



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

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VERTICAL PROSECUTIONS/
VIOLENT CRIMES

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GENERAL FELONIES/
ECONOMIC CRIMES

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SPECIAL PROJECTS

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BUREAU OF INVESTIGATION

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DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER

CHIEF OF STAFF

May 19, 2016

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

Re: Custodial Death on Sept. 18, 2015
Death of Inmate Eleuterio Chamu
District Attorney Investigations Case # SA 15-017
Orange County Sheriff's Department DR #15-188511
Orange County Crime Laboratory Case #15-54989

Dear Sheriff Hutchens,

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 Sept. 18, 2015, custodial death of 59-year-old inmate, Eleuterio Chamu.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Chamu. 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 Sept. 18, 2015, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Global Medical Center, in Santa Ana, after Chamu 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 any OCSD personnel. 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 and evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the Orange County Crime Lab (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, Gangs and TARGET, and Special Prosecution Units review fatal, as well as 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 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.

FACTS

On April 18, 2015, Chamu was arrested by the Santa Ana Police Department for lewd acts with a child. Chamu was not medically cleared to be booked in the Santa Ana Police Jail on April 18, 2015. The next day, on April 19, he was medically cleared and booked at the Orange County Men's Central Jail. During booking, Chamu complained of pain, depression, [REDACTED], and [REDACTED]. Chamu also claimed to have a history of [REDACTED].

On May 4, 2015, Chamu was transported to Anaheim Global Medical Center to be treated for advanced [REDACTED]. On May 28, 2015, Chamu was returned back to Orange County Men's Central Jail Medical Ward. On Aug. 29, 2015, Chamu was transported to Orange County Global Medical Center, in Santa Ana, immediately after being found in his cell with respiratory distress. Once at the hospital, it was determined that Chamu had no history of trauma and his toxicology screening was negative. Chamu did have a significant medical history of [REDACTED]. Upon admission, Chamu was diagnosed with [REDACTED] and [REDACTED]. He was intubated and given antibiotics. Chamu was unable to maintain blood pressure despite vasopressor support. After a few days, Chamu's health declined, and he was in [REDACTED].

On Sept. 10, 2015, Chamu's condition was so grave that he was granted compassionate release from custody but he remained in the hospital. On Sept. 18, 2015, Chamu's brother elected to withdraw care after consulting with the treating physician. On Sept. 18, 2015, at 7:03 p.m., Chamu's ventilator was turned off and he was extubated. At 9:02 p.m., the attending physician pronounced Chamu dead.

AUTOPSY

On Sept. 26, 2015, an autopsy was performed by Forensic Pathologist Scott A. Luzzi of Anatomic, Clinical, and Forensic Pathology Services. After a preliminary examination, the cause of death was indicated as natural causes pending toxicology results and the examination of micro slides. There was no evidence of any major or minor injuries. After receiving the toxicology test results and the examination of the micro slides, the final cause of death was determined to be natural disease. After review of the micro slides, the pathologist concluded that Chamu had the following pre-existing conditions:

[REDACTED]

EVIDENCE ANALYSIS

A sample of Chamu's blood was collected for testing. The blood was examined for the presence of drugs and alcohol. No illegal narcotics were identified in the samples. The narcotics present were consistent with those used in a medical setting.

BACKGROUND INFORMATION

Chamu had a California criminal history which included arrests for lewd or lascivious act with a child under 14, and other various traffic related offenses.

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 beyond a reasonable doubt:

- a. The person committed an act that caused the death of another human being;
- 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 the person acted he/she knew his/her 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;
- 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 *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 251, the court held that there is a "special relationship" between custodian and inmate:

"The most important consideration in establishing duty is foreseeability. 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 provides 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 or she 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

In the present case, there is no evidence whatsoever 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 inmate Chamu 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 the OCSD intentionally breached any duty of care to Chamu from the time he was booked into custody until the time that he died. Once transported to Orange County Men's Central Jail, the OCSD was aware of Chamu's pre-existing medical conditions. After he was booked into custody, Chamu was transported to the hospital on numerous occasions when he needed immediate medical care. There are no facts to support any inference that the OCSD intentionally breached their duty of care to Chamu.

There is also no evidence to support criminal negligence on the part of anybody connected with the OCSD. Criminal negligence is established when a person 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. There is absolutely no evidence that any OCSD personnel or anyone under their supervision acted in a reckless manner. Chamu was transported to the hospital whenever it was medically necessary for treatment. The OCSD was aware of his medical history and did not withhold or deny any type of medical care that Chamu needed.

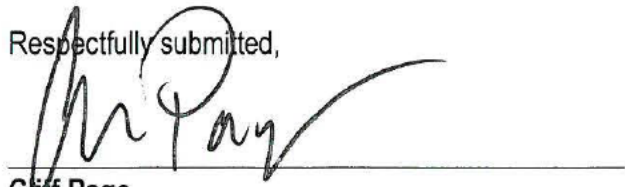
As soon as Chamu was found in respiratory distress in his cell on Aug. 29, 2015, he was immediately transported to the Orange County Global Medical Center in Santa Ana. Chamu's condition that caused him to be transported to the hospital was not related to anything that took place while Chamu was in custody; rather, it was related to his pre-existing medical conditions. Chamu's pre-existing medical conditions were lengthy and there is no evidence whatsoever that Chamu was not treated properly while in the custody of the OCSD, or that any OCSD personnel did anything, intentionally or negligently, to exasperate or aggravate Chamu's pre-existing medical conditions. Similarly, Chamu's death was not caused by any action or lack of action by any OCSD personnel. Chamu's death was the result of natural causes and there is no evidence to support a conclusion that anybody from the OCSD failed to perform a legal duty owed to Chamu.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA and pursuant to the applicable legal principles, there is insufficient evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD in connection with the death of Chamu. The evidence shows that Chamu died as a result of natural diseases.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cliff Page", written over a horizontal line.

Cliff Page

Deputy District Attorney
Gangs and TARGET Unit

A handwritten signature in blue ink, appearing to read "Ebrahim Baytieh", written over a horizontal line.

Read and approved by **Ebrahim Baytieh**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit