



MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

MEMORANDUM

TO: Deputy Attorney General Stephen Schumaker

CC: File; Judge John J. Russo, Administrative Judge

FROM: Matthew J. Donahue, Special Prosecutions Section Chief

DATE: February 2, 2018

RE: **Questioned Death of Tanisha Anderson on November 13, 2014**

This memo summarizes the involvement of the Attorney General’s Office (AGO) Special Prosecutions Section as Special Prosecutor in the questioned death of Tanisha Anderson on November 13, 2014. On February 2, 2018, “No Bill” notifications were filed with the clerk of courts. The Grand Jury declined to issue any indictments. As with any grand jury decision, such a decision is made regarding potential criminal liability and should not be interpreted as an endorsement, rejection, approval, or disapproval of actions or inactions by any person. The role of the Special Prosecutor was only focused on alleged conduct that potentially violated Ohio criminal law.

Tanisha Anderson’s death was tragic, and the investigation that followed was unnecessarily constrained by legal complications that, quite frankly, should not have ever happened¹. By the time the investigative file reached the Attorney General’s Office, two years and eight days after Ms. Anderson’s death, there was much work to be done before the case could move forward. And there was only so much that could be done because of what had (or hadn’t) occurred in the past. Never before has the Special Prosecutions Section² been presented with such a complicated legal mess.

The role of the Special Prosecutor in this case was to review alleged conduct that potentially violated Ohio criminal law. In addition, the Special Prosecutor was to present the facts of the case to a Cuyahoga County grand jury and prosecute the case if the grand jury returned criminal charges related to officers’ actions.³ The final decision of charging or not charging a crime(s) was solely within the power of the grand jury. The Special Prosecutor did not

¹ The Cuyahoga County Sheriff’s Department should be commended for their dedication and effort in this difficult matter.

² Special Prosecutions became a section on July 1, 2013.

³ It is the practice of the Ohio Attorney General’s Office that deaths involving law enforcement officers are presented to a grand jury.

focus on potential violations of local law enforcement policies. In addition, civil liability was not reviewed.

In this memo, we summarize how the AGO Special Prosecutions Section became involved in this case, the facts surrounding it, and the complicated legal issues that plagued it.

It is recommended that documents and recordings mentioned in this summary and attachments be read, viewed, or listened to in order to obtain a more complete understanding of this matter.

Brief Factual Circumstances⁴:

Tanisha Anderson was a 37-year-old female, who lived at 1374 Ansel Road in Cleveland, Ohio. At the time of her death, she was 5 foot 6 inches tall and weighed 251 pounds. “The autopsy documents significant coronary artery narrowing with 70% to 80% of the left anterior descending coronary artery and 50% of the left circumflex coronary artery. Other significant findings included a history of diabetes mellitus, obesity, and bipolar disorder.”⁵ Ms. Anderson was also taking medications, particularly Resperidol/risperidone. Records obtained by the Cuyahoga County Sheriff’s Department show that Ms. Anderson had been involuntarily admitted to Windsor Laurelwood Center for Behavioral Medicine on July 30, 2014, and discharged on September 3, 2014. Ms. Anderson was again involuntarily admitted on September 10, 2014, and was discharged on October 31, 2014.

On November 12, 2014, at 20:12, Ms. Anderson’s brother, Joell Anderson, called 911. Joell Anderson requested law enforcement help, indicating Ms. Anderson would not calm down, was belligerent, and family members were afraid.⁶ A voice understood to be Ms. Anderson’s said, “I’m not fighting with you.” Joell Anderson responded, “You’re not going to fight with the police when they get here either.”

The Cleveland Police Department dispatched Officers Tony Muniz and Stephen McGrath, who arrived at 21:31 in Zone Car 338. At the time, Officer Muniz was the Field Training Officer (FTO) for Officer McGrath, who was in his probationary training period. After speaking with Ms. Anderson and others at the home, Officers Muniz and McGrath concluded the situation was stable, so they left at 21:59.

At 22:46, Theresa Overton, Joell Anderson’s fiancé, made another 911 call for help at the same residence. At 22:51, Cleveland Police Officers Scott Aldridge and Bryan Myers arrived at the scene. Myers was in his probationary training period.

⁴ Please see Attachments A and D for additional details and witness statements. However, as different witnesses gave differing accounts of the events, this section serves as an overview of undisputed facts. Disputed facts are so noted.

⁵ See Attachment B.

⁶ See Attachments A and D.

Witnesses agree that Officers Aldridge and Myers were let into the Ansel Road home, and after some discussion, Ms. Anderson agreed to voluntarily go to the hospital.

At this point, versions of what happened next differ.

While in the back seat of the cruiser, Ms. Anderson became upset. Witnesses attribute this to different causes. Her brother, Joell Anderson, believed that it was because (at least in part) the back of the police car was too constrictive. Officers Aldridge and Myers believed (at least in part) that it was due to Joell Anderson yelling at Ms. Anderson that she was going to jail, an incorrect statement. It is disputed that Joell Anderson yelled at Ms. Anderson.

An interaction between the officers and Ms. Anderson occurred, which ultimately resulted in her ending up on the ground, in handcuffs, for some period of time.

As stated above, witnesses have differing assertions and/or beliefs about what exactly happened and why.

During the time Ms. Anderson was on the ground, Officers Aldridge and Myers claimed that Joell Anderson told them she was “fake sleeping.” Witness Andrew Conrad indicated that Officers Aldridge and Myers were the ones to claim she was “sleeping.”

Officers Aldridge and Myers called their supervisor, Cleveland Police Sergeant Rochelle Bottone. Sgt. Bottone arrived at some point, which is not documented, and EMS was called for.

Cuyahoga County Sheriff’s Department investigators estimate that Ms. Anderson was handcuffed on the ground for at least 21 minutes.⁷ This time estimation is, in part, based upon the time a Taser was armed during the struggle.⁸ (It is undisputed that the Taser was armed sometime during the struggle; however, as there were no body cameras capturing the incident, the Taser being armed is a significant marker on the timeline.) This time estimation is consistent with civilian witness statements but is not consistent with the Officers’ statements.

The timeline is as follows⁹:

- The Taser was armed at 23:17:24 and rendered safe at 23:17:43 (it was not deployed);
- 23:20 Radio requested Supervisor;
- 23:21 Supervisor asked for location;
- 23:22 Supervisor was en route;

⁷ See Attachment A.

⁸ Please note that previous Special Prosecutions cases have demonstrated the accuracy of a Taser’s internal clock can vary however investigators believe the internal clock to be accurate in this case.

⁹ Please note that the times are taken from more than one source and while not synced with each other should be understood to be close approximations.

- 23:34 EMS was requested;
- 23:41 EMS arrived;
- 00:30 (November 13) Anderson pronounced dead.

Most witnesses agreed the handcuffs were taken off of Ms. Anderson when EMS arrived. EMS personnel administered emergency medical treatment. Ms. Anderson was taken to the Cleveland Clinic Emergency Department, where she was pronounced dead at 00:30 on November 13.

An investigation by Cleveland Police Department's Use of Deadly Force Team began as a result of Ms. Anderson's death. More than seven months later, on June 19, 2015, the investigation was taken over by the Cuyahoga County Sheriff's Department, at the direction of then Cuyahoga County Prosecutor, Timothy J. McGinty. The reasons for this are not explicitly stated in records available to the Special Prosecutor. However, when the Cuyahoga County Sheriff's Department completed its investigation and handed the file to the Cuyahoga County Prosecutor's Office in February of 2016, it was immediately recognized the file was contaminated with "*Garrity* material."¹⁰ See *Garrity v. New Jersey*, 385 U.S. 493 (1967).

***Garrity* Material in the Anderson case:**

On February 16, 2016, the Cuyahoga County Prosecutor's Office officially recused itself from the Anderson case, asking the Cuyahoga County Common Pleas Court to appoint the AGO Special Prosecutions Section as the Special Prosecutor in the case. The file contained "*Garrity*" material which cannot be disseminated to the prosecuting attorney, so appointing a special prosecutor who had not been exposed to the file or the *Garrity* material would allow this investigation to move forward. ¹¹

Before the investigative file could be transferred to the AGO Special Prosecutions Section, the *Garrity* material had to be removed from the file. So, on February 26, 2016, the AGO Special Prosecutor filed a motion formally requesting a "taint reviewer" be appointed by the Cuyahoga County Common Pleas Court. A taint reviewer is someone who looks at a file and removes any *Garrity* material.

Though unknown to the AGO Special Prosecutions Section at the time of the request for a taint reviewer, the Cuyahoga County Prosecutor's Office (via their own internal process) had, on at least two occasions, conducted a taint review to attempt to prevent any *Garrity* material from being in the file.

¹⁰ In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the U.S. Supreme Court held that state employees were protected by the Fifth Amendment right when interviewed by their employers. Accordingly, "*Garrity* material" refers to statements made by public employees as part of an investigatory interview by an employer. These statements cannot be used in any subsequent criminal investigations.

¹¹ *Id.*

The Cuyahoga Common Pleas Court granted the AGO's request on March 22, 2016, and appointed retired Judge Thomas Pokorny to review the file for *Garrity* material on April 8, 2016. Judge Thomas Pokorny recused himself on May 20, 2016.

On May 20, 2016, retired Judge Joseph Gibson was appointed to complete the review. On September 30, 2016, as a result of Judge Gibson's work, the Court issued an order removing the Cuyahoga County Medical Examiner's documentation of "cause of death" and "verdict of death" from the Anderson case file. That cleared the way for the file to be sent to the AGO Special Prosecutions Section. The AGO Special Prosecutions Section received the redacted case file from the Cuyahoga County Common Pleas Court on November 21, 2016

In this case, the AGO Special Prosecutions Section didn't have and was not allowed to see or use any of the information from the *Garrity* material. Never had the Special Prosecutions Section had a "questioned death" investigation in which we were not allowed to see the "cause of death" and "verdict of death" or to call as a witness the medical examiner.

Throughout the taint review and Grand Jury investigative process, a "wall" was erected to prevent the AGO Special Prosecutions section from improperly communicating with any investigators from the Cuyahoga County Sheriff's Department, Cuyahoga County Medical Examiner's staff, investigators or command staff from Cleveland Police Department, and prosecutors with the Cuyahoga County Prosecutor's Office regarding this matter.

Though stripped of the Cuyahoga County Medical Examiner's cause and manner of death, the case file contained enough investigative work product from the Cuyahoga County Sheriff's Office to avoid another full investigation into the incidents of November 12 and 13, 2014. Nonetheless, additional investigative work needed to be done, including interviewing witnesses, finding an independent coroner to review the file, and additional legal analysis and fact-finding.

On February 8, 2017, the Montgomery County Coroner, Dr. Kent Harshbarger, M.D., J.D., M.B.A., agreed to review the case and determine – if possible – a cause of death and manner of death.

In September 2017, the AGO Special Prosecutions Section began presenting facts to a Cuyahoga County Grand Jury, work that extended over multiple sessions.

The *Garrity* issue created the most legally difficult and complex incidents involving a death in police custody that the AGO Special Prosecutions Section has ever faced.

***Garrity* Legal Background:**

Garrity takes its name from a United States Supreme Court case, *Garrity v. New Jersey*. In *Garrity*, the United States Supreme Court held that because a public

employee is employed by the government, any statement that the employee is *forced* to give triggers constitutional considerations of the employee's right against self-incrimination.¹² This right against self-incrimination is violated if a compelled statement in an internal investigation is then used in a criminal investigation.¹³ The U.S. Supreme Court stated, "The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. . . The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances."¹⁴ As a result, prosecutors generally are careful not to talk to anybody who has knowledge of *Garrity* material about the material, and they certainly can't see it or discuss it. If a prosecutor doesn't do this, a criminal case would almost certainly be thrown out.

