This document is an extract of a larger publication.

civilgrandjury.org is a project of UnGovr.org, a US-based 501(c)(3) nonprofit dedicated to government transparency and public accountability.



Mono County Grand Jury
Final Report Regarding Use of Unnecessary Force by Sheriff's Deputies
Case # 1213.05

Summary:

The 2012/2013 Mono County Grand Jury received two complaints dated August 10, 2012 and October 25, 2012 both containing two separate allegations. The first allegation was that an agreement for dismissal for drug possession charges made between the complainant and Mono County Probation Department was not honored. This allegation was not accepted by the Grand Jury for investigation because it had already been adjudicated by the Courts and was not within the Grand Jury's jurisdiction. The second allegation was that the complainant was illegally searched and that excessive force was used by the Mono County Sheriff's Department officers. The Jury accepted this part of the complaint for investigation.

The Grand Jury finds that the allegations raised against the Mono County Sheriff's Department are unfounded based upon all available evidence.

The Complaint:

In two letters dated August 10, 2012 and October 25, 2012 a complaint was received alleging that on November 8, 2011 Mono County Sheriff's Department approached the complainant and a friend while they were sitting in the friend's car, illegally forced the complainant from the car by assaulting the complainant with an excessive use of pepper spray, denied paramedics their request to transport the complainant to the hospital for treatment, and illegally obtained evidence without probable cause. In addition to the two letters noted above, the Grand Jury investigative committee received a telephone call on or about March 31, 2013 from the complainant saying additional information was available to assist with the Grand Jury investigation. The complainant was subsequently requested to provide this information in writing. No response was received by April 22, 2013 and on that date a follow up letter was sent giving the complainant until May 3, 2013 to respond with the additional information. On May 8, 2013 the Grand Jury received correspondence from the complainant making further accusations regarding civil liberties violations, however, no additional information was provided to substantiate the original complaint.

The Method:

The investigative committee took the following steps to ascertain the validity of this complaint:

1. Requested and reviewed the audio/visual tape of the encounter between the complainant and Sheriff's Department deputies. The video was from the Sheriff's car-mounted camera while the audio was from recorders attached to the officers' clothing.

2. Requested and reviewed the Sheriff's Department deputies' reports of the encounter. Reports from both officers were reviewed, in addition to a memorandum from the Sergeant on duty to the Lieutenant regarding the Use of Force in the encounter.

3. Requested and reviewed the Chalfant Valley Fire Department paramedics' report of the encounter.

4. Met with the Mono County District Attorney to determine the definition of probable cause, legal procedures for car searches, pepper spray use, and medical attention.

5. Requested and reviewed a booking photo of the complainant to visually detect the effects of pepper spray.

6. Requested and listened to audio tape of complainant and friend also involved in the encounter while they were detained inside the Deputy's vehicle.

7. Requested and reviewed a copy of the Mono County Sheriff Department Policy 300 regarding Use of Force.

8. Requested and received the Mono County Superior Court Notices, Orders, Sentence Commitment form (dated May 7, 2012) waiving the Preliminary and Jury Trial as the defendant (complainant) pled guilty to 2 felony counts which resulted in being ordered to report to the Probation Department.

The Investigation:

On February 13 the Grand Jury reviewed the video of the encounter between the complainant and two deputies of the Sheriff's Department. The video was lengthy and not always clear so it was difficult to know with any certainty exactly what was happening some of the time. It was clear however that the driver of the vehicle complied with the officer's request to vacate the car and be searched. It was also clear that the complainant was repeatedly asked by the second officer to vacate the car and the complainant did not comply. The video showed that the complainant physically and vocally refused to exit the vehicle despite repeated requests by the officer and the threat of using pepper spray. The audio portion of the complainant and friend in the officer's vehicle was also reviewed again at a later date with no additional information to be gained from it.

The reports of the two Sheriff's deputies involved in the encounter were consistent in the details. As the marked sheriff's car was on routine patrol they noticed a suspicious vehicle was observed turning into Pumice Mill Road (a dirt road). The officers waited approximately 10 minutes to follow, encountered the complainant and friend, shined their lights on them, and saw the occupants make furtive movements towards the floorboard. The Deputies' reports stated that based upon their training and experience, the car's occupants' furtive movements and information received from a confidential source, the officers suspected they were attempting to hide illegal contraband and/or weapons. The complainant's companion was ordered out of the car, searched in front of the patrol vehicle's camera and placed into the back seat of the patrol vehicle. The complainant was repeatedly ordered out of the car and warned that pepper spray would be used if there wasn't compliance. The complainant, protecting a purse, refused and was then pepper sprayed, from 4 feet away according to one of the officers. The videotape supported this claim and also showed that pepper spray was used at close range while the other officer held back the complainant's head. The complainant and the purse were then searched, contraband and drug paraphernalia was found. Medics were called to counteract the effects of the pepper spray; the

complainant was arrested and taken to Bishop Police Department.

A review of the Mono County Sheriff Department's Use of Force Policy (Policy 300) found that the officers' actions were in compliance.

The meeting with the District Attorney indicated that there are two types of contact between law enforcement and the public. A consensual contact allows an officer to make contact; however, the individual can refuse to speak to the officer. The next progression is detention in which the officer reasonably suspects something peculiar. As officer safety is a concern, based upon the "totality of circumstances" and the officer's training and experience, an officer can initiate probable cause to proceed further. The officer must have more probable cause than not (50%) that a crime is being committed to proceed. Probable cause is needed to search a vehicle; however, a search warrant is not required.

During the meeting with the District Attorney, the investigative committee was informed than an arrestee must be medically cleared before being booked and at that time, an arrestee can make a request for medical attention. The booking photo of the complainant showed no sign of physical stress. However, since this was taken two hours after the administration of pepper spray no conclusion can be drawn from this.

Findings and Recommendations:

1. Finding: the officers had probable cause to search occupants and vehicle, based upon the occupants' observed actions and circumstances.
   - ***Recommendations: none***

2. Finding: the officers followed guidelines outlined in MCSD Policy 300.
   - ***Recommendations: none***

3. Finding: medical attention was requested and provided.
   - ***Recommendation: all Sheriff vehicles to carry a first aid kit and water to counteract the effects of pepper spray.***

4. Finding: complainant resisted officer's repeated directions to vacate the vehicle. After the complainant was removed from the vehicle, the search of the complainant and the care provided for the complainant were not captured on camera.
   - ***Recommendation: whenever possible, officer contact with individuals should be captured on camera.***
   - ***Recommendation: dialogue from visual and audio tapes should be transcribed as supplemental to the officers' report, when applicable.***

5. Finding: the amount of pepper spray used during the encounter was difficult to ascertain from viewing the visual tape.
   - ***Recommendation: Develop a system to document when a canister of pepper spray is issued to an officer and when a canister has been depleted.***