aikens was not interviewed.

III. INVESTIGATOR'S CONCLUSIONS

The Investigator identified Penal Code § 835a(a) and SCSO Policy 300.3 concerning use of force as the authorities governing Dep. Aikens' actions.

Based on the record, the Investigator found the only force used was tackling Mr. Uhl to the ground. The Investigator found that facts known to Dep. Aikens at the time he used force were that (i) Mr. Uhl was potentially intoxicated (ii) he was trying to hurt people, and (iii) he

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[1] A third category of review—an "Administrative Review"—is also not based on a claim of wrongdoing, but it looks more broadly at whether there could have been policy violations and, even more generally, whether current policies and/or training were adequate to the circumstances or should be re-evaluated or changed. Procedural and substantive standards applicable to an "Administrative Review" are separate from those applied to the "administrative investigation" under review in this Audit.

was punching windows and trying to enter vehicles. Upon arrival on scene, Dep. Aikens saw Mr. Uhl punch a bystander. (IA Report at 12).

Based on these facts, the Investigator concluded that Mr. Uhl was an "immediate threat to bystanders on the scene, [his] conduct was aggressive, [he] was reportedly under the influence of intoxicating substance or substances, the potential for injury to the arriving deputies and other bystanders on scene was prevalent and there was an immediate need to control [Mr.] Uhl's violent and aggressive behavior." (IA Report at 13).

Accordingly, the Investigator concluded it was reasonable for Dep. Aikens to take Mr. Uhl to the ground to make the arrest, overcome resistance and prevent escape. The Investigator further concluded that Dep. Aikens' "application of taking [Mr.] Uhl to the ground by tackling him was reasonable and consistent with Sheriff's Office training." (IA Report at 12).

Because the Investigator found the force used to be "reasonable, necessary, was within policy and was lawful, [and] ultimately brought the situation under control", the Investigator determined the finding should be "**Exonerated**". (IA Report at 13, 15).

APPLICABLE LAW AND POLICIES

I. <u>LEGAL STANDARDS</u>

A deputy may arrest a person if they have probable cause to believe that the person committed a public offense. (Pen. Code § 835a(b); § 836). A deputy may use "objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance." (*Graham v. Connor*, 490 U.S. 386, 396 (1989); Pen. Code § 835a(b)).

The "reasonableness" standard (imposed by the Fourth Amendment and incorporated into California law) balances governmental interests against the nature and quality of intrusion and consideration of the severity of the crime, whether the suspect posed an immediate threat to officers or others, and whether the suspect was actively resisting or evading. (*Id*.). "Reasonableness" is judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight", and makes "allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." (*Id*.; Pen. Code § 835a(a)(4)).

The peace officer's "perspective" must be "objectively" reasonable in light of the "totality" of the "facts and circumstances" that actually confronted them. *Id*.; *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1006–07 (9th Cir. 2017), citing *Saucier v. Katz*, 533 U.S. 194, 207 (2001) (excessive force claims evaluated for objective reasonableness based on information officer had when conduct occurred); *Glenn v. Washington County*, 673 F.3d 864, 873 n.8 (9th Cir. 2011) (because reasonableness of force must be judged from perspective of reasonable officer on scene, cannot consider evidence of which officer was unaware at the time force was used). Identifying what the officer actually knew and what they were actually faced with is critical to assessing whether their perceptions, and their actions, were "objectively reasonable".

While evaluated from the officer's perspective, California law requires that use of force shall nevertheless be reviewed "in a manner that reflects the gravity of that authority and the serious consequences of the use of force" in order to "ensure that officers use force consistent with law and agency policies." (Pen. Code § 835a(a)(3); Pen. Code § 835a(a)(1) (authority to

use force is "serious responsibility that shall be exercised judiciously and with respect for human rights and dignity"); SCSO Policy 300.2 ("Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.")).

In addition to the Fourth Amendment reasonableness standard, California also requires law enforcement agencies to (i) use de-escalation techniques when feasible; (ii) only use a level of force "that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance"; and (iii) adopt comprehensive guidelines regarding "methods and devises" for the application of force. (Gov't Code § 7286(b)). These California requirements are in addition to, and separate from, the Fourth Amendment reasonableness standard.

II. SCSO USE OF FORCE POLICY 300

SCSO incorporated the above-referenced use of force requirements into its policies.[2]

A. Rules Governing Use of Force

SCSO Policy 300 defines "***force***" as the "application of physical techniques or tactics, chemical agents or weapons to another person." (§ 300.1.1). "***Deadly force***" is force that "creates a substantial risk of causing death or serious bodily injury", and "***serious bodily injury***" is defined as "[a] serious impairment of physical condition, including but not limited to" "loss of consciousness", "concussion", "bone fracture", "protracted loss or impairment of function of any bodily member or organ", "a wound requiring extensive suturing" and "serious disfigurement". (§ 300.1.1).

"Active Resistance/Assaultive Behavior" is defined as "When a subject verbally or physically indicates their intent to inflict bodily injury, assaults a deputy, or any other person" including where "[t]he subject may assume a fighting stance". (§ 300.1.1).

"Deputies shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the deputy at the time of the event to accomplish a *legitimate law enforcement purpose*." (§300.3) (italics added). Moreover, "[d]eputies may only use a level of force that they reasonably believe is *proportional* to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance." (§ 300.3; Gov't Code § 7286(b)(2)).

When reasonable, deputies "should consider actions that may increase deputy safety and may decrease the need for using force" by summoning additional resources, formulating a plan to handle an unstable situation that does not appear to require immediate intervention, or employing other tactics that do not increase deputy jeopardy. (§ 300.3.6). Deputies "should" also, when feasible, consider and use "reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force". (§ 300.3.6.; Gov't Code § 7286(b)(1)).[3]

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[2] This Audit references SCSO Policies dated April 11, 2022. The arrest in this case occurred on May 6, 2022. We are not aware of any revised policies released by SCSO between April 2022 and May 6, 2022.

[3] Government Code 7286(b)(1) requires SCSO to maintain a policy that "*shall* include" "a *requirement* that officers utilize de-escalation techniques . . . when feasible". By its terms, however, SCSO Policy § 300.3.6 and § 300.1.1 provide only that deputies "should consider" de-escalation

Policy § 300.3.2 further identifies factors to "consider" both when "determining whether to apply force" and later when "evaluating whether a deputy has used reasonable force". These include:

- immediacy and severity of the threat
- the individual's conduct as reasonably perceived by the deputy
- proximity of weapons
- the availability of other reasonable options
- seriousness of the suspected offense or reason for contact with the person
- training and experience of the deputy
- potential for injury to the deputies or suspect
- whether the person is resisting or attacking the deputy
- the risk of escape
- apparent need for "immediate" control of the person
- prior contacts with the person or awareness of propensity of violence
- "any other exigent circumstances"

(*See* Gov't Code § 7286(b)(21) (requiring policies to identify "factors for evaluating and reviewing all use of force incidents").

B. Supervisor Review and Administrative Investigations of Use of Force Incidents

California Gov't Code § 7286 requires law enforcement agencies to maintain a use of force policy that includes, among other things, "prompt internal reporting and notification regarding a use of force incident", and outlining the "role of supervisors" in the review of use of force applications. (Gov't Code §§ 7286(b)(10), (13)).

Pursuant to Gov't Code § 7286, SCSO Policy 300 requires deputies to document and report to their supervisor all use of force incidents. (§ 300.5.1). The supervisor should (where possible) obtain basic facts from the deputy, ensure injured parties are treated, interview the subject, identify witnesses, and approve related reports. (§ 300.7(a)-(f)). The supervisor should further determine if there is any indication of potential civil litigation and "[e]valuate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate." (§ 300.7(g) & (h)).

The Use of Force Lieutenant is then required to review each use of force "to ensure compliance with this [Use of Force] policy and to address any training issues. If a use of force is determined to be potentially outside the parameters of this policy, it will be assigned to Internal Affairs for additional investigation to determine if there were any violations of this, or any other policy." (§ 300.7.1).

III. SCSO CONTROL DEVICES AND TECHNIQUES

SCSO Policy 303 outlines various *devices* that may be used to "control subjects who are violent or who demonstrate the intent to be violent". (§ 303.2). Approved devices are

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techniques or "should consider" slowing down the incident. Thus SCSO Policy appears to impose a more discretionary standard for assessing de-escalation alternatives than the mandatory terms of Government Code § 7286(b)(1). For present purposes, and unless informed otherwise by SCSO, we assume that SCSO Policy intends to follow the mandatory requirements of Government Code § 7286(b)(1) notwithstanding SCSO's use of the term "should".

batons, tear gas, oleoresin capsicum spray and projectiles, kinetic energy projectiles, energy conductive devices ("Taser"), and canines. (§ 303; § 304; § 309).

With respect to use of force *techniques*, SCSO Policy does not identify them other than by reference to SCSO training. (*See* § 300.3.3 [defining "pain compliance techniques" as those for which deputy "successfully completed Office-approved training"]).

California peace officers are required to complete an introductory training course prescribed by the California Commission on Peace Officer Standards and Training (POST). (Penal Code § 832). The basic course curriculum is divided into discrete topics ("Learning Domains") which are accompanied by student workbooks. *See* www.post.ca.gov/regular-basic-course. Learning Domain (LD) 33 concerns "Arrest and Control" which includes "Control Holds and Takedown Techniques". *See* POST Basic Course Workbook Series Learning Domain 33, Arrest and Control Ver. 5.1 (rev. Feb. 2022).

"The primary objective of . . . takedowns is to gain control of the subject." (Workbook LD 33 at 3-3). A "takedown" technique is a "method for taking the subject to the ground" in order to defuse a situation, achieve control over the subject and the situation, and reduce the subject's ability to effectively attack. (*Id*. at 3-7). Considerations in using a takedown include immediate threat to the safety of officers or others, the subject's display of aggressive or assaultive behavior, the need for control of the subject, and inability to exert control by other means. (*Id*. at 3-9). Mechanics of a takedown method should include controlling the force used and using proper technique. (*Id*. at 3-13).

SCSO requires 8 hours of additional training each year (2 hours per quarter) in Use of Force defensive tactics/arrest and control, plus an additional 4 hours every two years as required by POST. *See* www.sonomasheriff.org/policies-and-training. The POST requirement is addressed through "POST Perishable Skills Program (PSP) III – Arrest and Control". *See* www.sonomasheriff.org/policies-and-training (attaching link to SCSO "Arrest/Control" Training outline dated Feb. 2022).

IV. [redacted]

[redacted]

DISCUSSION AND CONCLUSIONS

I. INVESTIGATIVE STANDARDS

A. Burden of Proof—"Preponderance of the Evidence"

In an employee investigation, a claim of misconduct may be "sustained" and discipline imposed if a preponderance of the evidence shows the employee violated law or agency policy. *See* Sonoma County Civil Service Commission Rule 10.5(I)(2). "Preponderance" is defined as evidence that "has more convincing force and the greater probability of truth" than the opposing evidence. (*Id*.). "Sustained" claims may be retained in the employee's general personnel records and could be (in some circumstances) subject to public records requests. *See* Penal Code §§ 832.5, 832.7, 832.8.

B. Complete Investigative Record—"Clearly Establish"

Where a preponderance of the evidence shows that the allegations are untrue or that the employee complied with law or policy, punitive action may not be imposed.

In addition, California Penal Code §§ 832.5, 832.7 and 832.8 segregate unsustained claims from the employee's personnel file and/or exempt them from public records requests. These are claims found to be (i) "frivolous" because they are "totally and completely without merit or for the sole purpose of harassing", (ii) "unfounded" because the allegation was determined to be "not true", and (iii) claims in which the employee was "exonerated" because the actions were "not violations of law or department policy". (Penal Code § 832.5(c), (d); Code of Civ. Proc. § 128.5(b)(2)).

To qualify as "unfounded" or "exonerated", Penal Code § 832.5 requires that the "investigation *clearly establish*[]" that the allegations are "not true" or that the actions "are not violations of law or department policy". (Italics added). To find a claim to be frivolous, the investigation must establish that any reasonable person would agree it is "*totally* and *completely* without merit" or was made for the "*sole* purpose of harassing". (Code Civ. Proc. § 128.5) (italics added).

We interpret "clearly establish" as used in Penal Code §§ 832.5, 832.7 and 832.8 to mean the investigation was sufficiently thorough to establish a *complete* factual and analytic record. Only when the investigation is "complete" can determinations properly be made as to whether the claim is or is not supported by a preponderance of the gathered evidence. (*See also* SCSO Policy § 1010.6.3 ["Formal investigations of personnel complaints shall be thorough [and] complete"]).

In compliance with Penal Code §§ 832.5, 832.7 and 832.8, SCSO Policy § 1010.6.4 requires that all personnel complaints be classified as "unfounded", "exonerated", "not sustained", or "sustained". The definition of "unfounded" and "exonerated" in SCSO Policy 1010.6.4 differs in some respects from Penal Code §§ 832.5 and 832.7 (*e.g.*, investigation "discloses" rather than "clearly establishes"). We assume SCSO intends its definition to match the statutory criteria and therefore apply the statutory standard here.[4]

II. THE INVESTIGATION WAS INCOMPLETE

A use of force review evaluates objective reasonableness, proportionality and de-escalation feasibility based on the facts viewed from the *perspective of the deputy*. Obtaining the deputy's direct explanation as to what he perceived, and the facts upon which he based that perception, is therefore critical to the use of force review.

While written incident and use-of-force reports are highly relevant, they are not a substitute for a deputy interview. "The primary purpose of [written] reports is to document sufficient information to refresh the deputy's memory and to provide sufficient information for follow-up investigation and successful prosecution." (Policy §323.1). Written reports should be "sufficiently detailed for their purpose and [be] free from error", but they are not detailed

[4] SCSO Policy 1010.6.4 defines "not sustained" as "the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member". "Not sustained" is not a category referenced or defined in Penal Code §§ 832.5, 832.7 or 832.8. The U.S. Dep't of Justice defines "not sustained" as "the allegations cannot be proven true or untrue by a preponderance of the evidence". *See* U.S. Dep't of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* at 50.

analytical documents. Written reports are prepared quickly, cover the entirety of an incident in general terms, employ short-hand language or law enforcement terms-of-art that are not self-explanatory, provide conclusory statements without detailed analysis, and often contain ambiguities. An interview allows the deputy to explain the incident and written reports in detail, allows for immediate follow up questions by the Investigator to clarify open issues, and ensures the record fully captures the salient facts related specifically to the use of force in that particular incident. The interview further allows the deputy to explain their *own* understanding of the use of force rules and training which govern their decision-making.

This case is illustrates these points. As discussed below, we agree with the Investigator that the record suggests the take-down may have been appropriate as a *general matter*: *controlled* take-down techniques are widely used to quickly take control of resisting or threatening persons.

However, the deputy here did not take Mr. Uhl to the ground in a controlled manner. Rather, the deputy used a *running* tackle that resulted in an uncontrolled fall to the ground and Mr. Uhl's head striking the pavement with sufficient force to inflict "serious bodily injury". The use of a running tackle thus raises questions of whether, before using such force, the deputy considered (or should have considered) the concrete-asphalt surface and/or Mr. Uhl's unsteady gait (including his level of intoxication and the fact he was backing away with his pants around his ankles). It also raises the question of whether the deputy considered (or should have considered) that by backing away Mr. Uhl was creating distance between himself and the bystanders thereby allowing use of a controlled takedown or other de-escalated level of force.

These factors, which are specific to *this* incident, are not addressed in the incident report or the various videos. *See* POST Basic Course Workbook Series Learning Domain 33, Arrest and Control Ver. 5.1 (rev. Feb. 2022) at 3-13 (mechanics of a takedown method should include controlling the force used and using proper technique).