Since *Garrity* has been in place for more than fifty years, most law enforcement agencies have policies and procedures in place to prevent and mitigate *Garrity* issues. These policies and procedures should not only be in place but also be strictly followed. Generally, law enforcement agencies have two options: conduct an administrative investigation only after a criminal investigation is concluded – OR – do both at the same time as long as there is a strict separation of investigators, command staff, and information sharing.¹⁵ Failure to abide by proper *Garrity* procedures creates unnecessary delay in the legal process.

¹² *Garrity*, 385 U.S. at 500.

¹³ In 2010, the Ohio Supreme Court reaffirmed *Garrity* in *State v. Jackson*, 125 Ohio St.3d 218, Syl., holding that a State prosecutor or State criminal investigator must not make direct or derivative use of *Garrity* material. See also *State v. Graham*, 136 Ohio St.3d 125 (2013). The Ohio Supreme Court gave specific examples of situations of derivative use of a *Garrity* statement, including: a prosecutor presents to the grand jury testimony from a witness to a *Garrity* statement; when the prosecutor reviews a *Garrity* statement in preparation for trial; when a prosecutor merely has possession of a *Garrity* statement. *Id.* at 223-224, 228.

In short, the Ohio Supreme Court has been very clear that when the State fails to prove that it did not make any use of a *Garrity* statement in obtaining an indictment, the remedy is that the indictment must be dismissed. Further in the 6th Circuit U.S. Court of Appeals, of which Ohio is a part, there is also potential civil liability against prosecutors and investigators for violating the targeted public employee's federal civil rights if use of a *Garrity* statement is made in a criminal matter. *McKinley v. Mansfield*, 404 F.3d 418, 436-439 (6th Cir. 2005).

¹⁴ *Garrity*, 385 U.S. at 499-500 (quoting *Slochower v. Board of Education*, 350 U.S. 551, 557-558 (1956)).

¹⁵ Indeed the Ohio Supreme Court specifically noted in *Jackson*:

"The state has argued that when a police department assigns the same person to both the criminal investigation and the internal investigation (which it claims is often necessary in small departments), our holding that the state makes derivative use of a *Garrity* statement when the prosecutor presents testimony to the grand jury from a *Garrity-statement* witness requires the department to choose between a criminal prosecution and an internal investigation. However, a police department can always assign the internal investigation of a police officer to an officer who has not taken part in and will not take part in the criminal investigation. In the alternative, a police department can simply wait until the conclusion of criminal proceedings before conducting an internal investigation."

Jackson, at 225.

In the Anderson matter, it remains unclear how the *Garrity* material ended up in investigative case file originally. It is clear that the Cleveland Police Department started the investigation of its own officers, and their investigation was tainted with *Garrity* material at the time Cuyahoga County Sheriff's Department took over in June 2015.¹⁶

It appears that the Cuyahoga County Prosecutor's Office and Cuyahoga County Sheriff's Department attempted to prevent any *Garrity* material from being injected into the file.¹⁷ Despite these efforts, the file became impermissibly contaminated. Because the Cuyahoga County Prosecutor's Office had seen the file, prosecutors could no longer – legally – be part of the criminal case. That led to the AGO Special Prosecutions Section becoming involved.

Limitations:

The *Garrity* contamination and the problems that it caused cannot be overstated. The Cuyahoga County Medical Examiner Office's "cause of death" and "verdict of death" were excluded for use in the criminal case. In fact, this situation is so unusual that Dr. Claus Peter Speth, calling on behalf of the National Association of Medical Examiners, reached out to me to express concern about the fact that the cause and manner of death were excluded from the Medical Examiner's report in this case due to *Garrity* material.

The *Garrity* contamination created extreme delay in this case.

The *Garrity* contamination also deprived AGO Special Prosecutors of critical information. All information and perspective on the case came from the case file and any additional work in the form of interviewing or re-interviewing witnesses.

The Special Prosecutions Section was also limited because of the late involvement in this case. AGO Special Prosecutors officially received the investigative file more than two years after Ms. Anderson's death and after at least two criminal investigations had been started. We believe a third—an administration investigation— had also been started. That late involvement meant many prior actions and decisions were made in the investigation without input from the AGO Special Prosecutors in the criminal case, which is a major impediment in this kind of legal matter.

Cooperation by witnesses in the Cuyahoga County Sheriff's Department investigation was an additional limiting factor. As discussed in the Cuyahoga County Sheriff's Department investigation summary,¹⁸ several witnesses either refused, delayed, or were unable to be interviewed by the Cuyahoga County Sheriff's Office. These witnesses

¹⁶ Attachment A

¹⁷ Attachment A.

¹⁸ *See Id.*

included Cleveland Police Department Duty Supervisor Sgt. Rochelle Bottone and Anderson family witnesses.¹⁹ This required additional efforts by the Special Prosecutions Section to attempt to determine if these witnesses could add value to the fact-gathering portion of this case.

As with any matter, the passage of time played a role. This incident occurred on November 12 and 13, 2014. As an example, in an interview on September 10, 2015, nearly 10 months after this incident occurred, a witness who was a first responder, incorrectly recalled that Officers Meyers and Aldridge were both African-American. In fact, Officer Aldridge is African-American and Officer Meyers is Caucasian.

Special Prosecutions Procedural Process: Interaction with the family and attorneys for Ms. Anderson

After being appointed in the case, Prosecutors with the AGO Special Prosecutions Section immediately reached out to Ms. Anderson's family attorney (a civil law suit was ongoing at the time but was settled on February 6, 2017) to introduce ourselves and explain our role in the legal process.

We met in person on March 27, 2016, at the family home where the incident happened. AGO Special Prosecutions Assistant Chief Angela Canepa and I attended the meeting with an Ohio Attorney General Bureau of Criminal Investigation (BCI) Special Agent for more than an hour.²⁰ This allowed us to see the physical location in which the events leading to Ms. Anderson's death occurred.

In the fall of 2016, I met with family attorneys, along with Assistant Attorney General Robert Fiatal (now retired).

On April 27, 2017, there was another family meeting at 615 West Superior Avenue in Cleveland, during which I— along with a BCI Special Agent—answered questions with family members and one of their attorneys for more than an hour.

In addition to these meetings, there were many phone calls among family members, their attorneys, and AGO Special Prosecutors.

Coroner's report:

Dr. Harshbarger's report²¹ is based upon the information available. Dr. Harshbarger found that Ms. Anderson death was as a result of the arteriosclerotic cardiovascular disease. As Dr. Harshbarger explains Ms. Anderson had a significantly compromised cardiac system (significant coronary artery narrowing with 70% to 80% of the left anterior descending coronary artery and 50% of the left circumflex coronary artery), was

¹⁹ Attachments A and C.

²⁰ The Agent was present due to policy considerations and not for investigative purposes.

²¹ See Attachment B.

on prescribed medication (Risperidol/risperidone) that increased her risk of a cardiac event, and was in circumstances just prior to her death that could trigger a cardiac event.

Dr. Harshbarger noted that “the autopsy did not show significant injuries.” He noted “a central anterior chest abrasion with underlying contusion and sternal fracture” which was “consistent with chest compressions being done as part of resuscitative efforts” which were “documented in the medical record by EMS.” Regarding the issue of whether Ms. Anderson’s injuries were associated with being restrained and whether she was asphyxiated, Dr. Harshbarger wrote, “the decedent was able to speak/scream out during a prolonged period of time at the beginning of the process such that air was being moved in and out” and “it would appear no significant chest compromise was occurring and the sudden collapse is more consistent with a cardiac event.”

Dr. Harshbarger’s report should be read in its entirety.

Conclusion:

The AGO Special Prosecutors conducted a professional and thorough review of all evidence that was legally permissible to view and obtained an outside medical expert to render a critical opinion of cause and manner of death. However, the final charging decision in this matter was up to the Grand Jury of Cuyahoga County to determine. As with any Grand Jury decision, such a decision is made with an eye towards criminal liability and should not be interpreted as an endorsement, rejection, approval, or disapproval of actions or inactions by any person.

The death of Tanisha Anderson is tragic.

The investigation by the AGO Special Prosecutions Section was made more difficult by *Garrity* issues, that could have been avoided if proper care had been exercised.

It is my strong recommendation that the *Garrity* issue in this matter be examined, understood, and prevented from ever happening again.