



Sacramento County District Attorney's Office

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Chief of Police Samuel D. Somers, Jr.
Sacramento Police Department
5770 Freeport Blvd., Suite 100
Sacramento, CA 95822

Captain Jim Ortega, Commander
Sacramento County Sheriff's Department
Correctional Services Unit
651 I Street
Sacramento, CA 95814

Re: In-Custody Death – Thomas Ramirez (DOB 10/17/65)
SSD Report No. 15-28740
SPD Report No. 15-31854
Date of incident: February 4, 2015

Dear Chief Somers & Captain Ortega:

The above case was referred to this office for review of the circumstances surrounding the death of arrestee Thomas Ramirez.

On February 4, 2015, at approximately 12:17 a.m., Sacramento Police Officer Alexis Grove was driving her patrol vehicle at 20th and H Streets. She was waived down by a civilian witness, who pointed out Ramirez one block away and advised that Ramirez was knocking on neighbors' doors. Officer Grove drove over to Ramirez and shined a spotlight on him. Ramirez walked in front of the patrol car and told the officer not to shine the spotlight at him. Ramirez began walking towards the rear of the patrol car. Officer Grove instructed him to come to her. During this time, Ramirez was continuously screaming. Officer Grove stated to Ramirez that she was going to pat him down for weapons and asked if he had anything illegal on his person. Ramirez said "no" and placed his hands on his head, while the officer grabbed his hands and began to search him. Ramirez stated he was on probation for possession of stolen property.

As Officer Grove began searching him, Ramirez tensed up like he was going to fight. The officer grabbed Ramirez' left arm and tried to pull it behind him. Sergeant Michelle Gigante had arrived at the scene and observed Ramirez moving his body, turning his head, and trying to break away. She then grabbed his right arm. Ramirez was flailing his arms and resisted the officers. They began losing some control over Ramirez and then tried to place him on the ground. After successfully forcing Ramirez to the ground, the officers rolled him over on his stomach.

Ramirez tried to grab Officer Grove's wrists and she placed her hand on Ramirez' head to prevent him from flailing around. A civilian witness observed the incident, ran over to the scene, and grabbed Ramirez' feet to assist the officers. Lieutenant Jason Bassett also arrived and struggled with Ramirez, who was eventually handcuffed. At approximately 12:25 a.m., the officers put Ramirez' feet in hobbles and placed him on his stomach across the backseat of Officer Grove's patrol vehicle. Her in-car camera was activated and recording at this point. Ramirez did not have any obvious injuries, but continued to scream and yell "Don't kill me," "Help," "No," "Stop it," "I'll do whatever it takes," "Give me one more chance," "I'm sorry," "I'm not a pedophile," "I'll be good," and other unintelligible words and phrases. After struggling with him, Sergeant Gigante noticed that her hands smelled like chemicals associated with methamphetamine. Ramirez was arrested for resisting a peace officer. Officer Grove departed the area of arrest at approximately 12:35 a.m. and transported Ramirez directly to the Sacramento County Main Jail. Ramirez was still very upset, yelling, and kicking while in the backseat of the patrol car. Ramirez would not follow the officers' orders to calm down. Ramirez rolled himself forward off the rear seat of the patrol car and onto the floorboard area.

Upon arrival at the jail at approximately 12:39 a.m., Ramirez was still screaming, yelling, and kicking. Sheriff deputies responded to assist, placed a spit mask on his face, removed Ramirez from the patrol car, and placed him face down on the ground. Ramirez was already handcuffed behind his back. He was still screaming, moving around, kicking, grabbing and attempting to bite Deputy Michael Koehler, and hollering "No" and "Help" and other unintelligible words. Ramirez was not complying with deputies' commands to stop. As a result, Ramirez' hands were raised up behind his back. Deputy Koehler placed his knee in the back of Ramirez' shoulder blades for approximately 20 seconds to hold him down, and then transferred to his other knee in the center of Ramirez' back. As deputies held Ramirez down on the ground and began to shackle his ankles, Ramirez stopped moving. Deputies realized he was in distress and immediately checked Ramirez' pulse at approximately 12:44 a.m. They removed the spit mask, shackles, and handcuffs, while also calling for a nurse. Deputies performed cardiopulmonary resuscitation on Ramirez and the Automated External Defibrillator was applied to his chest. Medical personnel arrived and transported Ramirez to Sutter General Hospital at approximately 12:59 a.m. He was pronounced deceased at 1:11 a.m. The entire incident at the jail was recorded pursuant to department policy.

The Sacramento County District Attorney's Crime Lab confirmed the presence of 2109 ng/mL of methamphetamine and 69 ng/mL of amphetamine in a sample of Ramirez' blood. According to the criminalist who tested the sample, this amount of methamphetamine is three to four times a lethal dose for someone who is not a chronic methamphetamine user.

The Coroner's Report indicated that Ramirez suffered a sudden death occurring with methamphetamine intoxication and restraint by law enforcement. He had an elevated level of methamphetamine, minor blunt force skin injuries, and rib fractures which may have been sustained prior to or during the restraint. There were no acute traumatic injuries of the brain or spinal cord. The following factors may have played a role in the death:

- (1) An episode of agitation, erratic behavior and physical exertion prior to contact with law enforcement;

- (2) Methamphetamine intoxication; and
- (3) Restraint with law enforcement.

LEGAL ANALYSIS:

The Office of the District Attorney investigates cases of officer involved deaths for the purpose of assessing and applying the law relating to police use of force and to determine if the officers' acts fall within the state laws of criminal responsibility. This office conducted its review by applying the facts of this case to the controlling legal authority. The authority applicable here included California Penal Code sections 834, 834a, 835a, 843, 192(b) and state and federal published cases.

Under the circumstances, SPD officers had probable cause to take Ramirez into custody. Ramirez was identified by a witness as engaging in suspicious behavior knocking on doors in the middle of the night. Ramirez advised that he was on probation for a theft-related offense. Officers had sufficient reasonable articulable suspicion to detain him to investigate the situation further. When officers attempted to detain him, Ramirez began to physically resist and struggle with them. When a person is being detained by a peace officer, it is the duty of that person to refrain from using force to resist the detention or arrest. (Penal Code § 834a; *Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321.) Ramirez violated Penal Code section 148 by failing to comply with the officers' orders and by physically resisting them.

Because the officers' efforts to detain and take Ramirez into custody were lawful, and there is no credible evidence to support a finding that any of the officers intentionally tried to harm him, the only possible source of criminal liability is under California Penal Code section 192(b), involuntary manslaughter. The relevant portion of Penal Code section 192(b) defines involuntary manslaughter as a "killing . . . in the commission of a lawful act which might produce death . . . without due caution and circumspection." The statutory phrase "without due caution and circumspection" has been described by the California Supreme Court as the equivalent of "criminal negligence." (See *People v. Penny* (1955) 44 Cal.2d 861, 869-880; *People v. Stuart* (1956) 47 Cal.2d 167, 173-174.)

Under California law, more than ordinary negligence is required to support a charge of involuntary manslaughter. Evidence must prove that a person acted in an aggravated, culpable, gross or reckless manner, a manner so imprudent as to be incompatible with a proper regard for human life, or in other words, a disregard of human life, or an indifference to consequences of the act. (*Somers v. Superior Court* (1973) 32 Cal.App.3d 961, 968-969.) Further, the evidence must prove that the consequence of the negligent act could reasonably have been foreseen, and it must appear that the death or danger to human life was not the result of inattention, mistaken judgment or misadventure, but the natural and probable result of an aggravated, reckless, or grossly negligent act. (*People v. Villalobos* (1962) 208 Cal.App.2d 321, 326-328; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 437-441.)

Although the term "negligence" is used in both criminal and civil actions, it is defined differently in each. Criminal negligence differs from civil, or "ordinary negligence," in that it requires a finding of more aggravated reckless conduct (i.e., the standard of measuring the conduct itself is

greater). Furthermore, criminal negligence requires a higher standard of proof than ordinary negligence (i.e., proof beyond a reasonable doubt).

The determination of whether or not conduct rises to the level of criminal negligence must be determined from the conduct itself and not from the resultant harm. (*Somers v. Superior Court*, *supra*, 32 Cal.App.3d at p. 969; *People v. Rodriguez*, *supra*, 186 Cal.App.2d at p. 440.) Consequently, the law requires us to set aside the hindsight that a death resulted in this case, and also abstain from considering whether or not the officers' actions amounted to ordinary negligence.

As noted by the coroner, Ramirez's physical exertion and methamphetamine intoxication contributed to his death. Ramirez never told officers about any medical condition that would have affected how they handled his detention and arrest. Ramirez exhibited no signs indicating there was anything physically wrong that should have been checked by medical personnel prior to him becoming unresponsive. Immediately upon realizing Ramirez had become unresponsive, deputies checked his condition, called for a nurse, and performed CPR until medics arrived.

It cannot be said that the officers acted in an aggravated, culpable, gross, or reckless manner. They did not act with a disregard for human life or an indifference to the consequences of their actions. In fact, the officers clearly demonstrated a proper regard for human life.

CONCLUSION

Applying the controlling legal standards to the factual record in this case, we find no credible evidence to support an allegation of criminal negligence or excessive force against any of the officers involved with Thomas Ramirez's arrest. Ramirez's death was not the result of inattention, mistaken judgment, or misadventure. To the contrary, the objective evidence supports a finding that the officers' conduct was reasonable given the circumstances they encountered.

While this case presents a tragic situation, our decision here, as in any case, must be based on what the evidence proves. Accordingly, there is no legal basis for any further action by our office.

cc: Rick Braziel, Office of Inspector General
Francine Tournour, Office of Public Safety Accountability