



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI

SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

MARY ANNE MCCAULEY

SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

JOSEPH D'AGOSTINO

SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

MICHAEL LUBINSKI

SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

JEFF MCLAUGHLIN

CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON

DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER

CHIEF OF STAFF

October 30, 2012

Acting Chief Jerry Price
La Habra Police Department
201 E. La Habra Boulevard
La Habra, CA 90633-0337

RE: Custodial Death on July 3, 2011
Death of Inmate Juan Jose Fuerte
District Attorney Investigations Case #11-011
La Habra Police Department DR # 11-3798
Orange County Crime Laboratory Case #11-48930

Dear Acting Chief Price,

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 July 3, 2011, custodial death of inmate Juan Jose Fuerte.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Fuerte. 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 La Habra Police Department (LHPD) officer or any other person under the supervision of the LHPD.

On July 3, 2011, OCDA Special Assignment Unit (OCDASAU) Investigators responded to St. Jude Hospital after Fuerte died while being treated at the hospital after being taken into custody. 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 LHPD officer or personnel. The OCDA will not be addressing policy, training, tactics, or civil liability.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: www.OrangeCountyDA.com

☒ MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

☐ NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92631
(714) 773-4480

☐ WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

☐ HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

☐ JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

☐ CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

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 and evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all 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 veteran 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 memos. 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.

An important aspect of investigating incidents such as this is seeking a statement from people who had contact with the deceased in the hours leading up to his death. All LHPD personnel involved in this incident voluntarily spoke to OCDA investigators.

FACTS

On June 24, 2011, at approximately 10:53 p.m., Fuerte flagged down LHPD Officers Cory Barrow and Adam Foster. Fuerte spoke only Spanish, and neither Barrow nor Foster spoke Spanish, so they contacted Officer Shawn Miller to assist in interpreting. Fuerte claimed that individuals within a nearby business tried to kill him. The business that Fuerte gestured toward was closed. Officer Miller observed that Fuerte appeared to be under the influence of alcohol. The officers did not observe anyone in the area who intended to harm Fuerte. Fuerte told the officers that he had a cousin who lived nearby and wanted to go to his house. Although he was under the influence of alcohol, the officers felt that he could safely walk to his cousin's house, so they allowed Fuerte to leave. Shortly thereafter, LHPD Officer Eric Ocampo made contact with Fuerte, stopped him, and radioed Officer Miller to confirm that Fuerte was the same individual that Officers Barrow and Foster had stopped earlier. When Officer Miller confirmed that he was, Officer Ocampo let Fuerte continue on his way to his cousin's house.

At approximately 11:19 p.m., Fuerte called 911 from a payphone, claiming that two males in a nearby vehicle had a gun and were trying to kill him, although he stated that he did not actually see the gun. Approximately three minutes later, LHPD Officers Eric Roy, Rob Diehl, and Miller responded to the call. Officer Roy also noticed that Fuerte smelled of alcohol and appeared intoxicated. The officers checked nearby vehicles, but found no one who was trying to harm Fuerte. Officer Roy believed that Fuerte's paranoia was induced by his intoxication. Officer Miller stated that Fuerte asked the officers to arrest him for his own safety. Officer Roy determined that Fuerte was too intoxicated to care for himself and placed him under arrest for California Penal Code Section 647(f) - public intoxication. Officer Deihl also observed that Fuerte was too intoxicated to care for himself, but that he did not show any indications of being a suicide risk.

Officer Miller accompanied Fuerte to the La Habra City Jail (LHCJ) and assisted in the booking process. They arrived at the LHCJ at approximately 11:42 p.m. During the booking process, Officer Miller never observed Fuerte making suicidal comments or exhibiting any behavior that would raise a suspicion of suicidal intent. Fuerte actually thanked the officers and said that he was going to go to sleep. Because Fuerte was still too intoxicated to care for himself at this point, he was placed in a sobering cell, and any personal effects that he could use to harm himself were removed from his person (i.e. belt, shoelaces, etc.).

Jailer Bob Metzler, with the assistance of jail trustee Filgonio Gonzalez acting as an interpreter, completed an inmate medical screening form which included two questions which addressed whether Fuerte had ever tried to harm himself, take his own life, or if he currently had any intentions of doing so. Fuerte responded in the negative to both questions. Jailer Metzler confirmed Fuerte's answers to these questions. During his time in the sobering cell, Fuerte pointed to the cameras in the jail and appeared to be scared of them. When Jailer Metzler asked Gonzalez to translate, Gonzalez told Jailer Metzler that Fuerte was not making sense. Gonzalez stated in a later interview that Fuerte was saying that someone was trying to communicate with him through the cameras. Fuerte also asked Gonzalez to talk to his family, but did not specify what he wanted Gonzalez to say. Fuerte remained in the sobering cell until approximately 6:21 a.m. the next morning, when he was able to stand without assistance and care for himself, and was then moved into cell #A-2.

Approximately two hours later, Jailer Metzler moved Fuerte into the booking cell in order to complete the booking process, when Jailer Metzler ended his shift. At approximately 10:47 a.m., after the booking process was complete, Jailer Clarence Johnson moved Fuerte back into cell #A-2. Inmate D. Medina was placed in one of the cells adjacent to Fuerte's cell at approximately noon that same day and began conversing with Fuerte in Spanish. He stated in a later interview that he believed that Fuerte was drunk because he was slurring his speech and was not making sense.

