

EXHIBIT 1

DA Letter to Sheriff, 11/21/19



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

November 21, 2019

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

RE: Criminal Cases with Evidence Collected but not Booked at OCSD

Dear Sheriff Barnes,

On Monday, November 18, 2019, at the briefing held at your headquarters, I first became aware that your office conducted a wide-scale internal audit of 98,676 Departmental Records (DRs) or sheriff reports to review evidence collection and booking by OCSD deputies over a two year period. At the briefing, I also learned Mary Izadi, OCSD's Constitutional Policing Advisor, wrote a report regarding the audit's findings. My office requested a copy of her report which was promptly provided the same day. Ms. Izadi's report dated February 2019 not only discussed the "Initial Audit's" process and findings for the 98,676 reports, but also detailed the process and findings of a "Secondary Audit" of 450 cases. This second audit found that in 47% of the 121 reports where deputies stated they had collected and booked evidence, there was no evidence booked. This means in 57 of the reports reviewed, a deputy failed to book a piece of evidence that the deputy stated he or she collected.

As a result, I have concerns that my office may have filed and prosecuted criminal charges against individuals based on OCSD reports that inaccurately stated evidence had been booked. As members of the same prosecution team, we must work together to protect the integrity of all criminal prosecutions and convictions in this county. My goal is to identify any and all cases handled by OCDA where a defendant's due process rights may have been negatively impacted by having evidence collected but not booked. A prosecutor is not only required to protect the due process rights of the accused before conviction, but "[e]ven 'after a conviction the prosecutor ... is bound by the ethics of his office to inform the appropriate authority of ... information that casts doubt upon the correctness of the conviction.'" (*Curl v. Superior Court* (2006) 140 Cal.App.4th 310, 318, citing *Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25.)

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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

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☐ NORTH OFFICE
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☐ WEST OFFICE
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☐ HARBOR OFFICE
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NEWPORT BEACH, CA 92660
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☐ JUVENILE OFFICE
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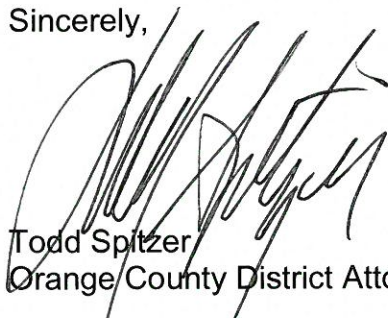
In order to fulfill my legal and ethical obligations as District Attorney, I need to know which cases, if any, were filed by my office where OCSD failed to book evidence after collecting it. Therefore, your agency now has the responsibility to provide the following information on these cases, from databases that are either under your possession and control, or are public (i.e. Vision):

1. The name and DOB of the defendant;
2. The OCSD report DR number;
3. The Orange County Superior Court case number;
4. The date criminal charges were filed;
5. The specific item or items listed in the report that were not booked;
6. Whether the criminal case is pending or has resolved;
7. If the case has resolved, the date of the disposition, and
8. How the case was resolved (i.e. plea, verdict, dismissal, etc.);
9. The attorney(s) of record for the defendant noted in Vision.

I know you and your department take evidentiary issues seriously and have begun initiating a series of corrective measures to address some of the deficiencies discovered in your audits. I believe we share the responsibility of restoring the rights of any person who may have been prosecuted in a case where recovered evidence was not booked. I understand it may take considerable time to compile this information. Therefore, in the event the universe of cases meeting this description is voluminous, I would appreciate you advising on a methodology on how to deliver this information in segments rather than waiting for your entire review to be completed. This will allow my office to commence notification to defense counsel as soon as possible.

Thank you in advance for your attention to this matter. I appreciate your understanding that the conduct that you brought forward through your own investigative efforts, which I commend, has now created significant legal and constitutional obligations on my Department.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd Spitzer', is written over the printed name and title.

Todd Spitzer
Orange County District Attorney

EXHIBIT 2

County Counsel Letter to DA, 3/13/20



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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Nicole A. Sims
Supervising Deputy
(714) 834-3319

E-Mail:
Nicole.Sims@coco.ocgov.com

March 13, 2020

Via email

Robert Mestman, Assistant District Attorney
Robert.Mestman@da.ocgov.com

Re: Evidence Audit Covering the Time Period of February 2016 to February 2018

Dear Mr. Mestman:

Per your request, we are writing on behalf of the Orange County Sheriff-Coroner Department (OCSO) to memorialize our position regarding the Evidence Audit referenced above. The Evidence Audit is a peace officer personnel record, as defined by Penal Code section 832.8.

Penal Code section 832.8 defines a peace officer personnel record as including "records relating to ... (4) employee advancement, appraisal, or discipline." Cal. Pen. Code § 832.8(a)(4). Because the Evidence Audit reflects a review of hundreds of deputies' compliance with policy, it qualifies as an appraisal of the officers. Moreover, the audit was generated for the purpose of appraising the deputies' conduct with respect to booking evidence. As the California Supreme Court recognized in *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 71-72, "many records routinely maintained by law enforcement agencies are not personnel records" but "records generated in connection with" officer "appraisal or discipline would come within the statutory definition of personnel records." (Emphasis in original.) Here, the Evidence Audit was generated in connection with appraising the deputies' conduct and compliance with policy, and thus, is a personnel record of each deputy noted in the report. Accord *City of Eureka v. Superior Court* (2016) 1 Cal.App.5th 755, 763-764.

Penal Code section 832.8 further defines a peace officer personnel record as relating to "... investigations of complaints, concerning an event or transaction in which [the officer] participated, ... and pertaining to the manner in which he or she performed his or her duties." The Evidence Audit was an internal investigation conducted because of administrative concerns about the deputies' booking of evidence. It pertains to cases in which the deputies booked evidence and how they performed this duty.

Robert Mestman, Assistant District Attorney
March 13, 2020
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As such, these records are not subject to disclosure in the absence of a properly noticed *Pitchess* motion pursuant to Evidence Code section 1043, *et seq.*

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By 

Nicole A. Sims, Supervising Deputy

cc: Don Barnes, Sheriff-Coroner
Robert Peterson, Undersheriff
Jeff Hallock, Assistant Sheriff
Ken Burmood, Commander

EXHIBIT 3

Table of Cases Negatively Impacted (i.e., Dismissed)

Defendant's Name	Court Case#	Case Status at Time of Dismissal	Evidence	Dismissed Charges
ADYSON FAYE HINZMAN	17CM09233	Convicted	3 –SuboxoneStrips	COUNT 2 (11350(a) HS)
ALEXIS DEL TORO	18CM08771	Convicted	CD containing video footage	COUNT 1 (240 PC); COUNT 2 (242 PC)
ALEXIS MURILLO	17HM12286	Convicted	glass pipe, two loaded syringes, meth, misc paraph.	COUNT 1 (11377(a) HS); COUNT 2 (11364(a) HS)
AYANNA KNIGHT	17WM04223	Pending	Photo	COUNT 1 (653.22(a)(1) PC)
CELESTINE CANTY	17WM14352	Pending	2 Condoms	COUNT 1 (653.22(a)(1) PC)
CHRISTOPHER BACOLOT	18CM08771	Convicted	CD containing video footage	COUNT 2 (242 PC)
CHRISTOPHER PENA	17HF1431	Convicted	glass pipe, two loaded syringes, meth, misc paraph.	COUNT 2 (11377(a) HS); COUNT 3 (11364(a) HS)
DANIEL BAHENA	18CF3275	Convicted	shaved Honda key	COUNT 4 (466 PC)
DAVID WEATHERFORID	17WM10388	Convicted	meth and pipe	COUNT 3 (11364(a) HS)
DELIA MONEAK EDWARDS	16NM07469	Convicted	One false registration tab	COUNT 2 (4462.5 VC)
DONALD LOREN TURNER	18CM02262	Convicted	.5g of meth	COUNT 1 (11377(a) HS)
DYLAN JAMES VILLAMIL	15HM08049	Convicted	14 pieces of foil and two straws	COUNT 1 (11364(a) HS)
ERICK MACK	17WM01663	Convicted	clear plastic container with .2g of heroin	COUNT 2 (11350(a) HS)
GEORGE MARTIN DELGADO	17NM18806	Convicted	One meth pipe	COUNT 1 (11364(a) HS)
ISMAEL RODRIGUEZ	16WM18144	Convicted	2.54g of meth	COUNT 1 (11377(a) HS)
JEFFREY AUSTIN	15HM07810	Convicted	heroin, marijuana, and paraph.	COUNT 1 (11350(a) HS); COUNT 2 (11364(a) HS); COUNT 3 (11357(b) HS)
JOEY BRIAN CABAN	16HF0047	Convicted	one 5.56 rifle round	COUNT 1 (4574(a) PC)
JOSEPH PAUL JORDAN	18CM00824	Convicted	One syringe loaded with meth	COUNT 1 (11364(a) HS); COUNT 2 (11377(a) HS)
JUSTIN ALI DANESH	15HM12052	Convicted	three needles, 1 detergent cap with cotton balls, two Marlboro wrappers	COUNT 1 (11364(a) HS)
KEITH CASEY JONES	16HM11811	Convicted	meth pipe	COUNT 1 (11364(a) HS)
LYDIA NAUTA RODRIGUEZ	18CM01211	Convicted	Bag containing 1g of meth	COUNT 1 (11377(a) HS)
MARJORIE CHARLES	17WM04223	Pending	Photo	COUNT 1 (653.22(a)(1) PC)
CALE HILL	15HM03044	Convicted	Glass pipe	COUNT 1 (11364(a) HS)
JOSEPH GRIFFIN	15HM03602	Convicted	Broken glass pipe, with about .25 grams of white crystalline substance	COUNT 1 (11377(a) HS)

