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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 13, 2010
Death of Inmate Marcus Dean Bell
District Attorney Investigations Case # SA 10-024
Orange County Sheriff's Department, DR # 10-229570
Orange County Crime Laboratory Case FR # 10-55485

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 Dec. 13, 2010, custodial death of inmate Marcus Dean Bell.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Bell. 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) deputy or any other person under the supervision of the OCSD.

On Dec. 13, 2010, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the Men's Central Jail after Bell died while in custody and while being treated at the medical ward of that facility. 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 OCSD deputies 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

On Dec. 11, 2010, Bell was arrested by the Fullerton Police Department (FPD) for burglary of a Target store and possession of stolen property.

On the date of Bell's arrest, Target employees notified FPD that they believed a burglary was occurring in the store. FPD officers responded to the scene and arrested Bell. While being patted down by FPD, Officer Darryl Bermender noticed that Bell was emitting a strong odor of alcohol and had difficulty standing.

Officer Bermender then conducted an interview of Bell, in which Bell admitted to "screwing up." Bell claimed that he was "more or less" in the store to steal.

On Dec. 12, 2010, at 3:11 a.m., Bell was booked at the OCSD Intake/Release Center. During the booking process, Bell was given Serax, an alcohol detoxification medication. During medical triage, Bell was classified as a medical expedite due to alcohol withdrawals. As such, Bell was housed in the Acute Medical Care Ward C, which is constantly monitored by nurses. A camera monitors all of Ward C, but Bell's bunk was partially blocked from view by a structural pillar.

Once in Ward C, Bell appeared fine as he ate breakfast, lunch and dinner, and took his doses of Serax. Other inmates report, however, that Bell appeared to be falling out of his bed at around 9:30 p.m. One inmate tapped Bell on the shoulder and said good night, to which Bell responded. At 1:50 a.m. on Dec. 13, 2012, another inmate was wandering around disturbing other inmates, but Bell did not appear to wake up during the disturbance.

On Dec. 13, 2010, at approximately 3:00 a.m., a jail nurse and OCSD Deputy Robert Torrez conducted daily vital checks of all the inmates in the medical ward. At 3:14 a.m., they found Bell in his bunk, unresponsive with no pulse. Bell was lying supine with his right elbow bent and right hand positioned above his head. His left elbow was bent and his left hand was found on his pelvis. The nurse examined Bell and determined that he had no pulse and was not breathing. She retrieved the "man-down" bag and requested assistance. In the meantime, Deputy Mike Bartimus had removed Bell's shirt in order to attach an Automated External Defibrillator (AED) and conduct cardiopulmonary resuscitation (CPR). Bell showed no response to medical intervention, including eight cycles of the AED.

At 3:27 a.m., Santa Ana paramedics arrived. At 3:35 a.m., the paramedics pronounced Bell deceased. There did not appear to be any trauma to inmate Bell's body and no suspicious circumstances surrounding his death. Bell had signs of death including rigor mortis and lividity.

AUTOPSY

On Dec. 14, 2010, at approximately 2:00 p.m., the post-mortem examination of Bell was conducted at the Orange County Sheriff-Coroner's Department Coroner's Division Facility. The examination was conducted by Chief Coroner for Riverside County, Dr. Joseph Cohen. A bullet was collected from the right chest area. It was concluded that the bullet found inside Bell was not related to the cause of death. No obvious entry wound from the bullet was found. Bell's liver was fibrotic and had significant scarring, and the heart was dilated and slightly enlarged. Bell's organs showed general signs of chronic alcoholism. The cause of death was determined to be chronic alcoholism.

EVIDENCE ANALYSIS

Toxicological Examination

DRUG	MATRIX	RESULT
Oxazepam	Postmortem Blood	0.77 mg/L
Tetrahydrocannabinol Carboxy-Acid	Postmortem Blood	Detected

BACKGROUND INFORMATION

Bell's prior criminal record, which included multiple alcohol, drug, theft and assault-related charges, was taken into consideration.

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.

In *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th231,251, the court establishes that there is a "special relationship" between custodian and inmate:

"The most important consideration in establishing duty is foreseeability. It is manifestly foreseeable that an inmate may be at risk of harm....Prisoners are vulnerable. And dependant. 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 of express or implied malice on the part of any OCSD deputy 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 inmate Bell 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).

Inmate Bell had a preexisting medical condition, including chronic alcoholism, as a result of his history of alcohol abuse at the time he was placed in custody with the OCSD. Inmate Bell went through medical screening at the time he was booked through the OCSD Intake/Release Center. During medical triage, Bell was classified as a medical expedite due to alcohol withdrawals. Bell was given Serax for alcohol detoxification. Bell was then housed in the Acute Medical Care Ward. A nursing station is attached to the barracks and clear windows allow for constant visual monitoring of the inmates.

When a nurse found Bell on Dec. 13, 2010, Bell had no pulse. Staff immediately started CPR and attempted AED. Bell showed no response to medical intervention and no signs of recent trauma were observed on Bell's body. There was no evidence of foul play on the part of any person who came into contact with Bell prior to his death. Additionally, there is no sign or indication of negligence on the part of any employee supervising Bell.

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 OCSD personnel or any individual under the supervision of the OCSD. Evidence shows that Bell died as a result of chronic alcoholism.

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

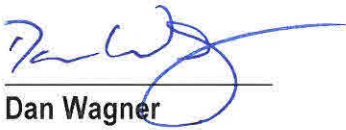
Respectfully Submitted,



Christopher R. Duff

Senior Deputy District Attorney
Gang Unit

Read and Approved,



Dan Wagner

Assistant District Attorney
Head of Homicide Unit