

ATTORNEY GENERAL'S REPORT OF INVESTIGATION

In re Fernando Ornelas

On October 17, 2013, Fernando Ornelas (Ornelas) was transported from the Valley Street Jail (VSJ) to Elliott Hospital where it was determined that he was suffering from a dislocated fracture of the cervical spine resulting in paralysis. The previous evening, Mr. Ornelas had assaulted a security officer at Elliott Hospital, resulting in injuries to both Ornelas and the officer. After being medically cleared at the hospital, Ornelas was transported to the Manchester Police Department (MPD) for booking and then to VSJ where he was incarcerated over night.

The Attorney General and Hillsborough County Attorney called for an investigation of the circumstances leading to Ornelas's injury. Because Manchester police officers had some involvement with Ornelas over the course of the evening, it was decided that the investigative team should include a member from outside that department. State Police Sergeant Fred Lulka led the investigation and was assisted by Manchester Police Detective Sergeant Ryan Grant.

The investigators conducted interviews of all VSJ staff who had any contact with Ornelas over the course of his incarceration, inmates on Ornelas's unit at VSJ, the Manchester officers involved in transporting and booking Ornelas at the MPD and Elliott hospital staff. The investigators also obtained the video footage at the Manchester Police Department, which spanned the period from Ornelas' entry into the building, through the booking process, to his departure from the department – and video footage at the jail, to include the intake process, his entry onto Unit B, and the area directly outside his cell throughout his entire stay. They also obtained Ornelas's medical records from the Elliott Hospital.

A review of the information and other evidence gathered during the investigation has led to the conclusion that Ornelas's injuries were not the result of criminal conduct. While Ornelas was subjected to physical force both at the hospital and at the Valley Street Jail, that force was justified under the circumstances. In addition, the medical records reveal that Ornelas suffers from a medical condition which makes him far more susceptible to spinal fractures, even from trivial trauma, which may not become symptomatic for days. As a result, the timing and cause of his injuries cannot be established with any certainty. A summary of the events follows.

Ornelas was involved in a single car accident on October 16, 2014. Because Ornelas was acting oddly at the scene, the responding officer contacted Ornelas's sister, who ultimately brought him to the Elliott Hospital for evaluation. It was determined that he would be transferred to the New Hampshire Hospital. He was placed on the Psychiatric Evaluation Program Unit (PEP) pending transfer. At approximately 7:15 p.m. on October 16th, Security Officer Lawrence Bolduc was in the hallway of the PEP trying to direct Ornelas back to his room when Ornelas grabbed Bolduc's shirt, tried to pull him down, and punched him several times in the face. Bolduc grabbed his arms and tried to take him to the ground while radioing for help. Ornelas grabbed the radio and tried to pull it away, while continuing to punch Bolduc. In the meantime, an LNA in the PEP called security asking for help. At that point, Bolduc sprayed Ornelas with Oleo Capsicum (OC) spray. That did not subdue Ornelas, who continued to punch and struggle with Bolduc. At one point, he grabbed Bolduc's face and dug his fingers into Bolduc's eyes. Because no back-up had

arrived by that point, Bolduc punched and elbowed Ornelas in an attempt to defend himself. One of the strikes resulted in a cut under Ornelas's eye.

Three hospital security officers responded to the unit, where they saw Bolduc and Ornelas engaged in a struggle on the floor. They intervened and, with the assistance of an MPD officer who also responded, they were able to gain control of Ornelas's arms and legs so that he could be handcuffed and restrained.

After the situation was brought under control, Ornelas was taken to the emergency department for medical assessment and treatment. A CT scan was done of his brain and face, which included a scan down to the first two cervical vertebrae (C1 and C2). A clinical exam of the neck was normal and he denied any neck pain. The emergency department staff cleared Ornelas for release to police custody.

Ornelas was taken to the MPD via the transport wagon. He had no apparent difficulty getting into or out of the vehicle. He was cooperative throughout the transport process.

Once at the MPD he was taken through the booking process, after which he was placed in a holding cell to await transport to the jail. He was at the department for slightly over an hour, during which time he was consistently on videotape. Ornelas was cooperative throughout the process, although he said that he was not sure why he was there. He told one of the booking officers that his neck was sore. While he was alone in the holding cell, he can be seen on the videotape repeatedly palpating the back of his neck and his chest with his fingers.

At approximately 12:15 am on October 17th, Ornelas was transported to the VSJ, where he was processed and placed in a cell on Unit B. As part of the intake process, Ornelas was seen by a nurse, who reviewed his medical history, took his vitals and cleaned up his facial injuries. At that point, Ornelas complained that his neck hurt. He was cooperative throughout the intake process, but appeared slightly unsteady on his feet.

