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November 6, 2018

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

Re: Custodial Death on November 22, 2017
Death of Inmate Mikeee John Illiano
District Attorney Investigations Case # SA 17-032
Orange County Sheriff's Department Case # 17-046243
Orange County Crime Laboratory Case # 17-59735
Orange County Sheriff's Coroner Case # 17-01544-DB

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 Nov. 22, 2017, custodial death of 58-year-old inmate Mikeee John Illiano.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Illiano. 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 Nov. 22, 2017, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the University of California, Irvine-Medical Center (UCIMC), where Illiano died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed two 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.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

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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 Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, 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

Illiano was a 58-year-old male who had a long history of drug abuse and suffered from Diabetes and related illnesses. On Thursday, July 27, 2017, Illiano was arrested by the OCSD for possession of drug paraphernalia in violation of Health and Safety Code section 11364, and for active arrest warrants. Illiano was booked into the Orange County Jail (OCJ) Intake Release Center. Illiano was subsequently housed at the Theo Lacy Jail facility, in Module "O," where he received care for his medical condition.

On Tuesday, Nov. 21, 2017, at approximately 8:30 p.m., OSCD Deputy Michael Koyro was supervising the distribution of medication for Module "O" when the Licensed Vocational Nurse (LVN) and Registered Nurse (RN) told him that Illiano's blood sugar levels were extremely low and that they were having trouble raising it. The RN told Deputy Koyro she would continue to attempt to raise Illiano's blood sugar level. At approximately 9:00 p.m., the RN advised Deputy Koyro that Illiano's medical condition was not improving and that he needed to be taken to an emergency room for additional treatment. The Orange Fire Department (OFD) Paramedics were requested. At approximately 9:15 p.m., the OFD, Engine #6 and Rescue #5 arrived at Module "O." Illiano was subsequently transported by ambulance to the University of California, Irvine-Medical Center (UCIMC). At approximately 10:15 p.m., Illiano arrived at the UCIMC emergency room. Illiano was admitted to UCIMC to receive treatment for hypoglycemia.

On Wednesday, Nov. 22, 2017, at approximately 1:45 a.m., Illiano was moved from the emergency room to the 7th floor Intensive Care Unit (ICU), room #7423, for treatment and observation. At 6:50 a.m., Illiano was awake, alert, and oriented. A short time later he went into cardiac arrest. According to the UCIMC attending RN, at approximately 7:10 a.m., she arrived at her work station and discovered that Illiano was being "Coded" and receiving medical intervention from a variety of the ICU's medical staff, including the attending physician. The attending physician first came into contact with Illiano after responding to room #7423 for a "Code Blue." Upon his arrival at Illiano's room, the physician observed the medical staff already providing Illiano with medical intervention/treatment for "Cardiac arrest," and he also observed that Illiano was in "ventricular defibrillation" and began assisting the medical staff in providing lifesaving medical intervention.

According to the attending physician, Illiano was ventilated and Cardio Pulmonary Resuscitation (CPR) was initiated and had continued in excess of 15 along with approximately seven Automated External Defibrillation (AED) shocks and the administration of "Full" Advanced Cardiovascular Life Support (ACLS) medication protocols with "some additions," however; Illiano's heart was unable to sustain a rhythm compatible for life. A "bedside" cardiac ultrasound indicated Illiano's heart had stopped functioning. The attending physician pronounced Illiano deceased at 7:38 a.m.

AUTOPSY

On Nov. 29, 2017, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Illiano. Following the autopsy, Dr. Luzi noted Illiano had no trauma on his body. Dr. Luiz stated that the cause of death was acute myocardial infraction - congestive heart failure, and the manner of death was natural.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Illiano's postmortem blood yielded the presence of Lidocaine.

BACKGROUND INFORMATION

Illiano had a State of California Criminal History record that revealed arrests dating back to 1979 for the following violations:

- Murder
- Burglary
- Vandalism
- Assault
- Robbery
- Assault and Battery
- Assault with a deadly weapon
- DUI
- Possession of a controlled substance
- Possession of drug paraphernalia
- Under the influence of a controlled substance
- Bench warrants
- Receiving stolen property
- Violation of parole

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 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/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 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 Illiano 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).

Illiano was a 58-year-old male with a history of drug abuse and suffered from Diabetes and related illnesses. In addition, the circumstances surrounding Illiano's hospitalization/medical treatment from Nov. 21, 2017 to Nov. 22, 2017, show his death was the result of natural causes rather than any acts or failure to act on the part of the OCSD or the OCJ staff.

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.

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 Illiano died of natural causes.

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

Respectfully submitted,



MICHAEL BARDEEN

Deputy District Attorney
TARGET/GANGS Unit



Read and Approved by **EBRAHIM BAYTIEH**

Senior Assistant District Attorney
Felony Operations II