



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

November 29, 2017

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

Re: Custodial Death on April 12, 2017
Death of Inmate Steven Mitchell Duran
District Attorney Investigations Case # SA 17-010
Orange County Sheriff's Department Case # 17-014072
Orange County Crime Laboratory Case # 17-46426

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CHIEF OF STAFF

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 April 12, 2017, custodial death of 62-year-old inmate Steven Mitchell Duran.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Duran. 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 April 12, 2017, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Anaheim Global Medical Center (AGMC), where Duran 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.

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, as well as 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 Assistant District Attorney supervising the Special Prosecutions Unit, 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

Duran was in poor health and suffered from numerous, life-threatening medical conditions including IV drug abuse, alcohol abuse, liver cirrhosis, hepatitis C, and hypertension. While in custody, Duran was diagnosed with hepatocellular carcinoma (liver cancer) with metastatic growth in multiple areas of his body.

On June 23, 2010, at approximately 8:40 a.m., a Newport Beach Police detective arrested Duran for a residential robbery. Duran was booked into the Orange County Jail (OCJ) at 12:17 p.m. On June 25, 2010, Duran was arraigned in the Orange County Superior Court (OCSC) under case # 10HF1074 for the following charges: first degree robbery, first degree burglary, and two counts of personal use of a firearm. Eleven priors were alleged including multiple strike priors. On April 23, 2013, Duran was convicted in a jury trial. At the time of his death, Duran was awaiting a court trial on the sanity phase of his case. The sanity phase had been continued numerous times over the years.

On Oct. 13, 2013, at 10:46 a.m., Duran was injured in a fall as he was exiting an OCSD transportation van at the North Justice Center in Fullerton. Duran injured his face and nose and was transported to the hospital by ambulance. Following the injury Duran complained of pain and tearing of his right shoulder rotator cuff. Duran filed numerous grievances in the jail requesting pain medication. On Dec. 15, 2014, Duran underwent shoulder surgery.

On June 18, 2015, Duran filed a civil suit in the OCSC naming the OCSD, OCSD Sheriff Sandra Hutchens, Correctional Health Services doctors, and others as defendants. Duran's lawsuit claimed general negligence in training, deliberate medical indifference, medical malpractice and neglect, along with physical and emotional pain and suffering related to the shoulder surgery and fall. Duran's lawsuit was ultimately dismissed with prejudice by OCSC Judge Linda Marks.

On Nov. 22, 2016, Duran was evaluated by a physician and admitted to AGMC. The physician diagnosed Duran with the following: inferior vena cava (IVC) thrombus (blood clot below the kidneys), hepatocellular carcinoma (liver cancer), history of substance abuse including IV drug abuse and alcohol abuse, bone metastasis, and liver metastasis. Duran was treated for the IVC thrombus with an IVC filter and returned to OCJ.

On Jan. 9, 2017, at 11:31 p.m., Duran was admitted to Orange County Global Medical Center (OCGMC) in Santa Ana for "lower extremity weakness and spinal cord metastasis." Duran's medical history listed the following conditions: metastatic hepatocellular carcinoma with metastasis to the spine and ribs, cirrhosis of the liver, hypertension, and hepatitis C.

On Jan. 19, 2017, Duran underwent surgery to relieve a "large tumor mass invading his lumbar 4 vertebral body and growing into the spinal canal causing severe stenosis (abnormal narrowing of a passage)." The post-operative diagnoses included: lumbar 4 mass involving the vertebral body, lumbar 4 stenosis due to tumor mass, lumbar radiculopathy, and hepatocellular carcinoma.

On Feb. 6, 2017, Duran underwent surgery due to a fracture of his vertebrae L4. On Feb. 15, 2017, Duran was transferred to AGMC in the Correctional Medical Section (CMS) due to a methicillin resistant staphylococcus aureus infection to the lower extremity region.

On Feb. 16, 2017, Duran signed a "Do Not Attempt Resuscitation" (DNR) physician order with comfort focused treatment with the "primary goal of maximizing comfort." Duran's condition was determined to be terminal. On April 9, 2017, at approximately 5:05 p.m., Duran was transferred from CMS to room 407 at AGMC due to a lack of bed space in CMS.

On Wednesday, April 12, 2017, at approximately 7:00 a.m., the registered nurse assigned to Duran found him alert but non-responsive. She noted Duran was not speaking and that his eyes were in a glazed, fixed position. His respirations were deep and shallow. At approximately 9:06 a.m., OCSD Deputy Jeffrey Warejko was providing security in room #407 when Duran began making gurgling sounds and vomiting. Deputy Warejko immediately summoned medical staff to the room. The registered nurse and a student nurse ran into the room to assist Duran. They found Duran had vomited fluid that appeared to be bile. Duran still had a pulse and shallow respirations. After cleaning Duran, the nurses noticed he was no longer breathing and had no pulse. The registered nurse summoned a doctor who entered Duran's room at 9:08 a.m.

The doctor had seen Duran earlier in the morning, as well as on April 10, 2017, and April 11, 2017. The doctor observed Duran had been lethargic for the last three days. Duran had previously been communicative, but during her morning visit he only opened his eyes and was not interactive. Duran appeared to be deteriorating. In the doctor's previous conversations with Duran, he indicated he wanted to be kept comfortable and did not want aggressive medical intervention. The doctor was aware Duran had requested a full DNR so Advanced Life Saving measures were not initiated. At approximately 9:10 a.m., the doctor pronounced Duran deceased.

AUTOPSY

On April 13, 2017, independent Forensic Pathologist Dr. Scott A. Luzi of Clinical and Forensic Pathology Services conducted an autopsy on the body of Duran. Dr. Luzi found no major or minor external injuries or signs of trauma. Dr. Luzi determined that Duran died from natural causes due to Hepatitis C infection, and cancer in the liver, stomach, and left lung.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Duran's postmortem blood collected during the autopsy yielded the following results:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Gabapentin	Postmortem Blood	23.0 + 2.8 mg/L
Morphine (Free)	Postmortem Blood	0.156 + 0.019 mg/L
Olanzapine	Postmortem Blood	<0.1 mg/L
Ondansetron	Postmortem Blood	Detected

BACKGROUND INFORMATION

Duran has criminal history records from New York, Nevada, and California that reveal arrests dating back to 1972 for the following violations:

- Prison escape with force
- Robbery
- Assault and battery
- Burglary
- Receiving stolen property
- Possession of burglary tools
- Grand theft
- Petty theft
- Auto theft
- Possession/manufacturing/sale of a dangerous weapon

- Bringing narcotics/alcohol into a prison or jail
- Probation and Parole violations
- Possession of drug paraphernalia
- Possession of a controlled substance
- Under the influence of a controlled substance
- Personate to make other liable
- False identification to police
- Driving under the influence of alcohol/drugs

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove 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 that 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 crime to analyze in this situation is criminal culpability under the theory of failure to perform a legal duty. Although the OCSD owed Duran a duty of care, the evidence does not support a finding this duty was in any way breached – either intentionally or through criminal negligence.

At the time Duran was placed in OCSD's custody, he had several preexisting and life-threatening medical conditions including IV drug abuse, alcohol abuse, liver cirrhosis, hepatitis C, and hypertension. Although Duran was injured from a fall when he exited an OCSD van on October 13, 2013, there is absolutely no indication this injury had anything to do with his death almost four years later. More specifically, the evidence clearly shows the OCSD met its legal duty of care with respect to that incident. After falling, Duran was transported to the hospital by ambulance. On Dec. 15, 2014, Duran underwent shoulder surgery.

While in custody, Duran was diagnosed with and received treatment for hepatocellular carcinoma and metastatic growth. On Nov. 22, 2016, Duran was evaluated by a physician and admitted to AGMC. The physician diagnosed Duran with a blood clot below the kidneys, liver cancer, bone metastasis, and liver metastasis. Duran was treated for the IVC thrombus.

On Jan. 9, 2017, at 11:31 p.m., Duran was admitted to OCGMC for lower extremity weakness and spinal cord metastasis. On Jan. 19, 2017, Duran underwent surgery to relieve a "large tumor mass invading his lumbar 4 vertebral body and growing into the spinal canal causing severe stenosis." The postoperative diagnoses included lumbar 4 mass involving the vertebral body, lumbar 4 stenosis due to tumor mass, lumbar radiculopathy, and hepatocellular carcinoma. On Feb. 6, 2017, Duran underwent surgery due to a fracture of his vertebrae L4. On Feb. 15, 2017, Duran was transferred to AGMC in the Correctional Medical Section due to a methicillin resistant staphylococcus aureus infection. On Feb. 16, 2017, Duran signed a DNR with the "primary goal of maximizing comfort."

On Wednesday, April 12, 2017, medical staff treating Duran at AGMC noticed he appeared to be deteriorating. At approximately 9:06 a.m., OCSD Deputy Warejko was providing security in Duran's room when Duran began making gurgling sounds and vomiting. Deputy Warejko immediately summoned medical staff. While attending to Duran, medical staff noticed he was no longer breathing and had no pulse. The registered nurse summoned a doctor who entered Duran's room at 9:08 a.m. The doctor was aware Duran had requested a full DNR so Advanced Life Saving measures were not initiated. Duran was pronounced deceased at 9:10 a.m.

There is no evidence in this case that Duran sustained an injury or was involved in a physical altercation while at OCJ. The facts are consistent with the Coroner's conclusion that Duran died from natural causes. All available records support the conclusion that the OCSD met its legal duty with the appropriate standard of care. Thus, there is no evidence to support a finding that any OCSD personnel or any individual under the supervision of the OCSD was criminally negligent or failed to perform a legal duty owed to Duran.

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 Duran died as a result of natural causes.

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

Respectfully submitted,



SUSAN LAIRD

Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **EBRAHIM BAYTIEH**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit