



George Gascón
District Attorney

April 10, 2019

Via Email and U.S. Mail

Sheriff Vicki L. Hennessy
San Francisco Sheriff's Department
25 Van Ness Avenue
San Francisco, CA 94102

Re: *In re Kyle Budner*
SFSD Incident #180-383-451

Dear Sheriff Hennessy:

The Independent Investigations Bureau (IIB) has completed its review of Kyle Budner's May 23, 2018 death while he was in the custody of the San Francisco Sheriff's Department (SFSD). Mr. Budner died at the San Francisco County Jail #2 in the housing area reserved for inmate "trustees." The available evidence indicates that Mr. Budner died of natural causes, and there is no evidence of criminal misconduct by any of the deputies involved in this incident, including Deputies Anthony Bryant, Star No. 834, Wendy Rodgers Wells, Star No. 1748, and Anthony Peppers, Star No. 1700. Accordingly, we decline to file criminal charges in this matter.

IIB focused exclusively on determining whether criminal charges relating to any deputy's conduct were warranted. This review did not examine collateral issues such as compliance with SFSD policies and procedures, training or tactics, or civil liability. The decision not to pursue criminal charges should not be interpreted as expressing any opinion on non-criminal matters.

On February 6, 2018, Mr. Budner was [REDACTED]. He was remanded to County Jail #2. On May 23, 2018, at approximately 7:45 a.m., a fellow inmate, Mr. R., tried to rouse Mr. Budner from his bed. The inmate found Mr. Budner unresponsive, stiff, and cold to the touch. Mr. R. notified Deputy Bryant, who responded to Mr. Budner's cell. According to Deputy Bryant, Mr. Budner was lying on his side, shirtless, and in the fetal position lying on top of his blankets.

Deputy Bryant pulled Mr. Budner from his bunk, placed him on the floor, and began chest compressions. Deputy Rodgers Well responded to Mr. Budner's bunk area and saw Deputy Bryant's efforts to render aid. The deputies called for a supervisor and for medical assistance. Additional deputies responded, as did a captain. Jail Medical Services staff arrived and took over chest compressions, applied a rescue breathing mask, and used an Automated Electronic Defibrillator. San Francisco Fire Department and Emergency Medical Technicians personnel responded to the jail and took over medical care. Ultimately, the efforts to revive Mr. Budner were unsuccessful, and Mr. Budner was declared dead at 8:17 a.m.

Page 2
April 10, 2019

Fluid, believed at the time to be blood, was observed on Mr. Budner's sheets and the wall beside his bunk. Fluid also drained from his nose, causing a red puddle on the floor beneath his bed. Deputy Bryant said the apparent bleeding occurred after he began chest compressions.

Jail Security Camera Footage

Video evidence indicates Mr. Budner went to the bathroom on his own at approximately 11:41 p.m. on May 22, 2018, and returned to his bunk at approximately 11:44 p.m. He took off his shirt at 11:47 p.m. and got into bed at 11:50 p.m. His last movement appears to be at 3:11 a.m. on May 23, 2018.¹

Civilian witnesses' statements

Witnesses described Mr. Budner as being in good spirits and appearing healthy before he went to bed. Inmate Mr. W. heard two quick noises from Mr. Budner at approximately 1:00 or 2:00 a.m., as though Mr. Budner were wincing in pain. Mr. W. assumed that Mr. Budner was having a bad dream. He had not heard Mr. Budner make such a noise before. Inmate Mr. R. said Mr. Budner was in the same position in his bed at approximately 4:00 a.m. when Mr. R. got up to go to breakfast. Mr. W. saw Mr. Budner lying on the bed with his shirt off at approximately 6:00 a.m. when he came back from completing his trustee work duties.

Medical Examiner's report

Following an autopsy and test results, the Medical Examiner's (ME) report, issued October 24, 2018, indicated that the cause of death was "Probably Group B Streptococcus [Strep B] sepsis." The ME listed the death as being from natural causes.

Sepsis: The ME report noted generally healthy organs and did not observe symptoms of infection in any of the organs. In a follow-up interview, Assistant ME Ellen Moffatt opined that in light of the autopsy, blood cultures, Mr. Budner's general medical profile, and the lack of any serious trauma and of evidence of other causes, the likely cause of death was sepsis resulting from a Strep B infection. According to Dr. Moffatt, a Strep infection or sepsis – which is the over-reaction of the immune system to infection – may have forced Mr. Budner's heart to work harder than it was able to, and/or caused Mr. Budner's organs to shut down. Dr. Moffatt observed especially rapid decomposition in Mr. Budner's body, which further suggested the role of bacterial infection.

Red Fluid from Budner's Nose: Dr. Moffatt also said that the red fluid coming out of Mr. Budner's nose as found at the scene was likely to be "purge," which is the result of mucous

¹ In contrast to the video footage, the deputy on duty that night, Deputy Peppers, said Mr. Budner got up at breakfast at approximately 4:15 a.m., went to wash trays with another inmate at 4:40 a.m., and returned to the pod at 5:45 a.m. He also remembered seeing Mr. Budner at 6:30 a.m. coming out of the bathroom and going back to his bunk. But the video evidence makes clear Mr. Budner did not leave his bunk, and his final perceptible movement was at 3:11 a.m.

Page 3
April 10, 2019

membranes, which contain blood vessels, breaking down after death. Dr. Moffatt said "purge" can happen quickly, especially where the deceased had been sick.

The investigation uncovered no evidence of foul play and Mr. Budner's death likely stemmed from an infection. Thus, criminal charges are unwarranted, and we have closed this investigation. In the event that the SFSD uncovers any additional evidence, please contact me to further discuss this matter. Thank you and your Department for your assistance in this matter.

Sincerely,



GEORGE GASCÓN
District Attorney