



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

January 17, 2023

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

Re: Custodial Death on September 27, 2021
Death of Baby Doe
District Attorney Investigations Case # 21-004111
Orange County Sheriff's Department Case # 21-32753
Orange County Crime Laboratory Case # 21-52673
Orange County Coroner Case #21-05733-DB

Dear Sheriff Barnes,

Please accept this letter detailing the Orange County District Attorney's (OCDA) investigation and legal conclusions regarding the September 27, 2021 custodial death of newborn Baby Doe.

OVERVIEW

This letter describes the criminal investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to review the conduct of all Orange County Sheriff's Department (OCSD) personnel involved with this incident as well as any other individuals working under the supervision of the OCSD.

On September 27, 2021, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to Orange County Global Medical Center (OCGMC), where newborn Baby Doe had died after receiving treatment. At the time of the events surrounding Baby Doe's death, his mother had been incarcerated in Orange County Jail/Intake and Release Center (IRC) and was in the custody of OCSD. Accordingly, investigation of the matter falls within the purview of OCDASAU.

During the course of this investigation, the OCDASAU interviewed four (4) witnesses. OCDASAU also obtained and reviewed records from the Riverside County Jail (RCJ), OCSD and IRC, Orange County Crime Laboratory (OCCL) as well as incident scene photographs, medical records, and other documents concerning the custodial status of Baby Doe's mother.

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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. It should be noted, 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 does not address issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating the deaths of individuals occurring in Orange County 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 (6) investigators are assigned to the OCDASAU on a full-time basis. Additional OCDA investigators assigned to other units in the OCDA are trained to assist when needed. On average, eight (8) investigators respond to an incident within an hour of being called. These investigators perform a variety of functions that include witness interviews, scene processing, evidence collection, and other responsibilities as needed. Naturally, the specific scope of each investigation depends, to a degree, on the circumstances surrounding the death and the information provided by witnesses or obtained through records, photographs, and autopsy findings. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to each investigation.

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. Thus, when the lead OCDASAU investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. If necessary, the reviewing prosecutor will send the case back for further investigation.

Throughout the review process, the assigned prosecutor will consult with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting reports and correspondence. It is also common for the matter to be reviewed by several experienced prosecutors and their supervisors. Ultimately, the District Attorney personally reviews all officer involved shootings and custodial death letters.

FACTS

On September 2, 2021, Baby Doe's mother was arrested in Riverside County on an outstanding misdemeanor warrant for battery on a public officer. She was booked into RCJ and reported to their staff that she was approximately twenty-four (24) gestational weeks pregnant. She also disclosed a history of hyperemesis (excessive vomiting). As a result, she was seen by RCJ medical staff on multiple occasions.

On September 3, 2021, she was given Zofran, an antiemetic used to treat nausea and vomiting. The same day, medical staff diagnostically confirmed her pregnancy. On September 9, 2021, Baby Doe's mother refused her prenatal vitamin, stating that it was not the right medication.

On September 16, 2021, Baby Doe's mother was transferred to IRC. An Orange County Health Care (OCHC) Registered Nurse completed her medical pre-screening at 2:18 p.m. Baby Doe's

mother disclosed she was six (6) months pregnant and a regular smoker. She also provided a medical history that included a stomach ulcer and excessive vomiting. She was provided written information that advised "[r]esources for information on ... pregnancy is available to every woman in custody," and was placed on a prenatal diet.

Beginning the same day, September 16, 2021, Baby Doe's mother was routinely examined by IRC medical staff. These evaluations included consultations and checks for temperature, pulse, respiration, and blood pressure. She was also provided Zolfran.

On September 17, 2021 and September 18, 2021 Baby Doe's mother refused her prenatal vitamin. Consequently, OCHC professionals asked her whether she understood the risks of pregnancy complications. She declined to answer verbally, but signed a refusal to accept treatment and liability waiver on September 17, 2021 at 7:30 a.m. Baby Doe's mother wrote the following reason for refusing the offered prenatal vitamin: "I don't want that medication, I want Zolfran." At 3:08 p.m., medical staff again advised her of the risks of not receiving prenatal care.

Due to excessive vomiting, Baby Doe's mother was assigned her own cell. On September 19, 2021, at approximately 8:25 a.m., and while assisting with medical distribution, Deputy Sloane Robinson noticed that Baby Doe's mother had a foam-like substance around her mouth. Deputy Robinson entered her cell to evaluate her condition. During that evaluation, Baby Doe's mother was unable to provide any verbal responses, instead communicating solely by nodding her head. As a result, Correctional Service Assistant Rian Straly notified medical staff of the situation.

Within two (2) minutes, Deputy Jenna Reese arrived at the cell to assist. Deputy Reese witnessed Baby Doe's mother throw up while lying on the cell bunk. Within the next two (2) minutes, a registered nurse and nurse practitioner arrived. They conducted a medical evaluation and determined that due to high blood pressure and the need for prenatal caution, Baby Doe's mother required hospitalization. During the course of this medical evaluation, it was noted that Baby Doe's mother was "lethargic but answers questions." At 8:48 a.m., paramedics arrived to assume treatment of Baby Doe's mother, and transported her to Orange County Global Medical Center (OCGMC).

Upon admission to OCGMC, Baby Doe's mother and her fetus were examined by a staff obstetrician. The doctor ordered that daily tests be conducted on the fetus. According to the doctor, test results were "okay" until the evening of September 26, 2021. At that time, seven (7) days after admission to the hospital, the test results were "very flat." Over the course of her hospital stay, Baby Doe's mother was administered various treatments and medication including intravenous fluids for hydration, and oxygen. She was also given stress tests and evaluated by ultrasound, while her fetus was assessed for a biophysical profile.

The biophysical profile revealed that the fetus' brain was not fully developed, consistent with a congenital brain anomaly. Monitoring also revealed a problematic heart rate and poor movement and tone. For these reasons, the treating obstetrician determined the best potential outcome was for Baby Doe's mother to give birth to Baby Doe via Cesarean section.

On September 27, 2021, at approximately 5:13 a.m., Cesarean surgery was conducted. Following his birth, Baby Doe's brain anomaly was confirmed by ultrasound, and his health did not improve. He was kept alive only by intubation.

Based on Baby Doe's condition, and after consultation with OCGMC medical staff, Baby Doe's mother agreed to terminate life support. Seven (7) hours after Cesarean surgery, Baby Doe was

declared deceased. In an interview with OCDA Investigator Troy Hernandez, the treating obstetrician opined that Baby Doe's life could probably have been saved in the absence of the brain anomaly.

Baby Doe's mother was interviewed as part of this investigation. She stated that she suffered vomiting and related issues throughout a prior pregnancy, and received some medical treatment. Regarding her recent incarceration in Riverside County, she claimed that RCJ staff "literally like starved, beat, [and] neglected" her. She stated "they weren't giving me proper medication and they would give me different medication like almost every time."

By comparison, Baby Doe's mother reported the IRC medical screening was more thorough than RCJ. In her view, "they had a way better process ... [t]hey were medically much better." She initially disputed that medical staff at IRC attempted to give her medication, but later admitted that she declined it. Confirming that she vomited routinely while at IRC, Baby Doe's mother stated that she declined the medication being offered, because she did not believe it was the type she was supposed to take. She explained that she desired to take Zolfran, but the jail medical staff offered her something different. Later in her interview, Baby Doe's mother stated she believed that the jail doctor injected her with a COVID vaccine by tricking her into believing it was Zolfran. (Records from OCJ document that Baby Doe's mother was offered a COVID vaccine and refused.) With respect to the day she was transported to OCGMC, Baby Doe's mother stated she recalled little beyond being "really sick."

Baby Doe's mother stated she was treated well at OCGMC, recounting that "they were great" and put her on IVs for hydration, administered electrolytes, and nourished Baby Doe through intubation. She also stated she felt good at the hospital up until the day prior to the Cesarean surgery. She stated she "could feel the baby move a lot" despite the doctors informing her that the baby had brain damage.

EVIDENCE COLLECTED

The following item of evidence was collected and examined:

- Muscle Standard (Baby Doe)

AUTOPSY

On Wednesday, October 6, 2021, Independent Forensic Pathologist Dr. Scott Luzi conducted an autopsy on Baby Doe at the Orange County Sheriff-Coroner Forensic Science Center. The cause of death was reserved at that time, pending review of toxicology and microscopic tests. An OCCL forensic specialist took twenty-five (25) digital photographs.

On April 21, 2022, and following the completion of toxicology and microscopic tests, Dr. Luzi determined that Baby Doe's death was the result of an intra-cranial hemorrhage caused by premature delivery stemming from acute chorioamnionitis, an infection of the membranes surrounding the fetus. He deemed the manner of death to be natural.

Anatomically, based on Baby Doe's weight and measurements, Dr. Luzi estimated a gestational age of between nineteen (19) and twenty-three (23) weeks.

Other relevant autopsy findings are as follows:

- Major Injuries:
 - None
- Minor Injuries:
 - Small superficial abrasion on chest
- Natural disease and pre-existing conditions:
 - Hydrocephalus of head
 - Parenchymal hemorrhage in head
 - Underdeveloped brain tissue

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Cannabinoids	Brain	Detected
Carboxy-THC	Brain	>501 ²

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 defendant committed an act that caused the death of another;
- b. When the defendant acted, he/she had a state of mind called malice aforethought; and
- c. The defendant killed without lawful excuse or justification.

There are two kinds of malice aforethought: express and implied. To harbor express malice, a defendant must intend to kill. To harbor implied malice, the defendant must intentionally commit an act, of which the natural and probable consequences are dangerous to human life, and, at the time the defendant acts, he/she knows his/her act is dangerous to human life and deliberately acts with conscious disregard of that risk.

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.**”

It should be noted, *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 he/she acts 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.

Finally, for any/all forms of homicide, the OCDA bears the burden of proving all elements beyond a reasonable doubt. Proof beyond a reasonable doubt means proof that leaves the jury with an abiding conviction the charge is true. To sustain a conviction, twelve (12) jurors must unanimously agree the OCDA has met the burden of proof.

LEGAL ANALYSIS

There exists no evidence of express malice on the part of any OCSD personnel or other individuals under the supervision of the OCSD.

As noted above, murder or manslaughter can be predicated upon a failure to perform a legal duty. Baby Doe’s mother was incarcerated at IRC and in OCSD custody immediately preceding and during the events surrounding Baby Doe’s death. Due to this custodial relationship, OCSD owed her and Baby Doe a duty of care. After review, the evidence does not support the conclusion that this duty was breached in either an intentional or criminally negligent manner.

Upon admittance to IRC, Baby Doe's mother was provided prenatal care by several trained medical professionals in the form of written advisements and medical consultations. Both on September 17 and 18, 2021, she knowingly refused prenatal medication.

When discovered in distress on September 19, 2021, Deputy Robinson and CSA Straly immediately investigated Baby Doe's condition and timely notified medical staff. Medical staff responded promptly, determined hospital care was needed, and summoned paramedics who transported her to OCGMC shortly thereafter.

Since causation must be established beyond a reasonable doubt for any form of homicide to be prosecuted, it is significant that there is nothing in Dr. Luzzi's autopsy report to suggest that receiving hospital services minutes, hours, or days earlier could have saved Baby Doe's life. His biophysical profile at OCGMC revealed low scores on breathing, movement, and brain activity, leading the treating obstetrician to proceed to Cesarean surgery.

Moreover, the daily tests were "okay" for a full week following Baby Doe's mother's admission to OCGMC. This is consistent with Baby Doe's mother's statements that her condition improved until nearly a week into her stay at OCGMC. Further, she described her treatment at IRC as comparatively better than RCJ.

Therefore, there is no evidence of a nexus between Baby Doe's cause of death and any breach of OCSD's duty of 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 no form of homicide can be proven beyond a reasonable doubt.

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

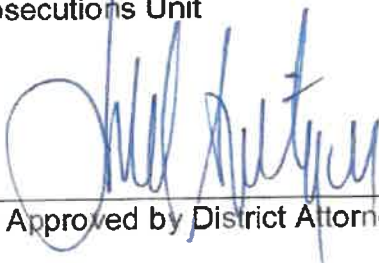
Respectfully submitted,



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