



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

September 4, 2019

Chief Jorge Cisneros  
Anaheim Police Department  
425 South Harbor  
Anaheim, CA 92805

Re: Custodial Death on October 27, 2018  
Death of Inmate Justin Bryan Perkins  
District Attorney Investigations Case # S.A. 18-034  
Anaheim Police Department Case # 18-166431  
Orange County Crime Laboratory Case # 18-55269

Dear Chief Cisneros,

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 October 31, 2018 custodial death of 38-year-old arrestee Justin Perkins.

**OVERVIEW**

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

On October 27, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to 300 South Brookhurst Street in Anaheim, CA. Justin Perkins died while in custody after receiving medical treatment at West Anaheim Medical Center. During the course of this investigation, the OCDASA conducted fifteen interviews and seventeen canvas interviews, as well as obtained and reviewed reports from the APD and Orange County Crime Laboratory (OCCL), incident scene photographs, video and audio from Body Worn Cameras (BWC), 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 APD personnel or any other person under the supervision of the APD. The OCDA will not be addressing any possible issues dealing with policy, training, tactics, or civil liability.

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## INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial deaths within Orange County when an individual dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units.

Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors and their supervisors. The District Attorney reviews all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer Lee gave a voluntary statement to OCDA Investigators on December 5, 2018. Officer Wang Lee gave a voluntary statement to OCDA Investigators on December 5, 2018.

## FACTS

On Saturday, October 27, 2018, John Doe 1 began his shift as a maintenance worker around 8:00 am at Madison Park Apartments, located at 2235 West Broadway in Anaheim, California. As John Doe 1 walked out of the management office towards Building "A," he noticed Perkins standing alone making gestures and talking to himself. Based on Perkins' behavior, John Doe 1 assumed that Perkins was "probably on something." John Doe 1 looked down to check the day's work orders on his phone and, when he looked back up, he saw Perkins standing right in front of him. Before John Doe 1 could react, Perkins punched John Doe 1 in the forehead with a closed fist. John Doe 1 described how Perkins then walked away "like nothing happened." John Doe 1 followed Perkins from a distance to the area of building "A" and building "F" where he eventually lost sight of him. John Doe 1 went back to the management office to relay the incident that had just occurred with Perkins. He provided the employees in the management office with a description of Perkins, and the employees knew him to be a frequent "unauthorized occupant" of apartment A115, who usually lived with Perkins' father and uncle in that unit. Around 8:40 am, Jane Doe 1 called APD on John Doe 1's behalf to report the assault and battery incident.

APD Officers Kenny Lee and Shiao Wang were subsequently dispatched to the call. Officers Lee and Wang were both equipped with, and enabled, their Body Worn Cameras (BWC). When the officers arrived at the location, they were met by Jane Doe 1, who told them that one of her workers had been punched in the face. John Doe 1 arrived to provide a statement to the officers, and relayed the circumstances of the assault and battery. He had redness in the area upon which he had been punched on his forehead, and told officers that he desired prosecution. After speaking with John Doe 1, Officers Lee and Wang went to apartment A115.

When the officers knocked on the door of the apartment, Justin Perkins answered and opened the door partway. The officers could see that he matched the description given by John Doe 1, and Perkins immediately started talking about an altercation in which he had been involved that morning. The officers requested Perkins' ID, which he provided, and asked for details regarding the altercation he had initially referenced. Perkins began saying things that were unrelated to the investigation, and appeared to be talking to someone who was not there. The officers then asked Perkins whether he was taking any medications, and Perkins responded that he was taking Depakote and Zyprexa. Throughout the interaction, Perkins never fully opened the door and, at times, remained partially behind the door. He also continually placed his hands in his pockets

and was putting his right hand on or behind the door. When Officer Wang told Perkins that he wanted to check to see if he had any weapons on him, Perkins backed up and began shutting the door on the officers. Officer Wang put his hand out to prevent the door from being shut completely, and asked Perkins to call his dad out for them. Perkins suddenly stated, "fight, fight who?" Officer Wang then asked Perkins what he was talking about and to whom he was talking. Perkins said, "You want to fight? Please fight. You want to?" Officer Wang asked Perkins if he had taken any medication that morning, and Perkins responded in the affirmative. Officer Wang asked Perkins if he was "on meth," and Perkins replied, "no." Officer Wang asked if Perkins was taking any illegal drugs, and Perkins again replied, "no." Officer Wang then said, "you need to open the door for me," and at that moment, Perkins swung the door open and lunged at Officer Wang, striking Officer Wang with his fist.

Officer Lee's BWC recording shows Perkins lunging out of the doorway swinging towards Officer Wang. Officer Wang moves to the side and immediately deploys his Taser, which did not appear to have an effect on Perkins. Perkins then engaged Officer Lee and initiated a fight with him. Officer Lee's BWC became covered as the fight ensued and fell to the floor. Officer Lee stated that he was trying to take Perkins down to the ground, but was struggling to do so because Perkins was much bigger and stronger. Officer Lee attempted to reposition himself to do a carotid restraint with his right arm. As he tried to position his right arm, he felt a "burning sensation and a large amount of pain coming from [his] right arm." Officer Lee stated that he then punched Perkins on his head "several times" to stop Perkins from hurting him. Officer Lee was eventually able to break free, and noticed at first glance that it appeared as though Perkins "had bit [his] complete pinkie off," and the area was bleeding profusely. At this point, Officer Lee in his mind believed that the scenario had changed from conducting an investigation to fighting for his life, due to the extent of his bleeding. Officer Lee stated that he was in shock and was not sure how long he would last in the fight, especially in light of the injury to his right hand.

BWC footage captured Perkins yelling expletives and a racial slur as he was engaging both officers in the fight. Perkins placed Officer Lee into a headlock, and Officer Wang believed that Perkins may choke or break Officer Lee's neck. Officer Lee used his free hand to hit Perkins several times on his torso with the baton, and Officer Wang stated that he punched Perkins approximately four times in an attempt to get him to release Officer Lee. Once Officer Lee broke free, Perkins again directed his attention towards Officer Wang. This time Officer Lee deployed his Taser, which made contact with Perkins' back but did not seem to have any effect on Perkins. Perkins then turned back around and charged towards Officer Lee. Officer Lee grabbed his baton and swung it at Perkins' body, but to no effect. Perkins again charged and came swinging at Officer Wang, and at this point Officer Wang became "more concerned, and frightened, because nothing [he] did and Officer Lee did was stopping [Perkins]." Officer Wang further stated that it seemed as if Perkins had superhuman power. Officer Wang indicated that it was the most scared he has been in his life. Officer Wang stated that he contemplated using deadly force, but was concerned that he may strike Officer Lee if he fired toward Perkins, or that Perkins would be able to overpower him and gain control of his firearm. As Perkins again charged towards him, Officer Wang swung his baton at Perkins' head to try and stop him, but it was again ineffective.

During this time, Perkins' uncle, John Doe 2, had been inside the apartment but heard the commotion coming from the hallway and came out to see what was happening. John Doe 2 stated that he exited the apartment and saw Perkins "wrestling" with the officers. The BWC recording captured John Doe 2 yelling to Perkins, "knock it off! Justin!" John Doe 2 stated that he tried to get Perkins to calm down and told Perkins to let the officers do their job. The fight continued outside of the hallway's east entrance and next to the stairs. Perkins finally fell to the ground, where Officer Wang attempted to apply a carotid restraint hold on Perkins. Officer Wang stated that he could feel Perkins grabbing for items on his gun belt, and feared Perkins was going to grab for his gun. Officer Wang continued to apply the carotid restraint until Perkins started snoring, at which point Officer Lee was finally able to get Perkins' hands behind his back in order to apply the handcuffs. Perkins was then released from the carotid hold by Officer Wang and placed in the recovery position. Officer Lee requested that paramedics respond.

APD Officers Edgar and Reynoso arrived on scene soon after Perkins was handcuffed, and relieved Officers Lee and Wang. Officer Reynoso performed a sternum rub on Perkins to arouse him. Once aroused, Perkins was able to sit up and independently opened his eyes and moved his head and legs. Officer Edgar noted that Perkins was "rigid, tense, [and] sweating profusely." Perkins was placed into a recovery position by the officers and they began asking Perkins his name,

date of birth, where he lived, and whether he lived at the apartment complex. While Perkins was not responding to any of their initial questions, once Officer Edgar asked Perkins whether he was able to stand up, Perkins responded, "yeah." The officers then helped Perkins to his feet, but after walking several feet, Perkins began resisting the officers' attempts to walk him away from the area, and began reaching for and grabbing towards the officers' belt areas. The officers therefore placed Perkins on the ground again while they waited for paramedics. During this time, John Doe 2 continued to tell Perkins to relax, and had told officers that Perkins was not taking the medications he was supposed to take. Perkins was eventually laid on his stomach by the officers, but still continued to kick his legs around. The officers were attempting to keep Perkins' legs from kicking, but were having a difficult time controlling Perkins' legs due to his strength. APD Officer Morrison arrived on the scene and began bending Perkins' legs toward his back in an attempt to place a hobble restraint on Perkins' feet. During this process, Officer Reynoso noticed that Perkins' breathing had changed. Officer Reynoso retrieved a medical kit, and soon after, an automated external defibrillator (AED), once Officer Edgar advised he was unable to find a pulse.

APD Lieutenant Moody requested an additional ambulance to respond "Code 3" for Perkins, and around 9:26 am APD Sergeant Lee advised dispatch that Perkins was nonresponsive. CPR was initiated with Officer Morrison performing chest compressions while Officer Edgar assisted with providing positive pressure ventilation. Officer Reynoso applied the AED pads to Perkins' chest, and the defibrillator analyzed Perkins' heart rhythms and advised officers that no shock was advisable at that time. CPR was therefore reinitiated and continued by the officers. Once paramedics arrived, Perkins was placed in an ambulance and transported to West Anaheim Medical Center (WAMC). Emergency room staff initiated Advanced Care Life Support protocols and a full body computerized tomography (CT) scan was completed. Perkins had suffered broken ribs, consistent with the administration of CPR, and also had bruising on his wrists, abrasions on his knees, blood in his nostrils, and a small hematoma and laceration above his left eyebrow. Therapeutic hypothermia protocols were initiated, and Perkins remained in a coma and transferred to the Intensive Care Unit (ICU) where he was listed in "critical condition."

Officer Lee suffered the loss of a portion of his pinkie finger, which was severed by Perkins when he bit it off, and Officer Wang suffered a fractured hand. Both officers required surgery for their injuries.

On Wednesday, October 31, 2018, Perkins' condition continued to decline and he was pronounced dead by medical personnel at 3:11 pm.

#### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- Two (2) Green Taser cartridge(s)
- Four (4) Clear Taser cartridge door(s)
- One (1) Green Taser cartridge door
- Black button
- Bent Taser dart
- Taser dart (no wires)
- Black ASP baton with "K.LEE" label on the handle
- Two (2) Avia brand athletic shoes
- Razor with brown hair
- Several samples of blood

#### **AUTOPSY**

On November 1, 2018, Forensic Pathologist Dr. Yong-son Kim of Orange County Coroner's Office conducted an autopsy on the body of Justin Perkins. Dr. Kim observed signs of pneumonia, as well as rib fractures consistent with the administration of CPR. On Thursday, March 14, 2019, and after reviewing the toxicology reports, Dr. Kim ruled the cause of death as acute polydrug intoxication due to combined effects of Methorphan and Bupropion. Dr. Kim further ruled the manner of death as accidental.

## EVIDENCE ANALYSIS

### Toxicological Examination

Postmortem and antemortem blood samples were collected from Perkins. Both samples were submitted for toxicology to screen for the presence of drugs and alcohol. The following results and interpretations were documented:

DRUG	Postmortem Blood	Antemortem Blood
THC	0.0120 ± 0.0016 mg/L	0.0053 ± 0.0007 mg/L
Hydroxy-THC	0.0039 ± 0.0005 mg/L	Detected
Carboxy-THC	0.0793 ± 0.0096 mg/L	0.0602 ± 0.0074 mg/L
Methorphan	0.0454 ± 0.0049 mg/L	None Detected
Bupropion	0.0338 ± 0.0048 mg/L	0.237 ± 0.034 mg/L
Bupropion metabolites	Detected	Detected

### BACKGROUND INFORMATION

Perkins had a State of California Criminal History adult record that revealed a 2017 arrest for PC 245(A)(4), Assault with Force Likely to Cause Great Bodily Injury.

