

In-Custody Death of Jonathan Salcido

Whittier Police Department

Officer Lamarr Tinnin, #327

Officer Roy Benjamin, #233

Officer Jim Azpilcueta, #465

Officer Richard Jensen, #266

Detective Jake Junge, #509

Detective John King, 203

J.S.I.D. File #17-0228



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 1, 2018

MEMORANDUM

TO: CHIEF JEFF A. PIPER
Whittier Police Department
13200 Penn Street
Whittier, California 90602

CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Jonathan Salcido
J.S.I.D. File #17-0228
W.P.D. File #2017-00003653
L.A.S.D. File #017-00047-3199-499

DATE: May 1, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 4, 2017 death of Jonathan Salcido while in the custody of Whittier Police Department (WPD) Officers Lamarr Tinnin, Roy Benjamin, Richard Jensen and Jim Azpilcueta, and Detectives Jake Junge and John King. It is our conclusion that the officers used reasonable force when they attempted to control Salcido before he died due to sequelae of excited delirium, and are not criminally responsible for his death.

The District Attorney's Command Center was notified of this in-custody death on May 4, 2017 at approximately 4:16 p.m., and the District Attorney's Response Team responded to the scene. They were given a briefing and walk through of the scene by Lieutenant Joe Mendoza of the Los Angeles County Sheriff's Department (LASD).

The following analysis is based on reports, recorded interviews, and photographs submitted to this office by the LASD. The departmentally compelled statements of the involved officers were not considered in this analysis.

FACTUAL ANALYSIS

Jonathan Salcido had suffered from schizoaffective bipolar psychosis for approximately six years.¹ He lived with his parents and had been hospitalized several times because of his mental

¹ Jonathan was 26 years old, 6'2" tall and weighed 260 pounds.

health. On May 3, 2017, Jonathan told his mother he was feeling “psychotic.” In response, his mother, Jasmine S█████, contacted his doctor and the hospital in an effort to find an inpatient placement for him. She was told that there were no beds available, but that a bed may be available the next day.

On May 4, 2017, Jasmine again called the hospital and was told that they had space to admit Jonathan. Jasmine told Jonathan that it was time to go, but Jonathan refused to go with her or even get out of bed. She described him as “full blown psychotic” and “out of touch with reality.” Jasmine, seeing Jonathan’s altered mental state, called the WPD at approximately 1:57 p.m. and requested their help in getting Jonathan to the hospital. Before officers arrived, Jonathan got out of bed, left the house and started walking on Ocean View Avenue in the City of Whittier.

Jasmine walked behind Jonathan for a period of time until he started running away from her. Jasmine realized she was not able to keep up with Jonathan, and she flagged down a car to drive behind him. Elaine S. saw Jasmine, realized she was an acquaintance from work, and stopped to help. Together they followed Jonathan on Ocean View Avenue while Jasmine updated the WPD dispatcher of Jonathan’s location.

Jonathan walked toward the northernmost end of Ocean View Avenue, which is closed to the public by an eight-foot iron fence. Lamarr Tinnin was the first WPD officer to arrive in response to Jasmine’s call for help. She flagged Tinnin down near the intersection of Mar Vista Street and Ocean View Avenue and told him that she was Jonathan’s mother and that he is “acting psychotic and she’s worried about him because he keeps running into traffic, he’s uncontrollable, and she’s afraid he’s going to get hurt.”

Jasmine pointed Tinnin in the direction where she last saw Jonathan. Tinnin drove his patrol vehicle onto Ocean View Avenue and saw Jonathan walking toward the end of the street. Tinnin drove past Jonathan and stopped his patrol vehicle about six car lengths past Jonathan. In response, Jonathan started sprinting toward, and then past, Tinnin’s vehicle to the fence at the end of the street. Jonathan tried to climb over the fence, but he was unable to scale it.

Tinnin exited his vehicle and pulled Jonathan off the fence. Jonathan came down off the fence into a seated position before he rolled over onto his side and crossed his arms in front of his body, preventing Tinnin from handcuffing him. After he rolled to his side, Jonathan appeared to calm down. Jasmine, who had followed Tinnin and Jonathan to the end of the street, was giving Tinnin more information about what had happened earlier when Officer Roy Benjamin arrived.

Benjamin approached Jonathan while he was calm and lying on the ground and Tinnin was standing next to him, but as he got close to them Jonathan jumped up and tried to run toward the fence. Tinnin grabbed onto Jonathan’s arm, and they both fell to the ground. Jonathan then rolled onto his stomach with his hands crossed under his body while Tinnin and Benjamin tried to control him. Tinnin was on Jonathan’s left side and Benjamin was on his right, but neither officer was able to control Jonathan’s hands. Because Jonathan was being combative with the officers, Benjamin radioed for emergency backup.

Officer Jim Azpilcueta arrived at the scene shortly after Benjamin's request for assistance. When he arrived, he saw Jonathan on the ground with an officer on each side of him. Jonathan was using his legs to kick and thrash around. In response, Azpilcueta laid on top of Jonathan and used his body weight to keep Jonathan from kicking.

Jasmine, who was standing near the struggle with Jonathan, yelled to the officers, saying they should use a Taser on Jonathan because "it worked before." Tinnin, who is a certified "Arrest Control Techniques" and collapsible baton instructor, declined to use a Taser because he felt it would be "more intrusive" than was necessary under the circumstances. Instead, he used his baton as a lever to extricate Jonathan's arms from under his body. Using that method, the officers were able to control Jonathan's hands and handcuff him without striking, kicking, or punching Jonathan and without using any other weapons.

While Tinnin, Benjamin and Azpilcueta were trying to get Jonathan into handcuffs, several other WPD officers responded to Benjamin's call for emergency assistance. Officer Richard Jensen and Detectives Jake Junge and John King arrived and assisted the other officers by restraining Jonathan's legs at different times. Several other officers and a field supervisor responded to the scene, but none of them had any physical contact with Jonathan.

As the officers were struggling with Jonathan, WPD dispatch had already requested an ambulance be sent to their location. The Los Angeles County Fire Department dispatched an engine and an ambulance to the scene. The engine arrived on the scene just after Jonathan was handcuffed.

Shortly after Jonathan was handcuffed he stopped all of his resistance toward the officers. Jonathan was mumbling and looking off into space but not engaging with anyone. He tried to get up again, but the officers held him on the ground.

When the firefighters arrived, they found Jonathan on the ground surrounded by officers. They noted that, while the officers surrounded Jonathan, they were not on top of him. Firefighter Kyle Sidebotham saw that Jonathan was taking breaths, but that his breathing pattern was not normal and it appeared Jonathan was turning blue. He asked the officers to remove the handcuffs and turn Jonathan onto his back and the officers complied.

The firefighters immediately realized Jonathan was in distress and started lifesaving measures, but they were not able to feel a pulse and were unable to revive him. Jonathan was transported to the hospital where the treating physician pronounced him dead.

Autopsy Report

Jonathan was examined by Dr. Ogbonna Chinwah, Los Angeles County Deputy Medical Examiner, on May 9, 2017. Dr. Chinwah finalized his report on August 31, 2017.

Dr. Chinwah noted several small abrasions on Jonathan's head and extremities as well as deep abrasions on the soles of his feet, but opined that those injuries were non-fatal. Dr. Chinwah

found nothing abnormal during the autopsy and determined that Jonathan died as a result of “sequelae of excited delirium due to or as a consequence of schizophrenia.”²

LEGAL ANALYSIS

To prove the crime of involuntary manslaughter in violation of Penal Code section 192(b), the People must prove that: 1) a person committed a crime that posed a high risk of death or great bodily injury because of the way in which it was committed; or performed a lawful act with criminal negligence; and 2) that act caused the death of another. Penal Code section 192(b); CALCRIM No. 581.

Therefore, to establish that an officer committed the crime of involuntary manslaughter as a result of his use of force in the course of his employment, the People would need to prove either that the officer committed an assault under the color of authority, or used force that, while lawful, was done in a criminally negligent manner.

“When a person, as a result of a mental health disorder, is a danger...to himself, a peace officer...may, upon probable cause, take...the person into custody...for crisis intervention.” Welfare and Institutions Code section 5150. The statute contemplates that a person may need to be involuntarily detained and taken into custody for their own protection or for the protection of others. *Id.* at 5150(e). It is recognized that a peace officer may use force to take someone into custody, so long as that force is reasonable. *See* Penal Code section 835a; *Hill v. Miracle* (6th Cir. 2017) 835 F.3d 306 (Courts should determine “whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them...the court should ask: (1) was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others? (2) was some degree of force reasonably necessary to ameliorate the immediate threat? (3) was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?”). If an officer uses more force than is reasonably necessary under the circumstances, he commits an assault under color of authority.

To prove an officer committed an assault under color of authority, the People must present evidence to show: 1) the defendant was a peace officer; 2) the defendant assaulted or beat another; 3) the assault took place while the defendant was engaged in the performance of his duties; and 4) the force used was not lawfully necessary. Penal Code section 149. When assessing whether an officer’s use of force was “lawfully necessary,” California criminal law employs the reasonable person standard. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. We must consider all the circumstances as they were known to and appeared to the officer, and consider what a reasonable person in a similar situation with a similar knowledge

² Excited delirium has been described in medical literature since the 1850’s. A recent paper suggests that, while the mechanism of death is unknown, people die from excited delirium because they experience an “extremely heightened emotional state exhibiting marked paranoia and mounting irrational fear” which releases a flood of dopamine which can convert extreme emotional stress into asphyxia and sudden cardiac arrest. Deborah C. Mash *Excited Delirium and Sudden Death: A Syndromal Disorder at the Extreme End of the Neuropsychiatric Continuum*, FRONT PHYSIOL. 2016: 7:435.

would have believed. *See* CALCRIM Nos. 505, 3470. This enables a jury who is assessing the conduct of a law enforcement officer “to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation – but this is not the same as following a special ‘reasonable police officer’ standard.” *Id.*

In the absence of a criminal violation, the People must show that the defendant committed a lawful act in a criminally negligent manner. Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment; a person acts with criminal negligence when: 1) he acts in a reckless way that creates a high risk of death or great bodily injury; and 2) a reasonable person would have known that acting in that way would create such a risk. CALCRIM No. 581. A person acts with criminal negligence when the way he acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act. *Id.*

In this case, Jasmine called the police and reported that Jonathan was delusional, psychotic, and a danger to himself. Her statements, coupled with Jonathan’s reactions to seeing the officers, provided sufficient cause to detain Jonathan pursuant to Welfare and Institutions Code section 5150. When the officers acted to detain Jonathan, they used only such force as was necessary to hold him in place and prevent him from injuring the officers. The officers never struck or kicked Jonathan, and their use of a baton as a lever to extricate his arms was reasonable and appropriate under the circumstances. Because the officers used objectively reasonable force to overcome Jonathan’s resistance to their lawful duty of detaining him for his own safety, they did not commit an assault under color of authority.

Not only was the force used by the officers objectively reasonable, it was also done without criminal negligence. As noted above, the officers used only minimal force in response to Jonathan’s resistance. There is no evidence that they acted “in a reckless way that create[d] a high risk of death or great bodily injury.”

Finally, the deputy medical examiner determined that Jonathan’s death was a consequence of his excited delirium. Dr. Chinwah noted the presence of abrasions consistent with Jonathan’s resistance and the officer’s use of force, but determined that they did not contribute to his death. Because Jonathan’s death was not proximately caused by the officers’ actions, they have no liability under Penal Code section 192(b).

CONCLUSION

We conclude that Officers Lamarr Tinnin, Roy Benjamin, Jim Azpilcueta, and Richard Jensen, and Detectives Jake Junge and John King used objectively reasonable force to overcome the resistance of Jonathan Salcido. Further, we find that the officers’ actions did not proximately cause the death of Jonathan Salcido. Therefore, the officers are not criminally liable for his death. We are closing our file and will take no further action in this matter.