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April 7, 2015

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

Re: Custodial Death on September 20, 2014
Death of Inmate Jeremy Jason Lavia
District Attorney Investigations Case # SA 14-014
Orange County Sheriff's Department Case # 14-18647
Orange County Crime Laboratory Case # FR 14-52602

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. 20, 2014, custodial death of inmate Jeremy Jason Lavia, 35.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Lavia. 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. 20, 2014, an Orange County Sheriff-Coroner's Office (OCSCO) Investigator responded to a residence in Rancho Santa Margarita, where Lavia perished. During the course of this investigation, the OCDA Special Assignment Unit (OCDASAU) interviewed seven witnesses, as well as 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 or Gang Units review 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 his or her supervisor, and this Assistant District Attorney eventually will review and approve any legal conclusions and resulting memoranda. 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

Lavia was a 35-year-old male with a long history of substance abuse, including OxyContin and heroin. On April 30, 2014, at approximately 5:15 p.m., Lavia was arrested and taken into custody for an outstanding warrant. At approximately 6:07 p.m., Lavia was booked at the OCSD Intake/Release Center in Santa Ana. On May 01, 2014, Lavia was transferred to the Theo Lacy Facility.

On or around Aug. 15, 2014, Lavia was involved in a physical altercation in the showers with a fellow inmate identified as "Weasel." Lavia injured his left hand during the altercation. On Aug. 16, 2014, at approximately 8:29 a.m., Lavia was seen by Orange County Healthcare Agency (OCHA) medical staff. Lavia claimed to have injured his hands when he "smashed them" between two carts. Mild swelling and bruising to his left hand and thumb were noted.

On Aug. 20, 2014, at approximately 9:07 a.m., Lavia was reexamined by OCHA medical staff. Lavia indicated that his left hand and thumb were still hurting and that he had a limited range of motion with his left hand. An x-ray indicated a slightly displaced base of the proximal phalanx. The hand was splinted and Lavia was prescribed Motrin for pain. The next day, a radiology report of Lavia's left hand and thumb was completed by American Correctional Solutions/OCJ and revealed that Lavia had a mildly impacted fracture, with slight displacement, involving the proximal aspect of the first metacarpal bone.

On Aug. 25, 2014, Lavia was seen by a physician at Western Medical Center Anaheim (WMCA) regarding his thumb and was diagnosed as having a closed fracture of the base of the thumb.

On Sept. 15, 2014, Lavia was released from the custody of the OCSD. Lavia contacted Jane Doe, who drove to the Norm's Restaurant in Santa Ana, and brought Lavia to her residence in Rancho Santa Margarita. Lavia told Jane Doe that he had broken the knuckle on his middle finger during a fight with another inmate approximately two weeks prior to being released. Lavia mentioned that he struck the other inmate several times, and that he was only poked in the eye during the altercation.

On Sept. 19, 2014, during the early afternoon hours, Jane Doe gave Lavia a ride to a house near the Tijeras Creek Golf Course in Rancho Santa Margarita. Jane Doe knew that the house belonged to Lavia's friend, John Doe. At some point, John Doe's fiancée asked Lavia to leave because of his history of heroin abuse. On that same day at approximately 4:00 p.m., Lavia went to his mother's residence in Rancho Santa Margarita. Lavia's mother was not home, but Lavia's stepfather, John Doe 2, allowed Lavia into the house to wait for a friend. Lavia seemed "normal" to John Doe 2, but he appeared to be feeling "down." Lavia was with John Doe 2 for approximately 20 to 30 minutes before an unknown subject came and picked him up. At approximately 5:30 p.m., Lavia telephoned his mother and told her that he was upset over the incident that occurred at John Doe's house earlier that day. Lavia sounded sober throughout the conversation with his mother. Between 8:30 p.m. and 11:00 p.m., Lavia returned to Jane Doe's residence. Jane Doe did not feel that Lavia was under the influence at that time, but he was distraught, so Lavia took an anti-depressant medication he had been prescribed. Shortly thereafter, Lavia began complaining that his vision was blurry and that his stomach was hurting. Lavia's complexion turned pale, so Jane Doe

instructed him to lie on a couch. After several minutes, Lavia's color returned and he indicated that he felt better. Lavia drank some water and returned to the couch.

Jane Doe watched Lavia as he lay on the couch noticing that Lavia's eyes were closed and he fidgeted. Jane Doe went to her bedroom and heard Lavia turn on the television and change channels continuously. Jane Doe believed that Lavia was watching television so she went to sleep. On Sept. 20, 2014, at approximately 11:40 a.m., Jane Doe found Lavia lying on the couch, not breathing, so she called 911 for medical assistance. At approximately 11:45 a.m., Orange County Fire Authority (OCFA) personnel arrived at Jane Doe's residence. The responding Paramedic observed Lavia lying supine on a couch. Lavia was unconscious, his pupils were fixed and dilated, and he had no pulse, no blood pressure, and was not breathing. At approximately 11:48 a.m., the Paramedics moved Lavia to the floor and used a Bag Valve Mask to establish an Oropharyngeal airway to try to assist Lavia with breathing. At approximately 11:52 a.m., cardio pulmonary resuscitation was initiated and an Electrocardiogram (ECG) was attached to Lavia. The ECG indicated that Lavia was asystole (no cardiac electrical activity), and the Paramedics observed rigor mortis of the lower jaw. At approximately 12:00 p.m., the Paramedics pronounced Lavia deceased.

At approximately 2:05 p.m., OCSD Coroner Investigator Dave Ralston arrived at Jane Doe's residence and took custody of Lavia's body. Investigator Ralston noted a possible venipuncture to Lavia's right forearm, below the antecubital fossa, covered by a small scab. In addition, Investigator Ralston collected a spoon lying between Lavia's body and the couch, with a white, dried residue in the bowl and slight discoloration to the bottom. Investigator Ralston also collected from the kitchen area two prescription medications in Lavia's name, Citalopram (10mg) and Oxcarbazepine (300mg).

AUTOPSY

On Sept. 27, 2014, at approximately 1:15 p.m., a postmortem examination of Lavia was conducted by Dr. Scott Luzi, an independent pathologist with United Forensic Pathologist. During the examination, Dr. Luzi observed foaming in Lavia's mouth and trachea. Dr. Luzi also noted an enlarged brain and enlarged swollen lungs which are consistent with someone who had overdosed with an opiate.

Following the autopsy and microscopic and toxicological examinations, Dr. Luzi determined that Lavia died as a result of "mixed drug intoxication."

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Lavia's postmortem blood and brain tissues were collected and examined for the presence of drugs and alcohol. The following results and interpretations were documented:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Morphine (Free)	Postmortem Blood	0.223 +/- 0.023 mg/L
Methamphetamine	Postmortem Blood	1.28 +/- 0.009 mg/L
Morphine (Free)	Brain	0.172 +/- 0.018- mg/kg
Codeine (Free)	Brain	0.0306 +/- 0.0033 mg/kg
6-Monoacetylmorphine (Free)	Brain	Detected

BACKGROUND INFORMATION

Lavia had a history of arrests and convictions relating to the following crimes:

- Possession of a dangerous weapon
- Under the influence of a controlled substance
- Possession of a controlled substance/paraphernalia
- Driving under the influence

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 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; 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 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 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.

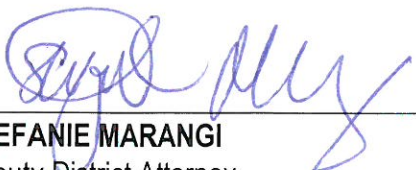
Although the OCSD owed Lavia a duty of care while he was in OCSD's custody, the evidence does not support a finding that this duty was in any way breached – either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). Lavia received timely medical attention during his incarceration. Moreover, while in custody, Lavia's only health concern was related to his hand, and he died as a result of mixed drug intoxication 35 days after his release. 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. Lavia's death was not caused, directly or indirectly, by any OCSD personnel or any individual under the supervision of OCSD.

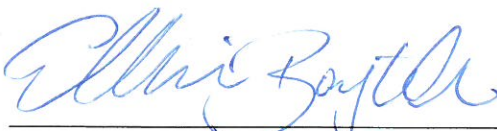
CONCLUSION

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 OCSD personnel or any individual under the supervision of the OCSD. The evidence shows that Lavia died as a result of mixed drug intoxication on Sept. 20, 2014, while he was not in the custody of OCSD.

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

Respectfully submitted,


STEFANIE MARANGI
Deputy District Attorney
Gangs Unit


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