

**In-Custody Death of Jorge Azucena
Los Angeles Police Department**

**Sergeant Mike Richardson, #26159,
Sergeant Anthony White, #27743,
Sergeant Robin Brown, #25781, Officer Percy Roberts, #39777,
Officer Felipe Rocha, #39617, Officer Julio Garcia, #38894,
Officer Christopher Winger, #40933**

J.S.I.D. File #14-0426R



**JACKIE LACEY
District Attorney**

Justice System Integrity Division

January 28, 2016

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
Force Investigation Division
Los Angeles Police Department
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: In-Custody Death of Jorge Azucena
J.S.I.D. #14-0426R
F.I.D. #F081-13

DATE: January 28, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations that Los Angeles Police Department Sergeants Mike Richardson, Serial #26159, Anthony White, Serial #27743, Robin Brown, Serial #25781 and Officers Percy Roberts, Serial #39777, Felipe Rocha, Serial #39617, Julio Garcia, Serial #38894, and Christopher Winger, Serial #40933 committed the crime of involuntary manslaughter based on the failure to perform a legal duty pursuant to Penal Code section 192(b). For the reasons set forth below, this office declines to initiate criminal proceedings.

The following analysis is based on reports, transcripts and audio/visual recordings prepared by the Los Angeles Police Department (LAPD) submitted to this office by Detective Blair Grabiak, LAPD Force Investigation Division. The compelled statements of all involved officers were considered in this analysis. An independent medical report prepared by expert witness Dr. Mark Brown was also considered in this analysis.

FACTUAL ANALYSIS

The following factual summary was derived from a compilation of video recorded from multiple patrol vehicles, microphones worn by various officers, surveillance video and officer statements. Unless otherwise noted, statements made by Jorge Azucena were obtained from the audio and video associated with the patrol vehicles and officers.

On September 6, 2013, LAPD Southwest Division Gang Enforcement Detail (GED) uniformed Police Officers Julio Garcia and Felipe Rocha were assigned to monitor and document the activities of Rolling 30's criminal street gang members. As part of their assignment, they were patrolling on Jefferson Boulevard, an area claimed by the Rolling 30's. [REDACTED]

[REDACTED]

[REDACTED] When Azucena arrived at the intersection of 12th Avenue and Jefferson Boulevard, he again failed to stop for the red light. Garcia [REDACTED] broadcast that they were following a DUI driver.

Azucena accelerated and began to drive on the wrong side of the road, passing two vehicles. Rocha advised that they were in pursuit. A 3.4 mile pursuit ensued through residential neighborhoods. Azucena continued to commit traffic violations while driving at an unsafe speed in an attempt to evade officers.

At approximately 11:25 p.m., Azucena drove south on La Brea Avenue, turned left, and traversed a raised center divider that separated the north and south lanes. Azucena then drove east into the alley south of Jim Gilliam Park. Garcia [REDACTED] made a U-turn and returned to the east/west alley south of Jim Gilliam Park.

Seconds later, Air Support arrived overhead and followed Azucena as he turned into Jim Gilliam Park. Tactical Flight Officer Kevin Webb broadcast that three suspects had exited the Suburban and were running north through Jim Gilliam Park. Webb described Azucena as a male black wearing a white hat, black jacket and dark pants. A second suspect, later identified as Antonio De La Fuente, was described as a male black wearing all black clothing. The third suspect quickly split off from Azucena and De La Fuente, running east through the park. Webb did not observe the third suspect for long enough to provide a description. Air Support continued to follow Azucena and De La Fuente and lost sight of the third suspect.¹

Air Support continued tracking Azucena and De La Fuente as they ran north on Ursula Avenue on the west side of the street. A surveillance camera on the exterior of 4050 Ursula Avenue captured Azucena turning right and running east towards 4050 Ursula

¹ The registered owner of the vehicle, Jesus Bustamante, told investigators he was sitting in the right rear passenger seat of the vehicle and Azucena was the driver. Bustamante stated there were a total of four males in the vehicle and two females. De La Fuente told investigators there were only four occupants in the vehicle, he was sitting in the left rear passenger seat and Azucena was driving. De La Fuente identified himself as the person who ran with Azucena. Bustamante stated he did not exit the vehicle at that time, but drove the car away after the police vehicles and helicopters left the location in pursuit of Azucena and De La Fuente. Neither Bustamante nor De La Fuente identified the third suspect who fled the vehicle.

