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September 25, 2017

Chief Raul Quezada
Anaheim Police Department
425 South Harbor Boulevard
Anaheim, CA 92805

Re: Custodial Related Death on July 2, 2016
Fatal Incident involving Fermin Vincent Valenzuela, Jr.
District Attorney Investigations Case # S.A. 16-022
Anaheim Police Department Case # 16-103833
Orange County Crime Laboratory Case # 16-51063

Dear Chief Quezada,

Please accept this letter detailing the Orange County District Attorney's Office (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Officers Woojin Jun and Daniel Wolfe. The incident occurred in the City of Anaheim on July 2, 2016. Fermin Vincent Valenzuela Jr., 32, was placed under arrest and treated while in custody at the West Anaheim Medical Center until his death on July 10, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the contact between Officers Jun and Wolfe and Fermin Vincent Valenzuela Jr. on July 2, 2016, and his death on July 10, 2016. This letter includes an overview of the OCDA's investigative methodology and procedures, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there is criminal culpability on the part of Officers Jun and Wolfe, or any APD personnel. The format of this document has been developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Saturday, July 2, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 33 interviews were conducted, and 16 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, DNA, fingerprint and officer processing; crime scene investigation and hospital photographs; Taser logs and manufacturer's reports; Anaheim Fire Department records; West Anaheim Medical Center records; criminal history records and prior police reports related to Valenzuela; civilian video recordings; interior and exterior business surveillance videos; Body Worn Camera (BWC) recordings; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of APD officers or personnel, specifically Officers Jun and Wolfe. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial related 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, neighborhood canvass, crime scene processing, evidence collection, vehicle processing, 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 officer-involved shootings and custodial death cases to determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising the Special Prosecutions Unit, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. 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 officers. In separate interviews, Officers Jun and Wolfe provided voluntary statements to the OCDA on July 7, 2016.

FACTUAL SUMMARY

On Saturday, July 2, 2016, at approximately 9:15 a.m., APD received a 911 call from Jane Doe. Doe reported that her mother had been followed home by an unknown male, who was currently pacing back and forth in front of their home. Doe gave her address in the area of Broadway Street and Magnolia Avenue in Anaheim. Doe described the suspect as a male, in his late 20s, wearing black clothing, burgundy shoes, and carrying a blue duffle bag.

At that time, APD Officers Wolfe and Jun were on duty in a 2-man police vehicle and assigned to patrol. They drove in a marked, black and white police vehicle, equipped with a visible blue and red light bar on the roof, and with the words "Anaheim Police" written in large black letters on each side of the car. Both officers were dressed in dark blue police uniforms with visible badges, and each wore utility belts holding a Taser, police radio, and firearm. Each officer was also equipped with a BWC.

At the time of the incident, Officer Jun had been a sworn police officer for 18 years. He had received drug recognition training and was recognized as a narcotics expert. He received training in the carotid restraint technique approximately two months prior to the incident. Officer Wolfe had been an officer for more than eight years. He had also received training as a drug recognition expert and in the carotid restraint technique.

Officers Jun and Wolfe were dispatched to the area of Broadway Street and Magnolia Avenue to respond to Jane Doe's report of a suspicious male in the area. At approximately 9:20 a.m., Officers Jun and Wolfe saw Valenzuela standing on the corner of Broadway Street and Magnolia Avenue, less than 500 feet from Jane Doe's address. Valenzuela matched the description Jane Doe gave to the 911 dispatcher.

Officer Jun believed Valenzuela noticed them and described Valenzuela as "very focused," and looking straight forward. Officer Jun thought Valenzuela's behavior was significant because Valenzuela avoided eye contact with the officers and made a quick turn into the laundromat. Officer Wolfe said Valenzuela was walking very fast, with his head fixed, and purposefully avoiding looking at their police vehicle. Valenzuela made a 90-degree turn and entered the Coin Laundry located at 221 South Magnolia Avenue. In both officers' experience, that type of conduct is displayed by subjects who have

contraband or are preparing to flee. Officers Jun and Wolfe each activated their BWC, which captured the entirety of their interaction with Valenzuela.

The Coin Laundry maintained numerous interior video surveillance cameras, which showed Valenzuela's entry into the establishment. Valenzuela walked to a row of washing machines and started placing items in one of the machines. Officers Jun and Wolfe entered the Coin Laundry and walked toward Valenzuela. When the officers approached, they heard the sound of glass breaking. Both officers recognized the sound as the breaking of a glass narcotics pipe. Possession of narcotics paraphernalia is a criminal law violation.

