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March 19, 2014

Chief Carlos Rojas
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Custodial Death on January 2, 2012
Death of Mario Marin
District Attorney Case # S.A.12-001
District Attorney Investigations Case # S.A.12-001
Santa Ana Police Department DR # 11-18379
Orange County Crime Laboratory Case # FR#12-40023

Dear Chief Rojas,

Please accept this letter detailing the Orange County District Attorney's (OCD A) Office's investigation and legal conclusion in connection with the above-listed incident involving the Jan. 2, 2012, custodial death of Mario Marin.

OVERVIEW

This letter contains the scope and legal conclusion of the Orange County District Attorney's (OCD A) investigation of the Jan. 2, 2012, death of Marin, who died at University of California, Irvine – Medical Center (UCIMC). In this letter, the OCD A describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and legal analysis to determine whether criminal culpability existed on the part of any Santa Ana Police Department (SAPD) officers.

The OCD A conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of SAPD or any SAPD personnel. The OCD A will not be addressing policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

The OCD A Special Assignment Unit (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 supported by additional investigators from other OCD A units. OCDASAU consists of six full-time investigators. There are additional OCD A investigators assigned to other units trained to assist when needed. The OCDASAU audio records all interviews and the Orange County Crime Laboratory processes all physical evidence.

When the OCDASAU investigation has concluded, 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, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

FACTS

On Jan. 2, 2012, Marin was pronounced dead at UCIMC, approximately five days after being arrested for assaulting members of City Lights Dream Center Church. At the time of his arrest on Dec. 28, 2011, Marin was under the influence of alcohol and marijuana, and appeared to be of unsound mind, as he was yelling expletives and offensive messages directed at members of the church. In the course of his outburst, he punched the church pastor in the face and attempted to bite the pastor as the pastor and another member of the church sought to subdue him.

On Dec. 28, 2011, at 10:09 p.m., Santa Ana police Officer Brian Booker responded to a 911 call placed by Church member Conception Ramirez saying a man was at the church "cursing everyone, cursing God, and wanting to fight with everybody." At 10:10 p.m., Officer Booker arrived on the scene and observed Marin fighting with church members. Officer Booker requested other officers be dispatched "Code 3." "Code 3" refers to emergency situations where lights and sirens are used. Generally, when a police officer requests assistance using "Code 3," it typically involves dangerous or even life threatening circumstances. Approximately 30 seconds later, Officer Sergio Gutierrez arrived on scene and attempted, unsuccessfully, to assist Officer Booker in the restraint of Marin. Officers Booker and Gutierrez were unable to control Marin because he continued to fight, causing Officer Booker to use his Taser. The Taser had little effect.

Marin continued fighting and it eventually took five officers to gain physical control of Marin. Once handcuffed, Marin continued to kick at officers until a rip hobble restraint was used to control his legs. A rip hobble is a device used to prevent combative subjects from kicking by strapping their legs together near the ankle. Witnesses reported that the officers used their knees and body weight to hold Marin down in an effort to finally place him under arrest.

Paramedics arrived and transported Marin to St. Joseph's Hospital in Orange. During the transport, a "spit sock" was placed on Marin's head. A "spit sock" is a device used to prevent someone from spitting on attending police officers, paramedics, or hospital personnel. Paramedics reported that Marin's vital signs were always stable during his transport to the hospital. Once Marin's care was relinquished to medical staff, Officer Booker placed Marin on a Welfare and Institutions Code 5150 hold. In the State of California, a "5150" hold can be applied to an individual when a peace officer, or attending medical professional, has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself. A "5150" hold allows for a 72 hour period where the person is further evaluated by medical, or psychological professionals. Two days after Marin's admission into St. Joseph's Hospital, on Dec. 30, 2011, medical staff determined that Marin required a higher level of care and transported him to UCIMC, where Marin was further evaluated.

During this evaluation, Marin revealed he had previously abused drugs and reportedly stated that he heard voices in his head and could speak with "spirits." He was then placed on a Welfare and Institutions Code "5250" hold. A "5250" hold allows for an additional 14 days for an individual to be professionally evaluated. Marin was diagnosed with Paranoid Schizophrenia. Marin's treating physicians were Doctors Michael Lekawa and Meghann Kaiser. The investigation further revealed that Marin was a private man, living in a dilapidated one-room apartment by himself and working at an auto repair shop.

On the morning of Jan. 2, 2012, Marin attempted to leave the hospital while still under the 5250 hold. Marin became combative with hospital staff when they tried to prevent him from leaving. He once again began to kick and bite, and it took six nursing staff and a hospital security guards to strap Marin to his bed. During this time, Marin was seen to purposely hold his breath for long periods of time. A moment later, Marin became pale and his eyes fixed on the ceiling above him. At 9:05 a.m. on Jan. 2, 2012, Marin became unresponsive, and hospital staff initiated life saving measures. At 9:45 a.m., Marin was pronounced dead.

AUTOPSY

On Jan. 4, 2012, at approximately 8:58 a.m., Forensic Pathologist Lawrence L. Nguyen, M.D. conducted the post-mortem examination at the Orange County Coroner Facility. Dr. Nguyen concluded that the cause of death was respiratory failure due to a sequence of traumatic injuries. There were various bruises and abrasions on Marin's body, two Taser probe marks on his lower back, a hemorrhage on the right side of his skull, and complete and partial fractures of some of his ribs. Internally, there was a discoloring of a portion of his left kidney, a hemorrhage within the left adrenal gland, and a tear in the center of his pancreas. The toxicology report tested positive for marijuana and .12% ethanol in his blood.

On Sept. 13, 2013, the OCDA met with Supervising Forensic Pathologist Dr. Anthony Juguilon seeking clarification of the autopsy findings. Dr. Juguilon explained that Marin's injured pancreas would certainly have been a contributing factor in his death. He explained that this type of injury is consistent with blunt force trauma to the abdomen, but it is difficult to definitively age the time the injury was sustained. Dr. Juguilon further explained that treating physicians may have had a difficult time diagnosing the extent of such an injury if the patient remained combative and did not communicate his symptoms or cooperate with treatment.

THE LAW

Homicide is the killing of one human being by another. Murder, manslaughter, and involuntary manslaughter are types of homicide.

To prove that a person is guilty of murder, the following elements must be proven:

1. The person committed an act that caused the death of another person;
2. When the person acted he had a state of mind called malice aforethought; and
3. He 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 deliberately acted with conscious disregard for human life.

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.

A person can commit murder by his failure to perform a legal duty. A legal duty to care for or help must be owed to the decedent by the person. The person must then have failed to perform that duty. The failure to act is the same as doing a negligent or injurious act.

A killing that would otherwise be murder is reduced to voluntary manslaughter if the person killed someone because of a sudden quarrel or in the heat of passion. A killing that would otherwise be murder is also reduced to voluntary manslaughter if the person killed another human being because he acted in imperfect self-defense. When a person commits an unlawful killing but does not intend to kill and does not act with conscious disregard for human life, then the crime is involuntary manslaughter. The difference between other homicide offenses and involuntary manslaughter depends on whether the person was aware of the risk to life that his actions created and consciously disregarded that risk. An unlawful killing caused by a willful act done with full knowledge and awareness that the person is endangering the life of another, and done in conscious disregard of that risk, is voluntary manslaughter or murder. An unlawful killing resulting from a willful act committed without intent to kill and without conscious disregard of the risk to human life is involuntary

manslaughter.

In custodial death situation, the most likely application of the law would be a review of involuntary manslaughter based on a failure to perform a legal duty. To prove that a person is guilty of this crime, the following elements must be proven:

1. The person had a legal duty to the decedent;
2. The person failed to perform that legal duty;
3. The person's failure was criminally negligent; and
4. 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.

LEGAL ANALYSIS

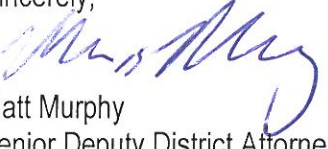
It appears Marin was experiencing some sort of schizophrenic episode in combination with drug and alcohol use. For reasons known only to him, he went to the City Lights Dream Center Church and began attacking people. Responding police officers used a variety of non-lethal techniques to arrest the highly combative Marin, including administering Taser shocks, applying body weight, and using a Hobble restraint. None of the witnesses described anything abusive or improper about the officers' efforts to effectuate the arrest. Marin remained combative for several days, culminating in his final fight with hospital staff. No one can say where Marin came from on his way to the church, and it is impossible to know exactly which of the many reported fights caused Marin's injuries. It should be noted that in all the fights leading up to his death, Marin was the aggressor.

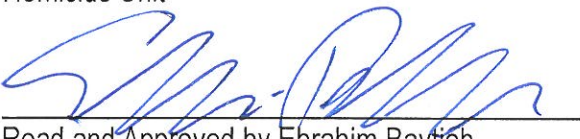
There appears to be no evidence of malice, a failure to perform a legal duty, or criminal negligence by anyone. Marin's death was due to a combination of a schizophrenic break, assaultive behavior, and lack of cooperation with treating physicians. There is no evidence of foul play on the part of any person who came into contact with Marin prior to his death. It is the OCDA's conclusion that the evidence does not support a finding of criminal culpability on the part of any SAPD officer.

CONCLUSION

Based on all the evidence provided to the OCDA, the entirety of the facts contained in the reports reviewed, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of any Santa Ana police officer or hospital staff.

Sincerely,


Matt Murphy
Senior Deputy District Attorney
Homicide Unit


Read and Approved by Ebrahim Baytieh
Assistant Head of Court – Homicide Unit