Avenue. As Azucena was about to enter the apartment complex, he fell to the ground and immediately stood up. De La Fuente was behind Azucena, and both entered the apartment complex. Azucena and De La Fuente entered the courtyard and ran toward the southeast corner of the apartment complex. A few seconds later, both ran down a stairwell. Shortly thereafter, both ran up the same stairwell. When Azucena reached the top of the stairwell, he fell to the ground and immediately stood up. Azucena and De La Fuente exited the front security door and ran north on Ursula Avenue. They crossed Ursula Avenue and began running west towards 4045 Ursula Avenue. They entered the front security gate and ran west through the courtyard of that apartment complex. Webb directed responding units to the alley and to the front of 4045 Ursula Avenue, and advised that the suspects were “running out of gas.”²

Officers Mark Horta, Ariel Gatus, Marlon Gomez, Lorri Greelea, Darius Bone, Clifton Rose, Mario Prendergast, Akash Udeshi and Brandon Rocket responded to the north/south alley west of Ursula Avenue and were directed to the rear of 4045 Ursula Avenue by Webb. Horta and Gatus observed Azucena inside the rear carport area walking towards the alley. Gatus observed that Azucena had his hands inside his pockets, and ordered him to take his hands out. Both Horta and Gatus un-holstered their service weapons at which point Azucena stated, “I don’t have a gun. I’m not going to open the door.” There was a wrought iron gate which was approximately 10 feet high between the carport area where Azucena was standing and the alley where the officers were standing.

Horta ordered Azucena to open the rear gate door, at which time Azucena backed away saying, “No.” Azucena moved to a different door, located between the carport and alley, and attempted to open it. Finding the door locked, Azucena began to pace as if he was looking for another exit. Azucena then walked south towards the southwest corner of the building.

At this time, Rose, Prendergast, Udeshi and Rocket ran north in the alley and around to the front of the apartment complex. Horta re-holstered his service weapon and scaled the 10’ high fence. As Horta climbed the fence, Azucena moved south in the carport area out of sight. Horta lost sight of Azucena behind a trash can. Horta then opened the rear gate to let Gomez enter the carport area. Horta and Gomez moved to the south in an effort to locate Azucena. As Horta cleared the southeast corner of the building, he observed Azucena climbing an 11’6” chainlink fence on the southwest side of 4045 Ursula Avenue. After clearing the fence, Azucena headed east towards the front of the complex. Gatus, Greenlea and Bone, who were in the alley, observed Azucena run east through the apartment complex to where additional officers were located.

Webb advised ground units that Azucena was on the south side of the building running east toward the street. Officers David Hunt, Azain Bautista, Garcia and Rocha responded from their location at the front of 4045 Ursula Avenue to the south side of the building and observed Azucena running east toward their location. Bautista ordered Azucena to

² Azucena and De La Fuente had run approximately .3 miles to get from the vehicle to 4045 Ursula Avenue.

stop. When Azucena failed to heed his command, Bautista pointed the red laser light from his Taser at Azucena's torso. Azucena continued to advance, and pushed on an 8'11" tall fence at the southeast corner of the complex, causing it to lean to the ground. Once Azucena had passed over the fence, it went back to its upright position. Bautista continued to order Azucena to stop while pointing the laser light at him. Garcia and Rocha [REDACTED] ordered Azucena to get on the ground. Azucena then placed himself on the ground in the prone position with his hands and legs spread apart.

At approximately 11:30 p.m., Garcia and Rocha took Azucena into custody. Hunt and Bautista were in the vicinity as this occurred, but left almost immediately to assist with locating De La Fuente. Roberts and Winger then arrived [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³

Webb broadcast that Azucena had been taken into custody and Air Support focused on locating De La Fuente. Webb advised ground units to maintain a perimeter around the building because De La Fuente was still inside.

At 11:31 p.m., microphones worn by Garcia, Rocha, Roberts and Winger captured Azucena very faintly saying, "Can't breathe" as he was being taken into custody. Shortly thereafter, Roberts told Azucena to get up. When Azucena did not follow his command, Roberts ordered him to stand up a second time. Azucena responded by saying, "I can't breathe. I can't breathe. I have asthma. I have asthma." [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³ Based upon transmissions from the Southwest station frequency used for broadcast and the microphone recordings from a patrol vehicle near the location of the arrest, the time between Azucena exiting the Suburban and being taken into custody was 4 minutes, 24 seconds. The approximate temperature was 71 degrees, with 75 percent humidity.

⁴ [REDACTED] Azucena speaks very faintly, and the ambient noise from the helicopter, civilians and other officers talking make Azucena's statements very difficult to hear.

[REDACTED]

Winger and Rocha placed Azucena against the left rear trunk of Roberts' patrol vehicle. Garcia advised Rocha that they needed to leave to look for the Suburban.⁷

[REDACTED]

At 11:32 p.m., Sergeant Mike Richardson arrived at the scene. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] During the search, Winger's microphone recorded Azucena twice saying he could not breathe.⁸ [REDACTED]

[REDACTED] Winger then told Azucena, "You can breathe. You're talking. You're fine. Just breathe." [REDACTED]

[REDACTED] Azucena, who had previously been silent for approximately one minute, then became extremely animated, yelling "I can't breathe! I can't breathe! Help me, help me, help me! I can't breathe! I can't breathe! Help me please! Help me! I can't breathe! I can't breathe!" towards the gathering crowd. [REDACTED]

[REDACTED] Azucena began yelling, "Let me go, let me go!" [REDACTED]

⁵ [REDACTED] From Azucena's tone, there is no indication he is having any difficulty breathing. His breathing does not sound labored, he is not wheezing or raspy, and there is no other indication that he is having trouble breathing.

⁶ [REDACTED]

⁷ Neither the Suburban nor the third suspect were located that evening.

⁸ Like his earlier statements, the recording does not depict any stress or difficulty breathing on Azucena's part as he makes these statements.

⁹ [REDACTED]

[REDACTED]

[REDACTED] Azucena then continued to yell “I can’t breathe!” and “Let me go!” [REDACTED]

[REDACTED] Additionally, Azucena was wearing a hooded sweatshirt despite the warm temperature. [REDACTED]

[REDACTED]

At 11:33 p.m., Sergeant Anthony White arrived at the location. [REDACTED]

At 11:34 p.m., Richardson told Roberts and Winger to place Azucena in the police vehicle and turn on the air conditioning.¹³ [REDACTED] Roberts placed Azucena in the left rear passenger seat of the vehicle with the windows to the rear doors closed. Azucena immediately fell back and laid across the rear seats. Roberts pulled him back into a seated position, at which time Azucena said, “I can’t breathe.” Roberts ordered Azucena to place his feet inside the police vehicle. Roberts and Winger then fastened Azucena’s seatbelt. Azucena leaned toward the right passenger seat, causing his hood to come off his head.¹⁴

¹⁰ [REDACTED] Azucena gets markedly louder and more animated as he moves into a position to address the crowd. There is no distress or difficulty in breathing detectable in the audio recording.

¹¹ [REDACTED]

¹² [REDACTED] witnesses estimated the number of gathered onlookers to be as high as 40 people at various times.

¹³ As documented below, Roberts did not have the opportunity to start the vehicle and transport Azucena for several minutes due to Azucena repeatedly unfastening his seat belt, kicking and banging on the doors and windows of the vehicle and otherwise disrupting the transport process.

¹⁴ The video does not depict Azucena having any difficulty breathing at this time.

[REDACTED]

[REDACTED] Video from Roberts' vehicle approximately 30 seconds later shows Azucena, while alone inside the backseat of the vehicle, saying "Sir, I'm having a seizure. Sir, I'm having a seizure." Azucena then yelled, "I'm on drugs! I'm on one. I feel like I'm going to have a heart attack." Horta, Gatus, [REDACTED] were all outside the vehicle near the left rear quarter panel. [REDACTED]

[REDACTED] Horta and Gatus could hear Azucena yelling, but could not make out what he was saying. [REDACTED]

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At 11:37 p.m., video from Roberts' vehicle depicts Azucena unfastening his seat belt and lying down on the rear seat of the vehicle. Azucena then states, "I can't breathe sir." There is no indication that any officers were within earshot of Azucena at that time.

[REDACTED] Roberts then opened the left rear passenger door and attempted to sit Azucena up as he continued ordering him to sit up. Azucena placed his feet outside the police vehicle and failed to comply with orders to pick his feet up. Roberts ultimately lifted Azucena's feet, placed them back into the vehicle and closed the door. Azucena laid down on the rear passenger seat with his feet up against the rear passenger door.

At 11:38, Azucena sat up and said, "Sir." Azucena then began kicking on the left rear passenger door with his feet. He sat back up and stated, "I can't breathe," then began yelling, "Help me! Help me! I can't breathe!" [REDACTED]

[REDACTED] None of the other officers in the vicinity heard Azucena's statements at that time.

At 11:39 p.m., [REDACTED] Azucena began banging the left side of his head against the left rear door and stated he could not breathe. Azucena struck his head two additional times against the door. [REDACTED]

15 [REDACTED]

[REDACTED]
[REDACTED] Roberts opened the left rear passenger door and Azucena leaned out of the door. Azucena then said, "I can't breathe. I'm messed up." Azucena exited the vehicle [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]¹⁶ [REDACTED]
Once out of the vehicle on Ursula Avenue, Azucena fell to his buttocks, essentially sitting on the inside frame of the vehicle doorway. [REDACTED]
[REDACTED]
[REDACTED]

Azucena said he needed some air. Garcia told Azucena, "Alright, well stand up man. We can't help you if you don't help yourself." [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]¹⁷ Roberts and Winger then lifted Azucena up and placed his upper torso on the left rear passenger area of their vehicle.

At 11:40 p.m., Richardson returned to the rear left portion of Roberts' vehicle. Rose and Prendergast also arrived. Prendergast heard a commotion near the vehicle, and responded to determine what was going on. Prendergast observed Azucena yelling and kicking. Prendergast approached Azucena and placed his foot behind Azucena's heel to preclude him from kicking further. As Prendergast was behind Azucena, he heard him say he could not breathe. Azucena did not appear to be in medical distress, just exhausted from running. Richardson approached Azucena and told him, "If you can talk, you can breathe. Yes, you can. Hold still and quit moving around, alright? You can breathe just fine. You can talk, so you can breathe." Azucena mumbled something unintelligible. Richardson then told Azucena, "Now, I need you to answer some questions for me. What's your name?" Azucena replied, "Let me go." Richardson told Azucena, "No, we are not going to let you go. What's your name?" Azucena said, "I can't breathe. Help me." Rose was approximately 10 feet away and heard Azucena say, "Help me." Rose believed Azucena was yelling toward the crowd and did not believe Azucena was in distress. Officers Kristin Tudor and Jason Sturm then approached the vehicle to see if officers needed any assistance. They observed that Azucena was sweating and yelling.

Richardson then told Roberts and Winger, "Just put him in the car. Fire up the A/C so we can get some air and let's get him out of here."¹⁸ Roberts and Winger placed Azucena in

¹⁶ The video does not show Azucena having any trouble breathing.

¹⁷ According to [REDACTED] other officers who were interviewed as part of this investigation, it is common in this area for suspects to attempt to incite onlookers. Frequently, this is done in an effort to get other gang members to commit some crime to divert police attention from the suspect and allow him to escape. Examples of criminal activity include firing shots in the area or at the officers. [REDACTED] other officers expressed concern that Azucena's statements could result in officers or civilians being injured.

¹⁸ [REDACTED]
[REDACTED]
[REDACTED]

the vehicle through the left rear passenger door. Azucena immediately fell towards the right passenger seat. Roberts, Winger and Pendergast got Azucena upright and buckled in. At 11:41 p.m., Roberts closed the door to the vehicle and began to drive Azucena to Southwest Station.¹⁹

[REDACTED]

At 11:45 p.m., video from Roberts' vehicle shows Azucena releasing his seatbelt, leaning towards his right and then laying down across the rear passenger seat. Approximately 30 seconds later, Azucena says, "I can't breathe." Officer Winger told Azucena, "Yes, you can. You're talking." Azucena then laid on his stomach as he continued to move around. Azucena then stated, "Help me."²⁰

At 11:46 p.m., Roberts and Winger arrived at the station with Azucena.²¹ Upon arrival, Winger opened the right rear passenger door. Azucena was lying on the rear seat on his right side. Winger reached in and pulled Azucena out of the vehicle. [REDACTED]

[REDACTED]

[REDACTED]²² Southwest station video depicts Winger holding Azucena's left arm and left rear pant leg while Roberts holds his right arm and right rear waistband area as they carried him into the station. Azucena appears to be dragging his feet.

¹⁹ Azucena was in custody for approximately 11 minutes, 16 seconds before Roberts and Winger left the scene per the patrol vehicle recordings which captured him being ordered to the ground, and Roberts' vehicle leaving the location.

²⁰ The video does not depict Azucena having difficulty breathing.

²¹ The transportation time from Ursula Avenue to Southwest station was 4 minutes, 58 seconds according to the video from Roberts' patrol car.

²² [REDACTED]

A second video from Southwest station shows Winger and Roberts carrying a slumped over Azucena down the hallway to where the holding cells are located. Azucena continues to drag his feet. Roberts and Winger placed Azucena on the floor, face down, just outside the watch commander's office and holding tanks. Winger's microphone captured Azucena saying, "I can't breathe. I need some air." Winger replied, "You're breathing, you're all right." Roberts then stated, "Hey man, you got to get up. You got to get up. We have to ask some questions." Video depicts Azucena on the floor, moving and kicking his legs at that time. [REDACTED]

At 11:48 p.m., Brown is depicted on the video entering the hallway with Roberts. Azucena is still lying on the floor.²³ Winger obtained the adult detention sign-in log from the wall, opened the door to Holding Cell No. 1, and placed the detention log on a bench in the hallway. Roberts and Winger carried Azucena into the holding cell [REDACTED]

[REDACTED] Southwest Patrol Kit Room Officer Anthony Ward entered the cell to assist the officers.

At 11:49 p.m., Brown also entered the holding cell.²⁴ [REDACTED]

[REDACTED] Winger and Roberts began to search Azucena and remove his property from his pockets. Ward stood by as Winger and Roberts removed the property. Ward noticed that Azucena was fidgeting, moving around and conscious. Ward never heard Azucena ask for help or indicate he was having any trouble breathing. Ward observed that Azucena did not appear to be having any difficulty breathing or require medical attention.

[REDACTED] Brown wrote "not responsive" on the log.²⁵ [REDACTED]

²³ The times from the station video are incorrect. Correct times were obtained by comparing the station video to the CD time stamp of the rescue ambulance request that was made. This narrative uses the adjusted times determined to be correct by LAPD investigators.

²⁴ There is no video depicting the inside of the holding cell.

²⁵ [REDACTED]

[REDACTED]²⁶ [REDACTED]
[REDACTED] Brown is seen on the video exiting the cell at 11:50 p.m., and appears to complete the adult detention sign-in log.²⁷ At 11:51 p.m., Roberts, Winger and Ward exit the cell and close the door.

Once outside the cell, Brown continued to monitor Azucena's behavior. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁸ [REDACTED] After approximately a minute and a half, Brown entered the watch commander's office.²⁹

Once in his office, Brown made a broadcast requesting to speak to one of the supervisors who was at the scene of the foot pursuit. This broadcast was made at 11:53 p.m. White responded within 30 seconds. Brown inquired about what happened in the field, to gather information to determine if a Rescue Ambulance (RA) was needed.

At 11:53 p.m., Officers Darcy Cornwell and Anthony Ariaz arrived at the station with De La Fuente. De La Fuente was placed on a bench, and later inside Holding Cell No. 2. Brown was advised of the arrestee, completed the adult detention log and briefly monitored Azucena before returning to his office.

At 11:58 p.m., Brown returned to monitor Azucena with Officer Robin Simmons. Simmons used her flashlight and illuminated the holding cell. Brown noticed that Azucena's breathing had become shallow. Simmons could see Azucena's chest moving, and that he was breathing. At 11:59 p.m., Brown left the cell and returned to his office. Cornwell then looked into the cell and noticed that Azucena's pants were lowered to his knees, and he was lifting up his shirt as if to remove it. Brown returned to the holding cell approximately 20 seconds after having left. Simmons and Cornwell were monitoring Azucena. [REDACTED]

[REDACTED] Simmons told Cornwell that Azucena did not look well. Cornwell observed Azucena on his back with his hands up, palms open and fingers cupped. Azucena's eyes were blinking, but his eyelids appeared stiff. Azucena appeared rigid. Brown told Cornwell to request an RA. At 12:00 a.m.,

²⁶ Roberts' and Winger's microphones did not pick up Brown's questions to Azucena. During this time period, there are portions of inaudible noises and static.

²⁷ The log also indicates it was completed at 11:50 p.m.

²⁸ Video of Azucena in the hallway prior to entering the cell shows him wearing a sweatshirt and trousers. When he is later taken out of the cell by paramedics, he is not wearing either article of clothing. The sweatshirt and pants were not cut or removed by paramedics.

²⁹ The holding cell contained a large window which faced the hallway and the watch commander's office, [REDACTED]

Cornwell broadcast for an RA. She described Azucena as “a male, approximately 25 years of age, conscious and breathing, suffering from a possible overdose.” Brown continued monitoring Azucena and observed that he was on the floor on his back either passed out or sleeping. Azucena appeared to be breathing.

At 12:03 a.m., Brown and Ward entered the holding tank to check on Azucena’s condition. [REDACTED]

[REDACTED] At 12:04 a.m., Simmons became concerned about whether Azucena was breathing because his eyes were partially open and his body appeared rigid. Simmons directed Officer Jake Choi to update the RA request to indicate, “Person is not breathing, unconscious.” [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

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At 12:09 a.m., Los Angeles Fire Department (LAFD) Engine No. 46 and RA No. 34 arrived on scene and began providing emergency medical treatment to Azucena.³¹ At 12:36 a.m., the RA left Southwest station and transported Azucena to Good Samaritan Hospital. The paramedics arrived at the hospital at 12:47 a.m. Azucena was pronounced dead by Dr. Vladimir Ayvazyan at 3:33 a.m.

An autopsy was conducted, and Deputy Medical Examiner Ogbonna Chinwah, M.D. determined the cause of death was “probable asthma” with a contributing condition of “methamphetamine effect.”³² Dr. Chinwah determined the manner of death was accidental.

On September 25, 2014, Detectives Forsman and Grabiak along with Deputy District Attorney Ann Marie Wise met with Dr. Chinwah to clarify what caused Azucena’s death and whether earlier medical intervention would have prevented his death. Dr. Chinwah indicated he was not qualified to render an opinion as to whether or not earlier medical intervention would have prevented Azucena’s death. When asked about the ruling of “probable asthma” as the cause of death, Dr. Chinwah indicated there were no physical signs of any chronic asthma condition found during the autopsy. Dr. Chinwah stated he attributed the cause of death to an acute asthma incident based upon Azucena’s statement to officers that he had asthma. Dr. Chinwah did not have the paramedics’ report or the medical records from Good Samaritan Hospital when he prepared the autopsy report.

³⁰ LAPD Policy does not require officers to personally provide first aid or medical treatment.

³¹ The time between when Azucena was taken into custody at 4045 Ursula Avenue and LAFD personnel’s arrival at Southwest Station was approximately 39 minutes.

³² Toxicology analysis done in conjunction with the autopsy revealed that Azucena had methamphetamine, amphetamine and marijuana in his system at the time of his death. Additionally, Delmy Fuentes, Azucena’s wife, told LAPD investigators that Azucena suffered from bronchitis and smoked marijuana, as well as having taken pain medication. Fuentes also advised Los Angeles County Department of Coroner’s Lieutenant Fred Corral that Azucena had a history of methamphetamine, marijuana and alcohol abuse. Juana Flores, Azucena’s mother, advised LAPD investigators that her son smoked marijuana and methamphetamine. Flores told investigators Azucena had lost a great deal of weight due to his methamphetamine use recently, and she had observed burn marks near his mouth.

Dr. Mark Brown, an emergency room doctor, was retained by the District Attorney's Office to provide an opinion regarding whether medical intervention at a sooner time could have prevented Azucena's death. Dr. Brown was provided all reports, audio recordings, video recordings, photographs, medical records pertaining to the incident and the autopsy report. After reviewing all of these items, Dr. Brown prepared a report.

Dr. Brown concluded that the evidence does not support Azucena having died from severe asthma exacerbation that led to respiratory failure. Dr. Brown indicated that such a process is visibly quite dramatic and unrelenting, and is not supported by the videos taken of Azucena on the date in question.

In his review of the medical records from Good Samaritan Hospital, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dr. Brown explained that people who are suffering from increased acidosis have an increased respiratory rate as their body attempts to clear excess CO2 from the blood. People in severe metabolic acidosis are breathing hard and feel out of breath even though their lungs are functioning normally. Their symptoms are often confusing to onlookers because they may be breathing quickly, but are able to speak and do not wheeze. They may complain that they cannot breathe, but do not appear to be having any difficulty doing so.

Dr. Brown further explained that metabolic acidosis forces potassium of the cells into the blood stream, increasing the serum potassium level. [REDACTED]
[REDACTED] severe and lethal cardiac arrhythmias occur.³⁴ These arrhythmias may produce intermittent symptoms.

According to Dr. Brown, Azucena's medical records are consistent with him [REDACTED]
[REDACTED] combined with alcohol, marijuana and methamphetamine in his system. [REDACTED]
[REDACTED] Rather, it appears the impact to his heart-rate caused his perception that he could not breathe.

Similarly, Dr. Brown found Azucena's behavior on the video consistent with him having suffered from these conditions. High on methamphetamine, alcohol and marijuana,

³³ Rhabdomyolysis is the breakdown of muscle tissue that releases damaging protein into the blood.
³⁴ Cardiac arrhythmia is an improper beating of the heart.

Azucena's adrenaline was surging from a high speed car chase followed by running for over four minutes prior to his capture. Azucena told officers he could not breathe, but the officers accurately assessed, based on his lack of symptoms, that his lungs were functioning properly. No one hears Azucena wheeze, and several note that he is able to yell loudly at the crowd.³⁵ The combination of Azucena having consumed methamphetamine and alcohol, with [REDACTED] is consistent with his being agitated, intermittently wobbly, having angry outbursts (such as banging his head on the window), feeling short of breath, sweating profusely and his erratic behavior once in custody (such as taking down his pants.)

Dr. Brown explained that both amphetamines and alcohol are arrhythmogenic, or irritating to the heart's electrical system. As such, they can produce rhythms that are unstable and can lead to death. Combined with Azucena's [REDACTED] [REDACTED] it produced a heart rhythm that was incompatible with producing blood flow, leading to eventual cardio-vascular collapse and death.

The treatment for Azucena's conditions would be rehydration. In this case, rapid infusion of four to five liters of saline as well as sodium bicarbonate. Both of these treatments were eventually used on Azucena, but neither were successful.

While theoretically such treatment could have prevented Azucena's death if administered early enough, such treatment would require that officers, and later paramedics and emergency room personnel, recognize Azucena's symptoms and know what treatment to provide. The paramedics and emergency room personnel in this case treated Azucena as if this was primarily a cardiac arrest, not a problem of [REDACTED] and hence did not give aggressive fluid resuscitation until nearly two hours into his resuscitation. The fact that trained medical personnel did not immediately recognize the nature of Azucena's ailment speaks to the confusing presentation of his symptoms.

In watching the videos, Dr. Brown opined that Azucena did not appear to be suffering from a serious medical condition, even to his trained eye.³⁶

Dr. Brown opined that even had medical treatment been provided immediately, it would be unlikely that Azucena's death could have been prevented. At the time of Azucena's arrest he was 30 minutes from what would ultimately prove to be a fatal cardiac arrest. By the time it was apparent Azucena was in medical distress it was too late for treatment to be effective.

³⁵ Asthma is a disease of the lungs where during an acute episode air is trapped inside the lungs, causing asthma sufferers to wheeze when they exhale. Asthma also limits a person's ability to speak during a severe episode. In Dr. Brown's opinion, Azucena's lung capacity as depicted in the videos is inconsistent with him having suffered from asthma.

³⁶ According to Southwest division training coordinator Brenda Hill, none of the involved officers or sergeants had any training in detecting heart arrhythmias or other heart conditions. Additionally, Sergeant Adam Loo, the LAPD teacher for CPR and First Aid curriculum indicated that the training given to LAPD officers and sergeants does not include any information on detecting issues such as those described by Dr. Brown.

LEGAL ANALYSIS

Penal Code §192 (b) – Involuntary Manslaughter: Failure to Perform a Legal Duty

To establish that the crime of involuntary manslaughter pursuant to Penal Code section 192(a) has been committed, the People must prove the following elements:

1. The defendant had a legal duty to the decedent;
2. The defendant failed to perform that legal duty;
3. The defendant's failure was criminally negligent; AND
4. The defendant's failure caused the death of the decedent.

Penal Code §192 (b); CALCRIM No. 582

A legal duty to render aid is imposed when a special relationship exists between the decedent and the defendant. *People v. Oliver* (1989) 210 Cal.App.3d 138, *People v. Montecino* (1944) 66 Cal.App.2d 85. Such a special relationship exists, and a duty is imposed, when a jailer takes custody of a suspect. *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231. This duty is codified in Government Code section 845.6.

Criminal negligence involves more than ordinary carelessness, inattention or mistake in judgment. A person acts with criminal negligence when:

1. He or she 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 that way would create such a risk. *CALCRIM No. 582*

Criminal negligence is defined as “so different from how 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.” *CALCRIM No. 582*

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. *CALCRIM No. 582*

Analysis:

Based upon Dr. Brown's expert opinion, the People cannot prove that the failure by the involved officers to summon medical help sooner was the cause of Azucena's death beyond a reasonable doubt. Given the objective symptoms displayed, it would not have been reasonable for the officers to have known that Azucena was suffering from a life-threatening ailment. Dr. Brown's opinion is consistent with the statements given by ■

■ of the officers who came into contact with Azucena at the scene of his arrest and all 19 non-officer witnesses who were interviewed from that location. While several described Azucena as sweating or complaining of an inability to breathe, no one present at the location stated that they believed he was actually in medical distress. Further, it took trained medical personnel two hours to properly diagnose and treat Azucena once they were summoned.

Although Azucena did state numerous times that he could not breathe, even if immediate medical treatment had been summoned it would be unlikely that Azucena's condition could have been properly addressed and treated by medical personnel given his symptoms. As such, the negligence or lack of action by the officers cannot be proven to be the cause of Azucena's death beyond a reasonable doubt.

CONCLUSION

Based upon the foregoing analysis, we decline to initiate criminal proceedings against Officers Roberts, Rocha, Garcia and Winger or Sergeants Richardson, White and Brown. We are closing our file and will take no further action in this matter.