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November 18, 2013

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower St.
Santa Ana, Ca 92703

Chief Carlos Rojas
Santa Ana Police Department
1050 West Civic Center Dr.
Santa Ana, Ca 92702

Re: Custodial Death on April 28, 2012
Death of Inmate Angel Anthony Ponce
Orange County District Attorney Investigations Case # 12-012
Santa Ana Police Department DR # 12-12578, 12-12685
Orange County Sheriff-Coroner Case # 12-01747-SH
Orange County Crime Laboratory FR# 12-46474

Dear Sheriff Sandra Hutchens and Chief Carlos Rojas:

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 April 28, 2012, death of inmate Angel Anthony Ponce, 50, a transient in the City of Santa Ana.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Ponce. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered and the legal principles applied to determine whether criminal culpability exists on the part of any Orange County Sheriff's Department (OCSD) deputy and/or Santa Ana Police Department (SAPD) officer or any other person under the supervision of the OCSD and/or SAPD.

On April 28, 2012, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Angels Community Park located at 914 West 3rd Street in the City of Santa Ana after Ponce died after being released from the custody of OCSD. The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies and/or SAPD officers or personnel. 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 contacted. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing and evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records interviews, and the Orange County Crime Laboratory processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a Senior Deputy District Attorney for legal review. Deputy District Attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memo. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On April 27, 2012, Ponce was arrested at 12:18 p.m. by SAPD officer Anthony Romero for a parole violation. Ponce was on parole for Penal Code Section 261(a)(2), Rape by Force. Ponce was seen by Officer Romero drinking a 32-ounce beer in front of a 7-Eleven convenience store.

Ponce was first taken to Santa Ana City Jail and then transported to the Orange County Jail, where he was booked at 4:19 p.m. and released at 9:33 p.m.

Santa Ana Jail

At 1:01 p.m., a medical evaluation was completed by Santa Ana City Jail custodial Officer Vanessa Clarkson, who completed the medical pre-screening of inmate Ponce. Ponce did not complain of pain, being ill or suicidal. He reported that he was bipolar, had schizophrenia and anxiety. He also listed his prescribed medication.

Ponce was medically cleared by Santa Ana Jail medical personnel. Santa Ana Jail Custodial Officer Mark Perez placed Ponce in a private cell. After placing Ponce in a cell, Officer Perez heard vomiting coming from Ponce's cell and saw him walking away from the toilet. Officer Perez inquired if Ponce was all right. Ponce responded that he was "all right." At 4:19 p.m., Santa Ana Jail Custodial Officer David Reyes escorted Ponce to the Orange County Jail.

Orange County Jail

At 4:19 p.m., Ponce was screened by a Correctional Medical Services Registered Nurse (RN). He informed the staff he had no pain but that he had Hepatitis C. He also told staff he had consumed Vodka that morning and drinks alcohol regularly. Ponce indicated he was currently prescribed Zyprexa, Buspar, and Remeron. It is unknown when he had last taken these medications. At 7:30 p.m., Ponce was taken to the medical jail ward, Mod L, and placed in a "safety gown," where inmates are given medical gowns to wear instead of jail uniforms.

At 7:30 p.m., Deputy Russell Egbert had a brief conversation with Ponce, who stated he wanted to kill himself. At no time while Ponce was in Mod L did he ask for medical attention, but he did state to Deputy Egbert that he was not feeling well. A short time later, Correctional Services Assistant Brian Quigley received paperwork advising Ponce was to be released. At 8:00 p.m., a different RN noted Ponce was hearing voices, but he denied being a danger to himself or others. Ponce said, "I was just upset from being re-arrested."

At 9:23 p.m., Ponce was escorted from Mod L downstairs to be released. During his entire stay at the facility, Ponce was cooperative and there had been no physical altercations. He was released at 9:33 p.m. The total approximate custody time between the two jail facilities was nine hours.

Angels Community Park

After being released from the Orange County Jail, Ponce walked one block to Angels Community Park located at 914 West 3rd St in Santa Ana. He walked up to a female friend of his at the park. The friend thought Ponce had been drinking and said he was sick and vomiting. The friend offered to call the paramedics on two occasions that night, but he declined. They went to sleep on the park benches at 11:00 p.m.

On April 28, 2012, the friend awakened at 6:00 a.m. and asked if Ponce was okay. He told her that he was okay, but he still appeared to be ill. At 9:45 a.m., Ponce said he was not feeling well and went to lie in the shade. The friend went to the bathroom and when she came back, Ponce was unresponsive. Paramedics were called and dispatched at 10:17 a.m. Ponce had no pulse and was not breathing. After attempting life saving measures on him, paramedics were directed to pronounce his death by Western Medical Center at 10:41 a.m.

AUTOPSY

May 1, 2012, at 9:20 a.m., the post-mortem examination of Ponce was conducted at the Orange County Sheriff-Coroner Forensic Center. The autopsy was conducted by United Forensic Services, Forensic Pathologist, Dr. Joseph Cohen. Ponce was a 50-year-old male. Dr. Cohen observed Ponce's liver to be pale and fatty, which is indicative of alcohol abuse. The heart was described as floppy, which is consistent with hypertension and alcohol abuse. One coronary artery showed a 50 percent blockage. Dr. Cohen observed a lower esophageal ulcer, which was perforated and appeared to be the cause of a large amount of murky fluid within the left chest cavity. Dr. Cohen did not observe any signs of recent internal or traumatic injuries, and no signs of impact injuries to the skull or brain.

In the autopsy report, Dr. Cohen stated the cause of death was chronic alcoholism with steatosis and fibrosis of the liver. He also stated other significant conditions were recent spontaneous esophageal rupture; hypertensive cardiovascular disease; chronic illicit drug abuse; chronic hepatitis C viral infection; and pulmonary emphysema. These conditions are all predispositions for sudden death.

The manner of death was determined to be natural causes.

EVIDENCE ANALYSIS

Ponce's post-mortem blood samples were analyzed for prescription drugs, common drugs of abuse and infectious diseases. His blood tested positive for hepatitis C. Olanzapine, Fluoxetine, and Mitazapine were found in his blood samples. Olanzapine, Fluoxetine and Mitazapine are all substances contained in prescription medications used to treat depression, anxiety and schizophrenia.

BACKGROUND INFORMATION

Ponce's criminal history was reviewed and considered in this case.

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, it 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;
- 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 *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th231,251, the court establishes

that there is a "special relationship" between custodian and inmate:

"The most important consideration in establishing duty is foreseeability. 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

There is no evidence of express or implied malice on the part of any OCSD deputy and/or SAPD officer or any inmates or other individuals under the supervision of OCSD or SAPD. 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 and SAPD owed inmate Ponce a duty of care, the evidence does not support a finding that this duty was breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

As stated above California Government Code 845.6: "...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." **Emphasis added.**

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.

Action of Officers, Deputies and Nurses

Santa Ana Jail

- Ponce completed a medical screening and did not complain of pain or being ill
- Santa Ana Jail Custodial Officer Perez, upon hearing inmate Ponce vomiting, asked him if he was all right and Ponce responded he was "all Right."

Orange County Jail

- Ponce was medically screened by an RN. He complained of no pain but said he had hepatitis C. He indicated he had consumed vodka earlier that day and was on Zyprexa, Buspar and Remeron.
- He told Deputy Egbert that he was suicidal and was placed in Mod L in a "safety gown."
- At no time when he was in Mod L did Ponce ask for medical attention, but did state that he was not feeling well.
- An RN did the medical release from Orange County Jail and inmate Ponce stated he was hearing voices, but denied being a danger to himself or others. He said, "I was just upset from being rearrested."

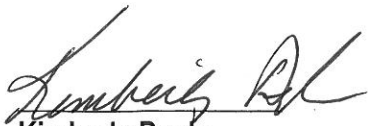
CONCLUSION

Based on all evidence provided to and reviewed by the OCDA and pursuant to the applicable legal principles, there is no evidence of criminal culpability on the part of OCSD or the SAPD personnel or any individual under the supervision of OCSD or SAPD.

All officers, deputies, and nurses acted as an ordinary careful person would act in the same situation. There is no evidence inmate Ponce needed immediate medical care while he was in custody at SAPD and Orange County Jail. He never complained of pain and never asked for medical attention. He vomited once and told Officer Perez he was all right. He told the RN that he was not feeling well, but never asked for medical attention. He said he wanted to commit suicide to Deputy Egbert, but then said he was just upset for being rearrested. The Coroner's report states Ponce's cause of death was chronic alcoholism with steatosis and fibrosis of the liver.

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

Respectfully Submitted,



Kimberly Doyle
Senior Deputy District Attorney
Target Unit

Read and Approved,



Bruce Moore
Assistant District Attorney, DNA Unit