Jailer Marlia Figueroa began her shift at approximately 2:00 p.m. that afternoon. Jailer Johnson informed her that Fuerte had been acting strangely, indicating that he was afraid of the cameras and the phone inside of his cell. Jailer Figueroa asked if Fuerte was a danger to himself or others. Jailer Johnson told her that Fuerte was a "little crazy," but had been brought into the jail for being drunk and was going to be released pending a warrant inquiry.

During her shift, Jailer Figueroa conducted regular welfare checks. At approximately 5:18 p.m., Jailer Figueroa fed Fuerte his dinner. At about 5:50 p.m., Jailer Figueroa walked by Fuerte's cell and asked him if he was okay, and he responded that he was. At approximately 6:52 p.m., Jailer Figueroa placed an inmate in the other cell that was adjacent to Fuerte's cell, and she overheard Fuerte talking to inmate Medina. Inmate Medina later stated that Fuerte was mumbling to himself while he was in his cell, but had not made any suicidal comments.

At approximately 7:00 p.m., via the in-cell camera, Fuerte was seen walking to the south wall of the cell (the same wall that the camera was on) and disappeared from view. A few minutes later, the back of his head momentarily came within view as he leaned away from the south wall, and then he leaned back toward the wall. At approximately 7:20 p.m., Jailer Figueroa conducted her regular check and found Fuerte hanging from the cord of the telephone that was located in his cell, which was approximately four feet above the cell floor. She immediately radioed for officer and paramedic assistance, and Sergeant Dan Barnes and Officers Rebecca Buenrostro and Paul Lucifora responded within one minute. The telephone cord was wrapped around Fuerte's neck and was being held in place by the handset. Fuerte's back was to the south wall, and he was in a kneeling position. Sergeant Barnes slapped the handset to release the cord.

Once Fuerte was on the floor of the cell, Sergeant Barnes checked for a pulse. Detecting no pulse, he began chest compressions and instructed Jailer Figueroa to retrieve a Bag Valve Mask (BVM). Officer Diehl, who was then on site, administered ventilations via the BVM and Officers Lucifora and David Crivelli administered chest compressions until Los Angeles County Fire Department Paramedics arrived at 7:26 p.m. and took over care.

Upon assuming care, paramedics detected no pulse or respirations. They intubated Fuerte and administered supplemental oxygen, initiated an intravenous line, and administered amiodarone before transporting Fuerte to St. Jude Hospital in Fullerton. At 7:46 p.m., when they arrived at St. Jude and relinquished Fuerte to the care of emergency room personnel, he had a pulse, but no respirations. After a time in the emergency room, Fuerte was transferred to the Critical Care Unit (CCU). He still had a pulse, but was on a ventilator. While in the CCU from June 25, 2011 to July 1, 2011, Fuerte remained on the ventilator; his heart was stable, but he never regained consciousness. Brain scans showed very little brain activity. Fuerte was declared brain dead on July 1, 2011, at 11:50 a.m. and 12:05 p.m. and on July 3, 2011 at 5:18 p.m. and 6:41 p.m.

AUTOPSY

On July 6, 2011, at approximately 9:13 a.m., Orange County Chief Forensic Pathologist Doctor Anthony Juguilon performed the post-mortem examination of Fuerte at the Orange County Sheriff-Coroner Forensic Science Center. After completing the examination, Dr. Juguilon concluded that the cause of Fuerte's death was lack of oxygen to the brain due to hanging himself.

EVIDENCE ANALYSIS

TOXICOLOGY

Fuerte's ante-mortem blood samples were analyzed for alcohol and substances of abuse, none were found.

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 elements must be proven:

1. The person committed an act that caused the death of another person;
2. When the person acted he had a state of mind called malice aforethought; and
3. He 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 deliberately acted with conscious disregard for human life.

A person can also commit murder by his failure to perform a legal duty, if the following conditions exist:

1. The killing is unlawful (i.e., without lawful excuse or justification);
2. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
3. The failure to act is dangerous to human life;
4. 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:

1. The person had a legal duty to the decedent;
2. The person failed to perform that legal duty;
3. The person's failure was criminally negligent; and
4. The person's failure caused the death of the decedent.

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 LHPD personnel. Thus, the only possible type of homicide to analyze in this situation is murder or involuntary manslaughter under the theory of failure to perform a legal duty.

As Fuerte's jailers, LHPD owed Fuerte a duty of care. However, the evidence does not support a finding that the duty was breached – neither intentionally (as required for murder) nor through criminal negligence (as required for involuntary manslaughter). La Habra police followed appropriate procedures and protocol, including post-arrest medical/psychological screening (which included specific questions about any potential suicidal intent) and removing any items from his person which he could have used to harm himself. LHPD jailers performed regularly scheduled welfare checks and provided Fuerte with all necessities. During the time he was in their custody, he made no verbal expressions of suicidal intent or any other indications that he intended to harm himself. Although Fuerte's behavior was unusual, most of the individuals who came into contact with him believed that it was a result of his intoxication. There was nothing that would have alerted a reasonable person that Fuerte might harm himself. Further, interviews revealed no verbal or physical mistreatment of Fuerte. The autopsy showed no signs of trauma apart from the ligature marks on his neck.

CONCLUSION

Based on all evidence provided and reviewed by the OCDA and pursuant to applicable legal principles, it is my legal opinion that that evidence does not support a finding of criminal culpability on the part of any LHPD personnel. The evidence shows that Fuerte died as a result of suicide.

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

Respectfully Submitted,



Larry Yellin
Senior Deputy District Attorney
Homicide Unit

Read and Approved,



Dan Wagner
Assistant District Attorney
Head of Homicide Unit