



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

June 3, 2019

Sheriff Don Barnes
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Custodial Death on May 12, 2018
Death of Fetus S.
District Attorney Investigations Case # 18-017
Orange County Sheriff's Department Case # 18-019141
Orange County Crime Laboratory Case # 18-46767

Dear Sheriff Barnes,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the May 12, 2018, custodial death of inmate Ciera S.'s fetus.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of the fetus. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether criminal culpability exists on the part of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD.

On May 12, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Global Medical Center (OCGMC), concerning the death of a still born fetus at Orange County Sheriff's Department Women's Central Jail. During the course of this investigation, the OCDASAU interviewed seven witnesses, as well as obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD personnel or any other person under the supervision of the OCSD. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial deaths within Orange County when a human being dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units.

Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors and their supervisors. The District Attorney reviews all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

In 2018, Ciera S. was a 28-year old female living in Santa Ana. On Jan. 3, 2018, Ciera S. was arrested by the Santa Ana Police Department (SAPD) for possession of a controlled substance, and was booked that same day into the Orange County Central Women's Jail. On Jan. 4, 2018, she received a positive pregnancy test result in the Orange County Jail. At the time of testing, Ciera S. had suspicions that she was pregnant and disclosed five prior instances of having been pregnant, including suffering from a prior miscarriage. At an initial Obstetrician (OB) visit on Jan. 22, 2018, Ciera S. admitted that she has been using methamphetamine since age 13 and that the last time she used methamphetamine was during her pregnancy on Jan. 2, 2018. On March 30, 2018, Ciera S. was released from the custody of the Orange County Sheriff's Department (OCSD).

On April 29, 2018, Ciera S. was arrested again by the SAPD for possession and transportation of a controlled substance and cruelty to a child. Upon arrest, Ciera S. "admitted to smoking methamphetamine while 23 weeks pregnant" in a conversation with law enforcement personnel. She was then booked into the Orange County Women's Intake Release Center.

On April 30, 2018, Ciera S. received a prenatal evaluation by Orange County Health Care Agency (HCA). There, she disclosed daily marijuana use in the amount of ½ milligrams and that she last smoked marijuana on April 29, 2018. On May 2, 2018, Ciera S. was examined by an HCA Doctor who indicated that Ciera S. was 18 weeks pregnant with the fetus in the breech position. Her estimated due date was August 29, 2018. On May 7, 2018, Ciera S. was evaluated by an HCA Obstetrician who ordered a Glucose Tolerance Test (GTT) and a Complete Blood Count (CBC). A glucose test for diabetes is typically given to pregnant females after 20 weeks. No problems were noted during Ciera S.'s medical examination with the Obstetrician.

On May 12, 2018, at approximately 7:40 a.m., following administration of the GTT, Ciera S. pressed the Emergency Button in her cell and began complaining of stomach cramps and vaginal bleeding. She was then evaluated by a Nurse Practitioner in the Triage Area at 8:36 a.m. for cramping and bleeding. Ciera S. complained of pubic tenderness, frequency, and urgency to urinate, which according to the treating nurse practitioner, was likely a result of a urinary tract infection (UTI). A urine analysis was performed and showed that she had Leukocytes and blood, also symptoms consistent with a UTI. Ciera S. was then moved to the Women's Jail Female Observation Unit (FOU) at approximately 9:30 a.m., where she was placed under the supervision of a Registered Nurse. The Nurse checked the baby's fetal heart tone, which was 159 beats per minute. Ciera S. was placed on bed rest and observation due to her pregnancy and cramping. The Nurse reported that Ciera S.' vital signs were fine and that she did not have any vaginal bleeding. At 10:06 a.m. medical staff received Ciera S.' lab results which indicated the following: high GTT, high white blood count, and high Neutrophils ABS. According to the Nurse, this was an indication of a severe infection and that "the infection may have caused the premature delivery."

At approximately 11:00 a.m., in an effort to relieve her cramping and discomfort, Ciera S. attempted a bowel movement, at which time Fetus S. came halfway out and feet first. Ciera S. pounded on the cell door for help. A Registered Nurse was in the nursing office when she heard Ciera S. knocking and saying, "I am having the baby." The Nurse told Ciera S. to lay on the bed and then summoned a deputy sheriff. Orange County Fire Authority (OCFA) Paramedics were notified at 11:01 a.m. When OCSD Deputy Brittany Douglas arrived, she checked Ciera S.' vital signs and administered oxygen. Ciera S. remained calm, oriented, talking, and answered the medical staff's questions.

OCFA arrived at Ciera S.' cell in the Infirmary at approximately 11:18 a.m. Paramedics arrived and found Ciera S. on the bed with Fetus S. halfway birthed. The fetus was breached with the torso, feet, legs and buttocks protruding out from Ciera S. According to Paramedics, Fetus S.' "arms and head had not come out" and "he was purple." Paramedics could tell that he was not fully developed and was deceased. Ciera S. continued pushing, and approximately 45 seconds to a minute later, Fetus S. was delivered stillborn. Paramedics confirmed that Fetus S. was deceased and cut the umbilical cord.

At approximately 11:48 a.m., Ciera S. and Fetus S. arrived at OCGMC. Fetus S. arrived at OCGMC in a bag. No signs of trauma were observed on Fetus S. or Ciera S. at the hospital. Ciera S. was taken to the Labor and Delivery Unit and placed under the care of OCGMC medical staff. While at the hospital, Orange County Sheriff Deputy Douglas overheard Ciera S. tell the nurses that she had used methamphetamine in late April 2018, and had also used marijuana at unspecified times. Nurses checked Ciera S. for bleeding and administered Cytotech after finding clots. The placenta was still inside Ciera S. with the umbilical cord protruding. At approximately 2:05 p.m., the on call physician was able to remove the placenta, and he then performed an ultrasound to ensure the uterus was clear, monitored bleeding and changed pads.

TOXICOLOGICAL EXAMINATION

A sample of postmortem blood from Fetus S. was collected and examined for the presence of drugs and alcohol, and none was found.

AUTOPSY

On May 16, 2018, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Fetus S. Dr. Luzi concluded that the cause of death was fetal demise. Dr. Luzi determined that there was no indication of air in Fetus S.' lungs, and he also observed that the umbilical cord was still attached and that there was no obvious trauma on the

fetus. Dr. Luzi concluded that Fetus S. died as a result of intra-uterine demise associated with placental infraction and chorioamnionitis. Dr. Luzi also concluded that the manner of death was natural.

BACKGROUND INFORMATION

Ciera S. had a State of California Criminal History that revealed arrests for the following violations:

- Burglary
- Failure to Obey a Court Order
- False Identification to a Peace Officer
- Grand Theft
- Evading a Peace Officer
- Cultivation of Marijuana
- Possession of Drug Paraphernalia
- Possession of Marijuana and Narcotics for Sale
- Possession and Transportation of a Controlled Substance
- Child Cruelty
- Receiving Stolen Property
- Possession of a Stolen Vehicle
- Possession of Metal Knuckles
- Vehicle Theft
- Petty Theft
- Probation Violation

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove that a person is guilty of murder, the following must be proven:

- a. The person committed an act that caused the death of another human being or a fetus;
- b. When the person acted he/she had a state of mind called malice aforethought; and
- c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he/she acted he/she knew his/her act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life.

A person can also commit an unlawful homicide by his/her failure to perform a legal duty, if the following conditions exist:

- a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
- b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
- c. The failure to act is dangerous to human life; and
- d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a “special relationship” between jailer and prisoner:

“The most important consideration ‘in establishing duty is foreseeability.’ It is manifestly foreseeable than an inmate may be at risk of harm.... Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner.”

California Government Code 845.6 codifies that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

“A public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care.”

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he/she acts is so different from how an ordinarily careful person would act in the same situation that his/her act amounts to disregard for human life or indifference to the consequences of that act. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

In the present case, there is no evidence whatsoever of express or implied malice on the part of any OCSD personnel or any inmates or other individuals under the supervision of the OCSD. Accordingly, the only possible type of homicide to analyze in this situation is under the theory of failure to perform a legal duty. Although the OCSD owed the fetus and mother a legal duty of care, the evidence does not support a finding that this legal duty was in any way breached, either intentionally or through criminal negligence.

When Ciera S. was first booked into the OCSD Central Women’s Jail on Jan. 3, 2018, she was administered a pregnancy test and tested positive. After discovering that she was pregnant, Ciera S. was told that she was scheduled for an appointment with an OB/GYN and was given a pregnancy education booklet. When she met with the OB/GYN on Jan. 22, 2018, Ciera S. admitted that she has been using methamphetamine since age 13 and had used methamphetamine during her pregnancy on Jan. 2, 2018. Furthermore, Orange County Sheriff Deputy Brittany Douglas overheard Ciera S. tell nurses that she used methamphetamine in late April 2018, and Cierra S. also disclosed to medical personnel daily marijuana use in the amount of ½ milligrams and that she last smoked marijuana on April 29, 2018.

Shortly after Ciera S. re-entered custody on April 29, 2018, she received a prenatal evaluation by HCA. On May 7, 2018, an Obstetrician requested for Ciera S. to undergo glucose and blood testing,

which is routine practice for pregnant females after 20 weeks. On May 12, 2018, which was the day of glucose and blood testing, Ciera S. complained of pubic tenderness, frequency, and urgency to urinate. She also began complaining of stomach cramps. Ciera S. did not mention these symptoms until May 12, 2018. The Nurse Practitioner believed Ciera S. had a urinary tract infection, which was confirmed by a urine analysis. The Nurse found no vaginal bleeding or amniotic fluid. The Nurse then checked the baby's fetal heart tone, which was 159 beats per minute. The Nurse recommended Ciera S. go to the Female Observation Unit (FOU) for bed rest and to drink lots of fluids due to low blood pressure. Ciera S. was prescribed antibiotics and was closely monitored at the FOU.

Deputies and OCFA Paramedics were immediately notified once Ciera S. pounded on her cell door for a nurse at approximately 11:00 a.m. on May 12, 2018. When the Nurse and Paramedics arrived they could see Ciera S. laying on her back with the baby half way out. The Nurse could tell that the baby was not breathing and that there was no movement. Ciera S. and Fetus S. were quickly transported to OCGMC. No signs of trauma were observed on Fetus S. or Ciera S. at the hospital. Shortly after Ciera S. and Fetus S. were transported to the hospital, the HCA Nurse Practitioner received the results of Ciera S.' glucose and blood tests that were administered earlier that day. Ciera S.' white blood count was abnormally high and thus the Nurse believed that her urinary tract infection may have caused the premature delivery. The Nurse stated that if she would have been aware of the presence of the urinary infection and the blood test results, she would have sent Ciera S. to the hospital. However, Ciera S. did not complain about cramping and frequency and urgency to urinate until May 12, 2018.

In evaluating all the above listed facts and circumstances, it is clear that there is no evidence whatsoever to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty so as to cause the death of Fetus S. Therefore, the filing of criminal charges is not warranted in connection with the death of Fetus S.

CONCLUSION

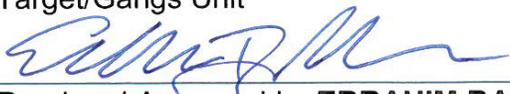
Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion that there is no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. The evidence shows that Fetus S. died as a result of fetal demise

Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,



CRAIG WILLIAMS
Deputy District Attorney
Target/Gangs Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Operations IV