



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

January 31, 2018

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

Re: Custodial Death on Dec. 17, 2014
Death of Inmate Thiep Truong Nguyen
District Attorney Investigations Case # S.A. 14-020
Orange County Sheriff's Department Case # 14-240219
Orange County Crime Laboratory Case # 14-04964-BA

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. 17, 2014, custodial death of 49-year-old inmate Thiep Truong Nguyen.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Nguyen. 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 Dec. 17, 2014, OCDA Special Assignment Unit (OCDASAU) Investigators responded to University of California, Irvine Medical Center (UCIMC), where Nguyen died while in custody after receiving medical treatment. During the course of this investigation, the OCDASAU interviewed 15 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.

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CHIEF OF STAFF

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 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

Nguyen had an extensive criminal history, which included crimes of violence and narcotics violations. On May 15, 2013, Nguyen was arrested by the Westminster Police Department for an outstanding felony warrant for a violation of California Penal Code section 245(a)(2), assault with a firearm; California Penal Code section 459-460(a), residential burglary; and California Penal Code section 273(a), child endangerment. On May 21, 2013, Nguyen was booked into the Orange County Central Jail (OCCJ) without incident. Upon booking, Nguyen denied any gang affiliations or having any conflicts with any other inmates. Nguyen also denied having any medical issues.

On June 6, 2013, Nguyen was transferred to the Theo Lacy Jail Facility in the City of Orange. While in custody at the OCCJ, Nguyen had no documented fights, conflicts, or altercations with any other inmates or staff.

On Nov. 25, 2014, Nguyen's eventual cellmate, Lan Pham, was arrested and booked into the OCCJ by the Huntington Beach Police Department for a violation of the California Health and Safety Code section 11364.1(a), possession of drug paraphernalia. Upon booking into the OCCJ, Pham denied any gang affiliations or having any conflicts with other inmates. On Nov. 28, 2014, Pham was transferred to the Theo Lacy Jail Facility. Pham was assigned to share a cell with Nguyen.

From Nov. 28, 2014, to Dec. 16, 2014, Nguyen and Pham shared a cell and living quarters. There were no documented or known conflicts between Nguyen and Pham. According to the 28 inmates interviewed by investigators, Nguyen and Pham had no conflicts and seemed to get along. Nguyen and Pham seemed to be properly classified according to their criminal history and jail behavior history. Up through and including Dec. 16, 2014, OCSD deputies did not observe any fights or violent behavior between Nguyen and Pham.

On the day of the incident, Dec. 16, 2014, Nguyen and Pham were in their cell and did not use the dayroom. At approximately 11:55 a.m., Nguyen and Pham became involved in a physical altercation in their locked cell. A surveillance camera outside of their cell captured a partial view of the incident and recorded the following: Nguyen was seated at the desk inside the cell, while Pham was standing near the back of the cell. Nguyen stood up and appeared to take a slight step forward toward the east side of the cell. Pham was not clearly visible because he moved to the east side of the cell behind the door frame, but it appeared he was standing directly in front of Nguyen. Nguyen then put both his arms up in front of his face. Pham punched Nguyen, using both hands with a closed fist, several times in the face in quick succession. Nguyen attempted to block the blows with his arms, but was unsuccessful. Nguyen's head snapped back as he absorbed Pham's punches to the face, causing him to lose his balance backwards. Nguyen stumbled north toward the back of the cell and out of view, but it appeared Pham was still making punching motions toward Nguyen. Nguyen then moved south and then east in the cell while Pham followed his movement. Nguyen fell backward with his back against the east wall and slowly slid down the wall into a sitting position, out of view. Nguyen did not get back up. The entire assault lasted approximately 20 seconds. Nguyen did not appear to punch or strike Pham during the entire incident. Approximately 15 seconds after the assault, Pham appeared to press the intercom emergency button near the cell door.

At approximately 11:56 a.m., OCSD deputies received an alert from Pham via the medical emergency intercom accessible to inmates within their cells. Pham told deputies he had an emergency and that his cell mate Nguyen fell on the ground and had hit his head. Deputies asked about Nguyen's condition and Pham told them Nguyen was bleeding, and he was unsure if Nguyen was breathing. Deputies then called for medical assistance. At approximately 12:01 p.m., Orange County Jail medical assistants evaluated Nguyen's condition and noted Nguyen was not making any sounds, was cyanotic (appearing bluish from insufficient oxygen), and was bleeding from cuts over his right eye and lower left lip. The Orange County Jail medical assistants called 911 for additional medical assistance. After determining Nguyen had no pulse, Orange County Jail medical assistants began cardiopulmonary resuscitation (CPR). The Orange County Jail medical assistants performed chest compressions, mechanical ventilations with an AMBU-bag, and prepared an Automated External Defibrillator (AED). After administering numerous chest compressions, the AED completed an analysis, but instructed against providing a shock to Nguyen. The Orange County Jail Medical Assistants continued administering chest compressions, provided ventilation, established an intravenous line in Nguyen's left arm, and delivered a saline solution.

After they performed 10-15 cycles of CPR, the Orange County Jail medical assistants found that Nguyen had a weak carotid pulse and a blood pressure of 60/40. Nguyen's pulse was at 115 beats per minute with oxygenation at 92. Although color was beginning to return to Nguyen, he was not able to breathe unassisted. The Orange County Jail medical assistants continuously administered CPR on Nguyen while monitoring his pulse and breathing. The AED device completed approximately three separate evaluations of Nguyen, but instructed against delivering a shock to Nguyen.

At approximately 12:20 p.m., members of the Orange Fire Department (OFD) and OFD paramedics arrived at the sally port of the Theo Lacy Jail Facility. OFD personnel moved Nguyen from the jail cell doorway to the second floor landing to provide him medical treatment. OFD personnel removed the AED pads from Nguyen's chest and placed defibrillator pads on the front and back of his body. OFD personnel monitored Nguyen's oxygen level and did an assessment of his body. OFD fire personnel placed Nguyen on a backboard and gurney for transport. Nguyen's head was immobilized to prevent injuries to his spine. Nguyen had a pulse and OFD paramedics personnel continued to administer bag-valve mask ventilations to Nguyen.

At approximately 12:39 p.m., OFD paramedics transported Nguyen to UCIMC. During the transport, OFD personnel continued to monitor Nguyen's medical condition. At approximately 12:57 p.m., OFD personnel arrived at UCIMC and released care of Nguyen to the on-duty emergency department personnel. Nguyen never made any statements regarding the incident or regained consciousness during transport.

Upon arrival in the emergency room, Nguyen was unconscious, not breathing and had visible injuries to his face, which included a laceration to his chin, a laceration under his left eye, and a cephal hematoma to the right side of his forehead. Nguyen did not have a pulse and was not breathing. CPR was being performed on Nguyen upon his arrival and was resumed by Emergency Room (ER) staff. ER staff intubated Nguyen and established an airway to assist with ventilations. A pre-admission blood sample was obtained from Nguyen.

At approximately 1:00 p.m., ER doctors examined Nguyen. The following were the doctors' initial observations of Nguyen:

- Unconscious
- Not breathing
- No pulse
- Cephal hematoma above the right eye
- Cephal hematoma on left eye
- Approximately three centimeter laceration to the left chin

Nguyen received a CT scan, x-rays, and an angiogram after CPR had been conducted and sinus rhythm was found. Nguyen received two rounds of epinephrine, consisting of one milligram each. A trauma team was requested to respond to the ER due to Nguyen's observed facial injuries. An atrial line and central line were established and a catheter was inserted into Nguyen's

penis. A direct laryngoscopy was performed using a 7.5 millimeter tube, inserted at a depth of 21 centimeters. Computed tomography scans, x-rays, and a physical examination was conducted and revealed Nguyen suffered from inter-cranial hemorrhaging, rib fractures, lacerations and cephal hematomas. Nguyen was placed on a ventilator and transferred to the Surgical Intensive Care Unit (SICU) and referred to Neurosurgery for consultation.

At approximately 1:35 p.m., Nguyen received a CT scan of his brain. The scan revealed diffuse subarachnoid and intraventricular hemorrhage with a possible rupture of an underlying cerebral aneurysm. A fracture of the right frontal process of the maxilla was also revealed. Nguyen remained in a vegetative state and received therapeutic medications to sedate him. Nguyen was determined to be suffering from acute swelling of the brain and his prognosis was extremely poor.

On Dec. 17, 2014, at 10:25 a.m., doctors performed a brain activity test of Nguyen and noted the following results:

- No response to verbal stimuli
- Pupils fixed and dilated
- Corneal reflex absent
- Oculovestibular reflex absent
- Motor response to noxious stimuli absent

As a result of the tests, Nguyen was declared brain dead at 10:30 a.m. on Dec. 17, 2014. At approximately 1:45 p.m., a brain activity test was performed on Nguyen and the following results were noted:

- No response to verbal stimuli
- Pupils fixed and dilated
- Corneal reflex absent
- Oculovestibular reflex absent
- Motor response to noxious stimuli absent

As a result of the above tests Nguyen was again declared brain dead at 1:45 p.m. on Dec. 17, 2014. With this second pronouncement of brain death, Nguyen was declared clinically deceased.

AUTOPSY

On Dec. 21, 2014, a post-mortem examination of Nguyen was conducted by independent Forensic Pathologist Doctor Scott Luzi. Following the autopsy, Doctor Luzi concluded the preliminary cause of death as multiple blunt force trauma.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Nguyen's postmortem blood tested negative for the presence of drugs and alcohol.

BACKGROUND INFORMATION

Nguyen had a State of California Criminal History record that revealed multiple arrests.

POST-INCIDENT CONVICTION

On December 19, 2014, OCDA filed criminal charges against Pham for the murder on Nguyen in Orange County Superior Court case 14CF4042, consisting of a felony charge of Murder, a violation of California Penal Code section 187. On January 22, 2018, the OCDA dismissed the murder charge against Pham, and Pham entered a guilty plea to one count of Manslaughter in violation of Penal Code section 192 (a), and one count of Assault with Force Likely to produce Great Bodily Injury in violation of Penal Code section 245 (a)(4). Pham will be sentenced to 10 years in State Prison at his upcoming sentencing hearing currently scheduled for April 25, 2018. As part of his guilty plea, Pham admitted that he unlawfully killed Nguyen upon a sudden quarrel and heat of passion.

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 the person 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:

"[T]he most important consideration 'in establishing duty is foreseeability.' [citation] 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, a necessary element contained within the charge of involuntary manslaughter, 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 of express or implied malice on the part of any OCSD personnel or any employee under the supervision of the OCSD. Accordingly, and only as to the conduct of any OCSD personnel or any employee under the supervision of the OCSD, 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 Nguyen a duty of care, the facts do not support a finding that this duty was breached – either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). Prior to this incident, Nguyen had no documented fights, conflicts, or altercations with any other inmates while incarcerated at OCCJ or the Theo Lacy Jail Facility. Nguyen and Pham both denied having gang affiliations or conflicts with any other inmates. There were no documented conflicts between Nguyen and Pham prior to this incident. Furthermore, the inmates interviewed by investigators noted that Nguyen and Pham seemed to get along without conflict. Based on these facts, the OCSD jail staff had no reason to believe Nguyen was in danger or needed extra protection from Pham. As such, Nguyen and Pham seem to have been properly classified and housed according to their criminal history and history of jail behavior as known to OCSD.

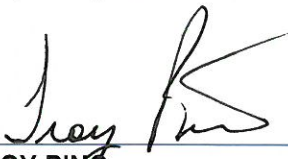
In addition, OCSD staff responded swiftly upon seeing the reality of Nguyen's condition, which had been reported initially as a mere fall. Once deputies became aware of the seriousness of Nguyen's injuries, the surveillance video depicted multiple deputies and medical staff rushing up and down the stairwell to and from Nguyen's cell. Moreover, OCSD personnel immediately requested additional emergency medical support from OFD. OFD provided emergency medical treatment and transported Nguyen to UCIMC where he was treated by the ER staff. Thus, there is no evidence to support a finding that any OCSD personnel or any individual employed by OCSD failed to perform a legal duty and/or did so with criminal negligence.

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 employed by OCSD.

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

Respectfully submitted,



TROY PIMO

Senior Deputy District Attorney
Homicide Unit



Read and Approved by **EBRAHIM BAYTIEH**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit