



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

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February 8, 2021

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

Re: Custodial Death on December 23, 2019  
Death of Inmate Dominic Richard Infantino  
District Attorney Investigations Case # 19-026  
Orange County Sheriff's Department Case # 19-048840  
Orange County Crime Laboratory Case # 19-57406  
Orange County Coroner's Office #19-05664-RZ

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 December 23, 2019 custodial death of 67-year-old inmate Dominic Richard Infantino (Infantino).

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Infantino. 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 December 23, 2019, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Anaheim Global Medical Center (AGMC), where Infantino died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed witnesses, reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), reviewed incident scene photographs, and collected 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 trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned 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.

## **FACTS**

On July 20, 2019, Infantino was arrested by OCSD for indecent exposure. OCSD transported Infantino to the Orange County Jail-Intake Release Center, located in the City of Santa Ana, where he was booked. Infantino was then transferred to the Orange County Central Men's Jail. Upon his arrival to OCJ, he was screened by medical personnel. Infantino explained that he suffered from coronary artery disease, congestive heart failure, valve disease, diabetes, hypertension, gastroesophageal reflux disease, and had a pressure ulcer on his left foot. Furthermore, Infantino explained that he had two knee replacement surgeries, had been diabetic for a long time, used insulin regularly, used a cane to walk, and was on multiple medications that weren't listed on the initial screening report. Due to his medical conditions, Infantino was flagged for a medical housing unit. Infantino was placed on a renal diet due to his diabetes and his blood sugar would be checked on a regular basis. Infantino also received medication as needed to stabilize his blood sugar and was scheduled to receive dialysis treatment multiple times a week. Logs were started to track Infantino's allergies, blood sugar, treatments and treatment administration, vital signs, diet, drug orders and drug administration, and sick calls.

On July 21, 2019, Infantino was seen by medical staff to get his blood checked. Infantino disclosed that he had been receiving hemodialysis treatment three times a week for the past eight years. Throughout the conversation, Infantino appeared forgetful and it took a long time for him to answer questions. Medical orders were then issued for Infantino to receive hemodialysis three times a week until his release from jail. Later that day, Infantino also received treatment on his pressure ulcer on his left foot, where it was noted that Infantino had insulin dependent diabetes mellitus, end stage renal disease, hypertension, and had weak legs and needed to use a walker.

On July 23, 2019, deputies found Infantino slumped on the toilet in his cell. Infantino had to be fully assisted by deputies to get into the wheelchair and he was unable to tell medical staff how long he

had been sitting on the toilet. Infantino was also lethargic and his speech was slow. His blood sugar was checked and medical staff gave him some food. A doctor was contacted, who advised Infantino to be transported to the hospital. Infantino was admitted to Orange County Global Medical Center (OCGMC) and was recorded having an altered level of consciousness, hypoglycemia, and shortness of breath.

On July 25, 2019, Infantino was discharged from OCGMC and returned to OCJ, where he continued to receive medical attention for his health conditions.

On July 31, 2019, Infantino complained of weakness and dizziness. Infantino informed medical staff that he had stood up, felt weak and dizzy, and fell down on his bottom. A doctor was notified of the incident and he requested for Infantino to be transferred to the hospital. Infantino was transferred to Anaheim Global Medical Center (AGMC) where medical staff found no signs of trauma to Infantino's body but was admitted for observation and monitoring. Later that day, Infantino was transferred to OCGMC due to a lack of beds available at AGMC.

While at OCGMC on August 1, 2019, Infantino received a carotid duplex ultrasound and a transthoracic echocardiography (TTE). The TTE showed that Infantino's left ventricle had a mild enlargement, his left atrium had a mild atrial enlargement, and his aortic valve was slightly thickened. On August 2, 2019, Infantino was discharged from OCGMC and returned to OCJ where he continued to receive medical attention, and was scheduled to resume dialysis three days a week.

On October 12, 2019, Infantino was observed to have low blood pressure and a low heart rate while attending his dialysis. The doctor at the dialysis center sent Infantino to the hospital. He was admitted to AGMC. On October 28, 2019, due to complaints of neck pain, Infantino received an MRI on his neck. The reviewing doctor found that Infantino had spinal stenosis and fluid collection along his C1-C5 vertebral. On October 29, 2019, Infantino was transferred from AGMC to OCGMC. Infantino was at OCGMC until November, 1, 2019. OCGMC medical personnel notes showed that Infantino received another MRI sometime during this time period at OCGMC. The MRI showed enhancements of multiple vertebral bodies and possible discitis osteomyelitis. On November 1, 2019, Infantino was transferred from OCGMC back to AGMC. On November 12, 2019, AGMC records showed that Infantino received a CT brain scan due to his altered mental status.

On November 25, 2019, Infantino was seen by a doctor for a psychiatric follow up. The doctor noted that Infantino was found to be confused, disorganized, and at times agitated. Infantino was also having memory problems and he didn't know what was going on. The doctor concluded that Infantino was suffering from organic dementia.

On December 23, 2019 at around 2:03 p.m., while still at AGMC, Infantino suffered a full cardiopulmonary arrest and he was resuscitated by medical staff. At around 2:30 p.m. Infantino suffered a second cardiac arrest and was again resuscitated. At 2:55 p.m. Infantino suffered a third cardiac arrest and was again resuscitated. At 3:18 p.m. the attending physician spoke to the sister of Infantino and she authorized medical staff to discontinue lifesaving efforts in the event Infantino had another cardiac arrest. At 3:20 p.m. Infantino was pronounced dead.

Medical records from OCJ, AGMC, and OCGMC indicated that Infantino went to hemodialysis three times a week as planned, received his medication daily, and had his well-being checked on several times a day while at each facility.

Law enforcement interviewed Infantino's sister, who stated she knew Infantino had a heart condition. She described him having surgery in 2019 to have stents placed. She also knew Infantino was diabetic, and she expressed that his health had been deteriorating in recent years. She further explained that while Infantino was at OCJ and AGMC she was able to speak to him on the phone. She didn't remember exact dates, but she believes sometime around September she received a call from Infantino while he was at OCJ, and he explained that his health was in "big trouble" and that he was not doing well. In addition, she explained that in her last few phone calls with Infantino before he passed away, she could tell that Infantino's cognitive abilities were diminishing.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- 30 color photographs of hospital scene and body
- 48 color photographs post-mortem
- Heart Bloodstain post-mortem
- Muscle Standard post-mortem

### **AUTOPSY**

On January 2, 2020, independent Forensic Pathologist Dr. Scott Luzi of Clinical and Forensic Pathology Services conducted an autopsy on the body of Infantino. On July 23, 2020, Dr. Luzi issued his findings in the death of Infantino. Dr. Luzi identified the cause of death as hypertension and atherosclerotic cardiovascular disease and that the manner of death was natural.

### **EVIDENCE ANALYSIS**

#### **Toxicological Examination**

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

| DRUG                              | POSTMORTEM BLOOD     |
|-----------------------------------|----------------------|
| 1-(4-chlorobenzhydryl)-piperazine | Detected             |
| Benztropine                       | Detected             |
| Haloperidol                       | Detected             |
| Midazoiam                         | 0.0259 ± 0.0030 mg/L |

### **BACKGROUND INFORMATION**

Infantino had a State of California Criminal History record that included convictions for the following violations:

- Indecent Exposure
- Lewd and Lascivious Acts with a Child Under 14
- Perjury
- Indecent Exposure with a Prior
- Failure to Register as a Felony Sex Offender

### **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/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 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 Infantino 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. Rather, review of OCJ records and all other relevant evidence reveals that OCSD personnel consistently exercised reasonable care in treating and handling Infantino. Infantino was constantly monitored, given his daily medication, and had his blood sugar regularly checked on a daily basis. OCSD personnel made sure Infantino received his dialysis treatments 3 times a week, and OCSD personnel transported Infantino to the hospital when needed. The evidence in this case supports a conclusion that OCSD personnel conducted their duties in a reasonable manner and responded effectively and appropriately regarding Infantino's deteriorating health while he was in jail.

Infantino's health was steadily in decline while he was at OCJ. This was evident when on July 23, 2019, two days into his incarceration, he was found slumped on the toilet in his cell and had to be transferred to the hospital. Furthermore, on July 31, 2019, Infantino had to be re-admitted to the hospital after complaining to medical personal that he became dizzy and fell on his bottom while he was in his cell. Then, in October 12, 2019, Infantino had to be transferred to the hospital after suffering from low blood pressure and a low heart rate. Medical Staff at AGMC then found out on October 28, 2019 that Infantino had spinal stenosis and fluid collection along his C1-C5 vertebral after he had complained of neck pain on October 19, 2019. Furthermore, sometime between October 29, 2019 and November 1, 2019, Infantino was found to be suffering from enhancements of multiple vertebral bodies and possibly discitis osteomyelitis. From October 19, 2019 until the date of his death, Infantino was under the care of medical staff at AGMC and OCGMC.

The OCSD did not fail 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 Infantino's death, the OCDA must be able to prove criminal culpability beyond a reasonable doubt, including legal causation as described above. The OCDA is not able to meet this burden of proof based on the all the available evidence. All efforts taken by OCSD were reasonable based on the known circumstances. Additionally, Infantino'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 beyond a reasonable doubt that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty. Instead, the evidence demonstrates that OCSD staff acted reasonably in fulfilling their duties, and that Infantino's death was a tragedy attributed to preexisting illness.

## **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 Infantino. The evidence shows that Infantino died as a result of hypertension and atherosclerotic cardiovascular disease and that the death was a natural one.

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

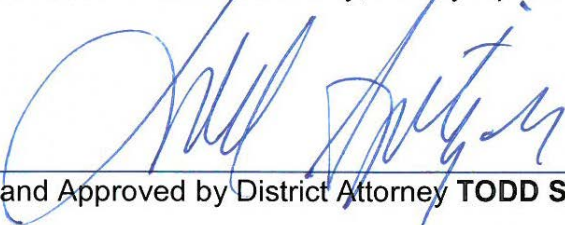
Respectfully submitted,



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



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