Defendant's Name	Court Case#	Case Status at Time of Dismissal	Evidence	Dismissed Charges
RICHARD LOPEZ	16WM08806	Convicted	Plasic baggie containing a white crystalline substance	COUNT 1 (11377(a) HS); COUNT 2 (11364(a) HS)
ANSELMO GARCIA	16WM07565	Convicted	license plates	COUNT 1 (496(a) PC)
ERNESTO CHAIREZ	16WM08852	Convicted	Meth and meth pipe	COUNT 1 (11377(a) HS); COUNT 2 (11364(a) HS)
NICHOLAS WALKER	16WM13944	Convicted	1.7 grams of meth	COUNT 1 (11377(a) HS)
VICTOR PEREZ	17CF2173	Convicted	Knife, meth, paraph	COUNT 1 (21310 PC)
DERRICK STOELTING	17WM07128	Convicted	Other - fake name written on index card	COUNT 1 (148.9(a) PC)
EDGAR GUTIERREZ	17WM10819	Convicted	Meth pipes	COUNT 1 (11364(a) HS)
CRISTINA HURTADO	17WM11057	Convicted	Paraphern.	COUNT 1 (11364(a) HS)
CALE HILL	SH888882	Convicted	.5 grams of marijuana	COUNT 1 (11357(b) HS)
KENNETH CHRISTOPHE TRUMBULL	16HM00661	Convicted	CD w/ images of crime scene and injuires to both parties, 2 baggies containing about a gram of white powder	COUNT 1 (11350(a) HS)
JONATHAN AGAJANIAN	18NM0629	Convicted	Paraphernalia	COUNT 1 (11350(a) HS)
ALEXANDER RAMIRO GONZALEZ-MATIAS	16CM11319	Convicted	Meth pipe	COUNT 1 (11364(a) HS)
KYLE JAMES RUSHER	16HM06082	Convicted	Paraph.	COUNT 1 (11364(a) HS)
GEORGE MARTIN DELGADO	16WM15944	Convicted	Meth pipe	COUNT 1 (11364(a) HS)
JEFFERY KARL HARDGRAVE	17WM02833	Convicted	Meth and meth pipe	COUNT 1 (11364(a) HS)
EMMANUEL MENDOZA BAHENA	17WM06585	Convicted	Two glass pipes	COUNT 1 (11364(a) HS)
ANTHONY WILLIAM WAGER	17WM10713	Convicted	Paraphern, Meth	COUNT 1 (11364(a) HS); COUNT 2 (11377(a) HS)
THOMAS PATRICK BENSON	16HM12309	Convicted	Glass pipe	COUNT 1 (11364(a) HS); COUNT 2 (11377(a) HS); COUNT 3 (5-3.02)a) SJMC)
RYAN CHARLES OLESON	15HM07939	Convicted	.1g of white crystalline stubstance, tested postiive for meth	COUNT 1 (11377(a) HS)
JOLEZLIE ANN SANCHEZ	17WM07918	Convicted	meth	COUNT 1 (11377(a) HS)
HUEY MINHJR HOANG	17WM14043	Convicted	Paraphern, Meth	COUNT 1 (11377(a) HS)
MIGUEL CALDERON	18HM12055	Convicted	Meth and broken meth pipe	COUNT 1 (11377(a) HS)
SAISHA J MIRANDA	16WM17527	Convicted	Meth and meth pipe	COUNT 1 (11377(a) HS); COUNT 2 (11364(a) HS)

Defendant's Name	Court Case#	Case Status at Time of Dismissal	Evidence	Dismissed Charges
BE NGUYEN	17WM01338	Convicted	Meth and meth pipe	COUNT 1 (11377(a) HS); COUNT 2 (11364(a) HS)
THOMAS GEORGE EVANS	16CM02353	Convicted	Surveillance video	COUNT 1 (11377(a) HS); COUNT 2 (20105(a) PC)
WILLIAM DALE STANLEY	17WM00325	Convicted	Photo of dagger and dagger	COUNT 1 (21310 PC)
DORA MARIA OCAMPO	16WM15320	Convicted	Meth pipes (2), switchblade knife	COUNT 1 (21510(a) PC); COUNT 2 (11364(a) HS)
KENNEDY CLAIRE GRIFFITHS	17WM09411	Convicted	Stun gun	COUNT 1 (22610(a) PC); COUNT 2 (22610(b) PC); COUNT 3 (11364(a) HS)
ERICA JASMINE SANTOS	17WM05092	Convicted	Fraudulent check	COUNT 1 (476 PC); COUNT 2 (664(b)-484(a)-488 PC); COUNT 3 (476 PC); COUNT 4 (484(a)-488 PC)
JEREMY LEE IMMEL	16HM04043	Convicted	Light bulb with crystal like substance	COUNT 2 (11364(a) HS)
LEE ANTHONY PANZARELLA	16HM05388	Convicted	DVD of cell phone video message	COUNT 1 (166(c)(1) PC)
PEDRO ZENDEJAS	17CM10196	Convicted	Smoking glass pipe	COUNT 1 (11364(a) HS)
NOE LEZAMA	17WM00454	Convicted	Meth pipes (2), switchblade knife	COUNT 1 (11364(a) HS)
CARIE ANN CLARKE	17HM12980	Convicted	Surveillance video	COUNT 4 (459.5(a) PC)
NICOLE MARLENE CEDILLO	17WM05080	Convicted	Two meth pipes with usable quantity	COUNT1 (11364(a) HS)
PAUL LESLIE OGLE	16HM00149	Convicted	.6g meth	COUNT 1 (11377(a) HS)
PEARL RUBY MENDEZ	16WM01108	Convicted	One meth pipe, five used syringes, and one notecard	COUNT 1 (11364(a) HS)
STEPHEN MICHAEL WALTERS	17WM01110	Convicted	One meth pipe	COUNT 2 (11364(a) HS)
TYSON JERMAINE SHELBY	17WM11392	Convicted	.5g of meth	COUNT 1 (11377(a) HS); COUNT 2 (135 PC)
WHITNEY ARLENE MONK	16WM09314	Convicted	one meth pipe	COUNT 1 (11364(a) HS)
RAINEY, DESTANY ROSHELL	16WM09075	Pending	Four condoms	COUNT 1 (653.22(a) PC)
MANUEL RAMIREZ	16WF1393	Convicted	Black metal knuckles	COUNT 1 (21810 PC)
MELINA VASQUEZ	16HM11562	Convicted	1 g of marijuana, false DMV registration tab	COUNT 1 (14601.2(a) VC)