It may turn out that a deputy's explanation during an interview ultimately reiterates or confirms what they wrote in their incident report, and therefore there may be a tendency to view such interviews as cumulative or a waste of time. To the contrary, the fact that a deputy's explanation during a properly conducted interview confirms their perceptions as stated in their written reports is critical to supporting a conclusion that use of force was reasonable and complied with policy. Moreover, a use of force finding based on a substantive explanation by the deputy, rather than just a paper record, fosters public trust and confidence in the final determination. It is when the deputy is *not* interviewed that doubts arise as to what the deputy knew and perceived at the time of the incident—factors that lay at the core of a use of force review.

Accordingly, an interview of the involved deputy is almost always required to complete the use of force investigative record and permit a determination based on a preponderance of the accumulated evidence. In this case, Dep. Aikens was not interviewed and the record does not identify a reason for this omission. Accordingly, we must conclude that the investigation was **INCOMPLETE**.

III. A PREPONDERANCE OF THE EVIDENCE DOES NOT SHOW WHETHER THE USE OF FORCE EITHER DID, OR DID NOT, COMPLY WITH LAW OR POLICY

A deputy may arrest a person for committing a public offense. (Penal Code § 835a(b); 836). Dep. Aikens witnessed Mr. Uhl strike a bystander and had probable cause to arrest him on that basis.

A deputy may also employ "reasonable" force to accomplish the arrest and overcome resistance. (Penal Code § 835a(b)). Factors relevant to whether the force used by Dep. Aikens was reasonable include the immediacy of the threat presented by Mr. Uhl to deputies and others, whether he was engaging in "assaultive" behavior, and the apparent need to gain immediate control of Mr. Uhl. (SCSO Policy § 300.3.2; POST Basic Course Workbook Series Learning Domain 33, Arrest and Control Ver. 5.1 at 3-3, 3-7, 3-9, 3-13. (rev. Feb. 2022)). The Investigator appropriately listed these factors in the use of force review. (*See* IA Report at 11-12).

We agree with the Investigator that a deputy presented with the circumstances faced by Dep. Aikens could reasonably conclude that Mr. Uhl presented an extant and ongoing threat to officers and others and needed to be immediately placed under control. Upon arrival, Dep. Aikens observed Mr. Uhl physically strike a bystander. This assaultive behavior occurred against the backdrop of Dispatch reports that Mr. Uhl had been physically attacking and fighting with bystanders, attempting to break business windows, hitting vehicle windows and attempting to enter them, and was continuing to fight bystanders in a parking lot at a service station. The video from the SCSO helicopter and from the service station surveillance camera do not capture the entirety of Mr. Uhl's actions that evening. However, they do confirm Mr. Uhl entered the service station parking lot and assaulted various bystanders, which is fully consistent with Dep. Aikens' Incident Report and his statements as to what he heard via Dispatch before arriving on scene.

Accordingly, we agree with the Investigator's conclusion to the extent that it found that use of a takedown would *generally* be an appropriate level of force to take Mr. Uhl into custody based on this record.

However, the IA Report does not distinguish between a "controlled" takedown and the specific running tackle that was actually used in this case which resulted in a "serious bodily injury" to Mr. Uhl's head.

Unlike a controlled takedown using body weight and muscular strength to overcome a person's resistance, a running tackle uses the body as a type of projectile. A person hit with a running tackle is often not able to prepare for the impact, resulting in an uncontrolled fall to the ground. A person who is already unsteady or out of balance when the tackle hits is particularly susceptible to an uncontrolled fall. The tackled person is also more susceptible to injury from hitting the ground, including head injuries.[5]

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[5] A controlled takedown and a running tackle usually are not viewed as "creat[ing] a substantial risk of causing . . . serious bodily injury" and are therefore not categorically viewed as "deadly force" in the same way a firearm is. (*See* SCSO Policy § 300.1.1 [defining deadly force as creating substantial risk of serious bodily injury]). However, a running tackle imposes a higher risk than a controlled takedown of resulting in injury, and the *specific circumstances* in which any takedown is used may increase the risk of inflicting "serious bodily injury".