When the officers were 10 feet away, Valenzuela did not acknowledge their presence. Officer Wolfe said, "Howdy," and asked Valenzuela if everything was alright. Valenzuela responded and said he was good and just trying to wash his clothes. Officer Wolfe saw blood on Valenzuela's hand and glass on the washing machine and asked, "You break a pipe or something?" Valenzuela did not answer, but grabbed items from his duffel bag at his feet and put them into the washing machine. Officer Jun noticed Valenzuela was sweaty although the weather was not hot. The officers were also aware that the Coin Laundry is next to Maxwell Park, known for its narcotic activity.

Officer Wolfe saw a screwdriver in Valenzuela's bag and was concerned it could be used as a weapon, and was also afraid there could be additional weapons in the bag. Officer Wolfe said two times, "Stop, put your hands behind your back." Valenzuela stepped away from the washing machine and started walking away. Officer Wolfe reached for Valenzuela's right arm and again ordered him to stop. Officer Jun saw Valenzuela was stiff and tense, which, based on his training and experience, indicated Valenzuela might flee. Valenzuela asked what Officer Wolfe was doing. Officer Wolfe ordered him to stop and get on the ground. Valenzuela ignored Officer Wolfe's orders and started struggling with the officer. Officer Wolfe was unable to handcuff Valenzuela or determine if Valenzuela carried a weapon or contraband on his person.

The officers struggled to maneuver Valenzuela to the ground because he was resisting and weighed significantly more than the officers. Valenzuela was on his stomach and Officer Jun was on Valenzuela's back. Officer Jun placed his right arm around Valenzuela's neck in an attempt to use the carotid restraint technique. Officer Jun chose this method because he could not access other options, like his Taser or baton, and he believed it was the fastest way to gain compliance. Valenzuela moaned, kicked, and used his hand to try and dislodge Officer Jun's arm. At the same time, Officer Wolfe tried with both hands to bend Valenzuela's arm. Officer Wolfe repeatedly ordered Valenzuela, "Relax your arm, stop fighting us." Valenzuela continued to resist and continuously moved his arms and legs in an attempt to break free. Officer Wolfe again told Valenzuela, "Stop fighting and get on your stomach." Valenzuela told the officers to stop and he could not breathe, but continued to resist. Officer Jun began to lose his grip and was afraid Valenzuela would escape or fight.

Officer Jun asked Officer Wolfe to tase Valenzuela. In response, Valenzuela began screaming and kicking his legs. Valenzuela asked the officers to stop and broke free from Officer Jun. Officer Wolfe drew his Taser and ordered Valenzuela to place his hands behind his back. Valenzuela did not comply and Officer Wolfe fired the Taser hitting Valenzuela twice, and both times failed to immobilize Valenzuela as intended. Valenzuela kept struggling and fled towards the front entrance of the Coin Laundry. In response, Officer Wolfe grabbed the back of Valenzuela's shirt, but Valenzuela maneuvered out of his shirt and kept running. Officer Wolfe held Valenzuela by the back of his boxer shorts and Officer Jun fired his Taser at Valenzuela. Officer Wolfe felt the effects of the Taser and lost his grip on Valenzuela. Officer Jun realized the Taser was unsuccessful and used it a second time. Valenzuela tried to grab the Taser. Valenzuela stood up and ran into the parking lot. The officers then followed Valenzuela into the parking lot and struggled to detain him.

Outside the Coin Laundry, Officer Jun stunned Valenzuela on his left shoulder with the Taser. Valenzuela then fell onto his back in the parking lot, flailing his arms and legs. Valenzuela kicked Officer Wolfe square in the chest, causing Officer Wolfe to fall back. Valenzuela stood up and Officer Jun kicked him and told him to get on the ground. Valenzuela ignored Officer Jun's commands and fled across Magnolia Avenue.

Both Officers Jun and Wolfe expressed the opinion that Valenzuela's behavior and unusual strength indicated that he was under the influence of a narcotic. Officer Jun was close to Valenzuela's face during the struggle and said Valenzuela's breath smelled like methamphetamine. Both officers were also concerned about the circumstances of the original 911 call and the safety of the civilians in the area.

Numerous civilians were interviewed and consistently stated that Valenzuela physically resisted the officers and refused to comply with their commands. They described Valenzuela as appearing to be strong, aggravated, and under the influence. Numerous witnesses expressed fear for the officers because Valenzuela looked enraged and appeared as if he was going to go after the officers, or do whatever he needed to do to get away.

The officers followed Valenzuela across the street. Officer Jun arrived first and kicked Valenzuela's foot to get Valenzuela on the ground. Valenzuela rolled and landed on his feet. Valenzuela faced Officer Jun with his hands slightly raised in the air, in what Officer Jun believed was an aggressive manner. Officer Jun tried to push Valenzuela on his back and Valenzuela pushed back. Officer Wolfe arrived and ordered Valenzuela to get on the ground. Valenzuela yelled, "Please, no," and "Stop, please," while simultaneously walking backwards. Officer Wolfe hit Valenzuela across the legs with his baton, with no visible effect on Valenzuela. Valenzuela did not get on the ground and Officer Wolfe struck him again. Valenzuela did not get on the ground, and he ran toward the 7-Eleven and tripped over a bush, falling to the ground. Officer Wolfe got on top of Valenzuela's back and Officer Jun grabbed Valenzuela's right arm to apply a wristlock. While Officers Wolfe and Jun were attempting to detain and handcuff Valenzuela, Valenzuela continued to resist and tried to break free from the officers' control. Valenzuela grabbed Officer Wolfe's finger and twisted it, tearing Officer Wolfe's glove.

At approximately 9:27 a.m., APD Sergeant Daniel Gonzalez arrived at the scene and saw Officer Wolfe attempting the carotid artery technique and Officer Jun trying to gain control of Valenzuela's arm. Sergeant Gonzalez said both officers looked exhausted. Valenzuela was still actively resisting and outweighed each officer by 60 pounds. Sergeant Gonzalez repeatedly ordered Valenzuela to stop resisting and supervised Officer Wolfe's application of the carotid artery technique. Sergeant Gonzalez gained control of Valenzuela's right arm while Officer Jun maintained control of Valenzuela's left arm. Sergeant Gonzalez indicated that use of the carotid artery restraint technique is approved by the APD when a subject is physically resisting, and he did not think the use of that technique was excessive because all other options had been attempted without success. Sergeant Gonzalez advised Officer Wolfe to continue because Valenzuela was still fighting. Sergeant Gonzalez gave Officer Wolfe instruction on how to properly administer the carotid artery technique. Officer Wolfe said he was able to get into position and squeezed Valenzuela for approximately 15 to 20 seconds until he heard Valenzuela snore. Officer Wolfe released pressure on Valenzuela after being on top of Valenzuela for less than two minutes. Valenzuela was actively resisting during that entire period of time, and it appeared that Officer Wolfe was in position for approximately 80 seconds until Valenzuela was handcuffed.

Because of Valenzuela's size, officers used two pairs of handcuffs to restrain him while Officer Wolfe was still on Valenzuela's back. After Valenzuela was handcuffed, he was rolled to his side. Valenzuela was not responsive to a sternum rub. Sergeant Gonzalez assessed Valenzuela's condition and immediately ordered CPR, chest compressions and an air bag. Anaheim Fire Department (AFD) personnel arrived at the scene, continued resuscitation efforts and transported Valenzuela to the Western Anaheim Medical center (WAMC). At the hospital, Valenzuela suffered three cardiac arrests and was successfully resuscitated each time. Blood tests at the hospital were positive for amphetamines and cannabinoids. On July 10, 2016, Valenzuela was deemed to be clinically brain dead, likely due to an irreversible hypoxic brain injury. Valenzuela was removed from life support, and he was pronounced deceased.

From the initial contact between the officers and Valenzuela, to the time Valenzuela was handcuffed, was approximately six minutes and five seconds.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- BWC from all responding officers
- Two Tasers, Model X26 (from Officers Jun and Wolfe)
- Two Taser wires
- Three Taser wires with attached Taser probes
- One glass smoking device and one broken piece of glass
- Green leafy substance
- Apparent blood
- Adidas duffle bag
- Visa credit card belonging to an unknown female

TASER ANALYSIS

The OCCL downloaded data from Officers Jun and Wolfe's Tasers on July 2, 2016, during the incident with Valenzuela. The review of the data indicates that Officer Jun deployed his Taser three times: twice for six seconds, once for five seconds. The data also shows that Officer Wolfe deployed his Taser twice, both times for five seconds.

Taser Inc., manufacturer of the Taser X26, conducted a download and analysis and determined both Tasers were operating within published electrical specifications.

DNA ANALYSIS

The four Taser probes discharged during the incident were analyzed by the OCCL for the presence of DNA. No DNA was detected on the first probe. The remaining three probes contained Valenzuela's DNA.

AUTOPSY

On July 14, 2016, Forensic Pathologist Dr. Aruna Singhania of Orange County Coroner's Office conducted an autopsy on the body of Valenzuela. Dr. Singhania concluded that the cause of Valenzuela's death was complications of asphyxia while under the influence of methamphetamine.

TOXICOLOGY

Samples of Valenzuela's blood and urine were obtained and analyzed, testing positive for amphetamine, methamphetamine and cannabinoids.

BACKGROUND INFORMATION

Valenzuela's criminal history dates back to 2003 and is as follows:

- Health and Safety Code section 11350(a) - Possession of a Controlled Substance
- Health and Safety Code section 11377(a) – Possession of a Controlled Substance
- Health and Safety Code section 11364 – Possession of Controlled Substance Paraphernalia
- Health and Safety Code section 11550(a) - Under the Influence of a Controlled Substance
- California Penal Code section - 148(a)(1) - Resisting Arrest or Obstructing a Police Officer
- California Penal Code section - 148.9(a) - False Identification to a Police Office
- California Penal Code section - 237A(b) - Willful Cruelty to a Child
- California Penal Code section - 273.5(a) - Corporal Injury on a Spouse/Cohabitant
- California Penal Code section - 243(e)(1) - Domestic Battery
- California Penal Code section - 242 - Battery
- California Penal Code section - 273.6(a) - Violation of a Restraining Order
- California Penal Code section - 459-460(b) - Second Degree Burglary

- California Penal Code section - 466 - Possession of Burglary Tools
- California Penal Code section - 470 (d) - False Checks/Records/Certificates/Etc.
- California Penal Code section - 485 - Appropriation of Lost Property
- California Penal Code section - 488 - Petty Theft
- California Penal Code section - 496(a) - Receiving Stolen Property
- California Penal Code section - 496(d)- Attempt to Receive Stolen Property
- California Penal Code section - 530.5(a) - Identity Theft- Credit
- California Vehicle Code section 23152(e) - Driving Under the Influence of Drugs
- California Vehicle Code section 31 - False Statements/Information to a Peace/Police Officer
- California Vehicle Code section 10853 – Malicious Mischief to a Vehicle
- California Vehicle Code section 14601.1(a) - Driving With a Suspended License
- Business and Professions Code section 4060 – Possession of a Controlled Substance without Prescription
- Failures to appear and violations of probation

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. In this case, the OCDA is prepared to release to the public the video showing the interactions between the APD officers and Valenzuela. However, since there is currently a valid protective order issued by a Federal Judge concerning the public disclosure of the video in question, the OCDA is going to give deference to this order and not release the video at this time.

THE LAW

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.

Furthermore, the law as detailed in CALCRIM 3470 and in well-settled case law, 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.)

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force 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.)

As Valenzuela died while in law enforcement custody, the law of homicide applies. 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 beyond a reasonable doubt:

- 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 acted he knew his 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 custodian and inmate:

"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/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 United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interaction of APD Officers Jun and Wolfe with Valenzuela.

LEGAL ANALYSIS

The issue in this case is whether the conduct of Officers Jun and Wolfe, on July 2, 2016, was criminally culpable and without justification. In order to charge Officer Jun or Officer Wolfe with a crime, it is required that the prosecution have the good faith belief in the ability to prove, beyond a reasonable doubt, all elements of one of the aforementioned law violations, and that no legal justification existed for the police officer's conduct.

Shortly after Valenzuela's initial contact with Officers Jun and Wolfe, Valenzuela was detained and placed under arrest by officers of APD. Using the applicable "objective reasonableness" standard, the officers clearly used reasonable force to attempt to effectuate the arrest, and Valenzuela had a duty to comply. There is no evidence of express or implied malice on the part of either officer. 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 negligence, since the death occurred while Valenzuela was in APD's custody.

At approximately 9:15 a.m., Officers Jun and Wolfe were dispatched to respond to a 911 call regarding an unknown male who followed the caller's mother and was pacing outside her home. Officers Jun and Wolfe saw a man matching the description, later identified as Valenzuela, walking on the sidewalk less than 500 feet from the caller's house. Valenzuela was walking very fast and purposefully avoiding acknowledgment of their presence. The officers became increasingly suspicious when Valenzuela made an abrupt, 90-degree turn into the Coin Laundry, because that behavior was consistent with someone who was going to flee or attempt to hide contraband.

The officers followed Valenzuela into the Coin Laundry and heard the sound of breaking glass, which they recognized as that of a narcotics pipe breaking. They noticed blood on Valenzuela's hand and that he appeared to be under the influence. Officer Wolfe greeted Valenzuela and asked if he broke a pipe. Valenzuela reached into his duffel bag numerous times. Officer Wolfe saw a screwdriver handle and was concerned it could be used as a weapon, or the bag might contain other dangerous items or contraband. Officer Wolfe repeatedly told Valenzuela to stop, and Valenzuela ignored Officer Wolfe's commands and reached into the duffel bag. Officer Wolfe told Valenzuela twice to put his hands behind his back. Valenzuela did not comply, but kept moving. Officer Wolfe tried to put Valenzuela's hands behind his back and Valenzuela continued to resist. These circumstances clearly provide the officers with the needed reasonable probable cause to detain and arrest Valenzuela.

The officers told Valenzuela numerous times to get on the ground and stop fighting. The officers did get Valenzuela to the ground, where Officer Jun attempted the carotid artery technique, with no success. Valenzuela kept resisting and pinned Officer Jun against a washing machine. Officer Jun told Valenzuela he was under arrest but Valenzuela continued to

physically and violently resist the officers. Both officers realized Valenzuela was abnormally strong and Officer Jun smelled methamphetamine on Valenzuela's breath, confirming their suspicions that Valenzuela was under the influence of a controlled substance. Being in possession of a narcotics pipe and being under the influence of narcotics are both criminal law violations and both officers continued with their lawful attempts to arrest Valenzuela.

Because Valenzuela ignored the officers' verbal commands and physical attempts to handcuff him, Officer Wolfe used his Taser on Valenzuela twice, with no effect. Valenzuela attempted to run out of the Coin Laundry, and twisted out of his shirt, which was being held by Officer Wolfe. Officer Jun used his Taser on Valenzuela twice, and that also failed to immobilize him. Valenzuela exited the Coin Laundry and was tased a third time by Officer Jun. Valenzuela was on the ground and kicked Officer Wolfe in the chest, causing him to fly back. Valenzuela's continued physical resistance provided further legal justifications for all the officers' subsequent actions. Valenzuela got up and Officer Jun kicked Valenzuela and told him to get on the ground, but Valenzuela refused to comply and fled across Magnolia Avenue. Both officers followed and Officer Jun was able to trip Valenzuela. Valenzuela recovered and faced Officer Jun in an aggressive stance. Officer Jun pushed Valenzuela, and Valenzuela pushed back and again refused the officers' commands to get on the ground. Officer Wolfe struck Valenzuela twice with a baton, and that failed to deter Valenzuela, who ran toward the 7-11 store. All these actions by the officers are clearly lawful and justified under the circumstances because police officers are allowed to use reasonable force to arrest a suspect who is fleeing and assaulting the officers.

Both officers were afraid Valenzuela might harm the civilians in the area, and both officers believed, correctly, that they needed to stop him. When Valenzuela tripped over bushes and fell, Officer Wolfe got on top of Valenzuela and attempted to restrain him. Officer Jun grabbed one arm to further assist in trying to detain and restrain Valenzuela. Sergeant Gonzalez then arrived and saw Valenzuela still actively resisting. Sergeant Gonzalez acted as a coach to Officer Wolfe, who was trying to get in position to apply the carotid artery restraint technique. Sergeant Gonzalez stated the application of that technique was appropriate and within department guidelines because of Valenzuela's physical resistance, and because all other efforts had been used without success. Sergeant Gonzalez also coached Officer Wolfe to make sure he was applying the technique in the proper manner. Once Valenzuela was subdued, officers used two sets of handcuffs to restrain him and immediately conducted resuscitation efforts.

Numerous civilians who saw the incident believed Valenzuela was under the influence, based upon his behavior and abnormal strength, and expressed fear for the officers' safety because Valenzuela was acting violently and repeatedly refused to obey the officers' commands. This is additional evidence showing that the officers acted appropriately in trying to control a suspect who was violent in resisting the officers' lawful commands

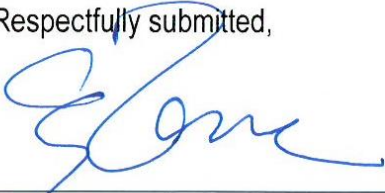
Although the APD officers owed arrestee Valenzuela a duty of care, the evidence does not support a finding that this duty was in any way breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). The APD officers did not intentionally fail to act, nor were they criminally negligent. As should be apparent from the above-described analysis, the prosecution would be unable to prove, beyond a reasonable doubt, that Officers Jun or Wolfe committed a crime while trying to arrest and restrain Valenzuela. A jury analyzing these facts would correctly conclude that Officers Jun and Wolfe did not commit a crime, but carried out their duties as peace officers in a reasonable and justifiable manner.

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 Officers Jun or Wolfe, or any APD personnel.

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

Respectfully submitted,



ERIN ROWE
Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **EBRAHIM BAYTIEH**
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