



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

September 3, 2019

Chief Thomas C. Kisela
Orange Police Department
1107 N Batavia St.
Orange, CA 92866

Re: Custodial Death on January 31, 2019
Fatal Incident Involving Jose Albert Aguirre
District Attorney Investigations Case # S.A. 19-001
Orange Police Department Case # 19-010975
Orange County Crime Laboratory Case # 19-41528
Orange County Coroner's Office Case # 19-00555-RA

Dear Chief Kisela,

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 January 31, 2019, custodial death of 54-year-old Jose Albert Aguirre.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Aguirre. 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 Police Department (OPD) personnel or any other person under the supervision of the OPD.

On January 31, 2019, OCDA Special Assignment Unit (OCDASAU) Investigators responded to St. Joseph's Hospital, where Aguirre died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed ten witnesses, as well as obtained and reviewed reports from the OPD, Chapman University Department of Public Safety (CUDPS), Orange County Crime Laboratory (OCCL), incident scene photographs, video recordings, 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 OPD personnel, CUDPS, or any other person under the supervision of the OPD or CUDPS. 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 an individual 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.

DISCLOSURE OF VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTS

At approximately 2:35 a.m. on January 31, 2019, OPD Officer Anthony Castaneda was on patrol, travelling west on Chapman Avenue in his marked OPD police unit. As he passed Main Street, Officer Castaneda saw Aguirre walking in the eastbound lanes of Chapman Avenue. According to Officer Castaneda's voluntary statement, he stopped at the Circle S Food Market, and returned to his patrol vehicle, travelling eastbound on Chapman, where he again saw Aguirre again in the roadway without any reflective clothing. At this point, Officer Castaneda decided to make a pedestrian stop to check on Aguirre's welfare, and notified dispatch of the contact at approximately 2:40 a.m.

Before Officer Castaneda could park his vehicle, Aguirre began running away, but then stopped as Officer Castaneda's car pulled closer to him near the US Bank. At this point, Officer Castaneda exited his vehicle and contacted Aguirre, whom he described as sweating, wide-eyed, looking around, and breathing heavily. Officer Castaneda instructed Aguirre to sit down three times. Aguirre initially hesitated and then complied. At this time, Chapman University Patrol Officer Joseph Garcia was stopped in his vehicle on Chapman Avenue, west of Main Street. Patrol Officer Garcia witnessed Aguirre run from Officer Castaneda and then later sit down. Based on Aguirre's conduct, Patrol Officer Garcia decided to stay with Officer Castaneda until additional OPD units arrived, and he

approached Aguirre and Officer Castaneda, standing behind Aguirre to avoid becoming involved while still being able to observe.

Based on his observations, Officer Castaneda believed Aguirre was under the influence of a controlled substance, and he requested a follow-up officer. Officer Castaneda asked Aguirre why he was standing in the road, but Aguirre provided no response. Aguirre smoked an unlit cigarette and then lit that cigarette, and Officer Castaneda asked him to extinguish it. Aguirre replied by saying that if this was going to be his last cigarette it's not going to matter, and then he stood up and tried to walk away. Officer Castaneda told Aguirre to remain seated and placed his hand on Aguirre's shoulder. Aguirre then turned and punched Officer Castaneda in the face, and a struggle ensued with Aguirre and Officer Castaneda striking each other with their fists.

After striking Officer Castaneda approximately five times in the face and torso while yelling, Aguirre attempted to run away, and Officer Castaneda made an emergency call for additional officers before he tackled Aguirre into the side of a pillar and then to the ground. Aguirre was on top of Officer Castaneda, who was afraid for his life. Patrol Officer Garcia stated that he also feared for Officer Castaneda's life as Aguirre was getting the better of him and thought that he may be able to take Officer Castaneda's weapon. Patrol Officer Garcia then took out his ASP collapsible baton, told Aguirre to stop, get back and get on the ground. When Aguirre did not cooperate, he began striking Aguirre. Patrol Officer Garcia stated that the baton strikes seemed to have little effect on Aguirre, and that Aguirre was exhibiting superhuman strength.

Aguirre then turned to look at Patrol Officer Garcia, who believed he would be attacked next. Aguirre then started to run. Both Officer Castaneda and Patrol Officer Garcia chased him and got him back on the ground, but could not get his hands, despite repeated commands and attempts. As the ASP strikes proved ineffective earlier, Patrol Officer Garcia removed his canister of oleoresin capsicum (OC) spray from his holster, showed it to Aguirre and asked Officer Castaneda if he should deploy it. Aguirre was still not compliant, so Patrol Office Garcia discharged the OC spray within one foot of Aguirre's face. After the OC spray was deployed, despite Aguirre continuing to fight, Officer Castaneda was able to get out from under Aguirre and grab his upper torso. Aguirre continued to resist, throwing his elbows from side to side and moving his hands towards his waistband. Patrol Officer Garcia struck Aguirre in the neck and shoulder in an attempt to gain compliance.

At approximately 2:45 a.m., OPD Officer Mitchell Pfyl arrived on scene where he observed Aguirre in a prone position with Officer Castaneda holding his legs and Patrol Officer Garcia striking Aguirre in the upper back with a closed fist. Officer Pfyl approached Aguirre and grabbed his left arm and pulled it from under his body. Officer Pfyl then handcuffed Aguirre's left wrist and then Patrol Officer Garcia assisted Officer Pfyl in handcuffing Aguirre's right wrist. Once handcuffed, Aguirre continued to struggle, and Officer Pfyl placed Aguirre's legs in a Hobble restraint.

At approximately 2:46 a.m., OPD Officer Alec Kovac arrived at the scene, and he relieved Officer Castaneda who was still holding Aguirre on the ground. Officers Kovac and Pfyl rolled Aguirre onto his left side into a recovery position, and Officer Kovac noticed Aguirre's arm muscles were tense and hardened and his pulse was abnormally fast. Officer Castaneda requested paramedics to respond to the scene at 2:46 a.m. Also at approximately 2:46 a.m., OPD Officer Jesse Crockett, who is a former paramedic, arrived and noticed Aguirre's breathing was labored and appeared very tense. Officer Crockett found that Aguirre's pulse was approximately 200 beats per minute. Approximately one minute later, Officer Crockett noticed Aguirre was no longer moving, his pupils had no reaction to light, he did not respond to a sternal rub and he had no pulse. Officers then

removed the Hobble restraint and handcuffs from Aguirre and begin cardiopulmonary resuscitation (CPR), continuing until paramedics arrived.

At 2:52 a.m., Orange Fire Department (OFD) personnel arrived on scene. One of the responding OFD paramedics found no respirations or pulse on Aguirre and saw no significant visible trauma. An intraosseous line (IO) was established in Aguirre's right tibia, and a Paramedic administered epinephrine to Aguirre. At approximately 3:04 a.m., OFD Rescue 6 transported Aguirre to Saint Joseph Hospital (SJH), where he arrived at 3:06 a.m. with no pulse and was treated by SJH emergency room personnel. SJH personnel continued life-saving efforts to no avail, and Aguirre was pronounced dead at 3:21 a.m.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One canister of First Defense MK4 Oleoresin Capsicum
- One black XL t-shirt
- One green 2XL collared shirt
- One piece of denim material
- One pair Peerless handcuffs
- One black nylon restraint Hobble
- One ZTE Cricket cellular phone
- One Alcatel cellular phone
- One California Identification Card

AUTOPSY

On February 1, 2019, Forensic Pathologist Dr. Etoi Davenport of the Orange County Coroner's Office conducted an autopsy on the body of Aguirre. During the autopsy, Dr. Davenport observed contusions, lacerations, and abrasions to Aguirre's head and body. Internal examination showed no significant fluid or adhesions in the thoracic or peritoneal cavities, and internal organs appeared normal, though the heart was minimally enlarged. Aguirre had had multiple rib fractures consistent with CPR. Dr. Davenport discovered a 4.5 x 4.0 cm clear Ziploc baggie inside Aguirre's small intestine. Liquid from the interior of the baggie tested positive for methamphetamine. Following the autopsy and toxicological analysis, Aguirre's cause of death was determined to be acute methamphetamine intoxication.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Aguirre's postmortem blood yielded the following results:

| DRUG | POSTMORTEM BLOOD | BRAIN |
|--------------------------|-------------------------|---------------------|
| Amphetamine | 0.406 ± 0.025 mg/L | 0.851 ± 0.063 mg/kg |
| Cyclobenzaprine | 0.0745 ± 0.0085 mg/L | |
| Methamphetamine | 7.10 ± 0.51 mg/L | 15.5 ± 1.1 mg/kg |
| N-desmethcyclobenzaprine | Detected | |

BACKGROUND INFORMATION

Aguirre had a State of California Criminal History record that revealed convictions for the following criminal offenses:

- Transport/Sell Controlled Substance

- Under the Influence of a Controlled Substance
- Aggravated Assaults
- Assault
- Battery
- Domestic Violence
- Willful Cruelty to a Child
- Possess/Sell Switch-Blade Knife
- Violation of a Court Order (Domestic Violence related)
- Violations of Probation and Parole

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;
- 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 murder 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.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

- a. The person had a legal duty to the decedent;
- b. The person failed to perform that legal duty;
- c. The person's failure was criminally negligent; and
- d. The person's failure caused the death of the decedent.

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.' [citation] It is manifestly foreseeable that 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

There is no evidence whatsoever in this case of express or implied malice on the part of any OPD or CUDPS personnel or other individuals under the supervision of the OPD or CUDPS. Accordingly, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty.

Although the OPD and CUDPS owed Aguirre a duty of care, the evidence does not support a finding that this duty was in any way breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

When Officer Castaneda encountered Aguirre, he was standing in the middle of the roadway, at night without reflective clothing, acting erratically, and exhibiting signs of being under the influence of a controlled substance. When contacted by Officer Castaneda, Aguirre initiated a physical altercation, striking Officer Castaneda with physical force and exhibiting what was described as “superhuman strength,” causing Patrol Officer Garcia and Officer Castaneda to fear for Officer Castaneda’s life. In response, Officer Castaneda, Officer Pfyl, and Patrol Officer Garcia used physical force, OC spray, and baton strikes to gain Aguirre’s compliance. Under these circumstances, the Officers’ actions to gain compliance of a dangerous individual were completely reasonable.

As soon as the officers had securely restrained Aguirre, while he was still responsive, Officer Castaneda requested paramedics at the scene. Once Aguirre was restrained, officers monitored his condition and checked his pulse multiple times. As soon as Officer Crockett found Aguirre to be unresponsive, officers reacted quickly and appropriately by removing the restraints and begin life-saving measures, continuing for approximately four minutes until OFD personnel arrived and took over treatment. OFD paramedics continued treatment until Aguirre arrived at SJH without a pulse, and emergency personnel attempted life-saving measures for an additional fifteen minutes. As such, from the time Aguirre was found to be unresponsive until he was pronounced dead, personnel from OPD, OFD, and SJH continuously administered appropriate emergency treatment.

Based on Dr. Davenport's examination, where a baggie containing methamphetamine was found in Aguirre's intestines, and toxicological evaluation, Dr. Davenport determined the cause of Aguirre's death to be acute methamphetamine intoxication.

There is a lack of evidence in this case to support a finding that any OPD or CUDPS personnel, or any individual under the supervision of the OPD and CUDPS, failed to perform a legal duty causing the death of Aguirre. To the contrary, all the evidence, including a review of all the available video recordings from the OPD patrol vehicles, supports the conclusion that the officers at the scene acted reasonably in their actions to subdue Aguirre, and reacted quickly and appropriately in response to the medical emergency experienced by Aguirre.

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 OPD or CUDPS personnel, or any individual under the supervision of the OPD and CUDPS. The evidence shows that Aguirre died as a result of acute methamphetamine intoxication.

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

Respectfully submitted,



JANINE MADERA

Senior Deputy District Attorney
Homicide Unit



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