



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

March 29, 2019

Chief David Valentin
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Custodial Death on July 23, 2018
Fatal Incident involving Phillip Andrew Diaz, Jr.
District Attorney Case #SA 18-024
Santa Ana Police Department Case #18-17722
Orange County Crime Laboratory Case #18-50289
Orange County Coroner's Office Case #18-03364-NG

Dear Chief Valentin,

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 the July 23, 2018, custodial death of 47-year-old Phillip Andrew Diaz, Jr.

OVERVIEW

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

On July 23, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to South Coast Global Hospital, where Diaz died while in custody after receiving medical treatment. During the course of this investigation, the OCDASAU interviewed 11 witnesses, as well as obtained and reviewed reports from the SAPD and Orange County Crime Laboratory (OCCL), incident scene photographs, Body Worn Camera 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 SAPD personnel or any other person under the supervision of the SAPD. 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 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.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

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 Felony Operations II 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, their supervisors, 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. SAPD Officers Isaac Buan, Kelvin Catlin, and Daniel Park all provided voluntary statements.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes 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 the video/audio evidence in connection with this case to the public. The relevant video/audio evidence is available on the OCDA webpage at <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTS

At the time of the incident, Diaz was a 47-year-old male residing in the city of Santa Ana with a history of drug abuse, diabetes, and a heart condition. According to his father, Diaz had been using methamphetamine prior to his death.

On Monday, July 23, 2018, at approximately 10:52 a.m., SAPD received a call that two males were fighting inside an apartment unit at 3400 block of South Plaza Drive in Santa Ana. Two officers were dispatched to the location. Officer Buan arrived on the scene first, at approximately 11:02 a.m., and parked south of the unit. Officer Buan stood in the parking lot below the south facing window of the unit and heard yelling coming from inside the apartment. Officer Catlin arrived at approximately 11:04 a.m., and both he and Officer Buan saw a male, wearing a white t-shirt, slam against the east-facing window of the unit.

Both officers entered the locked, gated apartment courtyard after a maintenance worker let them in. The officers approached the bottom of the outdoor stairs and stood beneath the unit. Upon hearing screaming coming from inside the apartment unit, Officer Buan asked for additional units to assist with the call. Officer Buan called up to unit B, saying, "It's the SAPD, come out, we just want to talk to you." Approximately 20 seconds later, Diaz exited the front door of the apartment unit. Diaz was drenched in perspiration, wore a white t-shirt, no underwear, and had his pants down around his ankles. Officer Buan said, "Hey bud, come out here."

Diaz quickly descended the apartment stairs. He had a clenched jaw, rigid muscle tone, wide eyes, and was profusely sweating as he attempted to run past the officers. Diaz's speech was incoherent and his movements were rapid. Given his behavior, the officers believed Diaz was under the influence of a stimulant. Officer Catlin received narcotics training in the academy, as well as a specialized course, where he learned to recognize symptoms of narcotics use. Officer Catlin stated that Diaz displayed the common symptoms of rigid muscles, bruxism, and highly active perspiration as he came down the stairs. Officers Buan and Catlin grabbed Diaz by the arms and shoulders to stabilize him, and repeatedly told him to relax.

While detaining him, Officer Buan recognized Diaz from a previous incident of battery on Diaz's father approximately one week prior. Diaz refused to comply and aggressively resisted the officers' attempts to restrain him. Because Diaz continued to struggle and shout unintelligibly, the officers took hold of Diaz's upper body and laid him on the grass, to handcuff him in a controlled manner. According to Officer Buan, they chose to take Diaz to the ground so that they could control him, then check the interior of the apartment for other involved or injured persons. Upon handcuffing Diaz, the paramedics were called.

Officer Park arrived on scene shortly after. Diaz was still screaming and kicking, so Officer Park helped the officers by taking hold of Diaz's legs. Officer Park stated Diaz was fairly strong and continued to resist all three officers. After securing Diaz on the ground, Officer Buan stood up with the intent to check the apartment unit, but Diaz began resisting again. Officer Buan was unable to check the apartment unit and stayed on the ground with the other officers to control Diaz.

Diaz continued to struggle and scream, "Let me out." Officer Catlin placed his right shin on Diaz's back and Officer Buan placed his right shin on Diaz's buttocks to control his movements. The officers repeatedly told Diaz, "You're all right, calm down," and reassured him that paramedics were on their way. Diaz continued to be noncompliant and actively resisted their attempts to control him. Witnesses in the surrounding area stated that they did not see the officers use any other force or weapons to control Diaz, and they acted appropriately.

Approximately two and a half minutes after Diaz came out of the apartment, Diaz was alert and screaming, with his head up and eyes open. The officers asked Diaz's name. Diaz yelled his first and last name in response. Approximately 30 seconds later, the officers then asked who else was in the apartment. Diaz screamed, then moaned at a lower volume and stopped resisting. Within 30 seconds, at approximately 11:09 a.m., Officer Catlin patted Diaz on the back and called his name, but Diaz failed to respond. After approximately 10 seconds, Officer Catlin called Diaz's name again, but Diaz was unresponsive. Officers Buan and Catlin were unable to locate a radial pulse. They rolled Diaz on his side and were unable to find a carotid pulse, at which point Officer Buan initiated chest compressions. Simultaneously, Officer Catlin ran to his car and retrieved a first aid kit that contained Narcan, which is a nasal spray used for the treatment of an opioid emergency or possible opioid overdose. Officer Catlin administered one dose of intranasal Narcan to Diaz, without effect. Officer Buan continued chest compressions until the paramedics arrived at 11:11 a.m.

The paramedics confirmed that Diaz had no pulse or respirations. The paramedics continued CPR and placed Diaz on a cardiac monitor, which showed that he was in cardiac arrest. They administered epinephrine and transported Diaz to South Coast Global Hospital in Santa Ana at approximately 11:26 a.m. At approximately 11:34 a.m., Diaz arrived at the hospital and Advanced Cardiac Life Support (ACLS) protocols were continued. The medical staff was unable to revive Diaz and he was declared deceased at 11:49 a.m.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- 21 photographs of the crime scene
- Pair of blue "Dickies" trousers
- Two Narcan (4mg) nasal spray devices (one used spray and one unused spray)

AUTOPSY

On July 25, 2018, Forensic Pathologist Dr. Yong-son Kim with the Orange County Coroner's Office, conducted an autopsy of the body of Phillip Andrew Diaz, Jr. During the autopsy, Dr. Kim found no evidence of internal trauma or hemorrhage, but did note severe swelling of the brain, which is consistent with a drug overdose. The autopsy of Diaz revealed he had a fatty liver and mild coronary artery disease. Dr. Kim determined the cause of death to be acute polydrug intoxication as a result of combined effects of amphetamine and methamphetamine, and the manner of Diaz's death to be an accident.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Diaz's postmortem blood and brain were examined for the presence of drugs and alcohol. The sample yielded the following results:

DRUG	Postmortem Blood	Brain
Amphetamine	0.115 ± 0.009 mg/L	0.292 ± 0.022 mg/L
Methamphetamine	3.29 ± 0.24 mg/L	7.98 ± 0.57 mg/L

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.' 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.

LEGAL ANALYSIS

There is no evidence whatsoever in the present case of express or implied malice on the part of any SAPD personnel or other individuals under the supervision of the SAPD. 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 SAPD Officers owed Diaz 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 SAPD's contact with Diaz, from initial observation to resuscitation efforts, was approximately three minutes. When Officers Buan and Catlin initially approached, they saw a male in a white t-shirt slammed against a second story apartment window. They called out for the occupant and asked him to come out and talk to them. Diaz exited the apartment, and based on his appearance and behavior, it was apparent to the officers that he was under the influence of narcotics, which was subsequently confirmed by toxicological tests. Diaz tried to run past the officers, but they detained him to address his condition and determine what occurred in the apartment. Diaz continued to yell and resist the officers' repeated attempts to calm him down. The officers were concerned that there might be victims in the apartment, but could not check because both officers were needed to maintain control over Diaz. Because Diaz would not comply, the officers determined they needed to lay him on the grass to handcuff him. They did so by taking hold of Diaz's upper body in a controlled take-down. This conduct by the officers was completely reasonable under the circumstances.

Witnesses stated that the officers responded to Diaz with the necessary amount of force and acted appropriately. Despite Diaz's shouting and struggling, the officers repeatedly told Diaz to relax using calm voices, asked his name, and let him know that paramedics had been called. When Diaz stopped resisting, the officers tried communicating with him within 30 seconds. When he was nonresponsive, they promptly checked for a pulse and respirations and began life-saving measures. The paramedics arrived approximately two minutes later and took over Diaz's medical care. Diaz was transported to the hospital, where lifesaving efforts were continued for approximately 20 minutes before Diaz was declared deceased. The coroner determined that Diaz's death was the result of complications due to an acute polydrug intoxication and the combined effects of amphetamine and methamphetamine.

Thus, there is no evidence whatsoever to support a finding that any SAPD personnel, or any individual under the supervision of the SAPD failed to perform a legal duty. To the contrary, the SAPD officers treated Diaz with composure and respect, and handled his sudden medical emergency with efficiency and professionalism.

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 SAPD personnel or any individual under the supervision of the SAPD. The evidence shows that Diaz died as a result of complications of polydrug intoxication and the combined effects of amphetamine and methamphetamine.

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**
Senior Assistant District Attorney
Felony Operations II