



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

November 7, 2017

Chief Corey S. Sianez
Buena Park Police Department
6640 Beach Blvd.
Buena Park, CA 90622

Re: Custodial Death on June 15, 2017
Death of Fetus of inmate Jane Doe
District Attorney Investigations Case # SA 17-016
Buena Park Department Case # 17-24834 and 17-24518

Dear Chief Sianez,

Please accept this letter detailing the Orange County District Attorney's Office (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the June 15, 2017, custodial death of the fetus of 18-year-old inmate Jane Doe.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of the fetus of Doe. 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 Buena Park Police Department (BPPD) personnel, any Orange County Sheriff's Department (OCSD) personnel, or any other person under the supervision of either the BPPD or OCSD.

On June 19, 2017, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the BPPD to investigate the death of the fetus of Doe that occurred at Buena Park City Jail. During the course of this investigation, the OCDASAU interviewed three witnesses, as well as obtained and reviewed reports and interviews from the BPPD, medical records, police vehicle audio/video recordings, jail surveillance video recordings, radio and telephone recordings, 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 BPPD personnel, OCSD personnel, or any other person under the supervision of either the BPPD or 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.

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CHIEF OF STAFF

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, 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

Doe was an 18-year-old female who resided in Las Vegas, Nevada. On June 14, 2017, at approximately 5:30 p.m., BPPD officers arrested her for auto theft. At least six officers separately recorded the felony traffic stop and subsequent arrest on their "Mobile Audio Video" recording devices. These recordings show the officers using tactics consistent with a high risk felony car stop. The recordings capture BPPD's entire contact with Doe and do not show any unusual or excessive force used by any of the involved officers. Doe followed the officers' verbal commands. She also complied when officers handcuffed her and secured her in a police vehicle. Doe never gave any resistance, and no force was ever used. The recordings do not show officers having anything other than incidental physical contact with Doe, nor do they show Doe falling down or sustaining any injuries.

Doe arrived at Buena Park City Jail at approximately 6:34 p.m. Jennifer Flowers, a private security jailer, completed the booking process for Doe at the jail. Flowers is employed by a private security company contracted to provide jail services to the BPPD. Flowers searched Doe and did not notice any visible injuries on Doe's body, nor did Doe complain of any injuries. Doe denied any medical problems. Flowers secured Doe in holding cell #H-14. Doe was the only inmate who occupied the cell. Flowers then asked Doe if she had any "medical problems," to which Doe responded, "No." Flowers checked on Doe every 30 minutes while Doe was in her cell in accordance with BPPD Jail protocol. Flowers reported that Doe never appeared to be in any medical distress and never indicated that she needed medical attention. Doe eventually fell asleep in her cell and remained asleep throughout Flowers' shift which ended at approximately 3:00 a.m.

On June 15, 2017, at approximately 10:39 a.m., BPPD jailer Michael Luu transported Doe to the Orange County Jail (OCJ) Intake Release Center (IRC) in Santa Ana. Prior to leaving to the BPPD Jail, Luu asked Doe if she had any medical problems. Doe replied, "No." Luu then asked Doe if she was pregnant. Doe replied, "Yes, about four months." Luu asked Doe if she was having any pain, cramps, or complications. Doe replied, "No." Luu reported that because Doe was pregnant her hands were cuffed in the front of her body while in transit to the IRC.

Doe arrived at the IRC at approximately 11:33 a.m.. During the booking process, Doe told medical staff that she might be pregnant, and that she was "cramping and spotting." Doe stated she had her last menstrual period two months prior, and had a positive result on a home pregnancy test three weeks earlier. Medical staff stopped the booking process and advised BPPD personnel that Doe needed medical clearance from a hospital before they could continue booking her into OCJ.

At approximately 12:22 p.m., Luu transported Doe back to the BPPD Jail. Doe was secured in cell #H-14, and she was the only occupant of the cell. At approximately 1:39 p.m., BPPD Corporal Sergio Lepe and Officer DemeTrek Chambers transported Doe to West Anaheim Medical Center for clearance. Medical staff performed a physical examination on Doe. They located and removed a tampon from Doe's vaginal area. Doe estimated that the tampon had been inside her for approximately two weeks. According to the medical records, an ultrasound and pregnancy test confirmed that Doe was eight weeks and four days pregnant and that the fetus was alive. Doe was then medically cleared for booking.

At approximately 5:05 p.m., Doe was transported back to the BPPD Jail. Again, she was placed in cell #H-14 where she remained the sole occupant. At approximately 7:40 p.m., Doe advised then on duty jailer Fernando Robles that she was possibly having a miscarriage. Robles immediately notified BPPD dispatch and requested paramedics. Paramedics were dispatched at approximately 7:41 p.m. and arrived at Doe's location at approximately 7:58 p.m.. The attending Paramedic observed Doe sitting on a toilet bowl inside cell #H-14. Doe estimated she was about 4 weeks pregnant and complained of abdominal pain and cramping which she said began approximately one hour prior. Doe also complained of pain in both lower quadrants of her abdomen as well as vaginal hemorrhaging. The Paramedic observed coagulated blood and discharge in the toilet bowl, but did not observe any visible injuries or trauma to Doe's body. According to the Paramedic, Doe did not complain of any mistreatment by any BPPD staff.

At approximately 8:06 p.m., Doe was transported by ambulance to La Palma Intercommunity Hospital (LPIH). Hospital staff assessed Doe's condition, and she was admitted. Doe told hospital staff her lower abdominal cramping and vaginal bleeding with passage of blood clots started two hours prior to her arrival at LPIH. Doe further reported that she was two months pregnant, had been spotting for two weeks and had received no prenatal care.

On June 16, 2017, at approximately 7:20 a.m., Doe was released from BPPD custody while she was still at LPIH due to her family posting bail. At approximately 10:30 a.m., BPPD personnel checked on Doe's condition and learned that she was scheduled for surgery but no further information was available. BPPD later learned that Doe did have a miscarriage and the fetus was believed to have been about eight weeks old. After a Dilatation and Curettage (D & C) surgical procedure was performed on Doe, the fetus was disposed of by hospital staff per their established protocols. At approximately 3:55 p.m., BPPD Sergeant Gregory Pelton conducted an audio digital recorded interview of Doe at the hospital. During Sergeant Pelton's interview, Doe confirmed that she had not initially disclosed to the arresting BPPD officers or jail staff that she was pregnant; that she was not injured by or involved in any physical altercation with law enforcement, jail staff, or any other inmate while in custody with the BPPD; that she received all the medical attention she needed while in the custody of BPPD; and that she had a safe place to go once she was released from the hospital. Doe also noted that she was spotting and cramping prior to being placed in custody.

AUTOPSY

No autopsy was performed because no fetal evidence was available in this case.

EVIDENCE ANALYSIS

West Anaheim Medical Center Medical Records

The medical records indicate that Doe complained of intermittent heavy vaginal bleeding that started approximately two weeks before she was arrested by BPPD. Doe stated to the medical staff that she was two months pregnant and had not received prenatal care. Doe did not have abdominal pain or back pain. A pregnancy test and ultrasound confirmed that Doe was eight weeks and four days pregnant and that the fetus was alive with a heart rate of 188 beats per minute. The medical records indicate that Doe was diagnosed with vaginal bleeding in pregnancy, first trimester; retained tampon, initial encounter-removed; and bacteriuria (bacteria in urine). The records further provide that there was no evidence of threatened miscarriage, ectopic pregnancy or toxic shock syndrome, and that Doe was medically cleared for booking in stable condition.

La Palma Hospital Medical Records

The medical records indicate that Doe was diagnosed with vaginal bleeding and an incomplete miscarriage necessitating a Dilatation and Curettage (D & C) surgical procedure.

Toxicological Examination

A sample of Doe's blood was obtained at West Anaheim Medical Center. The blood was examined by the hospital for the presence of drugs and alcohol; however, none were located.

