



Orange County District Attorney's Office

Report on Sheriff's Department Evidence Booking Issues OCDA Legal Analysis and Prosecution

January 13, 2021

I. BACKGROUND

As a result of the audit performed by the Orange County Sheriff's Department (OCSD), seventeen cases of OCSD deputy conduct involving a failure to book evidence were referred to the Orange County District Attorney's Office (OCDA) for the criminal review. An expansion of the original audit at the request of the District Attorney resulted in an additional 14 being referred for criminal review. The OCDA retained an independent prosecutor¹ to perform the legal review. The OCSD has been fully cooperative and helpful during the entire process.

II. LEGAL REVIEW

Each case was reviewed to determine whether: 1) the failure to book evidence evinced other criminality (e.g., the theft or misuse of evidence); and 2) whether the manner in which evidence was handled and documented, in each case, was itself, a violation of the criminal law. The investigation failed to reveal any evidence that an OCSD Sheriff's deputy stole or otherwise unlawfully used any evidence. However, the investigation did reveal that the failure to properly book and document evidence was, in certain instances, a violation of the criminal law.

The available proof of evidence booking failures implicated two potentially applicable statutes: 1) Government Code section 1222, which proscribes the willful omission to perform a legal duty; and 2) Penal Code section 118.1, which proscribes knowingly and intentionally making material false statements in a peace officer report.

¹ Patrick O'Toole, a former career prosecutor and United States Attorney who is an acknowledged grand jury expert, was hired to conduct an independent and comprehensive review of the original 17 cases. O'Toole authored three grand jury manuals used by the California District Attorneys Association (CDAA) to instruct prosecutors throughout California. The author of the law review article, "Prosecutors & Criminal Grand Juries Investigating Peace Officer Fatal Force Cases," *USF Law Review*: 2017 Vol. 51, Iss. 3, Article 1, stated that "Mr. O'Toole is one of the state's leading authorities on grand jury practice."

A violation of Government Code section 1222 is a misdemeanor with a one-year statute of limitations. At the time the OCSD presented these cases to the OCDA for criminal review, the one year statute of limitations had already expired.

A violation of Penal Code section 118.1 requires proof beyond a reasonable doubt that the defendant was a peace officer who, while acting in his or her official capacity, wrote a report in a criminal matter in which he or she knowingly included false information about a material matter. After a comprehensive review of the evidence and the totality of the circumstances, it was determined that sufficient evidence existed to prove beyond a reasonable doubt that the conduct of three of the seventeen deputies referred – Atkinson, Mora, and Simpson – constituted a violation of Penal Code section 118.1. With regard to those deputies in particular, the investigation concluded:

- In 8 reports out of 18—44%, Deputy Mora wrote in his reports that he booked non-photographic evidence when in fact he did not.
- In 38 reports out of 107—35%, Deputy Simpson wrote in his reports that he booked non-photographic evidence, when in fact he did not.
- In 16 reports out of 79—20%, Deputy Atkinson wrote in his reports that he booked non-photographic evidence when he in fact did not.

Each of these deputies have been criminally prosecuted.

Photographic Evidence

When submitting photographs, deputies would download the photos to a CD and then mail the CD to the OCSD photo lab via internal county “pony” mail in an envelope with a handwritten form that contained relevant case information. Photographs were not booked into evidence in the traditional sense. Due to deficiencies in the way OCSD handled photographic evidence at the time, it is not possible to determine if the missing photographs were simply not submitted by the deputy, were lost in transit to the photo lab, or were lost or misidentified after being received by the photo lab. Differing and inconsistent systems of how photographic evidence was handled resulted in the inability to prove whether a deputy failed to book photographic evidence and precluded criminal charges being filed with regard to photographic evidence.

The evidence of filing false police reports by the other fourteen deputies either did not rise to the level of proof beyond a reasonable doubt that a violation of Penal Code section 118.1 had occurred or the interests of justice did not warrant a criminal prosecution given the availability and appropriateness of substantial administrative penalties, including termination. In addition, serious mitigating factors included lack of sufficient training, policies, supervision, and guidance provided to the deputies under review.

III. Other Investigative Findings and Remedial Measures

The investigation found that a lack of adequate training and supervision regarding the booking of evidence was pervasive throughout the OCSD. No system of checks and balances existed within the Sheriff's Department to ensure evidence was being booked in a timely manner. That oversight has since been addressed and a checks and balances system has been implemented by the Sheriff's Department.

The culture of the Sheriff's Department emphasized spending time in the field making arrests without focusing on the after-arrest procedures, including booking evidence in a timely manner. The pressure to return to the field as quickly as possible coupled with the reality that evidence lockers did not then exist at every Sheriff's substation and deputies were forced to drive long distances to book evidence resulted in evidence not immediately being booked on multiple occasions. The high volume of calls in cities like Stanton resulted in deputies putting off booking evidence and misdemeanor and citation report writing to deal with other work needs.

Deputies testified in front of the grand jury that they were discouraged from utilizing overtime to finish reports and book evidence after their shift had ended, which resulted in evidence repeatedly being booked outside of the Sheriff's end-of-shift policy.

The OCDA has also worked with the OCSD to accelerate its internal investigations in order to submit them to the OCDA prior to the expiration of the statute of limitations so that all filing decisions can be properly considered. The new cases from the extended audit were already for, the most part, past the statute of limitations. However, all the cases reviewed for potential criminal charges were also reviewed for *Brady* and defense attorneys were provided appropriate *Brady* notifications.

IV. Conclusion

Of the 31 total cases referred to OCDA for criminal review as a result of evidence booking issues, criminal charges were filed against three deputies. Two deputies have been convicted and a third is awaiting trial following an indictment by the grand jury.

It is undeniable that peace officers across Orange County have been forewarned about the potential criminal consequences of failing to properly carry out their law enforcement duties regarding evidence booking and report writing. Any future willful violations will be continued to be reviewed by the OCDA for potential criminal charges.