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ORANGE COUNTY, CALIFORNIA
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JENNY QIAN
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

April 14, 2017

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

Re: Custodial Death on May 30, 2016
Death of Inmate Jennifer Ann Aiello
District Attorney Investigations Case # SA 16-018
Orange County Sheriff's Department Case #16-130570
Orange County Crime Laboratory Case #FR 16-49173

Dear Sheriff Hutchens,

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 May 30, 2016, custodial death of 43-year-old inmate Jennifer Ann Aiello.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Aiello. 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 May 30, 2016, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the Orange County Central Jail/Intake Release Center, where Aiello died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed 23 witnesses, and 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 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 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 May 29, 2016, at approximately 5:11 p.m., Anaheim Police Department (APD) Officer Kenny Lee and Officer Cory Reinmiller contacted Aiello near Beach Boulevard and Lincoln Avenue. A records check revealed that Aiello had a misdemeanor arrest warrant for pedestrian right of way, unlawful possession of a shopping cart, and misappropriation of lost property. The officers arrested Aiello for the warrant and transported her to APD jail.

At approximately 5:25 p.m., Officer Reinmiller escorted Aiello into the APD jail. During the medical screening process, Aiello stated that she suffered from [redacted]. Aiello also requested that she be taken to a doctor because she was [redacted] and would suffer [redacted] if taken to jail. At approximately 5:40 p.m., Officer Reinmiller and Officer Lee transported Aiello to West Anaheim Medical Center (WAMC). At 6:14 p.m., Aiello was taken to the emergency room (ER) and reported generalized body aches, [redacted], and [redacted]. Aiello denied suffering from fever, chills, vomiting, diarrhea, dysuria, and hematuria. The ER physician diagnosed Aiello with [redacted], [redacted], and a [redacted]. The ER physician did not find evidence of delirium tremens, acute alcohol withdrawal, acute abdomen, hepatitis, renal insufficiency, or severe anemia. Aiello tested positive for methamphetamine. At 8:41 p.m., Aiello was medically cleared and discharged from WAMC with a prescription for [redacted].

At approximately 9:17 p.m., Officer Reinmiller and Officer Lee transported Aiello back to APD jail to have her fingerprinted and photographed. At 9:39 p.m., APD jailers placed Aiello in Cell #1 until she was transferred to the Orange County Jail – Intake Release Center (OCJ/IRC). On May 30, 2016, at 12:16 a.m., APD jailer Dannielle Holt transported Aiello to OCJ/IRC. Aiello was in custody at the APD jail for five hours. During that time, she did not have contact with any other inmates. Aiello was able to walk without assistance, effectively communicate, and follow instructions. There were no reported or recorded verbal or physical altercations between Aiello and APD personnel. At approximately 12:35 a.m., Aiello arrived at OCJ/IRC. The intake nurse screened Aiello and placed her on [redacted] The nurse prescribed Aiello [redacted]. At 1:08 a.m., deputies booked Aiello into the OCJ/IRC and processed her through the female booking loop. Medical staff gave Aiello [redacted] at 1:26 a.m. and 4:15 a.m. as prescribed.

At 5:03 a.m., Deputies escorted Aiello and nine other inmates from the showers to holding cell PF6. An inmate that was with Aiello at the shower when they were changing into jail clothes stated that Aiello did not take a shower and "seemed out of it." When she was placed in the holding cell, Aiello began vomiting in the toilet and having diarrhea. Another inmate described Aiello pacing back and forth in the back of the cell near the toilet. Aiello forcefully vomited approximately 10 to 12 times and had trouble breathing. Aiello was pale, ashy in color, and [redacted]. Aiello told another inmate, Jane Doe 2, that she ate something that did not sit well with her. Jane Doe 2 suggested that Aiello get help from a nurse or deputy, but Aiello did not take her advice. Shortly thereafter, Aiello went to sleep and began to snore loudly. Jane Doe 2 moved Aiello and checked on her because she sounded as if she was gasping for air.

None of the inmates reported seeing Aiello in a physical altercation with another inmate or deputy, nor did they witness her fall or injure herself. The inmates were unaware that Aiello was in serious medical distress until the deputy and nurse arrived to administer medications and ordered them out of the cell.

At 7:05 a.m., Deputy Shawana Rodriguez and a Licensed Vocational Nurse (LVN) went to the holding cell to give Aiello her prescribed dosage of [redacted]. Deputy Rodriguez opened the door and called Aiello's name multiple times, but she did not respond. Deputy Rodriguez immediately ordered the other inmates out of the cell. After removing the other inmates, Deputy Rodriguez and the LVN entered the cell. Aiello was lying on the floor and her skin was pale and purplish. The LVN attempted to wake Aiello, but she did not respond. The LVN could not detect a pulse and immediately started chest compressions. The LVN told Deputy Rodriguez to "call man down."

Deputy Rodriguez told Deputy Craig Wiggins to call paramedics and went to the nurse triage area and requested the nurses to respond to holding cell PF6. Three nurses responded with the man down bag. The first nurse placed automatic external defibrillator (AED) pads on Aiello and took over chest compressions. Another nurse provided oxygen with an Ambu-bag and two nurses attempted to start an intravenous line. The AED evaluated Aiello five separate times and advised to continue administering cardio pulmonary resuscitation (CPR). The medical staff continued to perform CPR until the paramedics arrived.

At 7:20 a.m., Orange County Fire Authority (OCFA) paramedics arrived at the jail. The paramedic observed Aiello lying supine on the ground. Aiello was unresponsive and cyanotic, with dry and cold skin. The jail's medical staff was still performing CPR. The paramedic requested that the medical staff discontinue chest compressions in order to accurately assess Aiello's condition. The paramedic removed the AED pads and replaced them with Electrocardiogram pads (EKG). The monitor indicated that Aiello was pulseless and apneic with Pulseless Electrical Activity (PEA). The paramedics intubated Aiello, established an intraosseous infusion with normal saline in her left proximal, and administered three rounds of Epinephrine. OCFA placed Aiello on a gurney and loaded her into an ambulance. At 7:45 a.m., OCFA transported Aiello to Orange County Global Medical Center (OCGMC). OCFA continued to administer advanced cardiac life support but they did not observe any signs of trauma or physical injury indicative of a physical altercation. At 7:55 a.m., OCFA relinquished Aiello to the on duty ER medical personnel at OCGMC and they took over chest compressions. Aiello still had not regained a pulse. Aiello received the following medications intravenously:

- 3 rounds of Epinephrine
- 2 rounds of Sodium Bicarbonate
- 2 rounds of Potassium Chloride
- 2 mg Narcan

The ER physician continued medical intervention according to advanced cardiac life support protocol; however, these efforts did not restore a cardiac rhythm or pulse. At approximately 8:04 a.m., the ER physician pronounced Aiello deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- OCJ Clothing and Property Inventory Form
- One empty milk carton
- One naval orange
- One whole sandwich
- One partially eaten sandwich

AUTOPSY

On June 1, 2016, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Aiello. Dr. Luzi observed that Aiello had an enlarged heart and liver disease. Dr. Luzi did not observe any significant injuries or trauma. Dr. Luzi diagnosed Aiello with the following:

- [redacted]

- [redacted]
- [redacted]
- [redacted]

Dr. Luzi concluded that Aiello died as a result of natural causes.

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
[redacted]	Postmortem Blood	0.0591 + 0.039 mg/L
[redacted]	Postmortem Blood	Detected
[redacted]	Postmortem Blood	0.483 + 0.027 mg/L

BACKGROUND INFORMATION

Aiello had a State of California Criminal History record that revealed arrests dating back to 2011 for the following violations:

- Obstructing a Public Officer
- Trespassing
- Appropriating Lost Property
- Disorderly Conduct: Intoxication Drug/Alcohol
- Unlawful Possession of a Shopping Cart
- Disturbing the Peace

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 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 he/she 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; 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:

> "The 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/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 the way he/she acts is 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.

LEGAL ANALYSIS

In this case, there is no evidence whatsoever of express or implied malice on the part of any APD or OCSD personnel or any inmates or other individuals under the supervision of the APD or 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 APD and OCSD owed Aiello 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). There is no evidence that APD or OCSD intentionally breached any duty of care to Aiello from the time she was booked into custody until the time that she died.

The arresting APD Officers initially transported Aiello to the APD jail for booking. Aiello requested to be taken to see a doctor and the APD Officers transported her to WAMC. The ER physician at WAMC diagnosed Aiello with [redacted], [redacted], and [redacted]; however, there was no evidence of [redacted]. Upon her arrival to the OCJ/IRC, the medical staff placed Aiello on [redacted] and prescribed her [redacted]. The medical staff gave Aiello her prescribed dosage of [redacted] at 1:26 a.m. and again at 4:15 a.m.

While she was in the holding cell, Aiello started having diarrhea and vomiting in the toilet. Several inmates asked her if she was okay and suggested that she contact a nurse or deputy if she did not feel well. Aiello told the inmates that something she ate was not sitting well and declined to contact any jail or medical personnel. The inmates saw Aiello walking around in the cell before lying down and going to sleep. Aiello's skin was pale and ashy and she appeared to be suffering from [redacted].

When Deputy Rodriguez and an LVN went to the holding cell to give Aiello her prescribed medicine and observed her lying down, unresponsive, both the deputy and LVN responded appropriately and immediately. Deputy Rodriguez immediately called for additional assistance as the LVN started chest compressions. Aiello did not have a detectable pulse and several nurses responded and began administering life saving measures. The paramedics continued the lifesaving measures as Aiello was transported to the ER at OCGMC. Additional medical intervention in the ER did not restore a cardiac rhythm or pulse and Aiello was pronounced deceased.

Aiello did not have any signs of injury or trauma to her body. Additionally, during the time she was in custody, several healthcare professionals at WAMC and OCSD continuously monitored her health and administered medication as prescribed. Thus, there is no evidence whatsoever to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty. Tragically, Aiello died from natural causes as result of her preexisting conditions.

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 APD or OCSD personnel or any individual under the supervision of the APD or OCSD. The evidence shows that Aiello died as a result of natural causes.

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

Respectfully submitted,

Jeffrey Schunk
Deputy District Attorney
TARGET/Gangs Unit

Read and Approved by **Ebrahim Baytieh**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit