OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

March 22, 2023

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

Re: Custodial Death on July 3, 2017,
Death of Inmate Danny Viet Pham
District Attorney Investigations Case # SA 17-018
Orange County Sheriff's Department Case # 17-025790
Orange County Crime Laboratory Case # 17-51799

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 July 3 2017, custodial death of 27-year-old inmate Danny Viet Pham.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Danny Viet Pham (Pham). 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) personnel or any other person under the supervision of the OCSD.

On July 3, 2017, OCDA Special Assignments Unit (OCDASAU) Investigators responded to the Orange County Jail (OCJ), Intake Release Center (IRC) where Pham died while in custody. During the course of this investigation, the OCDASAU interviewed 47 witnesses, as well as obtained and reviewed reports from the OCSD, Orange County Crime Laboratory (OCCL), Orange County Coroner's Office (OCCO), Orange County Fire Authority (OCFA), incident scene photographs, video surveillance, 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 the part of OCSD personnel or any other 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

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 a veteran 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, who will eventually review any legal conclusions and resulting memos. The District Attorney personally reviews and approves all officer involved shooting and custodial death letters. If necessary, the reviewing prosecutor will send the case back for further investigation.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage http://orangecountyda.org/reports/videoandaudio/default.asp.

FACTS

On April 11, 2017, Pham was arrested for vehicle theft and booked into the Orange County Jail. The booking procedure includes a review of the inmate by the Classification Unit to determine appropriate housing. Deputies in the Classification Unit are responsible for assigning each inmate to a cell. During the booking process, inmates are evaluated and given a point value, based upon various factors such as criminal history, jail history, medical and mental health needs. Inmates are given different colored bands, based upon their designation. Protective Custody ("PC") Mainline inmates receive blue bands and are not integrated with the general population for safety reasons. A particular crime does not mandate a specific score, point value, or band. There are protocols in place if an inmate needs extra security or precautionary measures.

Pham declared himself to be homeless and asked to be placed in PC Mainline housing due to safety concerns. PC Mainline inmates are specially classified and placed in Module J. Pham had previously been an inmate in OCJ in 2011 and was housed in the mental health unit. In 2016 and 2017, he disclosed numerous times to jail staff that he was homeless.

On April 21, 2017, Pham resolved his criminal case and was sentenced to 180 days in OCJ. Pham's release date was scheduled for July 10, 2017. Pham again identified himself as homeless on May 9, 2017.

On May 12, 2017, Marvin Magallanes (Magallanes) walked into the lobby of the Anaheim Police Department and voluntarily confessed to the stabbing murders of two homeless men. The first victim, Tavita Onosai, was described as a Pacific Islander, and was killed on October 27, 2016. The second victim was Sabah Alsaad, whose race was described as unknown. He was killed on January 25, 2017.

Magallanes was arrested and booked at OCJ on May 14, 2017. Deputy Brent Richards handled Magallanes' classification. Deputy Richards had been a sworn deputy with OCSD for 2 ½ years, and in the Classification Unit for 5 months. Classification records note "High Violent Charges, 187, high bail," of $1 million. Deputy Richards was aware Magallanes stabbed a homeless man on a bus bench based on a law enforcement declaration. Deputy Richards also described Magallanes as cooperative. Magallanes specifically requested PC Mainline housing because he was afraid of assault if he were to be placed in the general population. According to Deputy Richards, a murder charge is only one factor when

determining classification or housing, and band color. A factual description of the murders was not made part of Magallanes' classification record.

On May 15, 2017, Magallanes was charged with two counts of special circumstances murder. While being transported to court, Magallanes tried to choke a fellow inmate. The inmate was of Asian heritage, and had not provoked Magallanes in any manner. Magallanes reached his right arm around the inmate's neck from behind and pulled him to the floor. The escorting deputies had to intervene and physically remove Magallanes. An incident report was written and Mental Health was notified, but Classification was not informed of the attack. According to Deputy Richards, Classification should have been notified of the incident. Administrative Segregation and Total Separation are more restrictive options for classification than PC Mainline. Magallanes' designation, however, remained the same.

After that incident, Magallanes was taken to the mental health ward, Module L, where he stayed in a safety cell until May 23, 2017. Magallanes then went to the Theo Lacy facility, but was returned to Module L on May 26, 2017, after an outburst in court.

On May 28, 2017, Pham articulated mental health concerns and was moved to Module L for observation. Pham and Magallanes are not believed to have interacted while both were in Module L. On May 29, 2017, Pham disclosed to a deputy that he was homeless. On May 31, 2017, Pham returned to Module J, where he was housed as a PC Mainline in Sector 1, Cell 4.

On June 4, 2017, Deputy Jason Hicks was escorting a nurse to Magallanes' cell in Module L. Deputy Hicks instructed Magallanes to remain seated in his cell. Magallanes stood up, walked to Deputy Hicks and punched him twice in the face. Deputy Hicks struck Magallanes in the face numerous times, but Magallanes refused to follow directions and continued to fight. Magallanes pushed Deputy Hicks on to the bunk and a second Deputy intervened to stop the fight. Deputy Hicks sustained a bloody nose, and lacerations to his lip and face. This incident was also documented in a report, but was not given to Classification, and there was no notation made in Magallanes' inmate record regarding this incident. According to Deputy Richards, for assault on a staff member, a jail incident report should have been written and provided to Classification. An incident report is the only mechanism in place to inform deputies. Incidents are also available for all deputies to view in the briefing log, but are not required reading, and are not made part of the inmate's file.

On June 15, 2017, Magallanes was assigned to Module J, Sector 1. Records display errors regarding the cell to which he was assigned. Magallanes was eventually assigned to Module J, Sector 1, Cell 8.

OCSD's housing policy provides guidelines for monitoring inmates in their housing area. One observation area is from the Guard Station, which is staffed by a Guard Station Deputy 24 hours per day, 7 days per week. The Housing Guard Station and Module Guard Stations are secured areas to which inmates are denied access. It is a fixed post and the deputy is not allowed to leave without relief or a sergeant's permission. The Guard Station is staffed by a deputy and one Correctional Services Assistant (CSA) or two deputies. The deputies are responsible for monitoring the Sectors and performing safety checks, and directing and coordinating the function of their Module, as well as movement outside the Module.

All Guard Station and Module deputies are required to maintain a 24-hour log, which includes names of the assigned deputies, date and shift times, time and status of counts, safety check times and observation, and incidents. The Daily Activity Schedule gives times for each required activity. Visual cell checks by module deputies are required every hour. Module J houses inmates cleared for regular housing, as well as Protective Custody and other special handling inmates designated by Classification.

OCSD maintains a Custody and Court Operations Manual, which designates the time and manner in which jail staff monitors the inmates. Safety checks, as defined by OCSD Policy 1700, Security and Control, Section 1716.1, provides that, "A safety check is a direct visual observation of each inmate located in an area of responsibility to provide for their health and welfare." Section 1716.2 specifically states that deputies will conduct safety checks for all cells except isolation cells, from a location

which provides a clear, direct view each inmate, and close enough to ascertain their presence and apparent physical condition. Safety checks may not be conducted from the guard station or by electronic video surveillance.

Safety checks must begin within sixty minutes of the ending time of the last check. Every safety check must be documented in the designated log, and checked by the supervising sergeant. If a safety check cannot be conducted within the required time frame, a sergeant is to be notified. A different but overlapping requirement is the inmate count. Inmate counts are conducted to verify each inmate's presence. Because the counts also require the deputy to observe the inmate's physical condition, it may also meet the criteria of a safety check. Housing staff's duty is to reconcile the module card against the electronic sheet to ensure accuracy.

Module J consists of eight sectors. There is a Guard Station, north of Sector 1. Two surveillance cameras monitor Sector 1. A metal door and glass partition divide the Guard Station and Dayroom. There is a concrete staircase against the east wall of the Dayroom, leading to a concrete tier walkway upon the upper level. There are sixteen cells in Sector 1. Odd numbered cells are on the first floor. Even numbered cells, including Cell 8, are located on the upper tier. Cell 8 is the fourth cell to the right of the stairs.

On June 22, 2017, Magallanes was in Module J, Sector 1, Cell 8 with inmate John Doe. Cell 8 has a metal hinged door and window. The door may be opened manually with a key, or remotely from the Guard Station. Two metal bunks, one upper and one lower, are affixed to the wall of the cell. Deputy Matthew Peterson, with OCSD for 3 years, was on duty when inmate John Doe, Magallanes cellmate, requested Magallanes be transferred. Doe complained that Magallanes made sexual advances toward him, and Doe wanted to avoid a fight. Deputy Peterson asked Magallanes about Doe's complaints, and Magallanes denied the alleged behavior.

Pham was still housed in Module J, Sector 1, Cell 4. Deputy Peterson asked if Pham would switch places with Doe. Deputy Peterson did not inform Pham of Doe's allegations against Magallanes. Pham agreed and moved to Magallanes' cell, while Doe took Pham's place.

OSCD's Classification Policy states that housing staff may make individual bunk or cell assignments without notification to Classification. At that time, Deputy Peterson did not know why Magallanes was in custody, and had no knowledge that Magallanes had assaulted another inmate and a Deputy. Deputy Peterson checked on Pham and Magallanes and both gave him a thumbs up.

Other inmates stated Pham shared he was homeless on multiple occasions. Pham was described as fragile, good, and did not have problems with anyone. Magallanes was described as out of it and "not there." No other inmates noticed a problem between Pham and Magallanes.

On July 3, 2017, there were 156 inmates assigned to Module J. Module J was staffed with three deputies, one deputy trainee, and one CSA. One sergeant supervised five modules, including Module J.

Jail logs indicated that safety checks were conducted at 7:55 a.m., but video surveillance showed that no deputies or jail staff entered Sector 1 from 7 a.m. to 8:44 a.m. Safety check records indicated that checks were also done at 9:00 a.m. and 10:05 a.m., but video surveillance showed that no safety checks were conducted at those times. CSA Myra Medina confirmed that the logs were inaccurate and no safety checks were conducted at those times.

At 7:23 a.m., video surveillance showed Pham exercising inside his cell, through the cell glass wall. Magallanes is seen on the video grabbing Pham from behind in a chokehold. Magallanes then pulls Pham toward the back of the cell, out of view of the camera.

At 7:37 a.m., Magallanes is seen placing Pham face down on the bottom bunk of their cell and covering him with a sheet.

At 9:45 a.m., Magallanes was advised over the inmate cell speaker to come out for an attorney bonds visit. The guard station unlocked his cell door. Magallanes left his cell without incident and walked out of Sector 1. He was met and escorted by Deputy Roberts. Deputies did not notice any unusual behavior.

At 11:08 a.m., Deputy Bartlett went to Cell 8 to deliver lunch. Deputy Bartlett said Pham was face down, with his head toward the wall, and looked like he was asleep. Pham was nonresponsive and Deputy Bartlett was unable to locate a pulse. Deputies on the lower level came upstairs and assisted with CPR. Deputy Roberts called out "man down" and requested medical assistance via radio. Two jail nurses arrived, and found Pham lying on his back in the bunk. He did not have a pulse. His skin was mottled and cold to the touch. Deputies were instructed to call paramedics. Pham was moved to the floor and jail medical staff started CPR. An AED was applied but no shock was advised. An Ambubag with oxygen was started. CPR was maintained until the paramedics from the Orange County Fire Authority arrived.

At 11: 30 a.m., the OCFA arrived and took over AED and chest compressions. The OCFA administered an EKG, which did not detect any heart function. A deputy began a crime scene log.

At 11:35 a.m., Pham was pronounced deceased by an OCFA captain.

Between 8:44 a.m. and 11:15 a.m., the time of lunch distribution, no deputies were in Sector 1.

At 7:15 p.m., Magallanes was interviewed regarding Pham's death. Magallanes said nothing unusual happened before he went to see his attorney. When asked how he and Pham got along, Magallanes stated, "We do pretty good." He denied knowing Pham was dead and said he was sad. Magallanes denied having any conflict with Pham and when asked to explain what the video showed, Magallanes responded, "Cameras lie."

At 10:50 p.m., Pham was moved from Sector 1, Cell 8 to Orange County Coroner's Office.

Evidence was collected and analyzed. DNA was collected from both Pham and Magallanes. DNA swabs from Pham's neck and under Pham's fingernails were tested, and indicated that Magallanes was not excluded as the contributor, by a probability of 1 in 1 trillion unrelated individuals.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Body swabs from Pham
- DNA from Magallanes

AUTOPSY

On July 6, 2017, independent Forensic Pathologist Dr. Scott Luzi of Clinical and Forensic Pathology Services conducted an autopsy on the body of Danny Pham. He found fractured trachea cartilage, petechial hemorrhage of both eyes, and bruising on the upper chest and neck muscles, consistent with an arm bar choke. Dr. Luzi determined that the final cause of death was strangulation, and the manner of death a homicide.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Pham's postmortem blood tested negative for the presence of drugs and alcohol.

MAGALLANES' POST-INCIDENT CONVICTION

On July 13, 2020, the OCDA filed criminal charges against Magallanes in Orange County Superior Court, case #17NF1330, for the death of Danny Pham pursuant to Penal Code 187(a). On August 25, 2022, Magallanes was convicted by a jury for Penal Code 187(a) for the second degree murder of Danny Pham. Magallanes was ultimately sentenced on that case to life without the possibility of parole, plus two years state prison, consecutive to 15 years to life.

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.' (*Tarasoff [v. Regents of University of California (1976)] 17 Cal.3d [425,] 434* [parallel citation omitted]). It is manifestly foreseeable than 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

The OCDA is limited to evaluating criminal conduct, and will not provide any opinions regarding the administrative performance of OCSD deputies.

There is no evidence of express or implied malice on the part of any OCSD personnel. 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 Pham 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). There is no evidence that any OCSD employee intended to cause Pham's death, or deliberately acted with conscious disregard for his life. The issue is whether any OCSD personnel acted with criminal negligence, or so differently from an ordinarily careful person in the same circumstances, rising to the level of disregard for Pham's life or indifference to the consequences.

Pham's homeless status was well documented by jail staff, during his incarceration in 2017, and from previous stays. Pham also shared this information with fellow inmates. Magallanes admitted to murdering two homeless men, one of whom was identified as a Pacific Islander. This information was not made available to the deputies in Module J. Deputy Peterson stated he did not know Magallanes was in custody for murdering two homeless men, or that Pham identified as homeless.

On the way to court, Magallanes attempted to choke a fellow inmate who was Asian. This information was not provided to Classification or made available to Module J deputies. An additional attack on a Deputy was, again, neither reported nor made available to Module J deputies. According to Classification, these incidents should have been reported to them. Magallanes was a PC Mainline inmate, and could have been reclassified to a more isolated or restrictive housing status. Deputy Peterson confirmed that he did not know Magallanes attacked an Asian inmate or a fellow deputy.

Jail video showed Pham standing in the front of the glass in their cell at 7:23 a.m. on July 3, 2017. Magallanes grabbed Pham in a chokehold from behind and pulled Pham toward the back of their cell. At 7:37 a.m., Magallanes laid Pham on the lower bunk, and covered him with a sheet so it looked like Pham was sleeping. There was no further movement from Pham and he was unresponsive when deputies attempted to revive him at 11:08 a.m. The pathologist determined that Pham died as a result of strangulation. Although there are intentional misstatements in the logs, had the deputies kept to the required hourly schedule, they would not have been present at the time Magallanes attacked Pham.

The deputies who witnessed the attacks on the inmate and fellow deputy wrote reports, but neither were received by Classification. Even without those incidents, OCSD personnel in booking and mental health possessed information regarding the circumstances of Magallanes' crimes and Pham's homeless status. Those facts would have been critical to the Module J deputies when making cell assignments, particularly on this occasion, when Pham was asked to move to Magallanes' cell. Those facts, however, were not accessible to Module J deputies, nor was there any reasonable expectation that they would independently have that information. Criminal negligence requires more than ordinary carelessness, inattention, or mistake in judgment. There is no single act on the part of any deputy or OCSD employee in which Pham's death was the natural and probable consequence, or one that a reasonable person would have known was likely to happen without an intervening incident.

Thus, there is no evidence to support a finding that any specific OCSD employee is criminally liable, under any theory, for Pham's death.

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 of criminal culpability on the part of any OCSD personnel.

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

Respectfully submitted,

Steven Schriver
Senior Deputy District Attorney

Brett Brian
Read and Reviewed by Assistant District Attorney – Special Prosecutions Unit

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