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December 13, 2017

Acting Chief David Valentin
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Custodial Death on August 10, 2017
Death of Inmate David Garrett Lascoe
District Attorney Investigations Case # SA 17-022
Santa Ana Police Department Case # 17-21842
Orange County Crime Laboratory Case # 17-54335
Orange County Coroner's Office Case # 17-03606-KU

Dear Chief Valentin,

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 Aug. 10, 2017, custodial death of 53-year-old inmate David Garrett Lascoe.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Lascoe. 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 Santa Ana Police Department (SAPD) personnel or any other person under the supervision of the SAPD.

On Aug. 10, 2017, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Global Medical Center (OCGMC), where Lascoe died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed six witnesses, as well as obtained and reviewed reports from the SAPD 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 SAPD personnel or any other person under the supervision of the SAPD. 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 including 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, 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

Lascoe was a 53-year-old homeless male who had a 20-year history of methamphetamine abuse. On March 6, 2017, at approximately 6:30 p.m., SAPD arrested Lascoe (SAPD Case #17-06074). On March 6, 2017, at approximately 11:25 p.m., Lascoe was transported to the Orange County Jail (OCJ) Intake Release Center where he was booked in connection with felony possession for sale and transportation of controlled substances.

On Thursday, May 4, 2017, Lascoe was released from OCJ and into the custody of the United States Marshals Service (USMS). The USMS transported Lascoe from OCJ to the SAPD – Detention Facility (SAPD-DF). Lascoe was booked into SAPD-DF for knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a controlled substance. Lascoe was housed in Module 3, Cell #32, with one other cellmate. Module 3 is a two story, 64 bed, 32 cell module.

On Aug. 8, 2017, at approximately 8:21 p.m., SAPD-DF security video showed Lascoe seated in a chair in the communal TV room. On two different occasions, Lascoe rubbed/grabbed the right side of his chest and once wiped his brow; Lascoe appeared to be in discomfort. At approximately 8:22 p.m., Lascoe got up and walked out of the TV room. At approximately 8:23 p.m., Lascoe entered Cell 32 and partially closed the cell door; he did not turn the cell light on. At approximately 8:31:50 p.m., Lascoe's cellmate entered Cell 32, turned on the lights and walked out of the view of the camera. Moments later, Lascoe's cellmate exited the cell and yelled there was a man down in Cell 32. Surveillance video showed no one came or went from Cell 32 between 8:23 p.m. when Lascoe entered and 8:31 p.m. when Lascoe's cellmate entered.

SAPD-DF Correctional Officer Jorge Ramos responded and found Lascoe on the bottom bunk, unconscious, slumped to his left, with his feet on the ground. Lascoe's complexion was "purple" and there was vomit on his face and bed. Ramos put out a "Man Down" radio broadcast and requested paramedics. Ramos saw no signs of trauma on Lascoe's body.

A licensed vocational nurse (LVN) arrived and saw Lascoe was "cyanotic" (blue skin tone) and had vomit on the left side of his face. The LVN saw no signs of trauma on Lascoe's body. The LVN checked Lascoe for a pulse and shook him. Unable to get a response or locate a pulse, the LVN and Officer Ramos moved Lascoe onto the floor and initiated cardio pulmonary resuscitation (CPR). The Automated External Defibrillator (AED) was attached; on three separate occasions the AED supplied an electrical current to Lascoe's heart and recommended chest compressions continue. CPR was continued until Orange County Fire Authority (OCFA) paramedics arrived.

At approximately 8:40 p.m., OCFA Engine 71 arrived on scene and found Lascoe on the floor, outside of Cell 32, unconscious and unresponsive. SAPD-DF personnel were performing CPR. OCFA took over CPR, attached the electrocardiogram (EKG) and determined Lascoe was in ventricular fibrillation. A shock was delivered which resulted in a positive conversion to sinus rhythm. A 12-lead EKG was attached and showed Lascoe had suffered a heart attack. Lascoe had spontaneous respirations as well as a stable blood pressure.

At approximately 8:57 p.m., Lascoe was transported Code 3 (lights and siren activated) by ambulance to OCGMC. While in transport Lascoe was treated according to Advanced Life Saving (ALS) protocols. At approximately 9:13 p.m., Lascoe arrived at OCGMC in full cardiac arrest. Lascoe was intubated and rushed into the Catheterization Laboratory where a doctor determined Lascoe had suffered a severe heart attack. The doctor performed surgery on Lascoe and placed three stents in Lascoe's right coronary artery. Lascoe was placed on a ventilator and hypothermia protocol was initiated. Lascoe was admitted into the Critical Care Unit (CCU).

Inter-Con Security (a U.S. Marshal's contracted security company) assumed custody responsibilities of Lascoe. Security was stationed in Lascoe's room on a 24 hours a day, seven days a week basis.

On Aug. 10, 2017, Lascoe's condition had improved and doctors elected to transfer him from CCU to the Telemetry Unit. At approximately 6:00 p.m., Lascoe was moved into the Telemetry Unit, Room 724. At approximately 6:20 p.m., Lascoe asked the Care Nurse Assistant (CNA) if he could get out of bed and use the restroom; his request was granted. Lascoe slowly got out of bed and walked, with assistance from the CNA, to the restroom. Immediately upon his return to bed Lascoe's health began to decline. The Inter-Con Security Officer said it appeared as though Lascoe was having difficulty breathing. Assistance was requested and a Rapid Response Team arrived. Lascoe was intubated and administered Advanced Lifesaving Medications including Epinephrine, Atropine, and Calcium Bicarbonate. Medical staff was unable to revive Lascoe. A physician pronounced Lascoe dead at 6:56 p.m.

