



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

February 2, 2012

David Silberman, Deputy County Counsel
County of San Mateo County Counsel
Hall of Justice and Records, 6th Floor
400 County Center
Redwood City, CA 94063-1622

Re: Notice of Findings
[REDACTED] v. San Mateo County Sheriff's Office (10-OCR-0669)

Dear Mr. Silberman:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the San Mateo County Sheriff's Office (SMCSO), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the SMCSO. In her Complaint, the Complainant alleges that personnel with the SMCSO discriminated against her based on sex when they attempted to strip search her during her January 2-3, 2010, detention, and that they also used force against her and failed to provide her with medical treatment.

The OCR has completed our review of the documentation provided by both the SMCSO and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

On the evening of January 2, 2010, officers from the San Mateo Police Department arrested the Complainant for being drunk in public and took her to the Maguire Correctional Facility operated by the SMCSO. The Maguire Correctional Facility is a male detention facility that provides central intake services for both male and female inmates. Upon arrival at the Maguire Correctional Facility, SMCSO personnel told the Complainant that she would be strip searched and Officer [REDACTED] (female) took the Complainant into a private room and began to conduct a strip search of the Complainant. As Officer [REDACTED] began the strip search, she asked the Complainant to remove her ring,

and the Complainant replied that it did not come off. Officer [REDACTED] began to pull on the Complainant's ring to remove it from her finger and threw the Complainant down to the ground. Two male officers came into the room and the three officers dragged the Complainant out of the room and forcefully pulled her ring off. The Complainant experienced injuries to her wrist, head, and face as a result of the deputies dragging her out of the room and forcefully removing her ring.

The officers placed the Complainant in a cell at the Maguire Correctional Facility and held her overnight. While the Complainant was being held, approximately every half hour she requested to see a doctor, but SMCSO officers would not allow her to see a doctor. The officers would also not allow the Complainant to make a phone call. The Complainant saw a nurse when she was booked and just prior to her release on the morning of January 3, 2010, and showed the nurse her wrist, but the nurse said that it was nothing. Upon the Complainant's release on the morning of January 3, she immediately went to the hospital to seek medical attention for her injuries, and she was diagnosed with a suspected fractured wrist, jaw pain, and multiple facial and head contusions. The Complainant had to seek additional medical treatment and undergo rehabilitation for her injuries and was ultimately diagnosed with a fracture in her right hand. The Complainant believes that the SMCSO officers began to strip search her because of her sex, and told the OCR that she does not know why the officers used force against her.

The Complainant filed a complaint with the County of San Mateo, dated June 14, 2010, generally alleging that she was beaten by SMCSO officers while being strip searched. The complaint did not allege discrimination. On February 17, 2011, the SMCSO sent the Complainant a letter stating that the SMCSO's investigation concluded that her allegations were not sustained.

The OCR requested that the SMCSO submit a position statement in response to the Complainant's allegations, and in the SMCSO's December 5, 2011, response, the SMCSO disputed the Complainant's allegations. The SMCSO initially noted that the Complainant was extremely intoxicated when the San Mateo Police Department brought her to the Maguire Correctional Facility. The SMCSO disputed that SMCSO officers ever told the Complainant that she would be strip searched and said that officers never intended to conduct a strip search of the Complainant, and that conducting a strip search absent reasonable suspicion that she possessed contraband would be contrary to SMCSO policy. The SMCSO also noted that a Strip Search Form was never completed, as would have been required with any strip search in accordance with SMCSO policy. The SMCSO said that Officer [REDACTED] began to conduct a "thorough clothing search" of the Complainant and removed the Complainant's boots and jacket to check them for contraband. The SMCSO submitted a written declaration from Officer [REDACTED], where Officer [REDACTED] stated that she never told the Complainant that the Complainant would be strip searched and did not conduct a strip search of the Complainant.

In Officer [REDACTED] written declaration, she denied the Complainant's allegation that she threw the Complainant to the ground because she could not remove the Complainant's

ring, and said that she took the Complainant down to the floor because the Complainant lunged at her. Officer [REDACTED] noted that if she had difficulty removing the Complainant's ring, she would have used the lubricant that the SMCSO keeps in the intake area for that purpose. Officer [REDACTED] further noted that if an individual refuses to remove a ring during intake, a sergeant may allow the individual to keep the ring. The SMCSO attached a copy of a Report of Inmate Action that Officer [REDACTED] prepared on January 2, 2010, in which she stated that while in the search cell the Complainant was verbally belligerent and was refusing to follow Officer [REDACTED] instructions, and that as Officer [REDACTED] started to pat search the Complainant the Complainant yelled, "Fuck you bitch," and lunged toward her. According to the Report of Inmate Action, Officer [REDACTED] then grabbed the Complainant's arm and took her down to the floor. In its position statement, the SMCSO stated that when the Complainant started the altercation with Officer [REDACTED], Deputy [REDACTED], Officer [REDACTED], Deputy [REDACTED], and Sergeant [REDACTED] all rushed into the search cell to provide assistance and that Deputy [REDACTED] and Officer [REDACTED] subsequently escorted the Complainant out of the cell and to the nurse's station. The SMCSO denied that any of the officers dragged the Complainant or removed her ring. The SMCSO provided the OCR with video footage of the intake area that shows four officers rushing into a cell and then shows all of the officers leaving the cell, with Officer [REDACTED] and a male officer holding onto the Complainant's arms and walking her down the hall and into a room. The video footage does not capture what occurred inside the search cell.

As for the Complainant's allegations that she was denied medical treatment, Officer [REDACTED] written declaration asserted that she was in the intake area the evening of January 2, 2010, where the Complainant was confined and she never heard the Complainant ask to see a doctor. The SMCSO also provided written declarations prepared by Deputy [REDACTED] and Officer [REDACTED], where both employees testified that they were also in the intake area the evening of January 2 and have no memory of ever hearing the Complainant ask to see a doctor. According to the SMCSO's position statement, the Complainant saw two separate nurses on the evening of January 2 and on the morning of January 3 in connection with the intake process, and was uncooperative. The SMCSO provided the OCR with a medical questionnaire ultimately completed on the Complainant; the top of the questionnaire lists a date of January 2, 2010, and there are handwritten notes in the top right corner stating, "combative, uncooperative, placed in holding cell." The questionnaire was signed by the Complainant and a nurse on January 3, and indicates that the Complainant had no medical complaints; the OCR understands that the nurse who saw the Complainant on January 2 was unable to complete the questionnaire and another nurse complete the interview on the morning of January 3.

The SMCSO provided the OCR with a copy of the SMCSO's Internal Affairs Investigation Report regarding the complaint that the Complainant filed with the County of San Mateo, which contains information consistent with the SMCSO's position statement and the above-referenced written declarations.

Lastly, in regard to the Complainant's allegation that she was not allowed to make a phone call, the SMCSO said that this allegation has not been verified. The SMCSO said

that individuals receive access to a telephone after they have completed the booking process, and that as the Complainant did not complete the booking process until the following morning due to her failure to cooperate, it is possible that she was not provided with access to a telephone.

Policies and Procedures Relevant to the Allegations

The SMCSO provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. The SMCSO provided the OCR with Section 3.03 of the SMCSO Corrections Division's Policy and Procedures Manual, entitled "Intake and Booking," which states that all prisoners brought into the facility shall be subject to a "Thorough Clothing Search" unless meeting the criteria for a strip search. A "Thorough Clothing Search" is defined as "[a] systematic rubbing of body surfaces through the clothing." According to Section 3.03, strip searches of pre-arraignment arrestees shall only be conducted when there is individualized reasonable suspicion, based on specific articulable facts, that the arrestee is carrying or concealing contraband. Officers conducting a strip search must obtain supervisory review and written approval on a signed Strip Search Report before conducting a strip search of a prisoner. The SMCSO also provided the OCR with Section 5-01 of the SMCSO's General Orders, entitled "Line Operations." Section 5-01 states that deputies/correctional officers are authorized to use only that degree of force that is objectively reasonable to protect themselves or others or to overcome resistance to their lawful authority. Section 5-01 further provides that deputies/correctional officers may use appropriate physical controls in jail facilities to maintain control of prisoners and to prevent escape. According to Section 5-01, "physical controls" include touching by a deputy/correctional officer other than a light touch, grasping, pain compliance holds, superior physical strength, body weight, and handcuffs. Section 5-01 requires deputies/correctional officers to document the use of force, including use of force greater than light touch, by completing a "Report of Inmate Action Taken."

Legal Analysis

The Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the SMCSO receives DOJ funding, contains a nondiscrimination provision that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). To prove discrimination, the evidence must establish an intent to discriminate. See, Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265 (1977). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. Id. at 265.

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the SMCSO, and finds that the evidence is insufficient to demonstrate that SMCSO personnel discriminated against the Complainant based on her sex. As an

initial matter, the evidence is insufficient to demonstrate that the personnel's actions are departures from the SMCSO's norms or procedures. Based on the information that is before us, it does not appear that the SMCSO ever intended to strip search the Complainant, but rather intended to conduct a thorough clothing search in accordance with Section 3.03 of the Corrections Division's Policy and Procedures Manual. The SMCSO asserts that the Complainant refused to comply with Officer [REDACTED] instructions during search and lunged at her, which led several officers to rush into the cell to assist Officer [REDACTED] gain control of the Complainant by taking her to the ground. While the video footage does not show what occurred within the search cell, the video shows the officers escorting the Complainant out of the search cell and to the nurse's station; the Complainant is walking with the officers and is not being dragged out of the cell as the Complainant asserted. Based on Officer [REDACTED] written declaration, along with the Report of Inmate Action that Officer [REDACTED] completed, it appears that any physical force used against the Complainant was used to protect the officers or to overcome resistance and was in compliance with Section 5-01 of the SMCSO's General Orders. The use of force under these circumstances also appears to comply with federal law, as whether force against pre-trial detainees is reasonable under the Fourth Amendment depends on the facts and circumstances in each particular case, including the severity of the crime at issue and whether the suspect poses an immediate threat to the safety of the officers or others. Gibson v. County of Washoe, 290 F.3d 1175, 1197 (9th Cir. 2002).

As for the Complainant's allegations that she requested to see a doctor and the SMCSO officers would not allow her to see a doctor, SMCSO officers working in the intake area where the Complainant was confined said they never heard the Complainant request to see a doctor, and the medical questionnaire that a nurse completed on the Complainant does not indicate that the Complainant complained of any injuries. Therefore, the evidence is insufficient to demonstrate that the Complainant did request medical assistance and that the SMCSO personnel ignored such requests. In regard to the Complainant's failure to receive the opportunity to make a telephone call, the SMCSO said that its normal procedure is to allow inmates to receive access to a telephone after they completed the booking process, and the Complainant did not complete the booking process until the following morning just prior to her release. Accordingly, it appears that the SMCSO's failure to provide the Complainant with access to a telephone was not in violation of its standard procedures.

In addition, the Complainant does not allege that any of the SMCSO personnel made any discriminatory statements referring to her sex, and it does not appear that the SMCSO has a history of sex discrimination. Based on information provided by the SMCSO, it appears that the SMCSO has received approximately four complaints from members of the public related to sex discrimination since January 1, 2009; none of these complaints alleged that an SMCSO officer searched an individual or used excessive force against an individual based on the individual's sex, and none of the complaints involved the SMCSO personnel who interacted with the Complainant.

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Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that the SMCSO personnel acted with an intent to discriminate against the Complainant based on sex. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,

/s/

Michael L. Alston

Director