



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

March 9, 2020

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

Re: Custodial Death on August 7, 2019
Death of Inmate Chong "Richard" Tok Rha
District Attorney Investigations Case # S.A. 19-014
Orange County Sheriff's Department Case # 19-027020
Orange County Crime Laboratory Case # 19-49244

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 August 7, 2019 custodial death of 35-year-old inmate Chong "Richard" Tok Rha.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Rha. In this letter, the OCDA describes the criminal investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to review the conduct of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD in connection with this custodial death incident. In connection with this incident, the custodial death incident started during an attempt by OCSD deputies to restrain and subsequently arrest Rha.

On August 7, 2019, OCDA Special Assignment Unit (OCDASAU) Investigators responded to St. Jude Medical Center in Fullerton. Rha died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed four 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 an individual dies while in custody or while being taken into 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 an experienced 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 several experienced prosecutors and their supervisors. The District Attorney reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved Deputies. All the Deputies involved in this incident gave voluntary statements to the OCDA Investigators.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING 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

On July 15, 2019 at approximately 08:47 pm Deputy Schwartz and Deputy Ramirez of the Orange County Sheriff's Department were dispatched to a residence in La Mirada, an unincorporated part of Orange County, regarding a violation of a restraining order. Rha's sister called 911 after Rha arrived at their parents' residence. Rha's sister stated that Rha was in violation of a restraining order and was in the home, possibly naked. His sister told police that Rha was a longtime methamphetamine user and suffered from mental illness, possibly Post Traumatic Stress Disorder.

When they approached the residence, the Deputies were told by dispatch that Deputies had been called to this home five (5) times in the last five (5) weeks because of Rha and his violent outbursts. The most recent call was on July 10, 2019 when Rha assaulted his father in the home, punching him

in the face. Deputy Ramirez himself has previously responded to the address three (3) months prior due to an incident involving Rha. When Deputies arrived, at approximately 11:14 pm, Rha's parents were outside the home and sitting inside their car. Because the sister was still en route, and about twenty-five (25) minutes away, the Deputies attempted to speak to the parents on the driveway. However, because of the language barrier, it was difficult to talk to them and identify what was going on. Because of this, Deputy Schwartz called the Language Line, a translation service, but still was unable to gather enough information. Shortly after the Deputies' arrival, Rha's sister arrived and told the Deputies that her and her parents had a restraining order against Rha and he would not leave the house.

The Deputies then determined that the restraining order had not yet been served on Rha. Because of this, the Deputies told the sister that the restraining order was not yet effective, but they would serve Rha with the restraining order and ask him to leave the residence. Before entering the home they asked the sister if there were any weapons in the home. She stated that the only possible weapons were the kitchen knives. In addition to this, they asked if her brother had a phone that they could call or if there was a phone inside the home that they could call, however, she stated that there was not. When the Deputies walked up to the front-door they announced their presence and called out the name "Richard" multiple times. After several attempts and no response, the Deputies announced that they were coming inside the home. They walked inside and went down the dimly lit hallway, checking each room as they walked by. They then opened another bedroom door and saw Rha shirtless and with his back to them facing an open window. The room was dark, with no lights on and Deputies were barely able to see Rha. Once they saw him, they called him by name, again saying "Richard." Rha responded by saying, "no. no." The Deputies asked Rha to come outside so they could talk. At this point Rha began flailing his arms and telling the Deputies to "Get out!" The Deputies reassured him several times that they only wanted to talk to him. Rha ignored the Deputies and raised what appeared to be a methamphetamine pipe to his mouth. Deputies saw him ignite the lighter and blow the smoke out the window. The Deputies believed that Rha was smoking a controlled substance, and based on his behavior they believed that he was high on methamphetamine and/or mentally ill.

The Deputies entered the room and Deputy Ramirez activated a flashlight to illuminate Rha. At this time, Deputy Schwartz drew her Taser, as a safety precaution, but did not deploy it. Rha became more agitated and screamed for help. Rha then set something on the dresser next to a pair of scissors and started moving into the back corner of the room. Deputy Ramirez grabbed his arm to pull him from the dark corner, concerned with what he could be concealing, Rha fought back. Deputy Ramirez then tried to pull him out of the corner with more force, Rha resisted again and tried to jump out of the corner. Rha then collided with Deputy Schwartz with such a large amount of force that she fell backward eight (8) to ten (10) feet. Deputy Schwartz broadcasted a "Code 3", asking for backup, over the radio and then shouted that she was going to deploy her Taser. She then deployed her Taser, but Rha was not affected. He fell onto the bed, however there was no noticeable NMI (neuromuscular incapacitation).

When Rha fell on the bed, Deputies Schwartz and Ramirez jumped on top of him to try to restrain him. However, he was still resisting and fighting back. Because of this, Schwartz deployed her Taser for a second time. Again, Rha was unaffected. He jumped up, shoved the Deputies out of his way, and ran out of the room and down the hall toward the kitchen. Deputy Schwartz knew that there were knives in the kitchen, so she ran after Rha. Deputy Schwartz removed her Taser again, but before she could use it, Rha punched her in the face and grabbed her Taser and a fight ensued over the Taser. Deputy Schwartz yelled at Deputy Ramirez that Rha was about to get possession of her Taser. At this point, Deputy Ramirez punched Rha in the face multiple times. All three fell to the

ground, and Rha dropped the Taser. Deputy Schwartz picked up the Taser, put it on Rha's back and discharged it. This "drive stun" again had zero visible effect on Rha.

The Deputies told Rha to stop resisting, however, he refused to comply. Deputies Schwartz and Ramirez both punched Rha in the face and upper torso. Deputy Schwartz punched Rha with a closed fist, and Deputy Ramirez punched Rha with an open palm and his elbow. One of the blows from Deputy Ramirez's elbows created an open wound on the back of Rha's head that was bleeding profusely. Shortly thereafter, Rha grabbed the Taser and hit Deputy Schwartz and Deputy Ramirez in the face with it. Deputy Schwartz then grabbed the Taser and threw it into the kitchen so Rha would not be able to grab it again. Because Rha's head was bleeding profusely, Deputy Ramirez began to try to calm him down by saying, "You are my friend" in Korean. This seemed to calm Rha down for a short period of time, and then Rha would act irrational again, and attempted to bite Deputy Ramirez. When Rha calmed down for a moment, Deputy Schwartz was able to cuff Rha's hands in the front of his body. At this point, Deputy Ramirez and Deputy Schwartz were still behind him, on his back, and attempting to hold him down. However, Rha used his knees to get up off the floor, with both Deputies on his back.

Deputy Ramirez was nervous that he would be able to get access to the kitchen knives and was worried for his and Deputy Schwartz's lives. Deputies got Rha back to the ground as he was trying to continue and kick them and fight them off. Deputy Ramirez tried to call for help on his radio, but his radio had been knocked off during the fight. Deputy Schwartz again stated over the radio that they needed emergency units.

Rha was 5'10" tall and 190 weighed pounds. Deputy Ramirez thought that Rha was too strong to be restrained by the Deputies, and he believed that he either needed to use a carotid hold or draw his gun. He chose to administer a carotid hold, and as he put his arm across Rha's throat, Rha moved Deputy Ramirez's arm and bit him for a second time and continued to attempt to get out of the carotid hold. Deputy Ramirez still administered the carotid hold, and applied pressure for 10-20 seconds. Rha then stopped resisting, but Deputy Ramirez kept 50% of his weight on him to ensure he did not get up and continue to fight. Deputy Ramirez checked Rha's pulse and determined he was unconscious, but still breathing and determined he was sleeping and making a "snoring" sound. The entire struggle between the Deputies and Rha lasted for a total of ten (10) minutes.

At this point an officer from the Buna Park Police Department and another OCSD Deputy Sheriff, Carreto and Oden, arrived and relieved Deputies Ramirez and Schwartz who were covered in blood, bruises, and scratches. Deputy Ramirez told the arriving officers that when Rha was conscious he would try to fight and bite them. They then rolled Rha onto his side into a "recovery position" and repositioned the cuffs to his back. Carreto searched Rha and found in his pocket a pipe with a stem and a cloudy white residue inside, with burnt marks and a bulb end. Oden removed two Taser wires from Rha's upper torso and then went to check his pulse and was unable to locate any. Oden immediately started to administer CPR until the paramedics arrived.

Paramedics with the Orange County Fire Authority (OCFA) arrived and attached a monitor to establish current vital signs and heart activity. The monitor showed that Rha was "asystole" or lacking any heart rhythm. Rha was treated following full arrest algorithm, which included CPR airway, rescue breathing, and medications. The Paramedics administered Epinephrine and a pulse was established. Rha was put into an ambulance and taken to St. Jude's Medical Center (SJMC). On the way to the hospital, Paramedics inserted an Intraosseous (IO) line into Rha's left tibia. On two occasions, Paramedics were able to gain a return of spontaneous circulation (ROSC).

Rha was brought into SJMC Emergency Room in atrial fibrillation and released into the care of SJMC Emergency Room personnel. Rha was unconscious and unresponsive with a swollen face. He had a laceration above his right eye and a laceration on the back of his head. The attending physicians found no other significant trauma and did not recall seeing any petechial in Rha's eyes or marks/bruising on his neck indicating asphyxia. The attending physicians conducted a series of CT scans and found no acute injuries, fractures or hematomas. Toxicology tests showed that Rha had methamphetamine and Tetrahydrocannabinol (THC) in his blood.

Deputies Ramirez and Schwartz were taken to University of California, Irvine – Medical center where they were treated and released the following morning. None of the responding law enforcement personnel were equipped with Body Worn Camera equipment during this incident.

Rha remained at SJMC CCU for three weeks in a post anoxic coma. On August 6, 2019, the attending physician conducted a brain death exam and the results were consistent with brain death. Six hours later, the attending physicians conducted the test a second time, and again determined that the test results were consistent with brain death. On August 7, 2019, life preserving methods were stopped and Rha passed away.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- TASER cartridge
- TASER probes (2)
- TASER GUN and TASER doors (2) and TASER AFIDS
- Swabs of apparent blood from residence
- Apparent blood swabs from the OCSO Deputies' clothing
- Restraining order paperwork
- Deputies' clothes

AUTOPSY

On August 14, 2019, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Rha. Dr. Luzi stated that the preliminary cause of death was consistent with cardiac arrhythmia associated with a physical altercation. Following the autopsy and toxicological analysis, Dr. Luzi concluded that Rha's cause of death was acute exacerbation of chronic methamphetamine use, and noted as other conditions the struggle with law enforcement and the use of Taser, as well as eosinophilic pneumonia. Dr. Luzi determined that the manner of death was accidental.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Rha pre transfusion blood yielded the following results:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Pre Transfusion Blood	31.6 ± 3.6 ng/mL
Methamphetamine	Pre Transfusion Blood	318 ± 28 ng/mL
Carboxy-THC	Pre Transfusion Blood	20.4 ± 2.5 ng/mL
THC	Pre Transfusion Blood	1.2 ± 0.2 ng/mL
Ephedrine	Pre Transfusion Blood	23.1 ± 2.3 ng/mL

BACKGROUND INFORMATION

Rha had a State of California Criminal History record that revealed arrest for the following violations:

- Possession of Controlled Substance
- Possession of Drug Paraphernalia
- Petty Theft

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.

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he/she 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.

The law further provides that the use of reasonable force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he/she is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.) The United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, explained that an officer’s right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment’s “objective reasonableness” standard. The Supreme Court further stated that the determination of the reasonableness of an officer’s use of force “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation” (*Id.* at 396-397.)

The United States Supreme Court’s analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions between OCSD and Rha.

LEGAL ANALYSIS

In this present case, there is no evidence whatsoever of express or implied malice on the part of any OCSD personnel or other individuals under the supervision of the OCSD. 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 or use of excessive force causing the death of Rha.

Although the OCSD owed Rha 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). Before Deputies entered the home, they knew that Deputies had been called out to this residence several times in the past few weeks. They were aware that the family was outside of their home, and did not want Rha in their home. They were also aware that Rha had a history of methamphetamine use and mental health issues causing his to

become violent. The Deputies walked into the dark home and were barely able to see Rha. After asking him several times to come outside and talk, he became violent and tried to get past the Deputies and run out the bedroom door.

After Rha hit Deputy Schwartz, he continued to run toward the kitchen where the Deputies were told knives were located. For their safety, the Deputies tried to ensure that Rha did not reach the knives. In the process of trying to handcuff and detain him, Rha continued to fight Deputies and even took their Taser, using it to hit both Deputies in the face. Deputy Schwartz discharged a Taser a total of three (3) times, which did not slow Rha down or affect him in any way. The Deputies used the Taser as a non-lethal method to gain control of Rha for their safety and the family's safety. It was clear based on all the circumstances that Rha was not acting in his right mind, and was acting irrational, having a violent outburst. Deputies believed that this was because he was either high on methamphetamine, suffering from his mental illness, or both. Rha continued to take the Taser from Deputies, punched them in the face, and attempted to run to the kitchen to potentially obtain a knife. After being punched in the face, Deputy Ramirez elbowed Rha in the back of the head causing a deep cut that began to bleed profusely. Seeing the large amount of blood, Deputy Ramirez tried to calm Rha down by speaking in Korean to him, and Deputy Schwartz continued to call for emergency help. Both Deputies continued to try to end the fight and get more Deputies on scene to help. Once they finally were able to cuff Rha's hands in front of him, he continued to lift off the ground with both Deputies on his back and continued to fight. At this point, Deputy Ramirez, fearing for his life and his partner's life, performed a carotid hold, another non-lethal way to control Rha. Finally, Rha became unconscious and stopped fighting the Deputies. After this, the Deputies continued to check his pulse and ensure he was breathing.

Deputy Ramirez and Deputy Schwartz did not act with criminal negligence because they were not careless in the way they acted. They were trying to help Rha and detain him peacefully to ensure everybody's safety. They continued to use reasonable force to ensure that Rha would stop attacking them and would stop acting irrational and violent. By using the non-lethal methods to incapacitate Rha, the Deputies did not have a conscious disregard for human life. Both Deputies assessed the situation and used their best judgment under the circumstances to ensure their safety, and the safety of others around them. The evidence supports the conclusion that both deputies acted reasonably, and did not use unreasonable or unnecessary force under the circumstances.

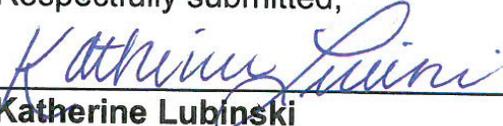
Thus, there is a lack of sufficient evidence in this case to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty causing the death of Rha. There is also a lack of sufficient evidence in this case to support a finding that the Deputies caused Rha's death by using unreasonable, excessive, or unnecessary force against Rha who was unlawfully combative and fighting with law enforcement.

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 that any OCSD personnel or any individual under the supervision of the OCSD committed a crime or failed to perform a legal duty causing the death of Rha. The evidence shows that Rha died as a result of acute exacerbation of chronic methamphetamine use during his unlawful struggle with law enforcement.

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

Respectfully submitted,



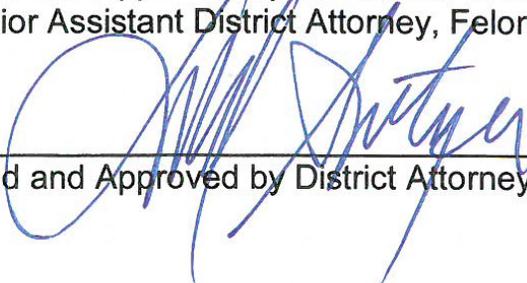
Katherine Lubinski

Deputy District Attorney, GANGS Unit



Read and Approved by **EBRAHIM BAYTIEH**

Senior Assistant District Attorney, Felony Operations IV



Read and Approved by District Attorney **TODD SPITZER**