AUTOPSY

On Aug. 11, 2017, Dr. Yong-Son Kim, a forensic pathologist with the Orange County Coroner's Office (OCCO), conducted an autopsy on the body of Lascoe. Following the autopsy, Dr. Kim noted that she had located three stents in Lascoe's right arteries. Dr. Kim also noted the presence of Pulmonary Embolisms (blood clots) in the arteries on both sides of Lascoe's lungs. On Oct. 10, 2017, Dr. Kim issued the autopsy final report concluding that Lascoe's manner of death was natural and the cause of his death was complications of Myocardial Infarction (heart attack) due to severe coronary artery disease.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Lascoe's postmortem blood was collected for testing. The blood was examined for the presence of drugs and alcohol. No illicit drugs or alcohol was detected.

BACKGROUND INFORMATION

Lascoe had a State of California Criminal History record that revealed arrests dating back to 1989 for the following violations:

- Assault with a Deadly Weapon
- Battery
- Inflict Corporal Injury on Spouse/Cohabitant
- Willful Cruelty to a Child
- Burglary
- Possess Burglary Tools
- Take Vehicle Without Owner's Consent
- Forgery
- Petty Theft
- Grand Theft
- Receive/Possess Stolen Property
- Possess Bad Checks
- Possess Controlled Substance
- Possess Controlled Substance Paraphernalia
- Possess Controlled Substance Control Substance for Sales
- Possess Narcotics for Sales

- Transport, Sales of Narcotics
- Parole Violation
- Evade a Police Officer
- Vandalism
- Trespass

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 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 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.' 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/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

There is no evidence whatsoever in this case of express or implied malice on the part of any SAPD personnel or any inmates or other individuals under the supervision of the SAPD. 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 SAPD owed Lascoe 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).

Lascoe was a 53-year-old male with a 20-year history of methamphetamine abuse. These facts indicate that Lascoe likely already had significant health risks prior to being placed in SAPD custody. In addition, the circumstances surrounding Lascoe's hospitalization on Aug. 8, 2017, show his death was the result of natural causes rather than any acts of SAPD-DF staff or inmates, including his own cellmate. On Aug. 8, 2017, at approximately 8:21 p.m., SAPD-DF security video showed Lascoe seated in a chair in the communal TV room where he appeared to be in discomfort. On two occasions he rubbed or grabbed the right side of his chest, and on one occasion he wiped his brow. At approximately 8:23 p.m., Lascoe entered Cell 32 and partially closed the cell door; he did not turn the cell light on. At approximately 8:31 p.m., Lascoe's cellmate entered Cell 32, turned on the lights and walked out of the view of the camera. Seven seconds later, at approximately 8:31 p.m., Lascoe's cellmate exited the cell and yelled that there was a man down in Cell 32. Surveillance video showed no one came or went from Cell 32 between 8:23 p.m. when Lascoe entered and 8:31 p.m. when his cellmate entered.

SAPD-DF Correctional Officer Jorge Ramos responded and found Lascoe on the bottom bunk, unconscious, slumped to his left, with his feet on the ground. Lascoe's complexion was "purple" and there was vomit on his face and bed. Ramos put out a "Man Down" radio broadcast and requested paramedics. Ramos saw no signs of trauma on Lascoe's body. A licensed vocational nurse observed Lascoe was "cyanotic" (blue skin tone) and had vomit on the left side of his face. The LVN saw no signs of trauma on Lascoe's body. The LVN and Officer Ramos initiated CPR, using an Automated External Defibrillator. CPR was continued until OCFA paramedics arrived. Upon arrival, OCFA took over CPR. A 12-lead EKG showed Lascoe had suffered a heart attack. While in transport to OCGMC, Lascoe was treated according to Advanced Life Saving (ALS) protocols. At approximately 9:13 p.m., Lascoe arrived at OCGMC in full cardiac arrest. A physician determined Lascoe had suffered a severe heart attack. The doctor performed surgery on Lascoe and he was admitted into the Critical Care Unit (CCU).

Inter-Con Security (a private contractor working with the US Marshals) assumed custody responsibilities over Lascoe at the hospital. Security was stationed in Lascoe's room on a 24 hours a day, seven days a week basis. On Aug. 10, 2017, Lascoe's condition had improved and he was transferred to Telemetry Unit. At approximately 6:00 p.m., Lascoe slowly got out of bed and walked, with assistance from the critical nurse assistant, to use the restroom. Immediately upon his return to bed Lascoe's health began to decline. Inter-Con Security Officer Dave Ronnow said it appeared as though Lascoe was having difficulty breathing. Assistance was requested and a Rapid Response Team arrived. Lascoe was intubated and administered Advanced Lifesaving Medications. Medical staff was unable to revive Lascoe. A physician pronounced Lascoe deceased at 6:56 p.m.

There is no evidence Lascoe sustained an injury or was involved in a physical altercation while at the SAPD-DF or the OCGMC. The facts are consistent with OCCO's conclusion that Lascoe died from natural causes. All available records support the conclusion the SAPD met its legal duty with the appropriate standard of care. Thus, there is no evidence to support a finding that any SAPD personnel or any individual under the supervision of the SAPD was criminally negligent or failed to perform a legal duty owed to Lascoe.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion there is no evidence to support a finding of criminal culpability on the part of any SAPD personnel or any individual under the supervision of the SAPD. The evidence shows that Lascoe died as a result of natural causes.

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

Respectfully submitted,

MICHAEL PEVNEY
Deputy District Attorney
Special Prosecutions Unit

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