



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

April 1, 2020

Chief Robert Dunn
Fullerton Police Department
237 W. Commonwealth
Fullerton, CA 92832

Re: Custodial Death on February 11, 2019
Death of Arrestee Daniel Flores Espinoza
District Attorney Investigations Case #S.A. 19-002
Fullerton Police Department Case #19- 01975
Orange County Crime Laboratory Case #19-41528

Dear Chief Dunn,

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 February 11, 2019 custodial death of 23-year-old arrestee Daniel Flores Espinoza ("Espinoza").

OVERVIEW

This letter contains a description of the scope and legal conclusions resulting from the OCDA's investigation of the custodial death of Espinoza. In this letter, the OCDA describes the criminal investigative methodology employed, evidence examined, witnesses interviewed, facts discovered and legal principles applied to review the conduct of any Fullerton Police Department (FPD) personnel or any other person under the supervision of the FPD in connection with this custodial death incident.

On February 11, 2019, OCDA Special Assignment Unit (OCDASAU) Investigators responded to St. Jude Medical Center ("SJMC"), where Espinoza died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed 20 witnesses, 5 additional witnesses were contacted during the supplemental canvas, as well as obtained and reviewed reports from the FPD 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 FPD personnel or any other person under the supervision of the FPD. The OCDA will not be addressing any possible issues relating to 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 an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTS

On February 2, 2019, paramedics responded to a medical aid call which did not involve Espinoza. The Fullerton Fire Department ("FFD") encountered Espinoza when he attempted to block the movement of their fire engine as they were leaving. FFD subsequently contacted the Fullerton Police Department ("FPD") and reported Espinoza's unusual behavior. FPD officers dispatched to the scene where they located Espinoza on the sidewalk and attempted to speak with him. Espinoza stood in a fighting stance and maintained an aggressive posture while ignoring the officers' requests to calm down.

At approximately 10:43 a.m. Espinoza attempted to push past the officers, and after a four minute struggle with six officers, Espinoza was restrained and placed in handcuffs. During his struggle with the police, a pre-existing laceration on Espinoza's head opened and Care Ambulance was dispatched to transport Espinoza to the Anaheim Global Medical Center. At approximately 11:08 a.m. Espinoza arrived at the emergency room and due to his combative nature was sedated by emergency room staff. During a search of Espinoza, methamphetamine was found to be in his possession. The incident resulted in Espinoza being placed on an involuntary psychiatric hold per Welfare & Institutions Code section 5150(a).

On February 11, 2019, at approximately 3:59 p.m., FPD officers (Sergeant Bryan Bybee ("Bybee"), Sergeant Anthony Cicciarelli ("Cicciarelli"), Corporal Kevin Kirkreit ("Kirkreit"), Officer Kyle Bishop ("Bishop"), Officer Hazel Rios ("Rios"), and Officer Victoria Rangel ("Rangel")) responded to a second dispatch concerning Espinoza. Rios spoke with Espinoza's father, Daniel Diaz ("Diaz"), who stated that he felt his son was acting like he was "out of his mind." Rios learned that Espinoza was again under the influence of methamphetamine. At approximately 4:18 p.m. Espinoza's mother, Martina Flores ("Flores"), arrived to the scene and requested from Rios that Espinoza be transported to the hospital for treatment of his methamphetamine use. Pursuant to her request, Rios informed her that the officers would only have the authority to transport Espinoza if he felt he was a danger to himself or others.

Rios stood on the sidewalk and called Espinoza out of the house. Espinoza emerged from the house upset. Kirkreit asked Espinoza if he wanted to hurt himself or anyone in the house and Espinoza stated that he did not think he was a danger to himself or others and thus was not transported to the hospital. Rios informed Diaz and Flores that Espinoza had not met the requirements to be transported to the hospital. Diaz said he would allow his son to remain in the house until the drugs had worn off and the officers evacuated the scene. Officers told Espinoza, Diaz and Flores that Espinoza was to remain inside the home because he was under the influence of methamphetamine. All of them stated that they understood.

Later that day, at approximately 5:22 p.m., a female called the FPD describing a male standing in the street who was yelling at people and who had his fists clinched. Due to the nature and description of the call, officers anticipated the described subject to be Espinoza. This time, four officers dispatched and identified Espinoza on the sidewalk yelling with his fists clinched. Unbeknownst to the officers, Espinoza had forced his entry into the neighbor's home prior to their arrival. At approximately 5:30 p.m., Espinoza entered into the neighbor's home through the locked side door. Espinoza entered the home, did not say or touch anything in the home and exited shortly afterwards. The neighbor was inside her home with her two small children.

When officers arrived, Espinoza stood in an aggressive stance towards the officers. Rios and Bishop told Espinoza to relax and that he was not going to be hurt. Espinoza accused Bishop of trying to kidnap him and Bishop reassured Espinoza that he was not going to kidnap him. Because of Espinoza's history of being combative towards the police, this time officers equipped themselves with less than lethal weapons. Bybee and Bishop armed themselves with 40mm non-lethal launchers and Rios, Rangel, and Kirkreit drew their tasers. Kirkreit repeatedly asked Espinoza to sit on the curb and to just talk to them. While Kirkreit was talking to Espinoza, Diaz and Valdivia were struggling to keep Espinoza still.

At approximately 5:33 p.m., Espinoza broke free from Diaz and Valdivia and charged at Garcia. Espinoza begun to swing his fists at Garcia, and as Garcia attempted to subdue Espinoza, Espinoza struck him in the face above the right eye. At approximately 5:33 p.m. Bybee fired one foam projectile at Espinoza from a distance of 10 feet. The foam projectile had no effect on Espinoza. Bybee subsequently approached Espinoza and Espinoza began to swing his fists at Bybee.

At approximately 5:33 p.m., Rios fired her taser at Espinoza from a distance of approximately 5 feet. The taser had no effect on Espinoza and he continued to swing at the officers. Kirkreit fired his taser at Espinoza from a distance of approximately 10 feet and it again appeared to have no effect on Espinoza. Rangel subsequently fired her taser at Espinoza from a distance of approximately 5 feet

and this time the taser had a minimal effect on Espinoza, causing him to tense up for less than a second. Espinoza then turned towards Rios and punched her in the back of her head.

At approximately 5:33 p.m., Bybee grabbed Espinoza and pulled him to the ground. Kirkreit, Bishop, Garcia, Ranger, Corporal Francisco Sepulveda (“Sepulveda”), and Cicciarelli all worked to restrain him. Sepulveda and Cicciarelli used their body weight to pin Espinoza to the ground while Bybee, Kirkreit, Bishop, and Garcia worked to handcuff Espinoza’s hands behind his back. At approximately 5:34 p.m., Bybee told Rios to request paramedics. Bybee, Kirkreit, Bishop, Ranger, Cicciarelli and Sepulveda held Espinoza on the ground as he continued to scream and struggle.

At approximately 5:40 p.m. FFD Paramedics arrived to where Espinoza was being restrained and the attending Paramedic received permission from SJMC to sedate Espinoza. Espinoza was seen breathing by the paramedic at approximately 5:47 p.m. Espinoza was then transferred by Care Ambulance to SJMC at approximately 5:49 p.m. Rios and Officer Anthony Tomol accompanied Espinoza in the ambulance.

At approximately 5:52 p.m., while in the ambulance, the paramedic noticed Espinoza’s color had changed and he was in respiratory distress. The information was relayed to SJMC staff. Rios removed the handcuffs from Espinoza and rolled him from his right side onto his back. At this time, Espinoza had gone into cardiac arrest. At approximately 5:48 p.m. the paramedic requested Rios to begin performing cardio pulmonary resuscitation (“CPR”) on Espinoza. Care Ambulance Emergency Medical Technician began ventilating Espinoza and noticed that Espinoza had vomited and used suction to clear vomit from Espinoza’s airway. The paramedic placed an intraosseous line in Espinoza’s left shin, and again sedated Espinoza during his transport.

At approximately 6:02 p.m. Espinoza arrived to the emergency room at SJMC. Paramedics were performing CPR on him. Espinoza had emesis around his mouth. He was unconscious, unresponsive, and had no pulse or respirations. Espinoza was intubated and administered several rounds of epinephrine and sodium bicarbonate. There was no significant visible trauma on Espinoza, however, Espinoza never regained consciousness.

On February 11, 2019, at approximately 6:25 pm, the attending physician at St. Jude Medical Center pronounced Espinoza deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Swab of Espinoza’s hands
- Fingernail scrapings
- Officer Rios’ uniform long-sleeve shirt with apparent blood
- Sergeant Bybee’s uniform short-sleeve shirt with apparent blood
- Corporal Kirkreit’s “Police” patch from vest with apparent blood
- Officer Rangel’s Taser Axon X26
- Swab of apparent blood from the back of Corporal Garcia’s vest
- Photographs taken: 172 – Officers, Corporals, and Sergeants
- Photograph of two sets of handcuffs used to secure Espinoza

AUTOPSY

On February 13, 2019, Forensic Pathologist Dr. Etoi Davenport, M.D. of the Orange County Coroner’s Office conducted an autopsy on the body of Daniel Flores Espinoza.

After extensively examining the body, Dr. Davenport found no significant injuries or trauma. The autopsy revealed that Espinoza suffered from a heart that was minimally enlarged. Dr. Davenport noted that the coronary arteries had normal origins and distribution with left dominance. The ventricles appeared minimally to mildly dilated, the left and right lungs had normal lobation and were normally expanded. Finally, Dr. Davenport opined the cause of death was consistent with acute methamphetamine intoxication.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Daniel Flores Espinoza postmortem blood yielded the following results:

| DRUG | MATRIX | RESULTS & INTERPRETATIONS |
|-----------------|----------------------|--------------------------------------|
| Amphetamine | 0.0742 ± 0.0055 mg/L | 0.261 ± 0.020 mg/kg |
| Methamphetamine | .0431 ± 0.031 mg/L | 1.51 ± 0.11 mg/kg |

BACKGROUND INFORMATION

Espinoza had a State of California Criminal History record dating back to 2009 that revealed arrests for the following violations:

- Vehicle Theft
- Violation of a Gang Injunction
- Assault with a Deadly Weapon – Not Firearm
- Use/Under Influence of a Controlled Substance
- Vandalism
- Probation violation
- Obstruct Public Officer

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 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 or 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 FPD personnel or any other individuals under the supervision of the FPD. 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 FPD owed Espinoza a duty of care, the evidence does not support a finding that this duty was in any way breached, either intentionally or through criminal negligence.


The totality of all the evidence in this case does not support a finding beyond a reasonable doubt that any FPD personnel used excessive force in trying to subdue Espinoza while he was struggling with the officers. Before his death and after he was taken into custody, Espinoza was transported by Care Ambulance to Anaheim Global Medicare Center where he was treated for an open pre-existing laceration on his head. He continued to receive medical assistance through the morning, however, Espinoza was placed on an involuntary psychiatric hold per Welfare & Institutions Code section 5150(a). On the evening of his death on February 11, 2019, and while in custody, Espinoza was immediately assessed by paramedics at the time he was handcuffed by officers. Paramedics received permission from SJMC to sedate him before transporting him to SJMC. Upon arriving at SJMC, paramedics continued to perform CPR on him. Espinoza had emesis around his mouth, was unconscious, unresponsive, and had no pulse or respirations. Nonetheless, paramedics continued to perform CPR. Espinoza was intubated and administered several rounds of epinephrine and sodium bicarbonate before the attending physician pronounced Espinoza deceased. Thus, there is no evidence to support a finding beyond a reasonable doubt that any FPD personnel or any individual under the supervision of the FPD failed to perform a legal duty causing the death of Espinoza.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion that there is no evidence to support a finding that any FPD personnel or any individual under the supervision of the FPD failed to perform a legal duty causing the death of Daniel Flores Espinoza. The Coroner's examination and conclusions show that Espinoza died as a result of acute methamphetamine intoxication.

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

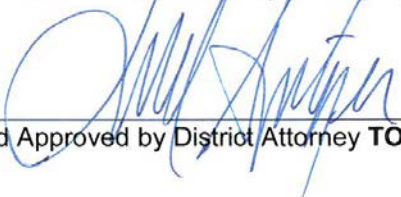
Respectfully submitted,



JENNIFER WALKER
Senior Deputy District Attorney
Homicide Unit



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

 3-30-2019

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