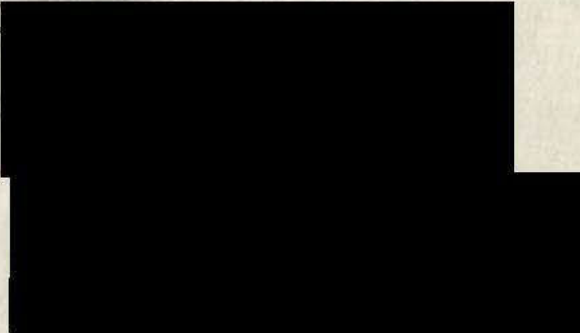




sent new articles

-
-
-



[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 hrs in holding tank

arrest at 2:00 pm

10:45^{pm} 11:00 tank stamp 2 or 3 more before

Chicanos are paying a high price for the
corruption in law enforcement

Why Sheriff's hasn't submit report to coroner

- prob. to beat him, knew what they
were to do

- several cans used

- degree of punishment

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
DISTRICT ATTORNEY

October 6, 1988

*Copies also delivered
to Sheriff E.
Asst Sheriff*

San Diego County Sheriff's Department

RE: Death of [REDACTED];
San Diego County Sheriff's Department Case No. [REDACTED];
District Attorney Case No. [REDACTED]

Dear [REDACTED]:

My staff has reviewed the reports prepared by members of your department concerning the facts and circumstances attendant to the death of [REDACTED] on the night of January 22, 1988, after a struggle with sheriff's deputies at the Central Detention Facility. A senior Deputy District Attorney has also met with Coroner's personnel concerning their findings and reports in this case (Coroner's case # [REDACTED]) and has reviewed material provided by the attorney retained by Mr. [REDACTED]'s family. To facilitate our independent review of this case, a senior District Attorney Investigator has conducted additional witness interviews. Based upon all available case materials, it is our determination that none of the involved sheriff's deputies bear any criminal liability for their conduct in the below-described incident.

On January 21, 1988, [REDACTED] and [REDACTED], pursuant to the Domestic Violence Prevention Act, filed an action in the Superior Court seeking to have their son, [REDACTED], removed from the family home in Lakeside. In a declaration sworn under penalty of perjury, the parents stated that their son had threatened them and other family members with bodily harm, that he had a very violent temper and would lose control, and that he refused to seek professional help for his problems. Further, it was declared that he had thrown his father out of the house on January 10, that his behavior had prompted a brother to move out, and that his sister and her husband would no longer visit because of him. Pursuant to that application for relief, Judge [REDACTED] issued an order directing the Marshal to remove [REDACTED] from his parents' home.

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At about 1:30 p.m. on January 21, Deputy Marshals executed the order and evicted [REDACTED]. He was given a copy of the Temporary Restraining Order signed by the judge, which ordered [REDACTED] to stay away from the residence and avoid contact with family members. In violation of that order, he returned one-half hour later. His mother, fearful of him, ran to a neighbor's residence and called the Sheriff's Department for assistance. Deputies found [REDACTED] inside his parents' home. He told them he had no other place to stay and suggested they take him to jail. [REDACTED], 28 years old, was lawfully arrested for violation of the court order. A large man, 6'1" and 286 pounds, he offered no resistance and was transported to the Central Detention Facility in downtown San Diego for booking.

As part of the normal receiving process for new inmates, [REDACTED] was placed in a preliminary holding area known as the "phone tank". A steel and concrete room measuring 11' by 16', it is equipped with a bank of telephones along the south wall and a currency/change machine on the east wall. A sliding steel gate on the west side provides access to the phone room. Adjoining the phone tank on the north side is the "search tank," with a manually operated sliding door permitting passage between the two rooms.

Shortly before 11 p.m., after several hours in the phone tank, [REDACTED] and other inmates were moved into the search tank for further processing. There, an argument ensued between [REDACTED] and Deputy [REDACTED], as [REDACTED] failed to comply with simple directions concerning the removal of all articles of clothing. [REDACTED] was directed back into the phone tank, to await separate processing. Deputy [REDACTED] threw [REDACTED]'s clothes to him, and [REDACTED] in turn threw them at Deputy [REDACTED], who then told [REDACTED] to step back into the search room. [REDACTED] attempted to throw a punch at Deputy [REDACTED], who partially closed the sliding door to block it.

Seeing the altercation, Deputies [REDACTED], [REDACTED], and [REDACTED] entered the phone tank from the west side as Deputy [REDACTED] joined them from the search tank. [REDACTED], clad only in boxer shorts, assumed a combative or resistive stance, and ignored orders to exit the phone tank. Intent upon subduing [REDACTED] and placing him in a padded safety cell, the deputies began grappling with [REDACTED] and forced his head and face against the wall of the phone tank in the vicinity of the coin changer. The four deputies, who were shortly joined by Deputies [REDACTED] and [REDACTED], struggled for control of [REDACTED], whose large bulk and strength and overall resistance made it difficult to restrain him.

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Deputy [REDACTED], who was in the best position to do so, applied a carotid restraint hold to [REDACTED]. During its application, [REDACTED] was forced off-balance by the other deputies, and Deputy [REDACTED] ended up beneath [REDACTED] on the floor. Still resisting, and with blood coming out of his nose, [REDACTED]'s wrists were handcuffed behind him. Owing to his body weight and the deputies' exhaustion from the struggle, [REDACTED] was dragged out of the phone room by his legs, with his chin scraping on the floor, and into a padded safety room down the hallway. At that time, [REDACTED] appeared to be unconscious.

Once in the safety room, deputies checked [REDACTED]'s vital signs and found only a very faint pulse. A nurse was called and [REDACTED] was rolled onto his side. As the nurse arrived and began to tend to [REDACTED] in the semi-darkness of the safety room, [REDACTED]'s pupils were noted to be very dilated and his breathing labored. Paramedics were requested. Pending their arrival, oxygen and cardiopulmonary resuscitative measures were administered. Loss of pulse and heartbeat were detected. On arrival of the paramedics, examination revealed no vital signs. Further emergency measures were applied, and [REDACTED] was transported to the U.C.S.D. Medical Center. He failed to respond to treatment and was pronounced dead at 11:47 p.m.

On January 22, 1988, an autopsy was conducted on the body of [REDACTED] at the Coroner's Office by Dr. [REDACTED], Deputy Medical Examiner. Exterior examination of the deceased revealed numerous superficial abrasions and contusions, including a large abrasion of the chin, consistent with being dragged to the safety room in the described manner. There was no evidence of injury to the neck.

Upon internal examination, there were found three areas of superficial hemorrhage at the top and side of the head, consistent with bumping into a hard object. There was a small area of hemorrhage at the side and back of the throat. That, as well as other small hemorrhages of the neck area and tongue, is consistent either with the application of a carotid restraint hold or with therapeutic measures by medical personnel. No fractures of the skeleton were found, and the cartilaginous and bony structures of the larynx were intact. There was no evidence that Deputy [REDACTED]'s application of a carotid restraint hold had resulted in any occlusion of the airway.

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Toxicological analyses of body specimens revealed only the presence of hydroxyzine, a tranquilizer, at a level consistent with therapeutic concentrations.

Based upon these findings, Dr. [REDACTED] determined the cause of death to be "cardiorespiratory arrest following altercation with law enforcement personnel, carotid restraint and handcuffing". Accordingly, the Coroner reported the death as a homicide. [REDACTED]'s ability to recover from application of the carotid restraint hold was compromised by positional asphyxiation. His large body weight, coupled with being handcuffed and in a face-down position, limited effective respiration and contributed to his demise.

As part of the Homicide Division's investigation of this case, the involved sheriff's deputies, civilian jail personnel, and percipient inmates were all interviewed. Their accounts of the deputies' struggle with [REDACTED], as heretofore outlined, are remarkably consistent. A review of the videotape taken by a camera in the jail receiving area shows the deputies entering the phone tank and bringing [REDACTED] out three minutes and two seconds later. The position of the camera, however, does not permit it to record events inside the phone tank.

