



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

June 3, 2019

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

Re: Custodial Death on July 26, 2018
Death of Inmate Ray Anthony Cruz
District Attorney Investigations Case # S.A. 18-025
Orange County Sheriff's Department Case # 18-28305
Orange County Crime Laboratory Case # 18-50549

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 July 26, 2018, custodial death of 64-year-old inmate Ray Anthony Cruz.

OVERVIEW

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

On July 26, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Global Medical Center (OCGMC), where Cruz died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed two 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. 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 who are 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, as well as 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 over 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, their supervisors, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On July 10, 2018, at approximately 5:23 p.m., Cruz was arrested by the Garden Grove Police Department (GGPD) for Corporal Injury of a Spouse, Kidnapping, and False Imprisonment. On July 11, 2018, at approximately 3:30 a.m., Cruz was booked into the Orange County Men's Jail (OCMJ) and housed in Module A, Tank 5, Bunk 62.

On July 15, 2018, at approximately 4:45 p.m., Cruz contacted OCSD Deputy Daniel Thomas and told Deputy Thomas that he was experiencing chest pains. Cruz stated that the chest pains had been occurring for approximately four hours and had moved from his chest down his arm. Cruz was coughing, holding his chest, and experiencing difficulty breathing and speaking. Cruz alerted Deputy Thomas that he was a diabetic and had a history of heart complications. Deputy Thomas immediately brought Cruz up to the Medical Dispensary on the second floor of the OCMJ for an evaluation. The nurse on duty determined that Cruz needed to go to the hospital and requested paramedics be called. Cruz was given 0.4/mg of nitroglycerin and 320/mg of Aspirin by the nurse prior to Orange County Fire Authority (OCFA) arriving.

At approximately 5:00 p.m., OCFA personnel arrived at the OCMJ Medical Dispensary and made contact with Cruz. Cruz was conscious and able to answer all questions. OCFA placed an Electrocardiogram (ECG) on Cruz and confirmed that Cruz was having a heart attack. Cruz was given another 0.4/mg dose of nitroglycerin and OCFA left OCMJ to transport Cruz to OCGMC at approximately 5:14 p.m. At approximately 5:31 p.m., Cruz arrived at OCGMC and was released into the care of emergency room personnel. Cruz was admitted with acute myocardial infarction and subsequently diagnosed with an anterior wall myocardial infarction. Cruz was taken to the Cath Lab where a stent was placed in his left anterior descending artery. Cruz appeared to be recovering better than expected from the surgery.

However, on July 16, 2018, his health began to deteriorate. An Echo Cardiogram revealed a Post-Myocardial Infarction Ventricular Septal defect. The attending Thoracic Surgeon performed surgery in an attempt to repair the defect and Cruz was placed on a heart-lung machine. After the surgery, Cruz responded well and his vital signs all appeared to be improving. However, because of the trauma of the multiple heart complications, Cruz was in pulmonary and renal failure. Despite the surgery, Cruz's health continued to deteriorate over the next several days.

On July 22, 2018, the attending surgeon informed Cruz' wife, Jane Doe, that further medical intervention was futile and that Cruz's condition was terminal. Doe agreed to remove Cruz from life support. However, due to Doe being the victim in Cruz's Domestic Violence arrest, OCGMC was reluctant to honor Doe's wishes. On July 26, 2018, at approximately 11:00 a.m., the attending surgeon met with Cruz' family. Cruz' family was informed that Cruz' condition was terminal. The family agreed and requested Cruz be removed from life support. At approximately 12:24 p.m., Cruz was removed from life support. At approximately 12:39 p.m., Cruz was pronounced deceased.

AUTOPSY

On July 28, 2018, independent Forensic Pathologist Dr. Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Cruz. Dr. Luzi concluded that Cruz's manner of death was natural, and his cause of death was myocardial heart infarctions due to hypertensive and atherosclerotic cardiovascular disease.

BACKGROUND INFORMATION

Cruz had a State of California Criminal History record that revealed arrests dating back to 1968 for the following violations:

- Burglary
- Take Vehicle without Consent
- Assault with a Deadly Weapon
- Grand Theft – Auto
- Assault and Battery and Drunk Driving
- Receive Stolen Property and Robbery
- Obstruct/Resist a Police Officer
- Inflict Corporal Injury on Spouse
- Provide False Identification to a Peace Officer
- Insufficient Funds – Check
- Criminal Threats
- Disobey Court Order and Disorderly Conduct
- Under the Influence of a Controlled Substance
- Prevent/Dissuade Witness
- Communicate with Prisoner without Consent
- Trespassing and Probation Violation

THE LAW

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

- a. The person committed an act that caused the death of another human being;
- 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 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/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

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

Although the OCSD owed Cruz 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). After Cruz informed Deputy Thomas of his medical complications, Deputy Thomas reacted quickly to get Cruz the medical attention Cruz required. OCSD personnel and other individuals under the supervision of the OCSD provided Cruz with immediate and diligent medical attention.

Deputy Thomas immediately escorted Cruz to the Medical Dispensary to be evaluated by the nurse on staff at approximately 4:45 p.m. on July 15, 2018. After the nurse on staff evaluated Cruz’s medical needs, the OCFA were called to transport Cruz to the OCGMC. During the time that OCMJ’s staff were waiting for Cruz to be transported, Cruz was given a dose of nitroglycerin and Aspirin.

At approximately 5:10 p.m., Cruz was transported after being evaluated by OCFA staff to OCGMC. Once at OCGMC, medical staff performed two heart surgeries to save Cruz’s life. However, Cruz succumbed to his heart complications despite the lifesaving efforts deployed by the OCSD and OCGMC staff. Thus, there is no evidence whatsoever to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty. On the contrary, all the evidence supports the conclusion that OCSD acted reasonably and appropriately in handling Cruz’s medical condition.

CONCLUSION

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

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

Respectfully submitted,



DAVID PORTER
Senior Deputy District Attorney
TARGET/GANGS Unit



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