At approximately 2:30 am, the nurse went to his cell to reassess him, bring him some ice for his eye and offer him some Tylenol. Ornelas told her that his neck hurt. When asked if he could turn his head, Ornelas said "no" but also shook his head. The nurse held out two fingers and asked him to squeeze one with each hand, to assess whether he had equal strength on both sides of his body. He did as requested, but complained that it hurt his neck. The nurse noted that his strength was unequal.

At approximately 5:30 am, a correctional officer observed Ornelas dipping his pillow in the toilet and spreading water on the cell floor. When told to stop, Ornelas said "f*** you", charged the door and head butted it twice. A supervisor was called to the cell, who tried to calm Ornelas down. Ornelas responded by punching and head butting the cell door, and screaming obscenities. He removed his smock and used it to spread more water in the cell. At that point, it was decided that Ornelas would have to be extracted from the cell and placed in a restraint chair. Additional staff were called and briefed on the situation. A nurse was called to standby to do a medical assessment and one of the correctional officers was given a video camera to film the extraction. (The camera malfunctioned so only a very small portion of the process was actually

filmed). The sergeant ordered Ornelas to come to the door, face the wall, kneel down and place his hands behind his back so they could enter and handcuff him. Ornelas responded with obscenities. The sergeant had the cell door opened, sprayed Ornelas with one burst of OC spray and closed the door. Ornelas continued to refuse to comply and tried to block the cell window with a blanket and smock. This process was repeated twice more, each time the OC spray was ineffective in subduing Ornelas or lessening his resistance. The sergeant ordered several officers to go into the cell and physically restrain Ornelas. As they entered, Ornelas jumped on the bunk and punched and kicked at the officers. With additional help, Ornelas was brought to the ground, but continued to fight. The officers were finally able to put hand and leg restraints on him, and pulled him to a standing position. They escorted him to the shower to wash off the OC spray, during which he continued to physically resist. He was returned to an adjacent cell, where he was placed in a restraint chair with his hands handcuffed behind his back. One officer held his legs and one officer placed a hand on each side of his head to control movement, while a third officer secured the restraint straps across his chest and legs.

The correctional staff checked Ornelas every 15 minutes from 5:45 am on, until he was taken to the hospital. With the exception of one instance, the checks were consistently conducted with at least two staff people present.

Once Ornelas was secured in the restraint chair, the nurse was brought in to assess him. Her assessment included a check of his pulse, pupils, facial injuries, and his ability to move his extremities. Ornelas was cooperative and talking with her. She did a similar assessment at 6:45 and found no significant changes in his condition. At approximately 7:30, Ornelas appeared less alert and somewhat incoherent. Medical staff checked him again at 8:25, at which time he was less responsive and his pupils were less reactive to light. They returned at 8:45 and found him to be unresponsive, his pupils were not at all reactive to light, and he was getting cool to the touch. Attempts to revive him using smelling salts and a sternal rub were both unsuccessful. At that point, the director of medical service had the staff uncuff him. When they did so, Ornelas slumped forward. A determination was made that he needed hospitalization so 911 was called.

Upon his arrival at the Elliott, a CT scan was done which revealed a fracture through the disc space at the C4-C5 level of the spine. The CT also revealed findings consistent with an existing medical condition that results in higher susceptibility to spinal fractures with minor trauma.

Legal Analysis

In determining whether Mr. Ornelas's injuries were the result of criminal action, the following charges were considered:

- RSA 631:1, I(a) - First Degree Assault: Purposely causing serious bodily injury to another
- RSA 631:2, I(a) - Second Degree Assault: Knowingly or recklessly causing serious bodily injury to another
- RSA 631:2-a, I(b) – Simple Assault: Recklessly causing bodily injury to another.

In order to bring any one of these charges, it would be necessary to identify the acts of a specific person or persons who caused the injury. That cannot be done. As described above, the cervical fracture manifested itself while Ornelas was restrained in a chair at the jail. In the 24 hours prior to that, he had been in two altercations, had repeatedly hit his head on the metal cell door, and had been in a car accident. Given his medical condition, any one of those incidents could have caused the fracture or resulted in the dislocation of a previously undiagnosed fracture.

However, even assuming Ornelas sustained the fracture during the altercation with Officer Bolduc or the altercation with the correctional officers at VSJ, the officers' use of force against Ornelas was justified. RSA 627:4, I provides that "a person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose." Officer Bolduc was acting in self defense when he punched Ornelas. The VSJ correctional officers made the decision to restrain Ornelas for his own protection after he repeatedly head-butted the door. When they attempted to do so, Ornelas fought back, necessitating that they use force to restrain him.

For the reasons discussed above, no criminal charges will be forthcoming in this matter.