### THE LAW

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

- a. The person committed an act that caused the death of another human being;
- b. When the person acted he/she had a state of mind called malice aforethought; and
- c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he/she acted he/she knew his/her act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life. A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

- a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
- b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
- c. The failure to act is dangerous to human life; and
- d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

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

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

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a "special relationship" between jailer and prisoner:

"The most important consideration 'in establishing duty is foreseeability.' [citation] It is manifestly foreseeable 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 this case of express or implied malice on the part of any APD personnel or any other individuals under the supervision of APD. 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 APD owed Perkins a duty of care once he was in the process of being taken into custody, 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).

APD Officers Lee and Wang were dispatched in response to a possible assault. John Doe 1 provided the two officers with a statement about what had occurred and told officers that a male subject had punched him in the head unprovoked. The officers arrived at the apartment where Perkins was living with his uncle, and initially made contact with Perkins when he opened the front door to the apartment unit. Officers attempted to initiate questioning with Perkins but were unable to elicit coherent details about the altercation he was referencing. Perkins continued to become more agitated throughout the approximately three-minute interaction in the doorway. This culminated with Perkins attacking the two officers, causing them to respond by using their fists, Tasers, and batons, all to seemingly no avail until Perkins fell to the ground outside and was eventually subdued once Officer Wang was able to place him into a carotid restraint hold. Officer Lee suffered the loss of a portion of his pinkie finger, which was severed by Perkins when he bit it off, and Officer Wang suffered a fractured hand. Both officers required surgery for their injuries.

Based on a review of all the available evidence and the video from the BWC, it is clear that the conduct of the officers in attempting to stop Perkins' attack was completely reasonable under the circumstances. What began as a misdemeanor assault investigation by the officers quickly turned into the officers fighting for their lives.

When officers were finally able to gain control of Perkins and place him in handcuffs, they did everything they could to tend to him and his injuries. Initially, Perkins was still alert, breathing, and had a pulse. He appeared to suffer from only cuts and abrasions that were incurred during the fight with Officers Lee and Wang. Regardless, paramedics had been called and were en route. Once Officers Edgar and Reynoso arrived on scene and took custody of Perkins from Officers Lee and Wang, they

assisted him to his feet and began attempting to walk him to the parking lot in order to meet the paramedics. Instead, while they were walking, Perkins began using his hands to try to grab at the officers. As a result, they placed him on the ground again and waited for the paramedics. During this entire time, Perkins remained breathing. While on the ground the second time, he began kicking his feet around, preventing officers from controlling them. As a result, officers applied a hobble restraint to his legs to keep him from kicking them or breaking free from their grasp.

Perkins remained alert and breathing for approximately 16 minutes after being initially handcuffed at the conclusion of the fight, and once even responded "yeah" in response to Officer Edgar's question as to whether Perkins could stand up. Once Perkins' breathing ceased, CPR was immediately administered. Concurrently, when officers could no longer find a pulse, they immediately retrieved the necessary defibrillator (the AED). After attaching the AED pads to the appropriate locations on Perkins' chest, the AED analyzed Perkins' heart rhythm, and directed the officers that no shock was advised. On one occasion, approximately two minutes after Perkins' breathing initially ceased, Officer Edgar noted that Perkins was breathing once again. However, the officers noted that his breathing was "coming and going," and therefore continued with CPR.

Less than six minutes after Perkins' initial loss of breathing, paramedics arrived and took over medical care of Perkins. Perkins was transported to the hospital, where he was eventually declared to be in "critical condition." Perkins remained at the hospital and his health status continued to decline before he was declared deceased on October 31, 2018. The coroner determined that Perkins' death was a result of acute polydrug intoxication due to the combined effects of Methorphan and Bupropion and ruled the manner of death accidental.

Thus, there is no evidence whatsoever to support a finding that any APD personnel or any individual under the supervision of the APD failed to perform a legal duty.

**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 APD personnel or any individual under the supervision of the APD. The evidence shows that Perkins died as a result of complications of acute polydrug intoxication due to the combined effects of Methorphan and Bupropion.

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

Respectfully submitted,



**DEVIN CAMPBELL**  
Deputy District Attorney  
TARGET/GANGS Unit



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