



George Gascón
District Attorney

October 24, 2017

Chief William Scott
San Francisco Police Department
1245 3rd Street, 6th Floor
San Francisco, CA 94158

Re: *In re* Marvin Day
SFPD Incident No. 150564114

Dear Chief Scott:

The Independent Investigations Bureau (IIB) has completed its review of Marvin Day's death on July 2, 2015, after he had been transferred to medical personnel from the custody of the San Francisco Police Department (SFPD). After a thorough review of the available evidence, we have concluded there is no evidence of criminal misconduct by any officer, including Officers Eric Kuk (Star No. 2169) and James Puccinelli (Star No. 1894). Accordingly, the District Attorney declines to file criminal charges against any of the officers involved in the incident.

The Independent Investigations Bureau focused exclusively on the question of whether the involved officers committed a crime. The Independent Investigations Bureau did not examine collateral issues such as whether the officers complied with internal SFPD policies and procedures, received adequate training, used competent tactics, or any other issues that may give rise to civil liability. This report should not be interpreted as expressing any opinions on non-criminal matters.

In brief, Officers Kuk and Puccinelli detained Day outside of the Neiman Marcus Department Store located at 150 Stockton Street, on suspicion of shoplifting and fighting with store loss prevention personnel. Day was sweaty, complained of shortness of breath and appeared fatigued, but was alert and verbally defiant with the officers. The loss prevention personnel confirmed he was the suspect, so the officers attempted to walk him to their patrol car. Day collapsed, however, before getting there. Officer Puccinelli requested an ambulance and Officer Kuk monitored Day until he could not find a pulse and it appeared Day had stopped breathing. The officers then performed cardiopulmonary resuscitation (CPR) until paramedics arrived and relieved them.

Day was transported to the California Pacific Medical Center (CPMC) Pacific Campus Emergency Department, [REDACTED] Redacted Medical Information

[REDACTED] Redacted Medical Care Information Day died on July 2, 2015. Autopsy and toxicology reports revealed the cause of death to be "acute methamphetamine toxicity" with contributing causes of an enlarged heart and severe atherosclerosis.

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Almost all of the events relevant to the officers' contact with Day were recorded by store surveillance cameras. Though the video was not date- or hour-stamped, the recording allows for a second-by-second analysis of the captured events. The following is a detailed summary of what happened. Unless specifically attributed to another source, the summary is based upon the surveillance video.

On June 28, 2015, at approximately 5:27 p.m., three loss prevention personnel from Neiman Marcus stopped Day as he was leaving the store. They suspected he had stolen sunglasses, based on a radio report from another employee who had been watching Day on the store's cameras. According to the employees, Day denied taking the glasses and, when one employee tried to take them out of Mr. Day's pocket, a physical altercation ensued.

The employees grappled with Day and Day tried to fight them off by backing away, struggling in their grasp, and throwing punches. One of the employees eventually succeeded in pulling the sunglasses from Day's pocket. The three men separated themselves from Day, ending the altercation. From the point in time when the employees contacted Day until separation, the altercation lasted approximately two minutes and 15 seconds.

While the altercation was still happening, the employee watching the surveillance cameras called 911. SFPD dispatched police units to a report of a "shoplifter fighting with security", and broadcast a suspect description, namely a black male, 45 years old, wearing a blue and gold beanie, Warriors shirt and white pants. This description matched Day's appearance (though he was actually 51 years old at the time).

Immediately after the altercation, the three employees went back to their office, leaving Day standing on the sidewalk with his hands on his hips. Day walked over to a newspaper vending machine and for several seconds rested his hands and arms on it, as if catching his breath. Day walked unsteadily around the corner to the Geary Street side of the Neiman Marcus store and sat down on the sidewalk for about 20 seconds. He got up and walked a few feet before stopping to bend over and put his hands on his knees. After a few seconds he walked slowly southbound for a few more feet, where he stopped and bent over again.

At this point, there is a gap in the video recording of approximately four seconds while the camera was being repositioned. During that gap in time, Officers Puccinelli and Kuk contacted Day, who they said was still standing bent over on the sidewalk. Officer Kuk said he told Day to put his hands behind his back. Officer Kuk said he intended to handcuff Day because he matched the suspect description. Both officers said Day refused to do as directed, so Officer Kuk took hold of Day's right hand. The officers said that, upon contact, Day went down to the sidewalk. The video recording shows Day lying on his left side, moving his body but not actively resisting the officers. Officer Kuk placed Day in flexcuffs without resistance from Day. Officer Kuk said Day complained of shortness of breath, so they let Day continue to lie on his side "in a position of recovery," and the video confirms they allowed him to do this.

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The officers noticed Day was sweating and appeared fatigued. Both officers attributed his condition to having just been in a fight. The loss prevention employees approached the officers and, according to all witnesses, positively identified Day. All of the witnesses said Day was verbally defiant at this point, saying he did not want to go to jail. Both officers believed Day was “passively resisting,” based on similar behavior they had seen with other detainees.

The officers helped Day stand up and walked him toward their patrol car, which was parked on the south side of Geary Street, just east of Stockton Street. According to Officer Kuk, Day said something along the lines of “I’m not going.” Day stopped walking before they could reach the car. The officers carried him by the arms for approximately 10-15 feet (with his feet dragging on the ground), then laid him down on the sidewalk.

The officers allowed Day to lie there for approximately 90 seconds. They raised Day to a sitting position, helped him stand up and walked him toward the patrol car. Day’s legs gave out on him as they reached the curb, however, so the officers laid him down on his back.

According to Officer Puccinelli, at that point he radioed a request for an ambulance “for precautionary reasons” because Day was “having trouble breathing.” The CAD log confirms he requested an ambulance “Code 2.” Both officers and the loss prevention employees said Day was at this point still conscious, breathing, and talking.

Day laid on his back, breathing with difficulty, for approximately 60 seconds. At that point in the video, it is unclear whether Day stopped breathing. Approximately 25 seconds later, Officer Kuk attempted to find Day’s carotid pulse. Officer Puccinelli radioed to upgrade the ambulance’s response to “Code 3” (confirmed by the CAD log). The officers moved Day so that he was lying supine on the sidewalk. Officer Kuk attempted to find a carotid pulse two more times, checked his mouth for breaths, and tried to get a response from Day by patting his chest. Day did not respond and appeared to be unconscious. Officer Kuk retrieved a CPR mask and placed it over Day’s face. Officer Puccinelli began chest compressions. The officers conducted CPR for approximately four minutes, until paramedics from the San Francisco Fire Department (SFFD) arrived and relieved them.

Less than five minutes and 30 seconds elapsed between the officers’ first contact with Day and Officer Puccinelli’s call for an ambulance (when Day collapsed at the curb). The officers began CPR less than three minutes and 30 seconds after Officer Puccinelli called for an ambulance.

According to the Medical Examiner’s report, the SFFD transported Day from the scene to the CPMC Pacific Campus Emergency Department. **Redacted Medical Care Information**

Redacted Medical Care Information

Redacted Medical Care After meeting with the attending physician, Day’s family elected to withdraw care.ⁱⁱ Day died on July 2, 2015.

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The San Francisco Medical Examiner's Office performed an autopsy and a toxicology analysis of blood taken from Day at the time he was admitted to the Emergency Department. The doctor who performed the autopsy, Chief Medical Examiner Michael Hunter, M.D., concluded Day's cause of death to be "acute methamphetamine toxicity" with the contributing factor of "atherosclerotic heart disease with cardiomegaly." Dr. Hunter found Day had an "enlarged 500-gram heart" and coronary arteries exhibiting "calcific atherosclerosis with 80% narrowing of the distal left main coronary artery . . . and up to 90% narrowing of the 1st diagonal branch." The toxicology report revealed Day had 3.6 mg/L of methamphetamine and 0.32 mg/L amphetamine in his blood on June 28, 2017. Dr. Hunter further noted that Day's body showed "[n]o signs of any external trauma or foul play."

Because Mr. Day's death stemmed from a clear drug overdose, with no evidence or other basis for alleging any improper use of force or other criminal conduct by the officers, criminal charges are unwarranted and we have decided to close this investigation. If you would like to discuss this matter further, or more evidence becomes available, please contact Andy Huang, IIB's Managing Attorney, at [REDACTED] to discuss this matter further.

Please do not hesitate to contact me if you have any questions. I thank you and your Department for your assistance in this matter.

Sincerely,



GEORGE GASCÓN
District Attorney