



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI

SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

JOSEPH D'AGOSTINO

SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

MICHAEL LUBINSKI

SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

JAIME COULTER

SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

CRAIG HUNTER

CHIEF
BUREAU OF INVESTIGATION

JENNY QIAN

DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER

CHIEF OF STAFF

October 19, 2016

Chief Raul Quezada
Anaheim Police Department
425 S. Harbor Boulevard
Anaheim, CA 92805

Re: Custodial Death on Feb. 18, 2016
Death of Inmate Tiffini Kuuipo Tobe
District Attorney Investigations Case #SA 16-009
Anaheim Police Department Case #16-26987
Orange County Crime Laboratory Case #FR 16-42802

Dear Chief Quezada,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusions in connection with the above-listed incident involving the Feb. 19, 2016, custodial death of 48-year-old inmate Tiffini Kuuipo Tobe.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Tobe. 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 Anaheim Police Department (APD) personnel or any individual under the supervision of the APD.

On Feb. 18, 2016, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the University of California, Irvine Medical Center (UCIMC) where Tobe died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed 26 witnesses. Additionally, the OCDASAU obtained and reviewed reports from the APD 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 criminal conduct occurred on the part of APD personnel or any individual under the supervision of the APD. 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. Additional OCDA Investigators assigned to other units in the Office have been 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 officer-involved shootings (both fatal and nonfatal) and custodial death cases to 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

On Feb. 18, 2016, at approximately 6:23 a.m., Tobe boarded Orange County Transit Authority (OCTA) bus #2309 at bus stop #388 located on the north curb of La Palma Avenue approximately fifty feet west of Tustin Avenue in the city of Anaheim. When asked for her bus fair, Tobe stated that she was homeless and sat in a seat near the rear door. After the bus driver called OCTA to report the incident, Tobe moved to the back row on the passenger side, next to a closed window. At approximately 6:26 a.m., Tobe opened the rear window and stuck her head outside of the bus. Tobe stood up, turned around, and began to climb out the window feet first. The bus began to move while Tobe hung on to the outside of the bus from the window. Tobe fell to the roadway as the bus reached a speed of approximately 26 miles per hour. Tobe landed on her buttocks, rolled backward, and struck the back of her head on the road. Momentum caused Tobe to slide along the ground until her head hit the raised curb located at 3707 La Palma Avenue. Approximately 16 seconds elapsed from the time Tobe stuck her head outside of the bus until Tobe fell from the side of the bus to the roadway.

Tobe lay in the street motionless for approximately five seconds before standing up. Tobe began to run in and out of traffic, yelling and screaming. The driver of a silver Chrysler 300 stopped suddenly to avoid hitting Tobe. Tobe jumped onto the trunk of a black Mercedes Benz while it was moving and rode on the car for approximately 40 yards. At the intersection of La Palma Avenue and Tustin Avenue, Tobe jumped onto the hood of a red Toyota Tacoma truck driven by John Doe 1. John Doe 1 placed a 911 phone call to report Tobe's behavior. During that phone call, Tobe can be heard jumping on John Doe 1's truck. Tobe ran to another truck, climbed into the bed, and picked up a metal rod. A civilian witness, John Doe 2, took the metal rod from Tobe and escorted her out of the street to a nearby gas station, and Tobe did not resist John Doe 2. Moments later, Tobe attempted to run back toward La Palma Avenue. John Doe 2 grabbed Tobe by her left arm and sweater trying to stop her. John Doe 2 struggled with Tobe for nearly two minutes before she escaped into the intersection. John Doe 1 and John Doe 2 followed Tobe into the intersection, picked her up, and carried her to the northwest corner of the intersection.

