



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

May 17, 2021

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

Re: Custodial Death on May 11, 2020
Death of Inmate Jeffrey Steven Scott
District Attorney Investigations Case # SA 20-012
Orange County Sheriff's Department Case # 20-015126
Orange County Crime Laboratory Case # 20-44785
Orange County Coroner Case # 20-02366-MM

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 May 11, 2020, custodial death of 55-year-old inmate Jeffrey Steven Scott.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Scott. 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 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 May 11, 2020 OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Global Medical Center (OCGMC), where Scott died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed five witnesses, obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), and reviewed incident scene photographs as well as 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 person under the supervision of the OCSD. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

As part of its duties, the OCDASAU is responsible for conducting an investigation when an individual dies while in custody in Orange County. 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 who are 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 cases and letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On May 3, 2020, at approximately 11:40 p.m., officers from the California Department of Corrections and Rehabilitation (CDCR) arrested Scott for a Parole Violation pursuant to Penal Code (PC) § 3056. Scott was on parole for a violation of PC § 288(a) – Lewd and Lascivious Acts with a Child and was monitored with an ankle bracelet. He was arrested because he failed to keep his ankle bracelet charged.

On May 4, 2020, at approximately 12:26 a.m., Scott was booked at the OCSD Intake/Release Center (IRC). During this process, Scott was given a chest X-ray, which was abnormal. An Orange County Health Care Agency (HCA) doctor examined him and ordered him to be transferred to OCGMC for treatment of a collapsed lung and Acute Respiratory Distress Syndrome. At approximately 3:15 a.m., Scott was transported, in custody, to OCGMC by ambulance. At approximately 10:23 a.m., OCGMC admitted Scott for treatment of a lung mass. At approximately 11:51 a.m., a CT scan performed at OCGMC revealed a collapsed lung and multiple subcutaneous lesions that indicated metastatic lung cancer. OCGMC later confirmed Scott had lung cancer, which had metastasized to the brain, chest, abdomen and pelvis. Scott's prognosis was poor and doctors determined his likelihood of recovery was low. At the time of his intake, Scott was conscious and able to interact with medical staff, but his condition deteriorated rapidly.

On May 8, 2020, at approximately 2:30 p.m., the attending OCGMC physician met with Scott's sister, Jane Doe. After advising her of Scott's condition, Jane Doe agreed Scott should be placed on Comfort Care with a Do Not Resuscitate (DNR) order. The attending physician ordered all medications and tests discontinued, with the exception of morphine, which was provided as a comfort measure. During the following three days, doctors and/or nurses regularly checked on Scott's condition and reviewed his vital statistics to make sure he was stable.

On May 11, 2020, at approximately 6:30 p.m., OCSD Deputy Daniel Serrano relieved Deputy Matthew Siefker as the deputy providing security for Scott, who was in room #415 at OCGMC. As Siefker briefed Serrano, Serrano observed Scott was pale and did not appear to be breathing. The medical staff was immediately notified and responded. The attending RN entered room #415 and evaluated Scott concluding that Scott was not breathing and had no pulse.

At approximately 6:37 p.m., an RN entered room #415 and conducted an additional evaluation of Scott, and also determined that Scott was deceased. Due to Scott being in OCSD custody, the RN was unable to pronounce death, which required a doctor. At approximately 8:25 p.m., an attending physician entered room #415 and evaluated Scott. The attending physician pronounced Scott deceased, and determined the time of death was 6:35 p.m.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Blood Stain Standard
- 33 Hospital Scene Photographs
- 66 Autopsy and Embalmed Photographs
- 10 Hospital Photographs

AUTOPSY

On May 14, 2020, independent Forensic Pathologist Doctor Scott Luzi conducted an autopsy on the body of Scott. Doctor Luzi determined that Scott had cancer throughout his body, including his brain. Doctor Luzi indicated that the cause of death was metastatic pulmonary carcinoma and that the manner of death was natural.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Scott's postmortem and antemortem blood yielded the following results:

DRUG	Postmortem Blood	Antemortem Blood
Morphine (Free)	0.462 ± 0.050 mg/L	N/A

BACKGROUND INFORMATION

Scott had a State of California Criminal History record that revealed arrest for the following violations:

- Lewd or Lascivious Acts with a Child Under 14 Years Old
- Grand Theft
- Vehicle Theft
- Attempted Burglary
- Tampering with a Vehicle
- Hit and Run with Property Damage
- Causing a Fire of Property
- Trespassing
- False Identification to a Peace Officer
- Vandalism
- Possession / Manufacturing / Selling a Dangerous Weapon
- Exhibiting a Deadly Weapon not a Firearm
- Felon in Possession of a Firearm
- Possession of a Controlled Substance

- Possession for Sale of a Controlled Substance
- Weapon/Tear Gas in State Prison
- Violation of Parole
- Probation Violation
- Failure to Appear
- Disobeying a Court Order / Process
- Contempt of Court
- Driving Under the Influence of Alcohol / Drugs
- Driving on a Suspended License

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 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 this case, there is no evidence of express or implied malice on the part of OCSD personnel, inmates, or 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.

The OCSD staff owed Scott a duty of care. Based on all available evidence, the OCSD staff fulfilled this duty. Therefore, the evidence does not support a finding that OCSD's duty of care was in any way breached, either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

When OCSD took custody of Scott, the medical staff performed an x-ray exam of Scott's chest and the results were abnormal. In response to this, the medical doctor ordered that Scott be taken to OCGMC for further evaluation and proper treatment.

Shortly after 11 a.m. on May 4, the morning after Scott was taken into custody, a CT scan at OCGMC showed evidence that Scott had a collapsed lung as well as lung masses and subcutaneous lesions. Further testing revealed that Scott had lung cancer, which had metastasized into his brain, chest, abdomen and pelvis. Scott's prognosis was poor and his health declined rapidly. By May 7, with biopsy results pending, Scott's attending physician noted Scott appeared to be lethargic and confused. On May 8, Scott's sister agreed to a DNR order and the attending physician ordered all medications and tests discontinued. Scott was placed on Comfort Care on May 9 and was given morphine to ease pain.

In the days prior to Scott's death, medical staff regularly checked on him and monitored his vital statistics. There is no evidence that at any time Scott displayed signs or symptoms which warranted additional medical care, or that additional treatments would have improved his condition.

Scott died on the evening of May 11. As soon as Deputy Serrano observed that Scott looked pale and did not appear to be breathing, he took immediate action to notify the medical staff. The staff then took appropriate action to address the situation. Scott was pronounced deceased on May 11 at 6:35 p.m. The independent Forensic Pathologist determined that Scott's cause of death was metastatic pulmonary carcinoma and that the manner of death was natural. Notably, this determination is consistent with the findings of the tests conducted at OCGMC and the treatment Scott received while in custody.

The evidence indicates that Scott's health was deteriorating rapidly when he was taken into custody. Within hours of his arrest, Scott was transported by ambulance to the OCGMC hospital, where he received testing that revealed lung cancer that had metastasized into his brain, chest, abdomen and pelvis. The cancer would claim his life one week later. During that week, Scott received regular medical attention while his physical and mental capacities faltered. Days prior to his death, Scott's sister agreed to a DNR order and Scott was placed on Comfort Care until his passing.

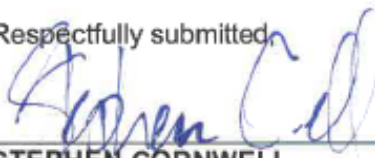
Based on the evidence, the OCDA's Office would not be able to prove beyond a reasonable doubt that OCSD was criminally negligent or reckless in any manner. There is no evidence that OCSD took actions or failed to act in any way that caused Scott's death. To the contrary, the evidence illustrates that OCSD accurately diagnosed Scott's condition and took appropriate measures to provide care.

CONCLUSION

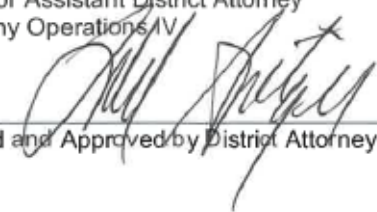
Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion that there is no evidence to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty causing the death of Scott. The evidence shows that Scott died as a result of metastatic pulmonary carcinoma and that his death was a natural one.

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

Respectfully submitted,



STEPHEN CORNWELL
Senior Deputy District Attorney
Gangs Unit

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

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