



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

December 5, 2023

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

Re: Custodial Death on March 8, 2022
Death of Inmate Aurelio Garcia
District Attorney Investigations Case #22-000651
Orange County Sheriff's Department Case #22-007702 and #22-003717
Orange County Crime Laboratory Case #FR 22-42872

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 March 8, 2022, custodial death of 65-year-old inmate Aurelio Garcia.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Aurelio Garcia. 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 March 8, 2022, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Anaheim Global Medical Center where Aurelio Garcia died as a result of Covid-19 and other health related issues. During the course of this investigation, the OCDASAU interviewed two witnesses and obtained and reviewed reports, incident scene photographs, and other relevant materials from the OCSD and Orange County Crime Laboratory (OCCL).

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 policy, training, tactics, or civil liability.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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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. 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 memos. The case may often be reviewed by several experienced prosecutors and their supervisors. Ultimately, the District Attorney personally reviews and approves all officer involved shooting and custodial death letters.

FACTS

On May 15, 2020, Santa Ana Police Department (SAPD) Officer Axel Calles arrested Aurelio Garcia on an outstanding felony warrant for violating Penal Code section 288 (A), lewd and lascivious acts with a child under 14 years old, and Penal Code section 289 (J), sexual penetration with a foreign object on a victim under 14 years old. Garcia was transported to SAPD Jail for booking, processing, and housing.

During the booking process, a registered nurse (RN) completed a medical screening questionnaire form for Garcia. Garcia disclosed the following medical conditions/problems: hypertension, diabetes, kidney transplant receiver (2010), dialysis (7 years before transplant), lumbar surgery, poor vision due to diabetes, and renal failure. Due to the above-mentioned medical conditions, the SAPD Jail declined to book and house Garcia.

Garcia was then transported to the OCSD Intake Release Center (IRC). During the initial screening, Garcia disclosed the same pre-existing medical conditions listed above to IRC medical staff. Garcia was medically cleared and booked into the jail. Due to his medical status, including a mobility impairment that required his use of a walker and wheelchair, Garcia was housed in Module O at the Theo Lacy jail facility. Module O is designed for inmates with various disabilities as well as those that require more comprehensive medical monitoring and treatment. On September 2, 2021, Garcia was transferred to Module "O," within the Central Men's Jail. This location is similar to Module O at the Theo Lacy Facility, in that it provides housing with additional monitoring for inmates with medical conditions.

While in OCSD custody, Garcia was regularly monitored, evaluated, and treated by medical staff. This included the provision of daily medication and multiple visits with nephrologists for his renal condition.

On February 1, 2022, Garcia tested positive for COVID-19 and was placed in medical isolation.

On February 3, 2022, at approximately 11:43 a.m., an RN conducted a medical check on Garcia. During the medical check, the nurse monitored Garcia's blood pressure and recorded an elevated body temperature. At approximately 11:52 a.m., an OCSD deputy on Garcia's floor received a phone call from the Men's Jail Dispensary doctor. The doctor told the deputy that Garcia needed to be sent to the hospital for further treatment regarding his COVID-19 symptoms.

At approximately 12:32 p.m., an OCSD deputy escorted Garcia to the Intake Release Center.

At approximately 12:50 p.m., Garcia was transported by OCSD to the Anaheim Global Medical Center (AGMC).

Garcia arrived at the hospital at approximately 1:22 p.m. At approximately 1:55 p.m., an emergency room doctor assessed Garcia's flu-like symptoms and admitted Garcia into the hospital. Garcia was provided treatment for his acute symptoms and underlying health conditions. Despite continual monitoring and treatment at AGMC, Garcia's health progressively deteriorated. On February 22, 2022, he was transferred to the Intensive Care Unit.

On March 8, 2022, at around 7:00 a.m., Garcia's breathing became distressed and his blood pressure dropped. Medical personnel administered four vasopressor medications to Garcia at maximum levels via an intravenous line (IV). Garcia's blood pressure failed to rise to normal levels, and based on his condition, medical personnel intubated Garcia.

Later that afternoon at approximately 1:48 p.m., Garcia's heart stopped. Medical staff began cardiopulmonary resuscitation (CPR) and a "Code Blue" was called. Advanced life saving measures were performed on Garcia for more than 20 minutes, including the administration of epinephrine. Ultimately after Garcia failed to respond, he was declared deceased at 2:14 p.m. by an emergency room physician.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- 50 OCCL autopsy photographs
- 17 OCCL post embalming photographs
- 45 OCCL hospital scene photographs
- 24 OC Coroner hospital scene photographs
- 1 audio recording of ICU nurse employed by Anaheim Global Medical Center
- 1 audio recording of ICU nurse employed by Anaheim Global Medical Center
- 1 audio recording of ER doctor employed by Anaheim Global Medical Center
- Garcia's hospital records
- Garcia's jail records

AUTOPSY

On March 18, 2022, Forensic Pathologist Dr. Scott Luzi conducted an autopsy on the body of Aurelio Garcia. At the conclusion of the autopsy, Dr. Luzi determined that the manner of death

was natural, and the cause of death was “diffuse alveolar damage due to novel coronavirus (COVID-19) infection.” In addition, the following “other” conditions were listed: pulmonary embolus due to deep vein thrombosis; hypertensive cardiovascular disease; end-stage renal disease.

EVIDENCE ANALYSIS

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol/Volatiles	Postmortem Blood	Presumptive Positive, but Negative on Confirmation
Barbiturates	Postmortem Blood	Negative
Cannabinoids	Postmortem Blood	Negative
Acetaminophen	Postmortem Blood	Detected
Gabapentin	Postmortem Blood	6.15 +/- .53 mg/dl
Lidocaine	Postmortem Blood	Presumptive Positive, but Not Confirmed
Phenylephrine	Postmortem Blood	Presumptive Positive, but Not Confirmed

BACKGROUND INFORMATION

Garcia had no prior criminal background.

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. As a result, 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 Garcia 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). When Garcia was brought to IRC, he was evaluated and screened by OCSD medical staff. After disclosing his pre-existing medical conditions, he was medically cleared and booked into the jail.

During the time Garcia was in OCSD custody, he was continuously monitored and treated for his various medical conditions. In September 2021, he was transferred to Module "O" to further ensure that he continued to receive appropriate treatment and care.

On February 1, 2022, Garcia tested positive for COVID-19. He was placed in isolation.

Two days later on February 3, 2022, and once informed that Garcia needed to be sent to a hospital for treatment of COVID-19 symptoms, OCSD personnel immediately and appropriately transported him to AGMC. A total of approximately 90 minutes elapsed from the time a doctor advised a deputy that Garcia needed to go to the hospital, until his arrival at AGMC.

Once at the hospital, medical staff continued to monitor and treat Garcia. He was under the care and supervision of medical staff at AGMC from February 8, 2022, until his passing on March 8, 2022.

There is no evidence here to suggest that OCSD failed to act, acted recklessly, or acted with gross negligence to cause Garcia's death. The evidence at hand suggests the contrary. When Garcia's medical issues related to COVID-19 arose and a doctor determined that Garcia needed hospital care, OCSD personnel immediately transported Garcia to AGMC. From there, Garcia received care and treatment until his death.

As a result, 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 owed to Garcia. Consequently, there is insufficient evidence to prove beyond a reasonable doubt that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty owed to Garcia that rises to the level of criminal negligence.

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 that resulted in the death of Garcia. The evidence shows that Garcia died as a result of complications related to infection from COVID-19, and that his death was natural.

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

Respectfully submitted,



M. CASEY CUNNINGHAM
Deputy District Attorney
Homicide Unit



Read and Reviewed by **BRETT BRIAN**
Assistant District Attorney
Special Prosecutions Unit



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