



County of Charleston, South Carolina

Sheriff Kristin R. Graziano

Memorandum

To: Chief Deputy A. Sad *AS 6/4/21*
From: Lieutenant J. Zealberg and Captain K. Whited *kw*
Date: June 3, 2021
Subject: Internal Investigation: 21D-002

On January 5, 2021, the Office of Professional Standards initiated an administrative investigation regarding the in-custody death of Inmate Jamal Sutherland at the Sheriff Al Cannon Detention Center. Special Agents Ian Lundell and Jomar Albayalde from the South Carolina Law Enforcement Division were assigned to investigate the incident criminally. Detective Jenny Antonio, with the Charleston County Sheriff's Office Criminal Investigative Division, was assigned to serve as a liaison. The administrative investigation is now complete. The following is a summary of the findings.

On January 4, 2021, Jamal Sutherland was arrested by the North Charleston Police Department for Assault and Battery 3rd Degree stemming from an incident at Palmetto Lowcountry Behavioral Health (Palmetto). During the intake process, Inmate Sutherland was non-compliant, combative and refused the initial medical screening. Due to his agitated state, Inmate Sutherland was escorted by the Special Operations Group to the Behavioral Management Unit.

The following employees were interviewed by the Office of Professional Standards as a result of having some type of contact with Inmate Sutherland on *January 4, 2021*. Each employee interviewed was supplied with Truthfulness and Garrity Advisements which they signed and stated they understood.

Sergeant Tessa Polite was interviewed by the Office of Professional Standards and she provided the following information: On January 4, 2021, Sergeant Polite was the booking supervisor when Inmate Sutherland entered the facility. Sergeant Polite stated she remembered Inmate Sutherland and his co-defendant, Antwan Shepherd, arriving from Palmetto. Sergeant Polite advised she believed the subjects were mentally ill. She also stated Inmate Sutherland was much more aggressive than Inmate Shepherd. This was the reason Inmate Shepherd was placed in a holding cell while Inmate Sutherland was taken to the Behavioral Management Unit.

Sergeant Polite advised she did not know if mental health referrals were completed on the subjects.

Sergeant Andrew Holiday was interviewed by the Office of Professional Standards and he provided the following information: Sergeant Holiday advised he was working in the booking area of the detention center on January 4, 2021. He dealt with Inmate Shepherd and Inmate Sutherland as they were both arrested during the same incident at Palmetto. Sergeant Holiday advised Inmate Sutherland arrived shortly after Inmate Shepherd and was very irate. Sergeant Holiday added Inmate Sutherland was speaking irrationally and failed to cooperate with the booking process. He also stated Inmate Sutherland had to be held onto while detention staff attempted to search him because he was trying to pull away. Due to his behavior, Inmate Sutherland was escorted from the booking area and taken to the Behavioral Management Unit. Sergeant Holiday advised a mental health referral was completed on Inmate Shepherd, but he did not know if one was accomplished for Inmate Sutherland. Finally, Sergeant Holiday relayed he does not believe he had any contact with Inmate Sutherland prior to this date and was not provided any information on any possible diagnosis or current medications from Palmetto or North Charleston Police.

Captain Hans Brown was interviewed by the Office of Professional Standards and he provided the following information:

On January 4, 2021, he was the Tour Commander at the detention center when Inmate Sutherland was escorted into the facility. Captain Brown stated when Inmate Sutherland arrived, he was combative and failed to follow instructions. Inmate Sutherland was yelling in the direction of his co-defendant, Inmate Antwan Shepherd, in the booking area. Captain Brown advised he knew Inmate Sutherland and Inmate Shepherd were arrested as a result of a physical altercation at Palmetto. Captain Brown authorized the transfer of Inmate Sutherland from the booking area to the Behavioral Management Unit due to his behavior and actions. Initially, Captain Brown wanted to place Inmate Sutherland in the Special Management Unit, but the unit was full. Once in the Behavioral Management Unit, Inmate Sutherland calmed down and detention personnel were finally able to conduct a thorough search of his person. Captain Brown advised he has never encountered Inmate Sutherland prior to his incarceration at the detention center on January 4, 2021. Captain Brown stated when the Special Management Unit is full, the Behavioral Management Unit is used as an alternative. Finally, Captain Brown advised he passed the information about Inmate Sutherland's behavior onto the oncoming day shift supervisor, Lieutenant Tarsha Smalls.

Detention Deputy Jessica Coston was interviewed by the Office of Professional Standards and she provided the following information: On January 4, 2021, Deputy Coston was assigned to the Behavioral Management Unit when Inmate Sutherland was escorted to the unit. Inmate Sutherland repeatedly stated the IOP (Institute of Psychiatry) was trying to kill him and they had given him eleven shots. Inmate Sutherland pulled up his sleeve several times and showed Deputy Coston numerous band aids on his arm. Deputy Coston further stated that Inmate Sutherland repeated this statement at least five times. Inmate Sutherland stayed in the Behavioral Management Unit for the rest of the evening.

The following employees were interviewed by the Office of Professional Standards as a result of having some type of contact with Inmate Sutherland on *January 5, 2021*. Each employee interviewed was supplied with Truthfulness and Garrity Advisements which they signed and stated they understood.

Detention Deputy Tamisha James was interviewed by the Office of Professional Standards and she provided the following information: On January 5, 2021, she spoke to Deputy Brian Houle about transporting Inmate Sutherland to bond court. Deputy James advised when she spoke to Deputy Houle, he did not ask if the bond hearing could be postponed. Deputy James never asked the presiding judge if the bond hearing could be postponed because Deputy Houle never made such a request. Deputy James stated shortly after she spoke with Deputy Houle, Lieutenant Brian Duval called her. Deputy James advised Lieutenant Duval never asked her if the bond hearing could be postponed. She further stated Lieutenant Duval asked if Inmate Sutherland had to attend bond hearing. Deputy James relayed, per Captain Salters' directive, all inmates must appear before the bond hearing judge. Deputy James explained the standard practice when an inmate refused to go to bond court was to contact the Special Operations Group and have the inmate brought to bond court to refuse in front of a judge. Deputy James stated the bond hearing directive came from Captain Salters verbally, as well as in an email. Deputy James stated after she talked to Lieutenant Duval, she notified Captain Salters of the situation. Finally, Deputy James stated she was assigned to bond hearing detail in September of 2020. An unruly inmate by the name of Samuel Fortson refused to attend bond hearing. Believing SOG operators would have to use force, Deputy James rescheduled Inmate Fortson's initial appearance. Shortly after postponing the hearing, Captain Salters spoke with Deputy James and stated all inmates must attend bond hearing. If they (inmates) refuse, they must do so in front of the judge. From that day forward, Deputy James mandated the appearance of all inmates at bond court.

Lieutenant Brian Duval was interviewed by the Office of Professional Standards and he provided the following information. On January 5, 2021, Deputy Houle spoke with Lieutenant Duval about his concerns for performing a cell extraction with Inmate Sutherland. Lieutenant Duval stated Deputy Houle did speak with him and brought up several issues. Lieutenant Duval explained Deputy Houle was the only Special Operations Group team member working that day and Inmate Sutherland was combative. Lieutenant Duval also stated Deputy Houle advised Inmate Sutherland was a big man and had access to weapons (spoon/spork and breakfast tray) in his cell. Lieutenant Duval stated since Deputy Houle was working by himself, he reached out to Sergeant Lindsey Fickett to see if she could assist. Sergeant Fickett was a former Special Operations Group team member and had experience in dealing with combative inmates. Lieutenant Duval stated he received the information that Inmate Sutherland was combative from Deputy Houle and not from the off going shift. Lieutenant Duval stated while Deputy Houle was relaying his concerns about Inmate Sutherland, Sergeant Christopher Fennell began talking with Sutherland. This conversation was an attempt to de-escalate and gain compliance. Lieutenant Duval explained he observed Inmate Sutherland holding the spoon mentioned above in his hand. Lieutenant Duval then stated he called bond court and asked if the judge was insistent on Inmate Sutherland coming to bond hearing. Lieutenant Duval advised Deputy Tamisha James was the bond hearing deputy he spoke with. Deputy James advised Lieutenant Duval inmates must come to bond hearing and they are not allowed to refuse. Lieutenant Duval stated Sergeant Fennell was still attempting to get Inmate Sutherland to comply, but was not successful. Lieutenant Duval stated he again called bond court and spoke to Deputy James to ascertain who had given the order for Inmate Sutherland to be brought to bond court. Deputy James advised the order came from Captain Salters. It should be noted the order referred to was an email directive issued by Captain Salters in 2017. Lieutenant Duval then tried to call Captain Salters to see if he could get permission to have the hearing postponed, but was unable to reach her. He then called Captain Greathouse as she was the Command Duty Officer. He explained the situation to her and her response was it would be safer to move Inmate Sutherland in an emergency restraint chair (ERC).

Lieutenant Duval advised by notifying the Command Duty Officer, he was making sure Captain Greathouse was approving the cell extraction/use of force although he did not ask any follow up questions about her remark. He further stated he understood Captain Greathouse's response to mean the order requiring all inmates to attend bond court was still valid. Lieutenant Duval stated he told Captain Greathouse that Inmate Sutherland was a combative inmate, but did not remember giving her any further details. Lieutenant Duval also stated he never talked directly to the bond judge about Inmate Sutherland. Lieutenant Duval stated his understanding of the standard practice was all inmates had to attend bond court and could only refuse in front of the presiding judge. Lieutenant Duval stated he believes this practice had been in place since 2014. Finally, Lieutenant Duval could not remember if Deputy Houle had ever asked if the bond hearing could be postponed.

Captain Emma Salters was interviewed by the Office of Professional Standards and she provided the following information: Captain Salters stated she did not have a direct role in the incident involving Inmate Sutherland on January 5, 2021. However, after the incident, she did speak with Lieutenant Duval. During the conversation, Captain Salters confirmed if an inmate refused to attend bond hearing, they must do so in front of a judge. Captain Salters believes this directive dated back to April of 2017. In April of 2017, under the order of Chief Willis Beatty (former detention chief deputy), she crafted the following email:

"From this point forward, when an inmate refuses to go to Bond Hearing, the first time, you are instructed to notify your supervisors and contact SOG. They will place the subject in the ERC, if necessary, and bring him/her before the Judge to refuse in person. You will write an informational incident report in JMS and notify us when it is done. If you have any questions, please don't hesitate to ask."

The email was delivered to all bond hearing employees and has been the accepted practice since. Captain Salters believed this practice stemmed from a complaint by a judge that was directed to Chief Deputy Beatty.

Captain Kerrilyn Greathouse was interviewed by the Office of Professional Standards and she provided the following information: On January 5, 2021, Captain Greathouse received a call from Lieutenant Duval who advised her there was an inmate (Sutherland) who was combative and needed to go to bond hearing. Lieutenant Duval stated they may need to use force and perform a cell extraction. Captain Greathouse stated she asked if the bond judge needed to see Inmate Sutherland and Lieutenant Duval stated yes, per the order of Captain Salters. Captain Greathouse explained Lieutenant Duval advised force would be utilized to remove Inmate Sutherland from his cell. She remarked the emergency restraint chair (ERC) should be used to take him to bond court. Captain Greathouse stated she advised Lieutenant Duval to have medical staff on standby and all inmates had to attend bond hearing per Captain Salter's directive. Also during her interview, Captain Greathouse advised the practice of inmates refusing bond hearings had to be done in front of a judge and she believed this practice had been established for at least 10 years. Captain Greathouse stated former Chief Deputy Willis Beatty gave the order several times as did former Major Cavin Harley. Captain Greathouse confirmed the bond hearing refusal procedure was a common practice. Captain Greathouse did not know if anyone at the detention center was aware of Inmate Sutherland's mental health history. Captain Greathouse stated the current Detention Director, Ms. Abigail Duffy, has implemented a new policy where inmates no longer have to be seen in person by the presiding bond judge to refuse their bond hearings.

An alert system is also being added that will potentially notify all detention deputies of mental health referrals and the mental health history of inmates.

Detention Deputy Christi Escamilla was interviewed by the Office of Professional Standards and she provided the following information: On January 5, 2021, Deputy Escamilla responded to a call in the Behavioral Management Unit. Upon her arrival she observed Deputy Houle, Sergeant Fickett, and Sergeant Fennell wrestling with Inmate Sutherland. Deputy Escamilla observed Deputy Houle, Sergeant Fickett and Sergeant Fennell attempt to put Inmate Sutherland in an Emergency Restraint Chair. Deputy Escamilla began filming the incident as part of her duties with the Security Threat Group. Deputy Escamilla stated that Inmate Sutherland then went limp and the fighting stopped. A medical emergency was called and CPR was initiated. EMS/Fire was called to the scene and took over life saving measures. These continued until Inmate Sutherland was pronounced deceased. Deputy Escamilla did not know Inmate Sutherland and never had any prior contact with him.

Sergeant Christopher Fennell was interviewed by the Office of Professional Standards and he provided the following information: On January 5, 2021, Sergeant Fennell advised he was in the Behavioral Management Unit for disciplinary boards. He overheard detention personnel stating Inmate Sutherland had to go to bond court. Sgt. Fennell further stated it was his experience when an inmate refused to go to bond court, the Special Operations Group would typically have to extract the inmate from their cell. Believing Inmate Sutherland was not going to comply, Sergeant Fennell stated he tried to talk to him and get him to cooperate. Sergeant Fennell stated Inmate Sutherland was saying a lot of things that did not make sense and he appeared to be mentally ill. Sergeant Fennell advised he continued to communicate with Inmate Sutherland and attempted to build a rapport with him. Sergeant Fennell stated he did not know Inmate Sutherland's charges. Sergeant Fennell advised after they communicated for a short time, Inmate Sutherland bent down and picked up a possible weapon. Sergeant Fennell stated it appeared the weapon was a "spork" and it looked sharp. Sergeant Fennell said Sergeant Fickett approached him and said we have to get Sutherland out. Sergeant Fennell responded, give me a second and tried again to get Inmate Sutherland to comply which was not successful. Sergeant Fennell stated he then backed away so Deputy Houle and Sergeant Fickett could start the cell extraction process. Sergeant Fennell advised oleoresin capsicum (OC) was utilized first in a vapor, then in a stream. Sergeant Fennell advised the OC may have worked as Inmate Sutherland began sliding toward the door of the cell. Sergeant Fennell then advised Inmate Sutherland appeared to become more combative as they opened the cell door and that is when a taser was deployed. He advised that in between cycles, Inmate Sutherland fought more. Sergeant Fennell said it seemed to him like they (Deputy Houle and Sergeant Fickett) were doing everything they could to control him. Sergeant Fennell said Inmate Sutherland was extremely strong. Sergeant Fennell advised normally they (SOG) do not want non team members to get involved in extractions, but he could tell Inmate Sutherland had the upper hand so he assisted in putting leg irons on him. Sergeant Fennell advised he did not know how many times the taser was utilized, but said it may have been three. Sergeant Fennell also stated he thought it was possible Deputy Houle and Sergeant Fickett both deployed their tasers. Sergeant Fennell stated after the handcuffs were secured on Inmate Sutherland, they slid him out of the cell. Once out of the cell, Sergeant Fennell advised Inmate Sutherland became quiet and stopped moving around. A medical emergency was called by detention personnel. Medical staff responded to the Behavioral Management Unit along with EMS to perform life saving measures. Sergeant Fennell stated he did not believe any excessive force was utilized during this incident.

Sergeant Fennell also confirmed the standard practice at the detention center was when a judge gave an order it had to be followed and all inmates had to attend bond hearings; if they refused they would be escorted to bond court by the Special Operations Group (SOG). Sergeant Fennell also relayed that postponing a bond hearing is up to the bond judge, not detention personnel. Sergeant Fennell advised he did not know Inmate Sutherland prior to this encounter.

Detention Deputy Brian Houle was interviewed by the Office of Professional Standards and he provided the following information: Deputy Houle stated he was working overtime on January 5, 2021, and was the only Special Operations Group team member working on that particular day shift. Deputy Houle advised he was summoned via his radio to call bond hearing. He called bond court and was advised to escort Inmate Sutherland to his bond hearing appearance. Deputy Houle stated he knew Inmate Sutherland was combative, but did not recall where he heard that information. Deputy Houle then approached Inmate Sutherland's cell and observed he still had his breakfast tray in his possession and was making erratic statements about some type of conspiracy. Inmate Sutherland was holding a plastic spoon in his hand and Deputy Houle did not know if it had been sharpened. Deputy Houle stated he believed Inmate Sutherland was possibly mentally ill due to his behavior and believed the process of getting him out of his cell and up to bond court could turn into a use of force. Deputy Houle stated he asked bond court if the hearing could be postponed due to Inmate Sutherland's behavior but was advised Inmate Sutherland had to attend. Deputy Houle stated he spoke to Lieutenant Brian Duval about his concerns. Lieutenant Duval called bond court and also called Captain Greathouse to advise them of the situation. Deputy Houle stated after Lieutenant Duval got off of the phone with Captain Greathouse, he told Deputy Houle to proceed with a cell extraction. Deputy Houle reminded Lieutenant Duval another inmate's bond hearing was postponed about a week ago because the inmate was demonstrating aggressive behavior. Deputy Houle explained to Lieutenant Duval, he did not see any difference with Inmate Sutherland's situation. Deputy Houle stated Lieutenant Duval did not respond to his statement and advised to proceed with the extraction which was authorized by Captain Greathouse. Deputy Houle stated he gave verbal commands to Inmate Sutherland to come to the cell door so he could be handcuffed, but Inmate Sutherland refused to do so. Deputy Houle again stated he told Lieutenant Duval this would be a use of force situation and asked if Sergeant Lindsey Fickett was available to assist him since he was working by himself. After receiving permission from her supervisor, Lieutenant Marvetta Mouzon, Sergeant Fickett responded to the Behavioral Management Unit to assist Deputy Houle. Sergeant Fickett was briefed by Lieutenant Duval about the situation. During the briefing, Deputy Houle stated Sergeant Christopher Fennell was attempting to de-escalate the situation by talking with Inmate Sutherland. Deputy Houle advised Sergeant Fennell attempted to negotiate with Inmate Sutherland for approximately ten to fifteen minutes. Deputy Houle stated Sergeant Fennell's attempts to persuade Inmate Sutherland to comply were unsuccessful. Deputy Houle and Sergeant Fickett then prepared for the cell extraction. Deputy Houle advised he continued to give verbal commands to Inmate Sutherland, but he moved further back into his cell, had a spoon in his hand and was holding it as if he planned on using it as a weapon. Deputy Houle said after seeing Inmate Sutherland was not going to comply, he administered oleoresin capsicum (OC-vapor) into the cell. Deputy Houle further stated he and Sergeant Fickett waited for a short time for the OC to take effect. He also stated Inmate Sutherland wrapped a towel around his head. Deputy Houle stated the OC had an effect on Inmate Sutherland, but he still would not comply with commands to come to the door. Deputy Houle and Sergeant Fickett then decided a second dose of OC (stream) might be more effective. Sergeant Fickett administered the second dose. This was also ineffective. Deputy Houle and Sergeant Fickett then decided to utilize their tasers.

The door to Inmate Sutherland's cell was opened and Inmate Sutherland was again given commands to comply, but he refused. Deputy Houle stated Sergeant Fickett deployed her taser and it had the desired effect. Sutherland fell backwards and was then ordered to move closer to the cell door. Inmate Sutherland started to move toward the cell door but would not exit the cell. Sutherland was told to roll onto his stomach but instead sat up, partially rolled to his side and said: "that's all you're going to get." Deputy Houle stated he entered the cell to handcuff Inmate Sutherland and was able to apply one handcuff onto his wrist. Deputy Houle said when he attempted to place the second handcuff on Inmate Sutherland's wrist, he began to resist by tensing up his arms and pulling away. Deputy Houle said he put Inmate Sutherland all the way down to the ground and Sergeant Fickett administered another cycle with her taser. Once the second taser cycle stopped, Deputy Houle advised Inmate Sutherland continued to resist. Not knowing if Sergeant Fickett's probes were still attached, Deputy Houle deployed his taser, striking Inmate Sutherland in the back. Once the cycle completed, Inmate Sutherland wrapped his arms around Deputy Houle's legs. Deputy Houle stated he cycled his taser two more times in an effort to get Inmate Sutherland to release his legs. Deputy Houle described Inmate Sutherland's actions as active aggression. Commands were given to stop resisting, but Inmate Sutherland refused to comply. Deputy Houle placed his knee on Inmate Sutherland's back to prevent him from trying to get up. Deputy Houle and Sergeant Fickett continued to struggle with Inmate Sutherland but were eventually able to get both handcuffs on him. Deputy Houle advised once Inmate Sutherland was secured in handcuffs he removed his knee. Sergeant Christopher Fennell then applied leg irons, Deputy Houle placed a spit mask on Inmate Sutherland and he was removed from the cell. Certified Medical Assistant (CMA) India Burch, who was on scene, began to evaluate Inmate Sutherland who was still moving around. Shortly afterward, Deputy Houle advised he saw Inmate Sutherland go limp/passive. Deputy Houle said this is common when combative subjects stop fighting. Once this occurred, Inmate Sutherland was placed into an emergency restraint chair. CMA Burch then checked Inmate Sutherland's vitals and could not get a pulse. Deputy Houle said Inmate Sutherland was then removed from the chair and a medical emergency was called. Deputy Houle stated the handcuffs were removed and CPR began. EMS responded and took over CPR. After approximately thirty minutes, Deputy Houle stated EMS stopped working on Inmate Sutherland. After being pronounced by EMS, Deputy Houle advised he waited at the scene for the State Law Enforcement Division, the Office of Professional Standards and the Criminal Investigative Division to respond.

Notes:

- Deputy Houle did not have any other contact with Inmate Sutherland in his professional or personal life prior to this incident.
- Deputy Houle advised he deployed his taser three or four times.
- Deputy Houle knows Sergeant Fickett deployed her taser, but does not know how many times total.
- Deputy Houle was a Special Operations Group (SOG) operator for 2 years.
- Deputy Houle advised his training for SOG was provided by a private contractor.
- Deputy Houle was a Defensive Tactics (DT) Instructor.
- The Office of Professional Standards received Basic Detention and Defensive Tactics Instructor manuals from the South Carolina Criminal Justice Academy (SCCJA). These manuals provide what tactics are taught at the SCCJA including Use of Force, The Force Continuum, Levels of Resistance and Handcuffing Prone Subjects. Photographs are included in the case file showing SCCJA instructors knee placement on a subjects back/shoulder when handcuffing in the prone position.

On May 19, 2021, the Office of Professional Standards received the Investigative Report (File 31-21-0006) from the South Carolina Law Enforcement Division (SLED). Deputy Houle was interviewed two separate times by SLED officials. The interviews occurred on January 5, 2021 and on January 15, 2021.

As a result of Deputy Houle's first interview, on January 5, 2021, SLED investigators documented the following discrepancy:

"CO Houle's statement was inconsistent with his BWC video, as his leg is still visible on the back of Sutherland for approximately a minute after Sutherland is heard stating, "I can't breathe." All other details provided by Deputy Houle were consistent with his BWC footage and other video sources. Prior to the interview, Deputy Houle had not seen any of the BWC videos."

On May 19, 2021, along with the investigative report, the Office of Professional Standards received SLED's Addendum to the original Investigative Report. The report contained no further information pertaining to Deputy Houle's sole statement discrepancy. After reviewing Sergeant Fickett's video, Deputy Houle is seen taking his left knee off of Inmate Sutherland's shoulder blade/back when Sutherland first stated, "I can't breathe." Deputy Houle then transitions to his right knee and places it on the shoulder blade/back area of Inmate Sutherland. Deputy Houle then again transitions back to his left knee and places it on the shoulder blade/back area of Sutherland. During this 3rd transition back to his left knee, Sutherland says I can't breathe another two-three times. One of the statements made by Sutherland is unintelligible. Deputy Houle has his knee on Sutherland's shoulder blade/back for approximately one minute prior to him being secured in handcuffs and double locking them. Deputy Houle says in his SLED interview he had his knee on Inmate Sutherland's back for approximately one minute. It should also be noted due to the amount of OC deployed, all involved persons experienced breathing difficulties. This is corroborated by the amount of coughing heard in the video. There is no inconsistency in this statement.

Sergeant Lindsey Fickett was interviewed by the Office of Professional Standards and she provided the following information: On January 5, 2021, Sergeant Fickett was assigned to work in a housing unit. She was contacted by Deputy Houle who requested assistance with a cell extraction in the Behavioral Management Unit. Sergeant Fickett spoke with Lieutenant Marvetta Mouzon and was granted permission to leave her assigned post with the understanding she would be assisting with the aforementioned cell extraction. When Sergeant Fickett arrived in the Behavioral Management Unit, she observed Sergeant Fennell was speaking with Inmate Sutherland through a closed cell door. Sergeant Fennell was pleading with Inmate Sutherland to place his hands through the door slot so handcuffs could be applied. Sergeant Fickett and Deputy Houle were briefed by Lieutenant Duvall. During his brief, Lieutenant Duvall advised Inmate Sutherland refused to be placed in handcuffs and took an aggressive stance. Lieutenant Duvall stated Inmate Sutherland made a comment referencing the fact detention deputies were going to have to use force. Finally, Lieutenant Duvall told Sergeant Fickett and Deputy Houle the bond court judge stated Inmate Sutherland had to be present for the hearing. After receiving the brief, Sergeant Fickett began to execute cell extraction procedures. She started this process by assessing the situation. Sergeant Fickett peered through the window of the cell door to identify any possible dangers. While examining Inmate Sutherland's surroundings, Sergeant Fickett observed an object in his hand. She described the object as white and sharp, probably a spoon. Sergeant Fickett explained she did not feel safe entering the cell while Inmate Sutherland was holding the object.

Therefore, the decision was made to introduce oleoresin capsicum (OC) in vapor form into Inmate Sutherland's cell. Deputy Houle deployed the vapor through the cell door flap. This deployment of OC appeared to have little effect on Inmate Sutherland as he continued to refuse to exit the cell. Realizing the first deployment of OC was not working, Sergeant Fickett elected to introduce a second volley. The second deployment of OC (stream) was introduced around a partially opened cell door. As Deputy Houle opened the cell door, Inmate Sutherland picked up a food tray just prior to the OC deployment. Inmate Sutherland attempted to mitigate the effects of the OC by wrapping a towel or blanket around his head and face. Realizing the second deployment of OC was not working, Sergeant Fickett decided to deploy her assigned taser. The taser was fired around a partially opened cell door while Inmate Sutherland was standing near the back wall of the cell. The taser application had the desired effect in that Inmate Sutherland's body tensed up, he fell into a table, and slid down to the floor. Sergeant Fickett believed the taser application lasted for five seconds, but she was not positive. At this moment, Sergeant Fickett believed she gained Inmate Sutherland's compliance as he appeared to be more attentive. Sergeant Fickett ordered Inmate Sutherland to move to the cell door. When Inmate Sutherland refused to stand and walk, Sergeant Fickett ordered him to slide to the cell door on his buttocks. Inmate Sutherland complied for a moment and slid across the floor until he reached the threshold of the door. While seated on the floor near the cell door, Inmate Sutherland failed to fully comply by refusing to lie flat on his stomach. However, Inmate Sutherland did place his hands behind his back. With the taser probes still connected to Inmate Sutherland, Sergeant Fickett instructed Deputy Houle to move in and apply handcuffs. As Deputy Houle was attempting to secure the handcuffs, Inmate Sutherland tensed his arms and tried to stand up. Realizing Inmate Sutherland was not secured with handcuffs and understanding the increased danger of fighting someone in a standing position, Sergeant Fickett deployed a second cycle of the taser. She believed the second application lasted for five seconds, but she was not positive. After the second taser cycle, Sergeant Fickett joined Deputy Houle in the effort to fully secure Inmate Sutherland in handcuffs. The process was difficult and exhausting because Inmate Sutherland was intentionally trapping his hands under his body and periodically trying to stand. Once the handcuffs were fully secured, Deputy Houle placed a spit mask on Inmate Sutherland while Sergeant Fennell secured his feet with leg irons. Sergeant Fickett relayed the remnants of the OC deployments were still present in the cell. Therefore, she assisted Sergeant Fennell and Deputy Houle with sliding Inmate Sutherland out of the cell. Once in the open bay area, Certified Medical Assistant India Burch (CMA Burch) removed the taser probes and checked Inmate Sutherland's well-being. Inmate Sutherland was then placed in the emergency restraint chair (ERC). Once in the chair, Sergeant Fickett realized Inmate Sutherland was unconscious. Sergeant Fickett assisted with the removal of Inmate Sutherland from the ERC. Inmate Sutherland was placed on his side on the floor and the handcuffs were removed. Sergeant Fickett does not recall who removed the handcuffs. An emergency medical response was requested.

Notes:

- Sergeant Fickett did not have any other contact with Inmate Sutherland in either her professional or personal life.
- Sergeant Fickett is positive she deployed her taser at least two times during the incident. She could have activated the device more than twice, but she is not sure.
- Sergeant Fickett knows Deputy Houle deployed his taser, but does not know how many times total.

On May 19, 2021, the Office of Professional Standards received the Investigative Report (File 31-21-0006) from the South Carolina Law Enforcement Division (SLED). Sergeant Fickett was interviewed three separate times by SLED officials. The interviews occurred on January 5, 2021, January 15, 2021, and February 8, 2021.

As a result of Sergeant Fickett's first interview, on January 5, 2021, SLED investigators documented the following discrepancies:

"Sgt. Fickett's statement contained inconsistencies with her BWC video (see Attachment 11). The actions of Sutherland attempting to get up, coupled with five additional TASER activations heard through audible cues of the weapon energizing did not match the statement provided, as she stated that she deployed her TASER twice. All other details were consistent with her BWC footage and other video sources (see Attachments 11, 14, 18, and 19). Prior to the interview Sgt. Fickett had not seen any of the BWC videos."

As a result of Sergeant Fickett's second interview, on January 15, 2021, SLED investigators documented the following discrepancies:

"Sgt. Fickett's statement was inconsistent with her BWC (see Attachment 11), previous interview (see Attachment 7), and the TASER download report as provided by Lt. Hiatt (see Attachment 8). All other details were consistent with her BWC and other video sources. S/A Lundell notated the following inconsistencies:

Sgt. Fickett stated in her second interview that she deployed her TASER three times, which was one more time than stated in her first interview (see Attachment 7), but less than the seven cycles as reported in the TASER download report (see Attachment 8). Sutherland remained on the ground throughout the incident and although Sgt. Fickett stated he was attempting to get up that was not visible within any of the recording."

Note: Prior to or during this interview, Sergeant Fickett had still not viewed her BWC.

As a result of Sergeant Fickett's third interview, on February 8, 2021, SLED investigators documented the following:

"The interview was conducted to allow Sgt. Fickett an opportunity to review her BWC video of the cell extraction of Sutherland and to address the inconsistencies in the information she had previously supplied. The interview was held at the CCSO and was the first time Sgt. Fickett had reviewed the BWC footage. After completion of the AVS form, Sgt. Fickett provided the following information and answered additional questions during the interview: Sgt. Fickett was shown her BWC video at the beginning of the interview. Sgt. Fickett described the resistance of Sutherland as repeated attempts to get off the ground once the handcuffing procedure was attempted, which included trying to turn and stand up, grab CO Houle's legs, and "buck" officers off of him. While overly focused on the altercation with Sutherland, she was unaware of how many times she activated her TASER after the third deployment. Sgt. Fickett did not remember hearing anything in particular from Sutherland, including any "I can't breathe" statements.

Sgt. Fickett addressed her decision to use the TASER stating she felt it would yield the greatest chance for compliance; however, Sgt. Fickett acknowledge her limited comfortability with the weapon as she stated she had not used the weapon in over a year and had sporadic use of it since obtaining a supervisory role several years ago. Agents told Sgt. Fickett that the TASER report showed a total of seven deployments, to which she did not have an initial response. Sgt. Fickett acknowledged that number was "not good," and she was unable to state why she continued to pull the trigger on the TASER device after she felt it was ineffective after the second deployment. When asked if she remembered what the best practices were advised by Axon as to the total number of deployments during a singular incident that was taught during her TASER recertification course, Sgt. Fickett responded she did not know."

On May 19, 2021, along with the Investigative Report, the Office of Professional Standards also received SLED's Addendum to the original Investigative Report. The report contained the following information:

"On April 16, 2021, Lieutenant (Lt.) Charles Ghent requested that SLED Technical Services attempt to enhance the Body Worn Camera (BWC) footage from Sgt. Lindsey Fickett and CO Brian Houle. On May 6, 2021, SS/A Harvey Shropshire of Technical Services provided a digital copy of the Body Worn Camera footage as well as still photographs (Attachment 52). SS/A Harvey Shropshire stated the video file was separated from all audio on the original video due to the process used by the enhancement software. The DVD was reviewed by S/A Lundell."

Agent's Note: On page 12 of the investigative report, a bullet point highlights an inconsistency in Sgt. Lindsay Fickett's interview (see Attachment 9), in comparison with her BWC footage. The bullet point states, "Sutherland remained on the ground throughout the incident and although Sgt. Fickett stated he was attempting to get to up, that was not visible within any of the recordings." After review of this enhanced video, it appears that Sutherland attempts to get up, as described by Sgt. Fickett in her statement. The bullet on page 12 should be omitted. It should be further mentioned, that CO Houle made the same statement during his interview (see Attachment 13)."

On May 19, 2021, the Office of Professional Standards received the Investigative Report (File 31-21-0006) from the South Carolina Law Enforcement Division (SLED). Contained within the five-hundred page document was a detailed report from Axon Enterprise, the manufacturers of the Taser X26P Energy Weapon. Axon Enterprise reported the following:

- Sergeant Fickett's assigned X26P Taser (serial number – Z1200AN5K) experienced clock drift of 3 minutes and 40 seconds fast (ahead) on January 5, 2021.
- Sergeant Fickett's assigned Taser was trigger activated 7 times on January, 5, 2021 between 09:38 and 09:40 EST (clock drift compensated times).
- The pulse graphs indicate Sergeant Fickett's assigned Taser discharged into a high impedance load typical of a partial or poor probe connection, or discharging through skin and fat for 30.4 seconds cumulative, and lost connection and could not discharge for 4.6 seconds cumulative on January 5, 2021.
- Sergeant Fickett's assigned Taser did not record any faults or errors that would be expected to impede functionality on January 5, 2021.
- Sergeant Fickett's assigned Taser was visually inspected and no damage was found that would be expected to impede functionality.

Investigative Timeline:

On January 5, 2021, Sergeant Lindsey Fickett and Deputy Brian Houle were placed on Administrative Leave by the Office of Professional Standards.

On February 18, 2021, NMS Labs issued toxicology results for Jamal Sutherland.

On March 16, 2021, the Forensic Pathology Report Summary was completed by J.C. Upshaw Downs, M.D. The report listed Jamal Sutherland's cause of death as the result of "excited state with adverse pharmacotherapeutic effect during subdual process." The manner of death is listed as "undetermined." Anita Hasert was the Charleston County Deputy Coroner assigned to this case.

On May 17, 2021, Sergeant Fickett and Deputy Houle were terminated from employment.

On May 19, 2021, The Office of Professional Standards received the completed State Law Enforcement Division's Investigative File, Case # 31-21-0006. Special Agent Ian Lundell was the primary case agent.

Conclusion of Facts:

On January 4, 2021, Inmate Sutherland was arrested by the North Charleston Police Department for Assault and Battery 3rd Degree. The charge stemmed from a physical altercation at the Palmetto Lowcountry Behavioral Health (Palmetto) facility wherein Inmate Sutherland allegedly assaulted a staff member. After arriving at the Al Cannon Detention Center, Inmate Sutherland was agitated and displayed aggressive behavior. Because of Inmate Sutherland's combative behavior, Captain (then Lieutenant) Brown made the decision to move Inmate Sutherland to the Special Management Unit. However, Captain Brown was advised the unit was at full capacity. Therefore, Captain Brown made the decision to house Inmate Sutherland in the Behavioral Management Unit. According to Sheriff Al Cannon Detention Center Policy and Procedure 9-09.8, Intake and Processing, Section VI, Paragraph 11:

The arrestee will be photographed and fingerprinted. Photographs must include all tattoos and body markings. The photographs taken during the intake process are crucial in assisting law enforcement in identifying wanted subjects or persons who cannot be identified by other means. If an arrestee refuses to be fingerprinted or have his photograph taken, the intake process stops. The arrestee will be placed in a holding cell until he/she cooperates. If an inmate is uncooperative, he/she will not be allowed to make any telephone calls until completely processed.

Captain Brown's decision did not match policy in that Inmate Sutherland was not placed in a holding cell. However, Captain Brown's judgement was sound and made sense under the circumstances. Specifically, Captain Brown made the decision to move Inmate Sutherland out of the Intake area not only based on Inmate Sutherland's behavior, but also because he was within sight and sound of Inmate Antwan Shepherd. Inmate Shepherd was Inmate Sutherland's co-defendant who was arrested during the same incident at the mental health facility.

On January 5, 2021, at approximately 09:00 hours, Deputy James contacted Deputy Houle and requested Inmate Sutherland's presence for a video bond hearing.

Deputy Houle advised Deputy James that Inmate Sutherland was combative and would not voluntarily attend the hearing; a cell extraction would be required. Deputy Houle also stated he asked Deputy James if the hearing could be postponed. Deputy James does not recall either of these statements from Deputy Houle. Deputy Houle then met with Lieutenant Duval in person and reiterated the same information supplied to Deputy James. Lieutenant Duval confirmed Deputy Houle explained a cell extraction would be required, but is not positive Deputy Houle requested to postpone the hearing. Lieutenant Duval contacted Deputy James and inquired as to whether or not Inmate Sutherland had to be present. Deputy James explained per Captain Emma Salters' order, all inmates refusing bond hearing must do so in front of the judge. Lieutenant Duval attempted to call Captain Salters, but she did not answer. Lieutenant Duval then contacted Captain Greathouse and explained Inmate Sutherland's behavior as combative. Lieutenant Duval also informed Captain Greathouse that a cell extraction, with force, was most likely going to be employed. Finally, Lieutenant Duval relayed to Captain Greathouse the order to forcibly remove Inmate Sutherland came from Captain Salters. Captain Greathouse did not think twice about the order because it was common practice to extract inmates from their cell when they refused any type of court hearing. Captain Greathouse stated she believed the practice of forcing inmates to refuse in front of a judge dated back to 2010. Captain Greathouse granted permission for the extraction and reminded Lieutenant Duval of the importance of having medical staff present. Captain Greathouse also recommended the use of the emergency restraint chair.

According to Sheriff Al Cannon Detention Center Policy and Procedure 9-14.4, Video Bond Hearing, Section III, Paragraph K:

The judge will be notified of all inmate refusals to sign the Consent to Video Conferencing Form. Inmates refusing to sign the Consent to Video Conferencing Form will not continue in the videoconferencing process. Inmates will not be coerced into signing the Consent to Video Conferencing Form; signature is strictly voluntary. The Court may request the inmate make the refusal via video; the Court will reschedule the inmate's court appearance. The Bond Hearing Detention Deputy will follow-up with the inmate regarding participation in Bond Hearing at each Bond Court Session. If the inmate refuses again, the Judge shall be notified of the refusal. If the Judge orders that the inmate be brought in front of him/her, the inmate shall be escorted to Bond Court by the Special Operations Group (SOG).

While applying the Video Bond Hearing Policy to Inmate Sutherland's incident, it is clear to see procedures were violated. However, during this investigation, the Office of Professional Standards exposed a custom and practice related to bond hearing refusals. Almost every employee interviewed stated it was common knowledge an inmate refusing bond hearing must do so in front of a judge. These statements were bolstered by additional evidence supplied to the Office of Professional Standards by Deputy James and Captain Salters. In the case of Deputy James, she was assigned to bond hearing detail in September of 2020. An unruly inmate by the name of Samuel Fortson refused to attend bond hearing. Believing SOG operators would have to use force, Deputy James rescheduled Inmate Fortson's initial appearance. Shortly after postponing the hearing, Captain Salters spoke with Deputy James and stated all inmates must attend bond hearing. If they (inmates) refuse, they must do so in front of the judge. From that day forward, Deputy James mandated the appearance of all inmates at bond court. During Captain Salters' interview, she stated the order originated years ago in 2017, from former Chief Deputy Willis Beatty (Chief

Beatty). Captain Salters believes the order came as a result of a complaint from a judge wherein an inmate continuously refused to appear in bond court. Regardless of the reasoning, former Chief Beatty ordered all inmates must attend bond hearing and refusals must be made in front of the judge. Therefore, Captain Salters (then Lieutenant Salters) crafted an email to all bond hearing employees. The email was sent on April 20, 2017, at 10:45 a.m., with a subject line of "BOND HEARING REFUSALS." The body of the email contained the following order:

"From this point forward, when an inmate refuses to go to Bond Hearing, **the first time**, you are instructed to notify your supervisors and contact SOG. They will place the subject in the ERC, if necessary, and bring him/her before the Judge **to refuse in person**. You will write an informational incident report in JMS and notify us when it is done. If you have any questions, please don't hesitate to ask."

Deputy James, Deputy Houle, Sergeant Fickett, Sergeant Fennell, Lieutenant Duvall, Captain Salters, and Captain Greathouse were either directly or indirectly involved with the decision to force Inmate Sutherland's appearance before a bond court judge. In doing so, they violated Sheriff Al Cannon Detention Center Policy and Procedure 9-14.4, Video Bond Hearing. However, because these employees followed a long-standing custom and practice, they are exonerated. The order in which these employees followed conflicted with policy, but was lawful. Sheriff Al Cannon Policy and Procedure 1-20.3, Chain of Command, Section III, Subsection E states:

- 1. Employees will obey all lawful orders from superiors, including any order relayed from a superior by a member of the same or lesser rank. Employees, regardless of rank, position or division within the Sheriff's Office, will obey lawful orders promptly.*
- 2. The term "lawful order" will be construed as an order in keeping with the performance of any duty prescribed by law or rule of the Sheriff's Office, or for the preservation of order, efficiency and proper discipline.*
- 3. The willful neglect or deliberate refusal of an employee to obey any lawful order given by a superior will be considered insubordination. Flouting the authority of any superior by manifest disrespect or by disputing orders will be considered insubordination. Failure to sign a Letter of Instruction, Reprimand, Suspension, or other disciplinary action constitutes insubordination.*

The Office of Professional Standards suggests Sheriff Al Cannon Detention Policy and Procedure 9-14.4, Video Bond Hearing, be re-written to establish clear guidance related to bond hearing refusals. At a minimum, the policy should contain language establishing the fact an inmate can refuse to attend a court hearing and will not be forced to comply. The Office of Professional Standards also suggests an addition to policy outlining the way in which an inmate is identified as a mental health subject. In this particular incident, none of the detention employees that had contact with Inmate Sutherland on January 5, 2021, had specific knowledge of his mental health status. A mental health identification system must be established and made easily accessible to all detention staff.

On January 5, 2021, at approximately 09:27 hours, Sergeant Fickett and Deputy Houle began the process of extracting Inmate Sutherland from his cell. During the extrication, Deputy Houle deployed OC vapor on one occasion and energized his taser on three occasions.

Sergeant Fickett deployed OC stream on one occasion and energized her taser on seven occasions. Videos of the incident clearly show both OC deployments. However, most of the taser deployments are not discernable as all, but one, occurred inside Inmate Sutherland's cell where there were no stationary cameras. All actions taken by Sergeant Fickett and Deputy Houle while inside the cell were captured by their body-worn cameras. However, the recordings do not clearly show each individual taser deployment as the action is fast paced and occurred under close quarter conditions.

OC was the first type of force used in this incident. As previously mentioned, both Sergeant Fickett and Deputy Houle deployed some form of OC. According to Al Cannon Detention Center Policy and Procedure 5-37.4, Oleoresin Capsicum, Section IV, Subsection C:

1. *OC may be used during any "planned use of force" (riot control, cell extraction, etc.) where force is needed to maintain or gain control of a situation.*
2. *OC may be used to resolve a situation where a delay in establishing control may result in bodily injury to an inmate, civilian, employee or to prevent destruction of county property.*
3. *The use of OC shall be consistent with the SACDC's guidelines for the Use of Force and Special Munitions-Less Lethal, and the manufacture's guidelines for use.*
4. *OC will only be used as a control measure and never as a form of punishment.*

Sergeant Fickett and Deputy Houle gave both applications of OC ample time to take effect in hopes Inmate Sutherland would comply. When Inmate Sutherland failed to comply, Sergeant Fickett and Deputy Houle deployed their assigned tasers. The Office of Professional Standards concluded the use of OC by Sergeant Fickett and Deputy Houle was justified and within the confines of policy.

As a result of investigations conducted by the Office of Professional Standards and SLED, Sergeant Fickett did in fact deploy her assigned taser on seven occasions while extracting Inmate Sutherland from his cell. Sergeant Fickett utilized her taser the first time, after Inmate Sutherland refused numerous verbal commands and failed to comply after two deployments of OC. Sergeant Fickett explained she deployed her taser the second time after Inmate Sutherland resisted handcuffing and attempted to stand. The fact Inmate Sutherland attempted to stand was initially in question. However, after enhancing the video(s), SLED confirmed Inmate Sutherland did in fact try to stand during the altercation. Discrepancies with Sergeant Fickett's total number of taser deployments begin with the third. She stated in her first interview with SLED she deployed her taser two times, but in her second interview with SLED she relayed she deployed the taser three times. During questioning by the Office of Professional Standards, Sergeant Fickett advised she is positive she deployed her taser two times. Sergeant Fickett added, she could have activated the device more than twice but could not remember the exact number of times. Although Sergeant Fickett could not account for all seven taser deployments, she explained each deployment would have been in direct response to Inmate Sutherland's refusal to comply. Sergeant Fickett stated her use of force would have stopped the second Inmate Sutherland submitted.

As a result of investigations conducted by the Office of Professional Standards and SLED, Deputy Houle did in fact deploy his assigned taser on three occasions while extracting Inmate Sutherland from his cell. Deputy Houle utilized his taser the first time within seconds of Sergeant Fickett's third deployment of her taser.

Deputy Houle deployed his taser initially not knowing if Sergeant Fickett's taser probes became dislodged. Deputy Houle deployed a second and third cycle of his taser after Inmate Sutherland grabbed his leg(s). Deputy Houle believed Inmate Sutherland was attempting to over-power him and described Inmate Sutherland's actions as active aggression. In SLED's report, agents mention a discrepancy with Deputy Houle's body-worn camera and his statement. The SLED report reads: *"CO Houle's statement was inconsistent with his BWC video, as his leg is still visible on the back of Sutherland for approximately a minute after Sutherland is heard saying, 'I can't breathe.'"* While reviewing SLED's interview of Deputy Houle and comparing it to video footage, the Office of Professional Standards did not note any inconsistency as Deputy Houle admits placing his knee on Inmate Sutherland's back for approximately one minute. In Sergeant Fickett's body-worn footage, Deputy Houle can be seen placing his left knee on Inmate Sutherland's back. The knee appears to be on the muscle mass between the shoulder blade and spine. The audio portion of the video is not clear, but it does sound like Inmate Sutherland says, "I can't breathe." Within five seconds of Inmate Sutherland's statement, Deputy Houle removed his left knee from Inmate Sutherland's back. Deputy Houle, while still struggling to apply handcuffs, then placed his right knee on Inmate Sutherland's back between the shoulder blade and spine. In his second interview with SLED, Deputy Houle was very clear he intentionally placed his knee on the muscle mass next to the shoulder blade to avoid contact with Inmate Sutherland's neck and spine. Deputy Houle again confirmed his knee was on Inmate Sutherland's back for about one minute.

While applying policy specific to the use of the taser during the incident involving Inmate Sutherland, the Office of Professional Standards uncovered glaring issues. According to Sheriff Al Cannon Detention Center Policy and Procedure 5-36.5, Electro-Muscular Disruption Technology Device, Section IV, Subsections A & F:

IV. Procedures:

A. GUIDELINES FOR USE:

EMDT's may only be utilized under orders of:

- 1. Detention Center Administrator or designee;*
- 2. In emergency situations in which any lesser degree of force would clearly be ineffective, or which would subject staff/offender(s) to serious threat of injury; or*
- 3. When a higher level of force may be justified, but an opportunity exists to use a less-lethal launcher before other options are deployed.*
- 4. Detention Deputies can use an EMDT device when that amount of force is objectively reasonable, given the facts and circumstances known by the Detention Deputy at the time of the event, to effectively bring a violent or potentially violent individual under control.*

EMDT devices may be used when a violent or potentially violent person is:

 - a. Actively resisting*
 - b. Aggressively resisting*
 - c. Displaying aggravated aggressive resistance*
 - d. Displaying actions indicating an attempt to self-injure or commit suicide*
 - e. Other emergency situations where the use of an EMDT would be considered objectively reasonable under the circumstances*

F. DEPLOYING THE TASER

1. *The EMDT is a defensive weapon and is recognized as a secondary, less lethal weapon. The use of the EMDT is an intermediate use of force and will be consistent with SACDC Use of Force procedures.*
2. *Verbal and visual warnings (e.g. activating the laser or flashlight) should be given unless it would otherwise endanger a Detention Deputy, staff members, civilians, or subject's safety, and/or is impractical due to circumstances. Otherwise, a verbal announcement and/or visible warning prior to the application of the EMDT is required to:*
 - a. *Provide the violent or potentially violent individual with a reasonable opportunity to voluntarily comply.*
 - b. *Provide other Detention Deputies, staff, and civilians with warning that the EMDT device may be deployed.*

In Section IV, under "GUIDELINES FOR USE," the EMDT Policy lists the types of resistance (i.e. active, aggressive, or aggravated aggressive) in which the taser may be utilized. However, the policy does not define what these terms mean. Upon further inspection of the EMDT Policy, under Section F "DEPLOYING THE TASER", employees are reminded any use of the taser will be consistent with Use of Force procedures. Therefore, the Office of Professional Standards reviewed Policy and Procedure 5-33.5, Use of Force. The Use of Force Policy does not mention or define any type of resistance, but does refer to a Use of Force Continuum. After delving further into this issue, the Office of Professional Standards discovered the Use of Force Continuum was removed from policy on April 24, 2017. When active, the policy supplied employees with guidance as to the appropriate levels of force based on the inmate's type of resistance. Refer to the diagram below:

Non-Verbal / Non-Compliance								
Passive Resistance								
Defensive Resistance								
Active Aggression								
Aggravated Aggression								
Shaded areas indicate appropriate levels of response	Officer Presence	Verbal Dialogue and Commands	Soft Empty Hand	OC Spray	EMDT Device	Hard Empty Hand	Less Lethal Shotgun	Deadly Force

It is not known who ordered the removal of the Use of Force Continuum or the reason why it was removed as this occurred under a prior administration.

As a result of removing the Use of Force Continuum from policy, it created confusion and left detention deputies without clear direction related to an appropriate use of force. Therefore, Sergeant Fickett and Deputy Houle were required to operate under their understanding of Sheriff Al Cannon Detention Center Policy and Procedure 5-33.5, Use of Force; which states in its entirety:

I. PURPOSE:

The Sheriff Al Cannon Detention Center (SACDC) recognizes that the use of force requires constant consideration and evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide Detention Deputies with guidelines for the reasonable use of force in conjunction with all SACDC Policies and Procedures.

II. PHILOSOPHY:

- A. The SACDC recognizes and respects the value of all human life and dignity. Vesting Detention Deputies with the authority to use reasonable force to protect the public welfare requires a careful balancing of all human interests.
- B. The use of force by Detention Deputies is a matter of critical concern both to the public and correctional community. Detention Deputies are involved in numerous and varied human encounters daily and, as warranted, may use force in performing their duties.
- C. Detention Deputies must have an understanding of, and true appreciation for, the limitations on their lawful exercise of authority, especially in situations regarding individuals resisting that authority.

III. POLICY:

- A. It is the policy of the SACDC that Detention Deputies shall use only the amount of force which is reasonable, given the facts and circumstances known at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used shall be judged from the perspective of a sensible Detention Deputy, on the scene, at the time of the incident.
- B. Given that no policy can realistically predict and address every possible situation a Detention Deputy might encounter, each Detention Deputy must determine the appropriate use of force utilizing the use of force continuum. While it is the ultimate objective of every encounter involving use of force in a correctional facility to minimize injury to property, the public, the staff, inmates, and prevent escapes; no Detention Deputy is required to sustain physical injury before using reasonable force. However, physical force will not be used as punishment.

IV. DEFINITIONS:

- A. Force: Conduct on the part of Detention Deputies that is designed to assist the Detention Deputies in controlling a situation, the actions or behavior of a person or persons.
- B. Continuum of Force: The escalation of force used by Detention Deputies in order to control a situation or the actions of persons, from minimum to maximum (i.e., verbal control, intermediate force, to deadly force).
- C. Soft Empty Hand Control: These techniques are not impact oriented, and include pain compliance pressure points, takedowns, joint locks, knee strikes as a distraction technique, or simply holding onto a subject.
- D. Oleoresin Capsicum (OC) Spray: An agency approved and issued handheld chemical agent (non-alcohol based) that emits a chemical solution composed of oleoresin capsicum, a natural oil of pepper, and a carrier agent, which is designed to incapacitate an aggressive or resistant subject with no lasting after-effects.
- E. Electro-Muscular Disruption Technology Device: A group of devices that use a high voltage, low power charge of electricity that disrupts the body's ability to communicate messages from the brain to the muscles, causing temporary motor skill dysfunction to a subject. An example of EMDT's is the X26 Taser.
- F. Hard Empty Hand Control: These techniques are impact oriented and include knee strikes, punches, and kicks. Control strikes are used to get a subject under control. Defensive strikes are used by Detention Deputies to protect them from attack.
- G. Less Lethal Shotgun: Is a manually operated "pump" shotgun that utilizes a 12 gauge shell in order to launch a variety of non-lethal rounds; such as starlight, superstar, medium and extended range slugs. These rounds are designed to gain compliance without causing death or serious bodily injury on impact.
- H. Deadly Force: Any force that is likely to cause death or serious physical injury.

V. GENERAL INFORMATION:

- A. Any application of force by a Detention Deputy must be reviewed by a "reasonableness" standard. When determining when to apply any level of force and evaluating whether a Detention Deputy has used reasonable force, a number of factors should be taken into consideration. Those factors may include, but are not limited to:
 - 1. The subject poses an immediate threat of serious physical harm to the Detention Deputy, himself/herself, or others.
 - 2. Availability of alternative methods to capture, restrain, or subdue suspect. (What resources are reasonably available to the Detention Deputy under the circumstances)

3. Detention Deputy's knowledge, training, experience, and state of mind.
4. The conduct of the individual being confronted (as reasonably perceived by the Detention Deputy at the time).
5. Subject resisting detention or restraint.
6. Detention Deputy/suspect factors (age, size, relative strength, skill level, injury, exhaustion, number of Detention Deputies vs. subjects).
7. Influence of drugs / alcohol (mental capacity).

B. While various levels of force exist, each Detention Deputy is expected to respond with only that level of force which is reasonably appropriate under the circumstances at the time to successfully accomplish legitimate correctional purposes. Detention Deputies must act objectively and reasonably given the facts and circumstances confronting them. Equally important, Detention Deputies must remember that once the force is used to successfully gain compliance, once compliance starts escalation of force stops immediately.

VI. PROCEDURE:

A. Justification for the Use of Force and Force Options:

1. Use of force by staff against an inmate or any other person, is justified when acting staff reasonably believes such force is necessary to:
 - a. prevent death or injury to themselves, the inmate or others;
 - b. prevent escape;
 - c. recapture an escapee;
 - d. to gain control of a disturbance;
 - e. protect property from damage or destruction;
 - f. enforce compliance with rules, regulations and orders when other methods of control have proven insufficient; and
 - g. to assist in the administration of medical treatment, in accordance with established procedures.
2. Force will be applied in compliance with the force continuum. Detention Deputies/Supervisors will:
 - a. use the least amount of force reasonably necessary to achieve the authorized purpose;
 - b. de-escalate and then stop the use of force once control is achieved and the situation/incident is secured;

- c. never authorize force as a means of punishment or retaliation;
 - d. never authorize the use of restraints as a means of punishment; and document and review all incidents of the use of force.
- 3. Justification for the level of force needed in a situation is determined based upon consideration of the force required and the individual circumstances. Factors that must be taken into consideration while determining how much force is needed are;
 - a. the number, size, strength, and behavior of the inmate(s);
 - b. the number, size, strength of the staff involved;
 - c. the location of the incident;
 - d. how time critical the situation is; and
 - e. type of restraints utilized on the inmate.
- 4. Both State and Federal law require that all force be reasonable. In *Graham vs. Connor*, the United States Supreme Court stated, "the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the Detention Deputies or others and whether he is actively resisting arrest or attempting to evade arrest by flight". In addition, Detention Deputies should take into account their own abilities and limitations. In no event will physical force be used as punishment.
- 5. The use of deadly force against an inmate is justified only when the acting staff member reasonably believes such force is necessary, and that a lesser degree of force will be insufficient to prevent death or serious bodily harm to themselves or others (Reference *SACDC Policy Use of Deadly Force*).
- B. Procedure for transferring inmates to the Behavioral Management Unit - An inmate who is charged with a major violation must be transferred to the Special Management Unit first, pending appearance in front of a disciplinary hearing board. The inmate will be escorted by two Special Operation Group (SOG) Detention Deputies and a supervisor, if available.

Upon appearance in front of a disciplinary hearing board and being found guilty, the inmate will be relocated to the BMU on the same day. If an inmate is found not guilty, the inmate will be removed from the SMU on the same day.

 - 1. In Podular Housing the following procedures will be implemented:

- a. If more than one inmate is in a cell, inmates not involved in the incident must be removed from the area prior to dealing with the inmate to be transferred.
 - b. Instruct inmates to pack their belongings in their box, time permitting.
 - c. Once an inmate complies with the orders, cuff the inmate's hands behind his/her back. The inmate will then be escorted to his/her designated area.
 - d. Inmates who are housed in a cell with a food slot will be treated in the same manner as noted above except the inmate will be directed to extend his/her hands through the food slot in order to cuff the inmate behind the back prior to cell removal.
 - e. If, at any time, the inmate does not comply with this procedure or staff directions, he/she will be removed from the cell or area by an extraction team. If the SOG or housing supervisors deem it necessary to form an extraction team, no further orders will be given. The Housing Lieutenant and CDO will be notified by the SOG or Housing supervisor, if the extraction team is activated.
2. In Dormitory Housing the following procedures will be implemented:
 - a. Instruct inmate to pack their belongings, time permitting.
 - b. Ensure all other inmates are on their bunks prior to SOG arrival.
 - c. SOG Detention Deputies will enter the unit, cuff the inmate's hands behind his/her back. The inmate will then be escorted to his/her designated area.
 3. Inmates may be removed from the multipurpose room, sally port, or lock down room in the same manner.

C. Staff Responsibility in Use of Force:

1. A planned use of force will be coordinated by the SOG supervisor or a housing/processing supervisor, who will:
 - a. provide direction to staff identifying the force options and security equipment that will be used to accomplish the objective;
 - b. direct application of the force needed to gain and maintain control;
 - c. ensure that another Detention Deputy will operate the video recording equipment to provide complete coverage of the incident;
 - d. notify medical staff and make sure they are staging in a safe area; and
 - e. provide written documentation of the incident by all staff involved.

VII. REPORTING OF USE OF FORCE:

- A. Whenever a Detention Deputy uses physical force against another person, he/she will notify a supervisor immediately following the incident. The supervisor will evaluate the information and respond to the scene of all significant use of force incidents. The Detention Deputy shall document the incident on the *Use of Force Report Form (SACDC-352)* and an *Incident Report* in the Jail Management System as soon as possible, but prior to the end of tour of duty.
- B. The responding supervisor will compile copies of the *Use of Force Report* along with the *Incident Report* and forward the information to the Housing Administrative Assistant. The use of force will be documented, scanned and sent to the Office of Professional Standards by the Housing Administrative Assistant.
- C. The responding supervisor will then be responsible for reviewing the reports and forwarding the use of force package through the chain-of-command. This package shall include the following but not limited to:
 - 1. incident report;
 - 2. supplemental report(s);
 - 3. medical reports noting any injuries;
 - 4. observation log;
 - 5. notice of disciplinary violations;
 - 6. audio, video recordings or photographs; and
 - 7. any other pertinent information
- D. Once the appropriate Lieutenant has completed the Use of Force packet, it will be forwarded through their appropriate chain-of-command.
- E. Once the packet is reviewed by the chain-of-command it will be given to the Command Administrative Assistant. The Command Administrative Assistant will document the date the use of force was received and then forward the completed Use of Force packet to the Office of Professional Standards.
- F. All reports should be written in a manner to include all facts, circumstances, acts, and conduct that interfere with a Detention Deputy's lawful exercise of authority, and support the level of the use of force.

It is imperative that the reporting Detention Deputy carefully articulate whether the subject(s)' actions were essentially a continuous act of resistance, and when the Detention Deputy's use of force occurred.

- G. Immediately following any level of force inmates will be checked by medical. When impact weapons are deployed, and/or injuries occur, a photograph will be taken for evidence. Documentation of any injury and/or medical assistance shall also be included on the appropriate report form(s).
- H. Any Detention Deputy, or person, who witnesses or believes that another Detention Deputy may have engaged in misconduct in the application of force or after the application of force, shall notify his/her supervisor without delay. A written report detailing the witnesses' account of the incident should be prepared.

VIII. USE OF FORCE REVIEW:

Use of Force incidents will be reviewed at different levels through the chain-of-command. These levels are not intended to identify a force continuum, but to review each Use of Force for effectiveness, training purposes, and/or policy revision, if applicable.

IX. ALLEGATIONS AGAINST STAFF:

The Detention Center Administrator will initiate an investigation to be done after notifying the Office of Professional Standards. If the Office of Professional Standards determines the allegation is criminal in nature, the Criminal Investigations Division (CID) will be notified.

X. TRAINING:

All employees will be made aware of the contents of this policy through pre-service training, initial policy issuance, and annually thereafter during the normal training cycle.

On January 5, 2021, Sergeant Fickett and Deputy Houle were ordered to escort Inmate Sutherland to bond court. The lawful order conflicted with policy, but arose from a long-standing custom and practice. Sergeant Fickett and Deputy Houle followed the Use of Force policy in that they utilized a reasonable amount of force to bring the incident under control. Sergeant Fickett and Deputy Houle began in their use of force by simply arriving on scene. Their attire and equipment was a warning to Inmate Sutherland the situation had risen to an elevated level. Sergeant Fickett and Deputy Houle then attempted to resolve the situation through verbal commands. On multiple occasions, both employees ordered Inmate Sutherland to comply with the handcuffing process. Sergeant Fickett and Deputy Houle then deployed two applications of OC while they continued to plead with Inmate Sutherland to exit the cell. Finally, Sergeant Fickett and Deputy Houle deployed their assigned tasers. The use of the taser in this situation is within the confines of policy; however, the number of times the taser was deployed must be addressed. The EMDT Policy does not address a maximum number of times a resistive subject can be tased. The EMDT Policy does state, *"Upon firing the device, the Detention Deputy shall energize the subject the fewest times and no longer than necessary to accomplish the legitimate operational objective."*

Inmate Sutherland continued to resist Sergeant Fickett and Deputy Houle throughout the entire event; even after he was handcuffed. Sergeant Fickett and Deputy Houle continued to utilize the taser instead of resorting to hard empty hand tactics/control.

Al Cannon Detention Center Policy and Procedure 5-33.5, Use of Force, defines hard empty hand tactics as:

Techniques that are impact oriented and include knee strikes, punches, and kicks. Control strikes are used to get a subject under control. Defensive strikes are used by a Detention Deputy to protect them from an attack.

The South Carolina Criminal Justice Academy defines hard empty hand control as:

Techniques that have the probability of injury. Examples: leg strikes, hand strikes, and neck restraints.

According to policy, *any application of force by a Detention Deputy must be reviewed by a “reasonableness” standard.* Without the guidance of the Use of Force Continuum, Sergeant Fickett and Deputy Houle had to immediately apply a “reasonable” standard while fighting with Inmate Sutherland and feeling the effects of the OC. Aside from deadly force, Sergeant Fickett and Deputy Houle only had one other option which would have been hard empty hand tactics. Therefore, the Office of Professional Standards concluded the use of force utilized by Sergeant Fickett and Deputy Houle during the incident involving Inmate Sutherland was reasonable and within the confines of current policy. Therefore, they are exonerated.

The Office of Professional Standards suggest a review of the Use of Force Policy. This policy should identify and describe the different levels of resistance. The Use of Force Policy should also contain language describing the appropriate response to each level of resistance.

The Office of Professional Standards also suggest a review of the EMDT Policy. This policy should identify and describe the different levels of resistance. The EMDT Policy should also contain language describing the level of resistance in which a taser can be utilized. Additionally, language should be added to policy giving employees direction as to the number of times a taser can/should be utilized in a single event.