In this case, Dep. Aikens used an uncontrolled running tackle on a person reported to be intoxicated and who was moving backwards with his pants around his ankles. Moreover, the tackle was made on a concrete-asphalt surface which was far more likely to inflict a concussive injury than soil or grass. The IA Report did not address whether use of this *specific* takedown method was reasonable and proportional, and complied with SCSO Policy, under *these* circumstances.

The IA Report did conclude that the tackling takedown used by Dep. Aiken was "consistent with Sheriff's Office training". But the IA Report neither identified the training by name nor provided an analysis of what the training required the deputy to do and how that requirement was met. (IA Report at 12). For purposes of this Audit, we have *assumed* that reference to SCSO training is to the POST Arrest and Control training identified in the materials discussed above. However, it is incumbent on the Investigator to identify the specific training upon which they are relying, and to provide a description and analysis of that training beyond the general outline-level information publicly available in the POST materials.

The IA Report also did not address de-escalation. California law and SCSO Policy impose a requirement to consider de-escalation when feasible. (Gov't Code § 7286(b)(1); SCSO Policy § 300.3.6). Mr. Uhl was backing away from the bystanders when the deputy tackled him. The Investigator should have evaluated whether it was reasonably feasible under these circumstances for Dep. Aikens to consider alternative tactics that would have reduced or eliminated the need for use of force (*e.g.*, a controlled takedown; repeating directives to get on the ground). It may be that de-escalation was not feasible, but the Investigator is required to evaluate it nonetheless.

In sum, we agree that the level of force involved in a controlled takedown is *generally* reasonable and proportional to place Mr. Uhl in custody, and note that the record, as it presently stands, does not suggest any misconduct by Dep. Aikens in his use of force. We further acknowledge that a more detailed review as cited above, including an interview with Dep. Aikens, may well result in a record in which the preponderance of the evidence shows that use of a running tackle was reasonable and proportional, and that de-escalation was not feasible

However, the Investigator did not interview Dep. Aikens or evaluate factors *specific* to this case: whether the level of force involved in a running tackle against an intoxicated person standing on concrete-asphalt with his pants around his ankles was reasonable and proportional, and whether de-escalation was feasible.

Accordingly, we must conclude that the preponderance of evidence in the investigative record does not support a finding that use of the running tackle either did, or did not, comply with law and policy. Therefore, we **DISAGREE** with the Investigator's finding of **EXONERATED**, and instead believe the finding should be **NOT SUSTAINED**.

IV.

RECOMMENDATIONS

1. Use of Force administrative investigations should address *all* applicable requirements—Fourth Amendment reasonableness, proportionality, de-escalation, specific training, any other policy applicable to the incident under review.

2. Absent a compelling reason, the involved deputy should be interviewed as part of every Use of Force review.

Date: April 18, 2023

Respectfully Submitted:

BY:

Matthew Chavez, Esq.
Law Enforcement Auditor III

APPENDIX A

MATERIALS REVIEWED

- Incident / Investigation Report, Case No. SD220506013 (May 6, 2022)
- Notice of Internal Affairs Investigation from SCSO to Dep. Cole Aikens (May 10, 2022)
- Email from Dep. Cole Aikens to Sgt. Brent Kidder dated May 10, 2022 acknowledging receipt of IA investigation notice
- Body Worn Camera for Dep. Cole Aikens dated May 6, 2022 (27 minutes, 6 seconds)
- Body Worn Camera for Dep. Cole Aikens dated May 10, 2022 (5 minutes, 7 seconds) (showing surveillance video)
- Video from Henry-1 Helicopter (May 6, 2022) (4 minutes, 43 seconds)
- Internal Affairs Formal Narrative (22-IA-0004)
- Email from SCSO to Dep. Cole Aikens dated October 18, 2022 re outcome of investigation
- Use of Force Review (22-UOF-0184)