



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

November 3, 2022

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

Re: Custodial Death on October 20, 2021
Death of Inmate Ryan Forney
District Attorney Investigations Case # 21-004606
Orange County Sheriff's Department Case # 21-035610
Orange County Crime Laboratory Case # 21-53590 and 21-53906

Dear Sheriff Barnes,

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 October 20, 2021, custodial death of 32-year-old inmate Ryan Forney.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Ryan Forney. 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 October 20, 2021, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the Theo Lacy Facility, where Ryan Forney died while in custody and was found nonresponsive in his cell bunk. During the course of this investigation, the OCDASAU interviewed 36 witnesses, as well as obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, and 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

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the part of OCSD personnel or any other person under the supervision of the OCSD. 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 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, TARGET/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 Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

Ryan Forney was booked into the Intake Release Center on October 18, 2021 at 2:03 p.m. for Penal Code (PC) 3056 – Parole Violation.

At 1:58 p.m., a Registered Nurse completed a medical screening of Forney. Forney indicated that he was not currently using any street drugs, but disclosed that he took Xanax for anxiety. He indicated that he had previously suffered from depression, hypertension, and anxiety, but never had any suicidal ideations. Forney was scheduled for Triage Prescriber and Mental Health Triage referrals.

At approximately 9:58 p.m., Forney was evaluated by Mental Health. He disclosed that he consumed one bottle of vodka per day, used heroin and methamphetamine daily, and had last used one week prior. Forney also indicated that he was currently using suboxone. He disclosed that in 2013, while in custody at OCJ, he underwent a psychiatric evaluation and was diagnosed with Bipolar disorder. Forney was observed to have no barriers to communication, was oriented to person, place and time, and did not have an abnormal physical appearance or abnormal behavior or thought process. He showed no signs of illness, injury, or pain. Forney denied prior suicide attempts or current suicidal ideations.

Forney was prescribed Escitalopram Oxalate for anxiety and Lisinopril for hypertension. He was placed on a withdrawal protocol of Oxazepam and Buprenorphine / Naloxone and cleared for regular housing.

Forney was transferred to the Theo Lacy facility on October 19, 2021 at approximately 11:37 a.m. and housed in Module J, Sector 11, Cell 13 with a cellmate, John Doe 1.

According to video surveillance footage that day, John Doe 1 appeared to be sleeping on the cell floor and Forney could be seen sitting on the lower bunk and occasionally getting up and then sitting back down. At approximately 10:25 p.m., Forney's left arm could be seen hanging off the bunk. This was the last movement seen by both inmates for October 19, 2021.

At approximately 2:40 a.m. on October 20, 2021, an announcement was made over the loudspeaker for a medication call. Forney's cellmate woke up, dressed, and then attempted to wake Forney. John Doe 1 noted that Forney was cold to the touch and unresponsive. John Doe 1 again tried to rouse Forney but was unsuccessful. At 2:47 a.m., John Doe 1 pushed the emergency button in the cell and notified officers that Forney was unresponsive and in need of medical assistance.

At approximately 2:49 a.m., there was a radio transmission that stated "Man down Module "J", Inmate unconscious and not breathing."

At approximately 2:50 a.m., Deputy Joshua Harvey arrived and administered three rounds of Narcan into Forney's nostrils, with no discernable effect. At 02:53 a.m., A Registered nurse attached the Automated External Defibrillator (AED) to Forney. The AED performed an analysis and no shock was advised an estimated three or four times. The Registered Nurse assembled a bag-valve-mask for oxygen delivery to Forney as chest compressions continued. Officer R. Lopez responded at approximately 2:55 a.m. with two additional boxes of Narcan.

At approximately 2:56 a.m., the Registered Nurse administered an intramuscular dose of Narcan for Forney and an intravenous dose of Narcan, both of which had no effect. At 2:57 a.m., an LVN arrived with an additional man down medical bag. Life saving measures were performed consistently until paramedics arrived.

At 3:00 a.m. Orange City Fire truck #6 arrived and placed a CPR machine on Forney. Orange City Fire then provided life saving measures between 3:00 a.m. and 3:32 a.m, when Forney arrived at the University of Irvine Hospital, where he was pronounced dead at 3:32 a.m. on Wednesday, October 20, 2021.

Upon investigation of the scene, forensic specialists found white powder, a Jail ID card for Ryan Forney, and a plastic spoon on the bottom bunk. There was also a piece of paper on the floor near the toilet that alluded to the sale of drugs, specifically "FENY."

