



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TODD SPITZER, DISTRICT ATTORNEY

February 21, 2019

Chief David Valentin
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Custodial Death on March 12, 2018
Death of Inmate Terrall Magee
District Attorney Investigations Case # 18-012
Santa Ana Police Department Case # 18-06101
Orange County Crime Laboratory Case # 18-43675

Dear Chief Valentin,

Please accept this letter detailing the Orange County District Attorney's Office (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the March 12, 2018, custodial death of 54-year-old Terrall Magee.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Magee. 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 Santa Ana Police Department (SAPD) personnel or any other person under the supervision of the SAPD.

On March 12, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to Fountain Valley Regional Hospital. Terrall Magee was pronounced dead after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed six witnesses, reviewed reports from SAPD and Orange County Crime Laboratory (OCCL), incident scene photographs, recordings from Body Worn Cameras, 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 SAPD personnel or any other person under the supervision of the SAPD. 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 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, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTS

On March 11, 2018, sometime before 8:58 p.m., Magee entered a business near 2411 West First Street in the city of Santa Ana. At approximately 8:58 p.m., SAPD officers responded to a call from American Alarms regarding a commercial burglary in progress at the business. Approximately four minutes later, the owner of the business called SAPD and reported that she was not at the location but was monitoring the premises remotely from security cameras and saw Magee on the premises. The business owner reported that she had seen Magee carry a ladder to the rear portion of the building.

Upon arrival, SAPD Officer Pardo saw Magee jump down from the gated area near the business onto First Street. Officer Pardo saw Magee running east while barefoot toward a liquor store. Officer Pardo chased after Magee. Magee entered the liquor store and an individual believed he saw Magee attempt to put something in his mouth. Magee then bumped into the individual. When the individual saw Officer Pardo chasing after Magee, he grabbed Magee by the front of his t-shirt and forced him onto his knees on the ground. Officer Pardo caught up and grabbed Magee by his upper body and pulled Magee out of the store. Officer Pardo then attempted to place Magee's hands behind his back, but Magee resisted.

Magee then attempted to bite Officer Pardo on the forearm. The aforementioned civilian observed blood on Officer Pardo's cheek and believed that Magee may have bitten Officer Pardo. Magee had white residue around his mouth and behaved erratically, consistent with being under the influence of

methamphetamine. Magee continued to resist Officer Pardo while Officer Pardo struggled to restrain him. Magee forcefully thrust his head forward and backward repeatedly in an attempt to head butt Officer Pardo. When Magee thrust his head, his face struck the pavement outside the liquor store. The civilian attempted to grab Magee's legs to assist Officer Pardo, and Magee kicked him three to five times in the stomach. The civilian sustained minor injuries. During the struggle, Officer Pardo's Body Worn Camera (BWC) fell from his person.

Several moments later additional SAPD officers responded to the scene. Officer Griffith approached Officer Pardo and Magee. Officer Griffith's BWC then shows Magee's right knee on the ground and Magee falling forward. Magee still resisted. Officer Pardo was behind Magee with his right arm around Magee's upper body or neck area. Officer Griffith can then be seen delivering three strikes with his straight stick baton to Magee's right thigh. Officer Griffith then joined Officer Pardo in attempting to restrain Magee. Officer Griffith handcuffed Magee's right wrist while Officer Pardo continued to struggle to control Magee's left wrist. Officer Griffith's BWC shows Magee continuing to forcefully resist arrest, even while he was face down on the ground. Officers Griffith and Pardo repeatedly issued commands to Magee to stop resisting.

Officer Griffith is seen delivering two closed fist punches with his right hand to the back of Magee's head. Officer Pardo then struck Magee twice with his right knee and punched Magee four times in his lower back. Officer Griffith and Officer Pardo repeatedly told Magee to stop resisting, and Magee can be heard yelling unintelligibly. Moments later, Officers Griffith and Pardo succeeded in placing Magee in handcuffs, but Magee continued to resist and struggle by kicking his legs. Shortly thereafter, SAPD Officers Lopez, Ahearn, and Sergeant Franks arrived to assist Officers Pardo and Griffith.

Once additional officers arrived, a hobble restraint was placed on Magee's ankles. Magee continued to yell unintelligibly and move his fingers. Magee then appeared unconscious and was breathing slightly. Sergeant Franks detected a very light pulse, and Officer Ahearn monitored Magee's pulse while other officers called paramedics. Officers then removed the hobble restraint from Magee's ankles and Officer Ahearn began administering chest compressions. Officer Lopez provided rescue breathing to Magee using a CPR mouth shield. Several minutes later, paramedics from the Orange County Fire Authority (OCFA) arrived and transported Magee to the Fountain Valley Regional Hospital. Magee was pronounced dead at the hospital.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One pair of white/red/black Puma shoes
- One dark blue t-shirt
- One pair of white shoe insoles
- One black t-shirt and grey sweatshirt
- Wires
- Two restraint devices

AUTOPSY

On March 14, 2018, Forensic Pathologist Dr. Aruna Singhania of the Orange County Coroner's Office (OCCO) conducted an autopsy on the body of Magee. Following the autopsy, Dr. Singhania noted the following injuries to Magee:

- Two small superficial abrasions, approximately 1 ½ inches, on right frontal area of scalp
- One abrasion, approximately 1 ½ inches, on right eyebrow area
- Two contusions, one on each cheek, approximately 2 inches

Dr. Singhania concluded that the cause of Magee's death was due to a sudden cardiac arrest with cardiomegaly that occurred during the struggle with law enforcement while under the influence of amphetamine and methamphetamine. Dr. Singhania, determined that the manner of death was homicide. OCDA Investigators followed up with the doctor regarding the use of the word "homicide." Dr. Singhania said she determined the death was a homicide because Magee was involved in a struggle with the officers when he suffered the medical emergency.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Magee's postmortem blood yielded the following results:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.0275 $\pm$ 0.0021 mg/L
Methamphetamine	Postmortem Blood	0.130 $\pm$ 0.010 mg/L

BACKGROUND INFORMATION

Magee had a California and Louisiana Criminal History record dating back to 1981 that revealed arrests for the following violations:

- Battery on a Police Officer
- Numerous Incidents of Resisting Arrest
- Battery
- Disorderly Conduct – Drunk in Public
- Under the Influence of Drugs
- Attempted Escape with Force
- Transportation / Sale of Narcotics
- Distributing Crack Cocaine
- Possession of Drug Paraphernalia
- Possession of Marijuana Over an Ounce
- Possession of Narcotics
- Driving Under the Influence of Alcohol or Drugs
- Petty Theft
- Carrying a Concealed Weapon
- Defrauding an Innkeeper
- Trespassing
- Disturbing the Peace
- Acquiring Identification to Defraud
- Indecent Exposure
- Prostitution
- Probation Violation
- Parole Violation
- Driving With a Suspended License

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 that there is a "special relationship" between jailer and prisoner:

"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 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

There is no evidence whatsoever in the present case of express or implied malice on the part of any SAPD personnel or other individuals under the supervision of the SAPD. 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 SAPD officers owed Magee 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).

Magee was under the influence of amphetamine and methamphetamine at the time of his interactions with the SAPD officers. Magee resisted the officers and used force to try to stop them from detaining him. Based on the totality of all the circumstances, the amount of force used by the responding SAPD officers was appropriate and justified. Magee had a history of drug use, and the autopsy revealed that Magee did in fact have amphetamine and methamphetamine in his system at the time he died. During the time that Magee was in SAPD's custody, he was not denied any medical care. To the contrary, SAPD Officers actively attempted to resuscitate and revive Magee immediately after he became unconscious and continued to do so until OCFA paramedics arrived.

There is also no evidence to support a finding that any SAPD personnel were criminally negligent. Criminal negligence is established when a person acts in a reckless manner that creates a high risk of death or great bodily injury, and a reasonable person would have known that acting in that manner would create such a risk. Here, there is no evidence that any SAPD personnel or anyone under their supervision acted in a reckless manner. The SAPD took active steps to attempt to meet Magee's medical needs while he was in custody. SAPD personnel did not do anything, intentionally or negligently, to exacerbate or bring about Magee's death.

The facts are consistent with the Coroner's conclusion that Magee's death was a result of a sudden cardiac arrest that occurred while he was under the influence of methamphetamine and amphetamine. All available records support the conclusion that the SAPD met its legal duty to Magee with the appropriate standard of care. Therefore, no evidence supports a finding that any SAPD personnel or any individual under the supervision of the SAPD was criminally negligent or failed to perform a legal duty owed to Magee. Thus, there is no evidence to support a finding, or for a reasonable jury to conclude, that any SAPD personnel or any individual under the supervision of the SAPD failed to perform a legal duty or caused the death of Magee.

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 SAPD personnel. The evidence shows that Terrall Magee died as a result of a cardiac arrest related to his drug use during the struggle with SAPD Officers.

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

Respectfully submitted,



ROBERT GOODKIN
Deputy District Attorney
TARGET/Gangs Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations II