



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

November 9, 2021

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

Re: Custodial Death on February 11, 2020
Death of Inmate Moises Aguirre Portillo
District Attorney Investigations Case # SA 20-004
Orange County Sheriff's Department Case # 20-005479
Orange County Crime Laboratory Case # FR 20-42004

Dear Sheriff Barnes,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving the February 11, 2020, custodial death of 34-year-old inmate Moises Aguirre Portillo.

OVERVIEW

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

On February 11, 2020, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the Anaheim Global Medical Center (AGMC), where Portillo died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed three (3) 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

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the part of OCSD personnel or any other person under the supervision of the OCSD. The OCDA will not be addressing 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.

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 Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On January 25, 2020, at approximately 8:43 a.m., Portillo was arrested by the OCSD for two misdemeanor warrants for drug-related charges. During the booking process at the OCSD Intake/Release Center (IRC), Portillo indicated that he had suffered alcohol-related seizures four days prior to his arrest and that he had suicidal thoughts. Portillo also disclosed his underlying medical conditions: hypertension and cirrhosis of the liver. He was placed on alcohol withdrawal protocols. A chest X-ray was conducted on Portillo which indicated trace left pleural effusion and mild cardiomegaly with no pneumonia or tuberculosis present.

On January 26, 2020, Portillo was transferred to the Theo Lacy Jail Facility (TLF) but was later returned to the IRC. On January 27, 2020, at approximately 1:28 p.m., Portillo was sent for a psychiatric evaluation for indicating suicidal thoughts. He requested medical housing due to his medical condition cirrhosis of the liver and alcohol detoxification.

On January 28, 2020, at approximately 5:30 p.m., Portillo was taken to the IRC Medical Triage for facial swelling. He was evaluated and transported to the Anaheim Global Medical Center (AGMC) via ambulance for treatment. Portillo notified AGMC staff that he was experiencing shortness of breath, body aches, and leg swelling. After receiving treatment, he was returned to the jail. On January 29, 2020, Portillo was transferred back to TLF.

On February 4, 2020, another chest X-ray was performed on Portillo, which revealed moderate large left pleural effusion. That night, at approximately 7:55 p.m., Portillo pressed the emergency button in his cell to alert staff that he was coughing up blood. Portillo was observed by TLF medical staff,

to whom he disclosed his history of drinking two pint-sized bottles of vodka per day prior to his incarceration. Again, OCS D personnel had Portillo transported via ambulance to the AGMC where he was examined and then cleared for return to the jail.

On February 5, 2020, at approximately 5:58 p.m., Portillo was referred to medical staff for exhibiting suicidal ideations and anxiety, but he denied suicidal thoughts to the medical staff.

On February 6, 2020, at approximately 8:56 a.m., Portillo was examined by a cardiac specialist, and was diagnosed with congestive heart failure and cirrhosis of the liver. At approximately 10:30 p.m., Portillo was transported by ambulance to the AGMC because he was experiencing an elevated heart rate and difficulty breathing.

On February 7, 2020, at approximately 12:13 a.m., Portillo arrived at the AGMC Emergency Department for treatment of possible tuberculosis or pneumonia, cirrhosis of the liver, fluid in and around the lungs, coughing up blood clots, and fluid around the heart. Upon admission, Portillo was conscious and able to eat and talk. He was transferred to Medical Surgical Unit 4 to receive treatment for his shortness of breath and pleural effusion in the left lung, as well as his history of congestive heart failure, liver cirrhosis, and drug abuse. At the time, doctors believed Portillo displayed symptoms of tuberculosis, but laboratory results were pending. Portillo was given an echocardiogram (EEG) which was "grossly abnormal" and "consistent with severe LV (left ventricle) systolic dysfunction" and revealed a large pleural effusion.

On February 8, 2020, at approximately 3:42 p.m., Portillo was alert, oriented, and resting in bed with a dry cough and indicated no pain, no leg pain, and no shortness of breath. When the attending physician spoke to Portillo, he was talkative, but was unable to answer many questions or provide a detailed previous history. The attending physician diagnosed Portillo as having commune acquired pneumonia with pleural effusion, and it was found that Portillo had cirrhosis of the liver and heart failure with ejection fraction of approximately 30%. Portillo was treated with antibiotics while the physician examined him for other infections. His heart failure was treated with blood pressure medication, the diuretic Lasix, and Entresto. He also received a beta blocker. His vital signs were stable.

On February 9, 2020, at approximately 6:20 a.m., OCS D Correctional Medical Security (CMS) Deputy David McFadden was assigned to provide security at Portillo's room in Unit 4. He described Portillo as lucid and able to talk. Portillo had not complained about any issues at the jail, including any assaults or medical treatment. Deputy McFadden unshackled Portillo so he could use the restroom. Portillo said he became dizzy, but quickly recovered, used the restroom, and then returned to the bed. Deputy McFadden advised Portillo to take a seat when he expressed feeling dizzy, reminded Portillo to make use of his emergency button if necessary, observed the nurses administering medication, and kept a detailed log of Portillo's activity.

Portillo was seen by two other doctors and his vital signs appeared stable. A nurse also noted that Portillo had been walking and moving around. He was administered blood pressure medications to stabilize his low blood pressure and low heart rate, and antibiotics for a lung infection. At approximately 10:25 a.m., only 20 or 30 minutes after he was seen awake and talking, Portillo was discovered unconscious with no heartbeat or respirations. The nurse initiated a "Code Blue" medical emergency which was announced throughout the hospital over the public address system. AGMC medical staff performed Cardiopulmonary Resuscitation (CPR) and other life-saving measures for thirty (30) seconds until his circulation and regular heartbeat and pulse returned. Portillo had suffered an anoxic brain injury and his prognosis was poor. Although Portillo was revived, he did not regain

consciousness. He was intubated and moved to Intensive Care Unit (ICU) Room 7 to stabilize his low blood pressure and low heart rate.

In the ICU, Portillo's condition slowly deteriorated. His blood pressure continued to drop due to his weak heart and he was administered many vasopressors to stabilize his blood pressure. On February 10, 2020, at approximately 2:34 p.m., Portillo was discovered unconscious with no heartbeat or respirations, and with dilated pupils. He was revived by medical staff seven (7) minutes later.

On February 11, 2020, at 7:56 a.m., medical personnel discovered Portillo was unconscious with no heartbeat or respirations, and with dilated pupils in Room 7 of the ICU. He was revived fourteen (14) minutes later. He was administered at least four vasopressors, but his blood pressure remained low. At approximately 9:59 a.m., a registered nurse discovered Portillo was again suffering cardiac arrest; he was unconscious with no heartbeat or respirations, and with dilated pupils. The nurse initiated a "Code Blue" medical emergency. Medical staff responded to the ICU room and attempted to perform life-saving procedures on Portillo but were unable to revive him. Portillo was pronounced deceased by the attending ICU physician at approximately 10:09 a.m. Portillo was the only patient in the room at the time of death.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Ninety-seven (97) photographs post-mortem
- One (1) hospital gown
- Blood standard post-mortem
- Deep muscle tissue standard post-mortem

AUTOPSY

On February 13, 2020, Independent Forensic Pathologist Dr. Scott Luzi conducted an autopsy on the body of Portillo. At the conclusion of the autopsy, Dr. Luzi stated that the preliminary cause of death was a possible embolism with an enlarged heart. The final cause of death was pending toxicology and microscopic tests.

On July 23, 2020, Dr. Luzi issued his final findings in the death of Portillo. He indicated the cause of death was pulmonary infarction due to pulmonary embolus and deep vein thrombosis. Furthermore, Dr. Luzi noted the following other conditions related to the death: hypertensive cardiovascular disease and cirrhosis. Dr. Luzi determined that Portillo's manner of death was natural.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Portillo's postmortem blood yielded the following results:

<i>DRUG</i>	<i>MATRIX</i>	<i>RESULTS & INTERPRETATIONS</i>
Lorazepam	Postmortem Blood	0.0227 + 0.0033 mg/L
Midazolam	Postmortem Blood	0.92 + 0.11 mg/L
Caffeine	Postmortem Blood	Detected
Levetiracetam	Postmortem Blood	Detected

Lidocaine	Postmortem Blood	Detected
Phenytoin	Postmortem Blood	Detected
Olanzapine	Antemortem Blood	Detected

BACKGROUND INFORMATION

Portillo had a State of California Criminal History record that revealed arrests dating back to 2004 for the following violations:

- Obstructing a Public Officer
- Burglary
- Unauthorized Entry to a Non-Commercial Building
- Trespassing
- Shoplifting
- Battery
- Tampering with a Fire Alarm
- False Identification to Peace Officers
- Use of False Evidence of Citizenship
- Possession of a Controlled Substance
- Possession of Controlled Substance Paraphernalia
- Possession of Over an Ounce of Marijuana
- Minor in Possession of Alcohol
- Vandalism
- Violation of Parole
- Probation Violation
- Failure to Appear

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 person;
- 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 jailer and prisoner:

"[T]he 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 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 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

In this present case, there is no evidence 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 OCSD owed Portillo 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). Rather, a review of OCSD medical aid reports and all other relevant evidence reveals that OCSD personnel consistently exercised reasonable care

in attending to Portillo. Upon arrival to the OCSD Intake/Release Center on January 25, 2020, OCSD personnel took Portillo's claims that he had suffered recent alcohol-related seizures and had suicidal ideations seriously, as was evidenced by his placement on alcohol withdrawal protocols. Additionally, when OCSD personnel were notified of Portillo's underlying medical conditions of hypertension and cirrhosis of the liver, they ordered a chest X-ray be conducted to monitor his condition. Portillo's movements from TLF to IRC in late January reflect that OCSD personnel continued to monitor his mental and physical health. OCSD personnel consistently sent Portillo for psychiatric evaluations to monitor his suicidal ideations. They also monitored his cirrhosis of the liver as he underwent alcohol detoxification. From his initial booking on January 25, 2020, and throughout his care at AGMC, the evidence supports a conclusion that OCSD personnel conducted their duties in a reasonable manner and responded appropriately to Portillo's declining health. In addition to responding to Portillo's physical condition, OCSD medical staff also closely monitored his mental health even though he denied having suicidal thoughts on February 5, 2020.

With each health scare, OCSD medical personnel continued to exercise caution and reasonable judgment when deciding to transfer Portillo into the care of AGMC physicians given his serious underlying health conditions. Often, Portillo was transported by ambulance which demonstrates OCSD personnel's caution and special attention to Portillo's medical conditions. OCSD personnel immediately transferred Portillo to the IRC Medical Triage on January 28, 2020 upon noticing facial swelling and exercised reasonable care by determining his need for additional medical treatment at AGMC. On February 4, 2020, OCSD personnel conducted another X-ray and immediately responded to Portillo's emergency button call, when he was coughing up blood, by transporting him to AGMC for treatment.

Portillo remained in AGMC from February 6, 2020 until his death on February 11, 2020. OCSD CMS Deputy McFadden was assigned as security to Portillo's room for the day of February 9, 2020. There is no evidence that Deputy McFadden failed to exercise reasonable care. Deputy McFadden advised Portillo to take a seat when he expressed feeling dizzy, reminded Portillo to make use of his emergency button if necessary, observed the nurses administering medication, and kept a detailed log of Portillo's activity. Deputy McFadden performed his required duties with reasonable care. Thus, there is no evidence to support a finding that Deputy McFadden failed to perform a legal duty or in any way caused Portillo's death.

By his own admission, medical records, and autopsy, Portillo suffered from pre-existing serious medical conditions exacerbated by his chronic alcohol and drug abuse prior to his incarceration. Portillo admitted his alcoholism to OCSD medical staff and stated that he would typically consume up to two bottles of vodka per day prior to the incarceration. He had a history of congestive heart failure and cirrhosis associated with chronic alcohol and drug abuse. Furthermore, Dr. Luzi noted the following other conditions related to Portillo's death: hypertensive cardiovascular disease and cirrhosis. Portillo's death resulted from pulmonary infarction caused by pulmonary embolus and deep vein thrombosis, pre-existing conditions which the evidence shows were neither caused by, nor exacerbated by any acts or omissions on the part of the OCSD.

There is no evidence to support beyond a reasonable doubt that OCSD deputies and personnel failed to perform a legal duty, nor can their actions be classified as criminally negligent. In order for the OCDA to file criminal charges relating to Portillo's death, the OCDA must be able to prove beyond a reasonable doubt criminal culpability, including causation as described above. The OCDA is not able to meet this burden of proof based on all of the available evidence. Additionally, Portillo's death was not the result of any act, or failure to act, by OCSD personnel. Thus, there is no evidence to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty causing Portillo's death.

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 OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty causing the death of Moises Aguirre Portillo. The evidence shows that Portillo died as a result of pulmonary infarction and that the death was a natural one.

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

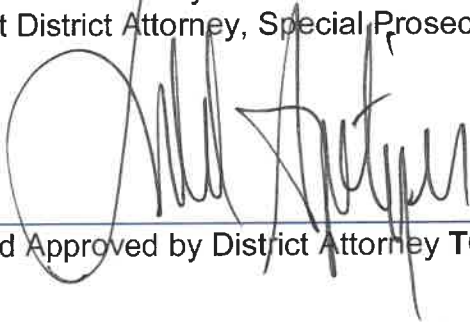
Respectfully submitted,



SCOTT WOOLDRIDGE
Deputy District Attorney, GANGS/TARGET Unit



Read and Reviewed by **BARBARA KIM**
Assistant District Attorney, Special Prosecutions Unit



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

11-10-2021