At approximately 6:34 a.m., APD Sergeant Michael Lozeau arrived and parked his car in the westbound #3 lane of La Palma Avenue at the intersection. As Sergeant Lozeau exited his vehicle, Tobe broke free from John Doe 1 and John Doe 2 and ran into the rear quarter panel of the passenger side of the vehicle. Sergeant Lozeau observed that Tobe appeared agitated, injured, and under the influence of drugs. When Sergeant Lozeau attempted to speak with her to calm her down, Tobe lunged toward his open passenger door. Sergeant Lozeau grabbed Tobe by her right arm, but Tobe spun herself and Sergeant Lozeau around, ending up a couple feet into the intersection. Sergeant Lozeau pulled Tobe to the sidewalk and forced her to the ground. However, Tobe continued to resist while on the ground. Sergeant Lozeau put Tobe's left arm behind her back and placed his knee on the center of her back to prevent her from escaping. On at least two occasions, Tobe complained that she was unable to breathe. Each time, Sergeant Lozeau removed his knee from Tobe's back. Each time the knee was removed, Tobe attempted to escape. After each escape attempt, Sergeant Lozeau would return his knee to the center of Tobe's back.

At approximately 6:36 a.m., APD Officer Clint Cavaness arrived at the scene. Body worn camera video footage shows Sergeant Lozeau standing to Tobe's side and holding her down by his hands. Officer Cavaness placed handcuffs on Tobe and used his knee to prevent Tobe from standing up but did not use his full weight on Tobe's back. Officer Cavaness then switched to just holding Tobe with his hands. Officer Cavaness requested a unit with a cage after determining that Tobe might be a flight risk. On the video footage, Tobe can be heard saying, "I can't breathe" and "I've got asthma" a couple of times. Several seconds later, Tobe can be seen rolling over to her right side and moving her legs around. Officer Cavaness continued to hold Tobe on the ground by her left bicep.

Jane Doe 1 approached Tobe as she was being restrained by Officer Cavaness and attempted to calm Tobe down. Jane Doe 1 told Officer Cavaness that Tobe jumped out of a bus and asked Officer Cavaness whether Tobe's neck was ok because Jane Doe 1 could see blood on Tobe's head and neck. Officer Cavaness asked Tobe for her name several times, but she did not respond. Officer Cavaness attempted to have Tobe sit upright while holding her arm, but she appeared unresponsive. Officer Cavaness confirmed that the ambulance was on the way to the scene, and informed dispatch that Tobe had facial injuries and an ambulance was required. Officer Cavaness tapped Tobe on her shoulder and shouted, but Tobe did not respond. Officer Cavaness laid Tobe onto her back and extended her legs out and proceeded to check Tobe's pulse. Sergeant Lozeau informed the arriving paramedics that Tobe was unresponsive and that it was unclear whether she was breathing.

At approximately 6:40 a.m., Anaheim Fire Department (AFD) Engine 5 arrived on scene. AFD confirmed that Tobe was unresponsive, not breathing, and lacked a pulse. AFD placed Tobe on a gurney and loaded her into the ambulance where advanced cardiac lifesaving protocols were initiated. The paramedics performed a secondary assessment on Tobe, which revealed the laceration on the back of her head; however, there were no visible injuries to her neck and no petechia observed in her eyes. At approximately 6:48 a.m., the ambulance arrived at Kaiser Permanente Hospital. Upon her arrival, Tobe spontaneously regained a pulse. Paramedics transferred Tobe to the care of the Emergency Room physician. The physician conducted a full visual examination of Tobe's body and observed a small non-bleeding abrasion on the back of Tobe's head along with a small abrasion above her right eye. An ultrasound and electrocardiogram did not reveal additional trauma or injuries to Tobe's body. Tobe remained unconscious with a weak pulse and restricted pupils. Tobe was unable to breathe on her own.

At approximately 7:43 a.m., a physician at Kaiser Hospital directed AFD to transport Tobe to the UCIMC. When Tobe arrived at UCIMC, she was intubated, unconscious, non-responsive, and had a low blood pressure. A computed tomography scan indicated that Tobe had sustained a brain injury. Tobe displayed a very low level of brain function, and she was transported to the Critical Care Unit. On Feb. 19, 2016, at 12:45 a.m., the attending physician pronounced Tobe critically brain dead. Subsequently that same day another attending physician confirmed that Tobe's brain was dead, and she was pronounced dead.

Voluntary Statement of Sergeant Lozeau Regarding the Incident

Sergeant Lozeau gave a voluntary, consensual statement to the OCDA on Feb. 26, 2016. The following is a summary of Sergeant Lozeau's statement.

Sergeant Lozeau was driving his unmarked, city vehicle on his way into work. Sergeant Lozeau was dressed in civilian clothing and had a compact Glock .45 pistol on his hip. Jane Doe 2, a code enforcement manager, was sitting in the passenger seat of Lozeau's vehicle. As Sergeant Lozeau approached the intersection of La Palma Avenue and Tustin Avenue, Jane Doe 2 could see a commotion in the street. Sergeant Lozeau could hear honking and traffic was slowing down. As Sergeant Lozeau approached the intersection, he could see two males struggling with a female, later identified as Tobe, in the roadway. Sergeant Lozeau was concerned for their safety and felt he had a duty to investigate.

Sergeant Lozeau pulled through the intersection, turned on his hazard lights, and parked facing westbound in the intersection. By the time he got out of his car, the two males had carried Tobe out of the intersection and onto the sidewalk. Sergeant Lozeau informed the two males that he was a police officer and they let go of Tobe. Tobe stood up and immediately moved towards Sergeant Lozeau's car. Sergeant Lozeau believed that Tobe was under the influence. Tobe was incoherent, and Sergeant Lozeau attempted to calm her down. Tobe remained calm for about three or four seconds before she lunged toward the open passenger door. Sergeant Lozeau grabbed Tobe by her right arm and pulled her away from the car. Tobe started pulling away and spun Sergeant Lozeau around into the intersection. Sergeant Lozeau became concerned that Tobe was going to run into traffic and get hit by a car because of her injuries and the fact that she was possibly under the influence of drugs.

Sergeant Lozeau held on to Tobe's right arm and dragged her back toward the sidewalk. Tobe continued to struggle and Sergeant Lozeau forced her to the ground. Sergeant Lozeau did not slam Tobe to the ground, nor did she hit her head on the ground. Sergeant Lozeau placed his right knee on the middle of Tobe's back and continued to try and calm her down. Tobe attempted to roll out from underneath Sergeant Lozeau. Tobe told Sergeant Lozeau that she could not breathe on two separate occasions. Both times, Sergeant Lozeau immediately lifted his knee, tapped her on the back, and asked if she could breathe. Tobe mumbled and attempted to escape. Sergeant Lozeau returned his knee to her back to keep her pinned down. Sergeant Lozeau never put his entire weight on Tobe, only enough to prevent her escape. To better control Tobe, Sergeant Lozeau grabbed her left arm and put it behind her back in a wrist lock.

At this time, Sergeant Lozeau was still concerned for his safety because he lacked information regarding the incident. One of the males initially attempting to restrain Tobe was still standing near the scene. A woman was crouched down talking to Tobe trying to calm Tobe down. Sergeant Lozeau asked Jane Doe 2 to call APD and make it Code 3 (emergency response with lights and siren) because Tobe continued to resist. Because Sergeant Lozeau did not have handcuffs available, he continued to hold Tobe with the wrist lock until Officer Cavaness arrived on scene. As Officer Cavaness walked over to place handcuffs on Tobe, she stopped struggling with Sergeant Lozeau. Sergeant Lozeau stood next to Officer Cavaness as they waited for additional units to arrive. As Sergeant Lozeau was standing near Officer Cavaness, he became concerned that Tobe was unresponsive and possibly not breathing.

Voluntary Statement of Officer Cavaness Regarding the Incident

Officer Cavaness gave a voluntary, consensual statement to the OCDA on Feb. 26, 2016. The following is a summary of Officer Cavaness' statement.

Officer Cavaness received a dispatch call of a possible injury resulting from a traffic accident involving a pedestrian and a bus. As he was responding to the location, Officer Cavaness received an update that a female was running in and out of traffic, jumping on cars. Officer Cavaness received an additional update stating that the female grabbed a metal pipe and two males were trying to detain her.

As he pulled up to the location, Officer Cavaness could see a vehicle parked in the middle of the intersection. Officer Cavaness saw Sergeant Lozeau holding Tobe, face down, with his knee on her back. Officer Cavaness approached Tobe and started placing handcuffs on her. Tobe was screaming unintelligibly. As he was placing the handcuffs on Tobe, she was able to lift his body up briefly. Officer Cavaness thought it bizarre that Tobe was able to lift him because of his size. Officer Cavaness was concerned that he was dealing with a possible suicide attempt or mental illness. Officer Cavaness requested that a police officer with a cage respond to the location because Tobe was still attempting to escape. Officer Cavaness was concerned about losing control of Tobe and allowing her to run back into the street during morning rush hour traffic. Officer Cavaness knew that he was the only uniformed officer at the scene and expected that it might take some time for additional units to arrive.

Officer Cavaness placed Tobe in handcuffs then used his knee to keep her from standing up. Officer Cavaness recalled that he did not use his full weight on her and that he would switch to where he was just holding her with his hands. Officer Cavaness held Tobe in place for approximately two minutes while he was talking to Sergeant Lozeau and communicating with dispatch via radio. Officer Cavaness did not hear Tobe say that she could not breathe. During this time, a female witness told Officer Cavaness that Tobe jumped out of a moving bus. Officer Cavaness checked what kind of injuries Tobe had and could see blood on her face. When he sat her up, he thought it weird that she was quiet because moments before she was agitated and screaming. While Officer Cavaness was holding Tobe up by her right arm, he noticed that she was unresponsive. Officer Cavaness started removing the handcuffs and laid Tobe on her back. Officer Cavaness checked for a respirations and a pulse. Officer Cavaness observed Tobe taking shallow, weak breaths and detected a faint pulse. Shortly thereafter, the paramedics arrived at the scene, and Sergeant Lozeau informed them that Tobe was possibly not breathing. The paramedics lifted Tobe onto a gurney and placed her in the back of the ambulance.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One pink long-sleeve shirt
- Miscellaneous papers, trash, red zippered pouch bag
- Trash, folder, miscellaneous papers
- Perfume bottle
- Two empty water bottles
- DMV pink document
- One blue/black sock

AUTOPSY

On Feb. 23, 2016, Forensic Pathologist Dr. Nicole Ellis of the Orange County Sheriff's Department, Coroner's Division, conducted an autopsy on the body of Tobe. At the conclusion of the autopsy, Dr. Ellis stated that the examination revealed bruising near the right side of the neck, petechia to the right eye and signs of hypertension. At that time, Dr. Ellis was not able to provide a cause of death, pending toxicology results and examination of the micro slides. On Aug. 2, 2016, after completion of the microscopic examination and toxicology report, Dr. Ellis determined Tobe's death to be accidental, caused by acute methamphetamine intoxication.

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Postmortem Blood	0.006 + 0.003 % (w/v)
Amphetamine	Postmortem Blood	0.0463 + 0.0029 mg/L
Amphetamine	Antemortem Blood	0.0291 + 0.0018 mg/L
Methamphetamine	Postmortem Blood	0.313 + 0.021 mg/L
Methamphetamine	Antemortem Blood	1.30 + 0.09 mg/L

BACKGROUND INFORMATION

Tobe had a State of California Criminal History record that revealed arrests dating back to 1995 for the following violations:

- Assault with a deadly weapon other than a firearm
- Provide false information to a peace officer
- Domestic battery
- Inflict corporal injury on a spouse/cohabitant
- Disorderly conduct: under the influence of drugs
- Obstruct a public officer
- Possession of control substance paraphernalia
- Take vehicle without owner's consent
- Possession of stolen property
- Petty theft
- Under the influence of a controlled substance
- Disorderly conduct
- Failure to provide animal care
- Evade a peace officer: disregard safety

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 beyond a reasonable doubt:

- 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.

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 tragic case, there is no evidence of express or implied malice on the part of any APD personnel or any individual under the supervision of the APD. 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 APD owed Tobe a duty of care, the evidence does not support a finding that this duty was breached in any way either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

Tobe put herself and the community in danger through her actions. Tobe jumped out of a moving bus before running out into oncoming traffic. Several witnesses reported that Tobe climbed onto the trunk of a car and held on for 40 yards. Tobe grabbed a metal bar out of the bed of a pick-up truck. Two males attempted to carry Tobe out of the roadway to prevent her from getting injured, but she continued to resist. When Sergeant Lozeau arrived, Tobe had visible injuries to her forehead and appeared to be under the influence of drugs. Sergeant Lozeau attempted to calm Tobe down several times before detaining her on the sidewalk.

Sergeant Lozeau became concerned that Tobe might injure herself or cause an accident in the roadway. This concern by Sergeant Lozeau was reasonable and justifiable based on the totality of the circumstances. While he was waiting for other police officers to arrive, Sergeant Lozeau restrained Tobe on the sidewalk by placing his knee in her back and putting her left arm in a wrist lock. Sergeant Lozeau did not put all of his weight on top of Tobe and lifted his knee anytime she complained about not being able to breathe. Tobe continued to struggle each time Sergeant Lozeau lifted his knee, causing him to hold Tobe down again. The entire time Sergeant Lozeau restrained Tobe, he was worried about his own safety because he had minimal information about the incident and did not know if there were other individuals involved that might pose a threat. Although he was the first law enforcement officer on scene, Sergeant Lozeau was off duty and did not possess the means to handcuff Tobe to ensure that she could not escape. Based on all the circumstances, it is fairly clear that Sergeant Lozeau acted lawfully and appropriately.

When Officer Cavaness arrived, Sergeant Lozeau was holding Tobe by wristlock behind Tobe's back. Officer Cavaness immediately placed the handcuffs on Tobe and held her down with his knee. Officer Cavaness avoided putting the entire weight of his body on Tobe's back while he was restraining her, and he called for another officer with a cage to respond to the location because Tobe continued to attempt to escape. Officer Cavaness worried that if Tobe was able to escape, she could injure or kill herself by running into the busy intersection. Officer Cavaness was the only uniformed police officer at the scene and knew that it might take a few minutes for additional police officers to respond. Once Tobe stopped resisting, Officer Cavaness began to check her for injuries. Officer Cavaness realized that Tobe was unresponsive and so he laid Tobe on her back and removed the handcuffs. Based on all the circumstances, it is fairly clear that Officer Cavaness acted lawfully and appropriately.

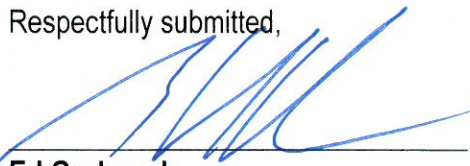
Based on a review of all relevant materials and evidence relating to this investigation, there is no evidence to support a finding that any APD personnel or any individual under the supervision of the APD failed to perform a legal duty, nor is there evidence that the force used by either Sergeant Lozeau or Officer Cavaness was unreasonable in light of the circumstances. Furthermore, there is no evidence whatsoever to suggest that the justifiable force used by Sergeant Lozeau and Officer Cavaness caused any of Tobe's injuries or her death. Tobe's injuries were sustained when she climbed out of the bus window and fell to the roadway while the bus was in motion, and her death was caused by methamphetamine intoxication.

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 whatsoever to support a finding of criminal culpability on the part of any APD personnel or any individual under the supervision of the APD. The evidence shows that Tobe died tragically as a result of complications from acute methamphetamine intoxication.

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

Respectfully submitted,



Ed Grubaugh

Deputy District Attorney
Target/Gangs Unit



Read and approved by **Ebrahim Baytieh**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit