



King County

Office of Law Enforcement Oversight

February 16, 2021

TO: Undersheriff Patti Cole-Tindall, King County Sheriff's Office (KCSO)

FR: Adrienne Wat, Interim Director, Office of Law Enforcement Oversight (OLEO)

RE: AMENDED Recommended findings for IIU2020-436

The Internal Investigations Unit (IIU) advised the Office of Law Enforcement Oversight (OLEO) that findings for investigation number IIU2020-436 had been drafted after OLEO certified the fact-finding portion of the investigation as thorough and objective on December 23, 2020. OLEO has independently reviewed the findings, disagrees in part, and recommends the following findings pursuant to King County Code 2.75.040(C).

Allegations Against Each Subject

	General Orders Manual (GOM) Allegation	Sheriff's Office Commander Findings	OLEO Recommended Finding
Subject Deputy 1	(1) 3.00.020(3)(a): Appropriate Use of Authority	Unfounded	Sustained
	(2) 3.00.015(2)(d): Excessive or Unnecessary Use of Force	Exonerated	Sustained
Subject Deputy 2	(1) 3.00.015(2)(d): Excessive or Unnecessary Use of Force	Exonerated	Exonerated

Summary of the Incident

The above listed allegations were investigated by IIU concerning events that took place on October 7, 2020.

On the morning of October 7, 2020, subject deputy 1 was on duty in his patrol vehicle and saw an individual, the complainant, standing at an ATM. He stated that the complainant seemed suspicious and that he thought the complainant might be vandalizing the ATM. He stated that the complainant's hands could have been at the machine's card reader for five to thirty seconds, which appeared abnormal to him. Subject deputy 1 could not see any damage to the ATM from his vehicle.

Based on his observations, subject deputy 1 decided to approach the complainant to investigate potential vandalism further. He drove near the ATM, exited his vehicle, and told the complainant to stop. The complainant refused to stop and walked away. Subject deputy 1 told the complainant that the complainant would be arrested for obstruction if he did not stop, but the complainant continued to walk away. Subject deputy 1 stated over the radio that he had probable cause to arrest for obstruction. He did not check the ATM for any damage before stopping the complainant.

Subject deputy 1 entered his patrol vehicle and drove to where the complainant had walked. Subject deputy 1 exited his vehicle, grabbed the complainant's arm, and pinned the complainant against his vehicle. The complainant turned around and grabbed and removed subject deputy 1's spare firearm magazine from his vest. Subject deputy 1 then wrapped his arms around the complainant to take the complainant to the ground. At this point, subject deputy 2 arrived to assist. Both deputies stated that when the complainant refused to comply with their commands, they struck the complainant in his back. After striking the complainant, the deputies stated that the complainant complied, and they were able to handcuff him.

The complainant accused the deputies for detaining him without a reason and that the deputies punched him in the head four or five times during the physical interaction.

Both deputies denied hitting the complainant on his head. Both deputies stated that they do not know when the complainant could have hit his head and that the complainant never complained of pain during the interaction.

After the incident, the ATM was inspected and found to be in normal working condition and there were no signs of tampering.

The video obtained from a nearby gas station shows a struggle. However, the video is not clear because of the reflection from the patrol vehicle's lights. The video does not capture what occurred at the ATM.

Analysis

Allegations against subject deputy 1:

1) Appropriate Use of Authority

Pursuant to GOM 3.00.020(3)(a), deputies shall be aware of the extent and limitation of their authority in the enforcement of the law. And, GOM 5.00.020, detention/search short of arrest (stop & frisk), states that:

Whenever an officer/deputy deprives anyone the freedom of movement in any real way, they have performed a Constitutional seizure. The law allows an officer to do that short of probable cause, based on "reasonable suspicion" (not a hunch or a guess). This is the traditional *Terry v. Ohio* stop. The officer/deputy must be able to articulate the facts that justify the stop and it can only be briefly. Brevity generally depends on the facts of each situation. The value in this detention is that officers/deputies can ask questions and make observations that may develop probable cause. The citizen has no obligation to answer questions and if nothing more is observed officers/deputies must release the citizen promptly.

OLEO respectfully disagrees with the analysis of the King County Sheriff's Office (KCSO) that subject deputy 1 had articulated sufficient facts to justify a *Terry* stop. Although subject deputy 1 believed the complainant was tampering with an ATM, he stated in his IIU interview that he could not see any visible damage while observing from his vehicle. And, although subject deputy 1 stated that the complainant was at the ATM for an extended period, during his IIU interview he stated that the period could have been five to thirty seconds prior to him attempting contact with the complainant. The record is clear that at no point did subject deputy 1 look at or inspect the ATM for any vandalism to investigate his hunch before stopping the complainant. Even though the complainant did not stop when ordered, merely walking away under these facts does not give rise to reasonable suspicion. Additionally, subject deputy 1 had initially attempted to stop the complainant near the ATM. He had the opportunity to check the ATM for signs of vandalism after the complainant walked away and before he reentered his patrol vehicle to drive to where the complainant had walked. Instead, it was only after he and subject deputy 2 arrested the complainant that he checked the ATM and found no damage. Although credit cards containing other people's names were found, this was determined after the complainant had been arrested and cannot be used in hindsight to confirm the deputy's hunch to support a *Terry* stop.

Based on the above analysis, OLEO recommends that **the allegation of violating appropriate use of authority be Sustained**. Subject deputy 1 did not articulate any facts other than a hunch that the complainant may have been vandalizing an ATM and, by not inspecting the ATM for damage, he failed to develop facts to justify a lawful *Terry* stop. Additionally, based on the limited information provided by subject deputy 1, the complainant had no obligation to stop and talk to the deputy; therefore, there was no probable cause to support an arrest for obstructing a law enforcement officer.

2) *Excessive or Unnecessary Use of Force*

Under GOM 6.00.010, any use of force by Sheriff Office members must be objectively reasonable:

The reasonableness of a particular use of force is based on the *totality of circumstances* known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject. Objectiveness is judged from the perspective of the reasonable officer on the scene, rather than 20/20 hindsight, and allows consideration for circumstances that are tense, rapidly evolving, and often require split-second decision-making. Factors considered as part of this analysis include the severity of the crime at issue, whether the suspect poses an immediate threat, and whether the suspect is actively resisting or attempting to evade arrest.

The first issue to examine when determining if the force used was appropriate is whether the officer had lawful authority to stop the person force was used upon. When the officer does not have lawful authority to stop or detain the person, any force used is considered unreasonable, and therefore excessive and unnecessary.

As OLEO analyzed above for the *Appropriate Use of Authority* allegation, subject deputy 1 did not articulate sufficient information to establish reasonable suspicion to conduct a *Terry* stop or have probable cause to arrest for obstructing a law enforcement officer. Because the stop was unlawful, the detention by subject deputy 1 made the force used not objectively reasonable. As a result, any force used was excessive and unnecessary.

Based on the above analysis, OLEO recommends that **the allegation of excessive or unnecessary force be Sustained.**

Allegation against subject deputy 2:

1) *Excessive or Unnecessary Use of Force*

Subject deputy 1's lack of lawful authority cannot be attributed to subject deputy 2.

Subject deputy 2 had no knowledge or information about the underlying reason for the stop other than that it was for obstructing a law enforcement officer. And he arrived on scene while subject deputy 1 was already attempting to detain the complainant. OLEO agrees with KCSO's analysis of subject deputy 2's conduct that the **allegation of excessive or unnecessary force for subject deputy 2 be Exonerated.**