BACKGROUND INFORMATION

Doe has no prior criminal history in the state of California.

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 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/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 connection with this case and the miscarriage of the fetus, there is no evidence whatsoever of express or implied malice on the part of any BPPD or OCSD personnel or any inmates or other individuals under the supervision of the BPPD or OCSD. Accordingly, the only possible type of crime to analyze in this situation is criminal culpability under the theory of failure to perform a legal duty. Although the BPPD and OCSD owed Doe a duty of care, the evidence does not support a finding that this duty was in any way breached -- either intentionally or through criminal negligence.

During the felony traffic stop and Doe's subsequent arrest, there is no evidence that BPPD officers used any force or that Doe was injured in any way. Doe never reported any injuries or mistreatment related to her arrest. BPPD Jail staff searched Doe and did not observe any injuries on her body. When jail staff asked Doe if she had any medical problems, Doe said, "No." Doe did not inform jail staff or any officers that she was pregnant at this time. Jail staff checked on Doe every 30 minutes while she was in her cell. Doe never appeared to be medically distressed or in need of medical attention. Thus, none of the arresting officers or jail staff knew or had any reason to know that Doe was pregnant at this time.

Prior to transporting Doe to the OCJ IRC the next morning, jail staff again asked Doe if she had any medical problems. Again, Doe replied, "No." Jail staff then asked if she was pregnant, and Doe said she was. Jail staff asked Doe if she was having any pain, cramps or complications. Doe replied, "No." Because of the pregnancy, Doe's hands were cuffed in the front of her body while in transit. At the IRC, Doe complained of "cramping and spotting" for the first time since being placed in custody. Medical staff immediately stopped the booking process and BPPD personnel transported Doe to a local hospital for medical clearance. There, hospital staff determined that the fetus was alive and that there was no evidence of a threatened miscarriage. Hospital staff medically cleared Doe for booking.

When Doe returned to the BPPD Jail, she told jail staff she might be having a miscarriage. Jail staff immediately called paramedics who quickly arrived at the scene. Paramedics did not observe any visible injuries or trauma to Doe's body, and Doe did not complain of any mistreatment by any BPPD personnel. An ambulance transported Doe to another local hospital. Thus, both BPPD and OCSD personnel, as well as the individuals under their supervision, took reasonable and appropriate action to respond to Doe's medical needs.

After Doe was released from BPPD custody at the hospital, BPPD personnel checked on Doe's condition. Doe confirmed that she did not initially inform any officers, jail staff, or other BPPD personnel that she was pregnant. Doe stated she was not involved in any physical altercation with law enforcement, jail staff, or any other inmate. Doe never shared her cell with another inmate, and there is no evidence of any altercations between Doe and other inmates or jail staff. In addition, there is nothing in Doe's medical records to suggest that her miscarriage was caused by physical injury or failure to seek medical care while in BPPD custody. According to Doe, she was spotting and cramping before she was even arrested. Medical records also show that Doe's vaginal bleeding began approximately two weeks before she arrested by BPPD.

Thus, all available evidence supports the conclusion that the BPPD and OCSD met their legal duties with the appropriate standard of care. Therefore, there is no evidence whatsoever to support a finding that any BPPD or OCSD personnel or any individual under BPPD's or OCSD's supervision failed to perform a legal duty.

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 any criminal culpability on the part of any BPPD or OCSD personnel, or any individual under the supervision of the BPPD or OCSD. The evidence shows that the death of the fetus of Doe was due to preexisting vaginal bleeding and cramping resulting in an incomplete miscarriage.

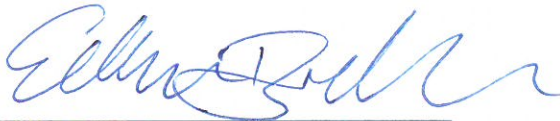
Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,



SUSAN LAIRD

Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **EBRAHIM BAYTIEH**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit