



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

MARY ANNE MCCAULEY
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

MICHAEL LUBINSKI
SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

JEFF MCLAUGHLIN
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

June 18, 2012

Sheriff-Coroner Sandra Hutchens
Orange County Sheriff's Department
550 North Flower Street
Santa Ana, CA 92703

Re: Custodial Death on December 31, 2010
Death of Inmate Cynthia Kaye Drury
District Attorney Investigations Case # SA 10-028
Orange County Sheriff's Department DR # 10-240833
Orange County Crime Laboratory Case FR #10-56397-5

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 December 31, 2010, custodial death of inmate Cynthia Kaye Drury.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Cynthia Kaye Drury. 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 deputy, officer or any other person under the supervision of the Orange County Sheriff's Department.

On December 31, 2010, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Orange County Jail after Cynthia Kaye Drury died while in custody. The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of Orange County Sheriff's Department officer or personnel. The OCDA will not be addressing 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 and 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. Prosecutors assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

Drury was a 46 year old female, who had a long history substance abuse, diabetes and, in her own words, "heart troubles."

On December 30, 2010, at approximately 12:45 a.m., Anaheim Police Officers Matthew Ellis and Chris Cooper arrested Drury for the following violations: California Health & Safety Code section 11350(A) – Possession of a Controlled Substance; California Health & Safety Code section 11377(A) – Possession of Methamphetamine; and California Vehicle Code section 12500(A) – driving without a license. Drury was transported by Anaheim Police Officer Timi Fife and booked into the Anaheim City Jail (ACJ). During the booking process, Drury told jail staff that she had diabetes, "heart troubles" and "mental problems."

On December 30, 2010, at approximately 2:30 p.m., an Orange County Sheriff's Department custodial transportation van arrived at ACJ. Orange County Sheriff's Department personnel picked up and transported Drury to the Orange County Sheriff's Department Intake/Release Center (IRC). During the contact with the Anaheim Police Department, Drury was cooperative and there was no physical confrontation. At times she appeared lethargic, unable to stay awake and had difficulty communicating. However, she did not display these symptoms toward the end of her stay at ACJ.

On December 30, 2010 at approximately 3:05 p.m., Drury arrived at the IRC and began the medical screening and booking process into the Orange County Jail (OCJ). According to medical intake screening documents, Drury was aggressive and placed her head on the counter and claimed that she could not open her eyes because they were swollen shut. However, Drury would open her eyes when yelling at medical staff. Drury indicated that she had a history of heroin use for 25 years which she was "kicking right now" and that she used "8 grams" a day. Drury indicated that she last used heroin on December 29, 2010, and denied drinking any alcohol or using other street drugs. Drury was medically cleared for Correctional Medical Service (CMS) housing along with medical orders to follow the Opiate Detoxification Protocol (ODP). The protocol and medical notes reflect that Imodium, Atarax and Tylenol were the medications administered.

On December 31, 2010, at approximately 0545 hours, a urine sample was obtained from Drury and an "Insta Check" drug screen was completed. The urine sample tested positive for amphetamine, cocaine, methamphetamine, opiates and benzodiazepines. As a result of the drug screen findings, Drury was taken off the ODP and the Benzodiazepine Withdrawal Protocol (BWP) was enacted. The medical notes reflect that staff administered the medications Zofran, Imodium, Norflex and Serax to Drury, consistent with the BWP.

On December 31, 2010, at approximately 1545 hours, Drury was taken to medical triage for a follow-up medical evaluation. As a result of the follow up, RN Elizabeth Cardoza requested that Drury be moved into medical observation, in a lower tier and a bottom bunk. As a result of this request, Drury was reassigned to Module K, Sector 14, Cell 1. Sector 14 is for inmates that need additional observation and have some sort of medical/mental issues. Sometime between 1700 and 1753 hours, according to jail documents, Drury was moved from Module M to Module K, Sector 14, Cell 1.

Sometime between 1850 and 1900 hours, Orange County Sheriff's Deputy Natalie Elzbeth assisted RN Linda Austin with dispensing medication within Module K, Sector 13. At approximately 1920 hours, Sector 13 was completed and Deputy Elzbeth and RN Austin entered into Sector 14. While Austin began providing medication to another inmate, Deputy Elzbeth began safety checks of the inmates housed in the cells nearby.

On December 31, 2010 at approximately 7:20 p.m., Deputy Elzbeth looked into cell 1 where Drury was housed. Deputy Elzbeth saw that Drury was in her bunk, lying on her left side, eyes opened. Drury looked sick, was drooling, and was very still. Deputy Elzbeth tapped on the glass on the door and called out to Drury but did not receive a response. Deputy Elzbeth and RN Austin entered the cell and continued to call out to Drury but still did not receive a response. Deputy Elzbeth touched Drury's hand and noted her skin was cold. RN Austin checked Drury's carotid artery for a pulse with negative results. Deputy Elzbeth rolled Drury onto her back so RN Austin could start cardiopulmonary resuscitation (CPR).

On December 31, 2010 at 7:36 p.m., Santa Ana Fire Department (SAFD) personnel arrived at the jail and were escorted to Drury. The paramedics assumed medical aid. Paramedics noted that Drury's skin was cool and pale and did not see any signs of trauma. Paramedics attempted to resuscitate Drury, without success. At 7:59 p.m., paramedics pronounced Drury dead.

AUTOPSY

On Sunday, January 2, 2011, at approximately 9:15 a.m., the post-mortem examination of Drury was conducted at the Orange County Sheriff-Coroner Forensic Science Center. The autopsy was conducted by Napa and Marin County Coroner Chief Forensic Pathologist Doctor Joseph Cohen.¹ Following the autopsy, Dr. Cohen concluded that the Manner of Death was "Natural" and that the Cause of Death was "Dilated Cardiomyopathy Due to Chronic Substance Abuse" (a weakened and enlarged heart).

EVIDENCE ANALYSIS

A subsequent toxicological examination of Drury's post-mortem blood was performed by the OCSD Crime Lab. The results were as follows:

<u>DRUG</u>	<u>RESULT</u>
Morphine (Free)	Detected
Amphetamine	Detected
Methamphetamine	Detected
Oxazepam/Alprazolam	Detected
Methamphetamine/Orphenadrine	Detected
Orphenardine (Pill)	Detected

BACKGROUND INFORMATION

Drury's criminal history commenced in 1988 and continued thru 2010. During that time frame, Drury suffered twenty-six (26) separate criminal convictions including convictions for being under the influence of a control substance pursuant to HS 11550 (10 separate convictions); prostitution pursuant to PC 647(b); possession of controlled substances pursuant to HS 11377 and 11350; possession of hypodermic needles pursuant to BP 4149; theft pursuant to PC 484-488 and 666-484-488; automobile taking pursuant to VC 10851; lewd conduct pursuant to PC 647(a); and receiving stolen property pursuant to PC 496.

¹ Until late 2010, Dr. Cohen was the chief forensic pathologist for the County of Riverside.

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, it must be proven:

- a. The person committed an act that caused the death of another person;
- 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 acted he knew his 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;
- 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.

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 of express or implied malice on the part of any Orange County Sheriff's Department deputy, officer or any inmates or other individuals under the supervision of the Orange County Sheriff's Department. 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 Orange County Sheriff's Department owed inmate Drury a duty of care, the evidence does not support a finding that this duty was breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

Drury had preexisting medical conditions at the time she was placed in custody with the Orange County Sheriff's Department as a result of her history of chronic substance abuse. Moreover, Drury stated she had been using heroin for 25 years, estimated her use at "8 grams" per day, had ingested heroin within the 48 hours prior to her intake at Orange County Sheriff's Department, and had a heroin habit she was "kicking right now". Drury went through medical screening at the time she was

booked through the Orange County Sheriff's Department Intake/Release Center. The cause of Drury's lethargy was investigated by medical personnel and included a urine screen. Based on the results of the urine screen, Drury was further treated with medication to reduce the trauma of potential heroin withdrawal. While checking on Drury's welfare, Orange County Sheriff's Department personnel discovered Drury was unresponsive and took immediate action to resuscitate her. Her death was the result of pre-existing conditions due to her long pattern of drug abuse.

CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA and pursuant to applicable legal principles, there is no evidence to support a finding of criminal culpability on the part of any Orange County Sheriff's Department personnel or any individual under the supervision of Orange County Sheriff's Department. Evidence shows that inmate Drury died a natural death due to an enlarged heart caused by chronic substance abuse.

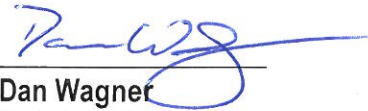
Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Troy Pino", written over a horizontal line.

Troy Pino
Senior Deputy District Attorney
Homicide Unit

Read and Approved,

A handwritten signature in blue ink, appearing to read "Dan Wagner", written over a horizontal line.

Dan Wagner
Assistant District Attorney
Head of Homicide Unit