The general descriptions of the deputies' application of reasonable force upon [REDACTED] were, however, harshly controverted by statements of inmate [REDACTED] in an interview published in the Los Angeles Times on March 2, 1988. [REDACTED], who was a jail inmate, claimed that he was a percipient witness to the [REDACTED] incident. According to [REDACTED], four deputies handcuffed [REDACTED], dragged him naked into another room, and then began "...teeing off on this guy...One deputy took his baton with him and you could hear the inmate yelling, 'Oh, my God! Please don't beat me no more!' You could hear thumps. You could hear them slamming something down on the floor. He (inmate) was crying. They beat him for about four minutes."

All of which is poppycock. A review of jail records and interviews of other witnesses reveal that [REDACTED] was not present during the incident in question. A District Attorney Investigator has interviewed [REDACTED]. [REDACTED] stood by the statements attributed to him in the Times' article. For identification purposes, he was asked to describe [REDACTED]. [REDACTED] said that [REDACTED] was about 5'6" tall and weighed about 140 pounds--about as far from the truth as the rest of [REDACTED]' tale.

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In this case, there is no evidence that Mr. [REDACTED]'s death was other than unintentional and accidental. Accordingly, any criminal liability for that death, by California state law, must be premised upon Section 192(b) of the Penal Code--involuntary manslaughter. The applicable part of that section provides: "Manslaughter is the unlawful killing of a human being, without malice. It is of three kinds:... (b). Involuntary--...in the commission of a lawful act which might produce death,...without due caution and circumspection."

The 1955 California Supreme Court case of People v. Penny, 44 C2d 861, sets forth the standard to be used in California for negligent homicide, and interprets the words "without due caution and circumspection" to be the equivalent of "criminal negligence." "... (I)n order to impose criminal liability for a homicide caused by negligence, there must be a higher degree of negligence than is required to establish negligent default on a mere civil issue. The negligence must be aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be of such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances 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... (C)riminal responsibility for a negligent homicide is ordinarily to be determined pursuant to the general principles of negligence, the fundamental of which is knowledge, actual or imputed, that the act of the slayer tended to endanger life. The facts must be such that the fatal consequence of the negligent act could reasonably have been foreseen. It must appear that the death was not the result of misadventure, but the natural and probable result of a reckless or culpably negligent act." Ibid., pp. 879-880.

The foregoing remains the standard to be applied in California for purposes of assessing criminal negligence in cases such as the death of Mr. [REDACTED]. Other appellate cases have held that whether the conduct of the person involved was wanton or reckless as to warrant conviction of manslaughter must be determined from the conduct itself and not from the resultant harm. That is to say, in the case of [REDACTED], the focus must be upon the conduct of Deputy [REDACTED] and the other deputies as compared with what reasonable law enforcement officers similarly situated would have done, and not upon the resulting death.

In this case, there are two instances in which criminal negligence, if present, might be found. The first involves

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the fight in the telephone tank, as deputies attempted to subdue [REDACTED]. The second involves Varela's being dragged face down, along the hallway to the safety cell.

In the telephone tank, deputies confronted a resistive and combative inmate. Multiple officers working together to subdue a violent inmate afford a lesser degree of risk of harm to both the officers and the inmate than does an officer going one-on-one. Therefore several deputies approached [REDACTED] and attempted to subdue him. In so doing, they used methods and holds in which they had received training.

There are two issues presented as to the telephone tank fight. First, did the deputies apply a dangerous chokehold to [REDACTED], either deliberately or inadvertently? If the answer to that question is "yes," then we must next determine if such conduct meets the legal standard set forth above as to criminal negligence. Second, are injuries to [REDACTED]'s face, although minor and unrelated to his subsequent death, when taken together with spatters and smears of blood in the phone tank, evidence of excessive force?

As to the hold placed upon [REDACTED], there is no evidence that the carotid restraint hold, widely recognized as an acceptable/low-risk-of-serious-injury technique for subduing belligerent persons, was applied in other than a correct manner by Deputy [REDACTED]. There is no physical evidence that it was applied as, or degenerated into, a dangerous chokehold.

Neither is there credible evidence that [REDACTED] was "beaten" in the phone tank. His injuries as determined upon autopsy are consistent with the deputies' account of the phone tank fracas. As the deputies and Varela thrashed about the room, [REDACTED]'s head did connect with the wall and there is blood upon a nearby toilet. We find no evidence upon which to base a finding that the episode was other than as described by deputies and some of the civilian witnesses.

In retrospect, the deputies would have been better served by checking [REDACTED]'s vital signs and state of consciousness there in the phone tank, once he was handcuffed and subdued. His condition was aggravated by placing him on his stomach. Further, although we are mindful of the jail environment, dragging an inmate on his face is simply inconsistent with basic humane treatment, particularly after that inmate has been restrained and controlled. In addition, in that it may have exacerbated the positional asphyxiation as described by the Coroner, such conduct may relate directly

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to the cause of death. What we may think of the acceptability of that conduct is largely irrelevant, however, for it clearly falls short of the "disregard of human life or indifference to the consequences" necessary to establish criminal liability.

In making this determination, I am mindful of the material presented by the [REDACTED] family attorney as well as that offered by the Sheriff's Department. That attorney, [REDACTED], first contacted this office on September 16, 1988, and shortly thereafter made available material he had already supplied to the grand jury and to the FBI. In pertinent part, that consisted of interview transcripts of four witnesses as conducted by or in the presence of Mr. [REDACTED] or [REDACTED], who appears to be acting as his investigator.

Those interviews are of [REDACTED], [REDACTED], [REDACTED], and [REDACTED], all inmates in the jail at the time of the [REDACTED] incident. We had been provided tape recorded interviews by sheriff's investigators of each of these individuals. The interviews of [REDACTED] and [REDACTED] as offered by Mr. [REDACTED] are largely consistent with their sheriff's investigator interviews. The interview of [REDACTED] is the same interview with which the Sheriff's Department earlier provided us. The interview of [REDACTED] conflicts in important respects with the interview he gave sheriff's investigators.

Specifically, in the interview provided by Mr. [REDACTED], [REDACTED] describes seeing Deputy [REDACTED] deliver a karate kick to [REDACTED]'s face, and seeing a chokehold, rather than a carotid restraint, applied to [REDACTED]. [REDACTED] alleges that sheriff's investigators repeatedly turned the tape recorder on and off during their interview of him, suggesting that they recorded only those non-incriminating portions they wanted to hear and wanted made part of the record.

The difficulty with his statement is that it does not comport with the known facts and that the tape recording of the law enforcement interview of [REDACTED] gives no indication of being "doctored." A senior attorney on my staff has compared the sheriff's transcript of the law enforcement interview to the tape of that interview and found them to be consistent. Further, the attorney listened carefully and heard no evidence of the recorder being stopped and started. Indeed, upon interview by sheriff's investigators [REDACTED] spoke in a matter-of-fact fashion and his statements are wholly inconsistent with what he told Mr. [REDACTED].

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investigator. No prosecution could ever be built upon such an unsteady foundation as the inconsistent statement of Lambro.

Taking together all these observations, it is our opinion and determination that the conduct of the involved officers falls short of the standard for criminal negligence set forth by the California Supreme Court. There is no showing of any aggravated, culpable, gross, or reckless negligence as is necessary for criminal liability under Penal Code section 192(b). Under California state law, the involved deputies have no criminal liability for the accidental and unfortunate death of [REDACTED] [REDACTED] [REDACTED].

That determination is not a close call, given the state of the evidence and the high standard that must be met before a person may be convicted of a crime as a consequence of negligent or inappropriate action. What I find more puzzling, however, is the setting in which this incident occurred. Surely, deputies must maintain control over inmates in the jail, but here, a disagreement between a deputy and an inmate over a mere trifle was allowed to escalate needlessly from a staring match to a fatal confrontation.

Very truly yours,

[REDACTED]
District Attorney

ELM:jg.

cc: Lt. [REDACTED]
San Diego Sheriff's Department
Homicide Division