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- A sample of Forney's postmortem blood
- A heart blood standard
- 70 OCCL jail scene photographs
- 52 OCCL autopsy photographs
- 19 post embalming photographs
- 21 OCCO photographs
- OCHCA medical records
- Jail facility video
- Audio recording of 27 interviews with other inmates

- 9 audio recordings of interviews with witnesses and other individuals
- White powdery substance recovered from Bunk #1
- Yellow rolled paper located on Bunk #1
- Nine (9) swabs collected from Forney's hands, nails, neck, and face
- White boxers

AUTOPSY

On October 27, 2021, Forensic Pathologist Dr. Luzi of the Orange County Coroner's Office conducted an autopsy on the body of Ryan Forney. The autopsy revealed no major, or life threatening, injuries. The only minor, or non-life-threatening injury found was a 0.5 linear abrasion on the right forehead over the eyebrow. Pre-existing conditions identified included remote internal fixation in the pelvis, cerebral edema, pulmonary congestion and edema, and cardiomegaly. Dr. Luzi determined Forney's cause of death to be acute fentanyl intoxication and judged the manner of death to be an accident.

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG14	MATRIX	RESULTS & INTERPRETATIONS
Fentanyl	Postmortem Blood	0.0272 ± 0.0026 mg/L
Nonfentanyl	Postmortem Blood	Detected
4-ANPP	Postmortem Blood	Detected
It Acetaminophen	Postmortem Blood	6.57 ± 0.61 mg/L
Oxazepam	Postmortem Blood	0.338 ± 0.039 mg/L
Oxazepam-glucuronide	Postmortem Blood	Detected
Buprenorphine	Postmortem Blood	Detected
Buprenorphine-glucuronide	Postmortem Blood	Detected
Norbuprenorphine	Postmortem Blood	Detected
Naloxone	Postmortem Blood	Detected
Citalopram	Postmortem Blood	Detected
Norcitalopram	Postmortem Blood	Detected

A sample of the white powder collected from the bottom bunk was tested by the Orange County Crime Lab which revealed the substance contained Fentanyl and Acetaminophen.

BACKGROUND INFORMATION

Ryan Forney had a State of California Criminal History record that revealed arrests dating back to 2014 for the following violations:

- PC 273.5(a) – Infliction of Corporal Injury on Spouse/Cohabitant
- PC 166(c) – Contempt: Violation of a Protective Order
- PC 148.9(a) – Giving False Identification to an Officer
- PC 451(d) – Arson: Property
- PC 69 – Obstruct/Resist Executive Officer
- PC 245(a) – Assault with a Deadly Weapon
- PC 4573.6 – Possession of a Controlled Substance while in Prison
- PC 148.5(a) – Making a False Police Report
- PC 415(1) – Fight/Challenge Fight Public Place
- H&S 11550 Under the Influence of a Controlled Substance
- PC 3056 – Violation of Parole
- PC 470(d) – Forgery
- PC 594(b)(1) – Vandalism
- PC 647(f) – Disorderly Conduct: Public Intoxication
- PC 240 – Assault
- PC 242 – Battery
- PC 422(a) – Threaten Crime with Intent to Terrorize
- VC 14601.1(a) – Driving on 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 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; 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:

"[T]he 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 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 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 Ryan Forney a duty of care, the evidence does not support a finding that this duty was in any way breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). The OCSD was alerted by John Doe 1, Forney's cellmate, that Forney needed assistance and responded promptly. Deputies found Forney unresponsive and performed necessary medical care to no avail until the Orange City Fire Department arrived on the scene who took over attempting to care for Forney. Ultimately these efforts were unsuccessful and Forney was later pronounced deceased by medical personnel.

When Forney's cellmate found him unresponsive in his bunk, officers and medical staff arrived and immediately began life saving measures. This included administering several doses of Narcan, consistent performance of CPR and multiple AED analyses. Unfortunately, these actions were not

successful for the approximately ten minutes that they were performed, prior to the Orange City Fire Department arriving. It is clear that the deputies and those working with them took all necessary and appropriate measures to provide Forney medical care when they were notified that he was nonresponsive.

Thus, 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.

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 Ryan Forney. The evidence shows that Ryan Forney died as a result of acute fentanyl intoxication and that the death was an accident.

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



Shaun Abuzalaf
Deputy District Attorney
Gangs/Target Unit



READ AND REVIEWED BY BRETT BRIAN
Assistant District Attorney
Special Prosecutions Unit



READ AND APPROVED BY DISTRICT ATTORNEY TODD SPITZER