

REPORT ON THE IN-CUSTODY DEATH OF
CARLOS MARGO (a.k.a. ABEL FLORENTINO)
ON MARCH 24, 2017



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INDEPENDENT INVESTIGATIONS BUREAU
CITY AND COUNTY OF SAN FRANCISCO
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I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the death of Carlos Margo¹ that occurred on March 24, 2017, after he was taken into custody by the San Francisco Police Department (SFPD). The SFDA's review was conducted by the office's Independent Investigations Bureau (IIB) and focused exclusively on determining whether any criminal charges relating to the conduct of the police officers are warranted. IIB's review did not examine issues such as the officers' compliance with internal policies and procedures, their training or tactics, or any issues related to civil liability. This report should not be interpreted as expressing any opinions on such non-criminal matters.

In brief, on March 11, 2017, SFPD officers responded to a 911 call from Hecho Cantina restaurant at 2200 Market Street in San Francisco, California. The caller reported an aggressive person, later identified as Carlos Margo, causing property damage and harming himself inside the restaurant. Officers arrived and found restaurant patrons restraining Margo with his stomach on the ground. Officers took over the task of restraining him. They handcuffed him, shackled his legs and eventually sat him up. San Francisco Fire Department (SFFD) personnel arrived to tend to Margo's self-inflicted injuries and to assist with transporting Margo to the hospital in an ambulance. Although Margo had calmed down considerably, given his earlier combative state, one SFFD paramedic administered a sedative in the event he became combative again. Both SFPD officers and SFFD personnel then worked to place Margo in soft restraints, restraining him to a backboard. Once the restraints were on, officers removed his handcuffs and leg shackles and laid him back on to the backboard. They soon realized Margo had become limp and unresponsive. Officers and paramedics checked and found that Margo was not breathing and did not have a pulse. Officers began cardio pulmonary resuscitation (CPR) and SFFD transported him to San Francisco General Hospital (SFGH), where he remained on life support until he died on March 24, 2017.

The San Francisco Office of the Chief Medical Examiner (OCME) conducted an autopsy and determined that Margo's death was caused by complications of anoxic encephalopathy (brain damage caused by a lack of oxygen), which was due to "methamphetamine toxicity while under law enforcement restraint." The Medical Examiner ruled his death an accident.

After a thorough review of the available evidence,² we have concluded that we cannot prove beyond a reasonable doubt any criminal misconduct on the part of the officers involved in this incident. Accordingly, we decline to file any criminal charges in this matter.

¹ Carlos Margo was also known as Abel Florentino.

² The evidence reviewed as part of this investigation includes: SFPD's incident reports and dispatch records; footage from those SFPD officers with activated body-worn-cameras (Officers Buckley, Valderrama, Gomez, Gippner, Petuya, Mendoza, and McCarter-Ribakoff); Hecho Cantina surveillance videos; interviews with civilian witnesses and SFFD personnel; and Margo's autopsy report. Each of the SFPD officers involved in this incident wrote a short narrative as part of SFPD's incident report and Officer Gomez was interviewed by SFPD's Homicide Detail. Each of the SFPD officers, however, refused to cooperate with IIB's investigation.

II. FACTUAL SUMMARY

On March 11, 2017, at approximately 8:30 p.m., SFPD Officers Nicholas Buckley, Star #537, and Matthew Gippner, Star #2421, went to the Hecho Cantina Restaurant at 2200 Market Street, in San Francisco, California, in response to a 911 call about an aggressive person damaging property in the restaurant and physically harming himself.

Margo Exhibits Erratic Behavior at the Restaurant

According to Jonathan P., the shift supervisor at the restaurant, and Travis C., who was working the cash register, Margo had come in to the restaurant and grabbed the restaurant's cordless phone. This occurred around 8:26 p.m. according to the restaurant's surveillance cameras (time adjusted for delay).³ Leslie T., who was tending the bar, said she saw Margo chewing on a laundry bag he was holding as he approached the register area where the phone was. All three said Margo took the phone, saying he was calling 911.



Figure 1: Hecho Cantina surveillance video depicts Margo approaching the cash register holding a laundry bag. Yellow circle indicates Margo's location. (Source: Hecho Cantina via SFPD).

³ The surveillance cameras' timestamps are not accurate. According to SFPD Sergeant Oscar Barcena, Star #1715, who retrieved and reviewed the footage, the timestamp on the cameras are 16 minutes and 16 seconds slower than the actual time.

Leslie T., Jonathan P., and Travis C., all said that Margo then began running inside the restaurant, grabbing a cue ball from the pool table and making nonsensical comments. Travis C. said Margo swung the cue ball around, causing people nearby to step back as they feared being struck. Jonathan P. said he saw Margo use the cue ball to strike and break the glass on the restaurant's pinball machine. He said he then observed Margo use the cue ball to strike and break the glass on the restaurant's front door. Margo then took a glass water jug from the bar, poured the water over his head, and broke the jug across the bar.



Figure 2: *Hecho Cantina surveillance video depicts Margo striking the restaurant's pinball machine with a cue ball. Yellow circle indicates Margo's location. (Source: Hecho Cantina via SFPD).*

Jonathan P. said Margo then grabbed a piece of broken glass from the jug and used the jagged edge to stab his own hand. At that point, at approximately 8:27 p.m., Jonathan P. called 9-1-1 from his cellphone and reported the incident and his observations to the police. Cory A., the restaurant's chef, said Margo was yelling: "Help me," while stabbing himself.⁴

Restaurant Patrons, Then Officers, Restrain Margo

While Jonathan P. was calling 911, he said he saw two or three restaurant patrons tackle Margo and take him to the ground. This occurred at approximately 8:29 p.m., according to the

⁴ The restaurant's surveillance videos corroborated these witnesses' accounts. The videos do not include audio, however, so that portion of their statements could not be corroborated.

surveillance cameras. Within a minute, Officers Gippner and Buckley arrived. The officers intervened and took over restraining Margo. Officer Buckley said he held Margo's left hand which was bleeding uncontrollably. He said that he tried to apply pressure to the wound, but Margo kept resisting and pulling his arm away. Officer Gippner grabbed Margo's right arm and also positioned himself over Margo's legs to try and control them. Margo was agitated: he was breathing heavily, screaming, and struggling. Officers Gippner and Buckley repeatedly told Margo to relax. They both noted that there was broken glass all over the ground near Margo.



Figure 3: Footage from Officer Buckley's body-worn camera shows him holding Margo's left wrist while Officer Gippner holds Margo's right arm. (Source: SFPD).

Officer Hava McCarter-Ribakoff, Star #4187, arrived on scene soon after. She said she saw Margo prone on the ground, stomach down, with Officer Buckley holding his left arm out straight and Officer Gippner holding Margo's right arm behind his back. She said that Margo was yelling and actively resisting the officers by tensing his body and pulling his arms away. Almost immediately, Officers Ana Mendoza, Star #1996, and Anthony Gomez, Star #1436, also arrived on scene. Officer Mendoza said she saw Officers Gippner and Buckley on the ground with Margo and that she intervened by placing her hand on Margo's head to prevent further resistance. Officers Irving Garcia, Star #1810, and Natasha Valderrama, Star #2476, arrived next. Officer Garcia said he saw Officers Gippner and Buckley holding Margo in a prone position with his stomach down on the ground. He saw broken glass on the ground, and noticed Margo bleeding from his left wrist.



Figure 4: Footage from Officer Buckley's body-worn camera continues to show him holding Margo's left wrist while Officer Gippner holds Margo's right arm. Margo is in handcuffs at this point and Officer Mendoza is holding Margo's head. (Source: SFPD).

As observed on the videos from both of their body-worn cameras, Officer McCarter-Ribakoff and Officer Buckley debated whether to handcuff Margo. According to the video from her camera, Officer McCarter-Ribakoff handcuffed Margo at approximately 8:32 p.m. Officer Buckley's body-worn camera video shows that after being handcuffed, Margo continued to kick his legs. Officer Gippner told him to stop and Margo responded: "I'm sorry, please help me!" Officer McCarter-Ribakoff then used a strap to bind, or hobble, Margo's legs together. According to the police incident report, Officer Keith Lipp, Star #702, said he took over holding Margo's legs down. He said he had to readjust the strap around Margo's ankles and legs several times. He said Margo tried to get the officers off him by periodically thrusting his hips in the air.

According the videos from the various body-worn cameras, all the officers on scene repeatedly told Margo to relax, however, he would often yell and scream in a panicked way that he needed help, saying at one point: "I'm overmedicated, someone drive me." At approximately 8:33 p.m., Officer Buckley's body-worn camera video shows Margo scream in a panic that he could not breathe. Several officers told him to calm down and explained that if he could scream and yell, then he also could breathe. Officer Mendoza also removed her hand from Margo's head. According to the incident report, she did this to help Margo feel more comfortable.

The body-worn cameras also show Margo spitting blood at officers' feet, including at Officer Mendoza. Officer Gippner can be seen trying to restrain Margo's head at one point. He said in the incident report that this was to prevent further spitting. Margo apologized for spitting. Margo repeated, still in a panicked tone, but less loudly: "I can't breathe" several times around 8:34

p.m. He also continued to ask for help and moaning and wailing unintelligibly. There is nothing visible on the videos that appears to be preventing Margo from breathing. He does not seem to be choking or otherwise losing the ability to breathe in a way that is visible or audible in the videos.

San Francisco Fire Department Medical Personnel Arrive

Medical personnel from SFFD, John Groshong, Samuel Bunn, and Mark Murphy, arrived on scene to assist with taking Margo to the hospital. Officer Gomez greeted them outside and gave them a sense of Margo's erratic behavior and told them they would likely need to restrain Margo. At approximately 8:35 p.m., the medical personnel entered the restaurant with their equipment. Officer Garcia immediately retrieved a mesh spit mask from one of the SFFD medical personnel and placed it over Margo's head to keep him from spitting on the officers. Officers also cut and removed a messenger-type bag Margo was wearing.

The SFFD personnel had brought a backboard with them. At approximately 8:36 p.m., Margo appeared to calm down and stop screaming. At that time, at the direction of medical personnel, Officers Garcia, Gomez, Buckley and Gippner rolled Margo over and turned him on to the backboard in a seated position with his legs straight out in front of him. Medical personnel can be heard on the body-worn cameras asking that Margo be put on to the backboard to be prepared for transport and so they could better attend to Margo's left wrist. While in the seated position, officers continued to hold Margo's arms, legs and head. Officer Garcia held Margo's left arm. Officer Buckley pushed his back and held his shoulders. Officer Gomez held Margo's right arm at first and then switched to holding Margo's collar, upper back and head.



Figure 5: Footage from Officer Mendoza's body-worn camera shows Margo seated upright on the backboard with his legs straight ahead of him and his head hunched over with various officers holding him. (Source: SFPD).

At 8:37 p.m., Margo can be seen on Officer Gomez's body-worn camera yelling for help again and resisting, albeit more quietly and less aggressively than before. His protests prompted an unidentified officer to ask medical personnel if they may be able to give Margo something to calm him down. Bunn left the restaurant to go to his ambulance to obtain a sedative. Meanwhile, the remaining medical personnel began to bandage Margo's bleeding left wrist. By 8:39 p.m., Margo seemed calm and appeared to no longer be resisting. At 8:40 p.m., an unnamed officer asked if Margo was still breathing. Officer Gomez touched Margo's head and Margo moved, leading Officer Gomez to confirm that he was still breathing.



Figure 6: Footage from Officer Gomez's body-worn camera shows, from a different perspective, the same scene as depicted in Figure 5: Margo seated with his legs straight ahead of him and his head hunched over. The footage shows Officer Buckley's gloved right hand pushing Margo's back and Officer Gomez's gloved hands holding Margo's collar and pushing his right shoulder. Margo's head is covered by a mesh spit mask. (Source: SFPD).

At 8:41 p.m., Bunn returned from the ambulance and administered 5 mg of Versed⁵—a sedative—into Margo's left arm. Over the next two minutes, medical personnel, with the assistance of officers, placed Margo into soft restraints, which are cloth restraints used to restrain people during medical transport. The videos do not show Margo moving or talking at all throughout this process. However, Murphy said that he felt Margo resist occasionally, pulling his arms against the restraint. Once the restraints were on, Officer Valderrama can be seen removing Margo's handcuffs. At 8:43 p.m., officers lay Margo down on to the backboard. Officer Gomez checked Margo's pulse, and finding no pulse he asked the medical team to check his pulse as

⁵ Versed is also known by its generic name Midazolam, belonging to a class of medications called benzodiazepines (sedative), which produce a calming effect on the brain and nerves (central nervous system). See <https://www.webmd.com/drugs/2/drug-16693/versed-oral/details>

well. They also did not detect a pulse. Officer Gomez initiated CPR and began doing chest compressions. As Officer Gomez continued CPR, other officers and SFFD personnel placed Margo on to the gurney and took him to the SFFD ambulance outside.

Margo was subsequently transported to SFGH, where he was successfully resuscitated and stabilized. He remained in a coma and on life support until he died on March 24, 2017.

Medical Examiner's Findings

The San Francisco Office of the Chief Medical Examiner (OCME) conducted an autopsy and determined that Margo's death was caused by complications of anoxic encephalopathy (brain damage due to a lack of oxygen) due to "methamphetamine toxicity while under law enforcement restraint." The Medical Examiner also noted another relevant condition was Margo's obesity. Margo was 36 years old, 5'10" and 218 lbs. His body-mass-index was 31.3.

The Medical Examiner's office ran a toxicology screen on a urine sample obtained from Margo on March 13, 2017. His urine tested positive for methamphetamine, amphetamines and midazolam (Versed). Because there was no blood sample retained from Margo's initial admission to the hospital, however, the Medical Examiner could not determine the exact concentration of the drugs present in Margo's system. Without exact information about drug concentration, the Medical Examiner could not definitively conclude whether or not Margo had experienced an overdose. However, based on a review of the videos from the body-worn cameras of responding SFPD officers, as well as the descriptions of Margo's behavior, in addition to the presence of methamphetamine detected in the urine, the Medical Examiner said it was likely that Margo experienced some kind of reaction or response to methamphetamine.

Upon reviewing the body-worn cameras and the fact that Margo was restrained by law enforcement while undergoing a likely methamphetamine reaction, the Medical Examiner added the following comment to the autopsy report:

The use of law enforcement restraint maneuvers with an individual probably under the influence of methamphetamine may contribute to a catecholamine surge and/or electrolyte imbalance which may destabilize cardiac function resulting in cardiac arrhythmia and subsequent anoxic complications and/or sudden death. The decedent's obesity can make respiration in a prone position difficult, leading to increased agitation and additional catecholamine release.

Catecholamines are hormones that are part of the body's stress response. At high levels, a surge of these hormones can lead to a destabilization of the heart function, which in turn can lead to a deprivation of oxygen to the brain. Although the Medical Examiner could not say definitively whether this occurred in Margo's case, given the circumstances of Margo's death, the Medical Examiner noted that it was possible that Margo experienced such a surge as a result of being confined while experiencing a methamphetamine reaction. Additionally, the comment noted that Margo's obesity may have made breathing difficult in a facedown position, which also may have also led to feelings of agitation, which can also cause a catecholamine surge.

Finally, the Medical Examiner did not say that the midazolam, or Versed, contributed in any way to Margo's death. The Medical Examiner ruled the manner of death an accident.

III. LEGAL ANALYSIS

According to the Medical Examiner, Margo's death stemmed from drug intoxication, but also that "law enforcement restraint maneuvers . . . may [have] contribute[d]" to destabilizing Margo's heart function, and therefore may have also contributed to his death.⁶ Because of the officers' potential contribution to Margo's death, we evaluate the officers' use of force in restraining Margo to determine if criminal charges are warranted.

Here, the officers restrained Margo on the ground in a prone position for several minutes. They held his arms and legs, and on occasion his head as well. The officers did not strike Margo, they did not use pain control holds, or use any kind of weapon on him. Although he yelled that he could not breathe several times, he continued to struggle and resist the officers. He also continued to yell and scream panicked statements at the officers, indicating that he was still alive and breathing. They then held him in a seated, hunched position for several minutes while they worked to undo his handcuffs and place him in soft restraints.

Under California Penal Code Section 192, manslaughter is the unlawful killing of a human being without malice. Relevant here, Subsection 192(b) specifically defines involuntary manslaughter as such an unlawful killing that occurs "without due caution and circumspection." Acting without due caution or circumspection, or criminal negligence, "involves more than ordinary carelessness, inattention, or mistake in judgment." CALCRIM 580. More specifically:

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 in that way would create such a risk.

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way 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 580.

⁶ The report did not say that the particular *manner* in which law enforcement held Margo caused his death. Margo did not choke, suffocate, or experience any kind of positional asphyxia. Rather, the Medical Examiner explained that Margo potentially experienced an extreme stress hormone response, caused merely by the fact of being restrained (not the manner) while undergoing a methamphetamine reaction, and by being agitated because he had some difficulty breathing while lying down. These two circumstances may have given rise to the stress response that may have caused a heart malfunction that led to the brain damage.

To pursue criminal charges, a prosecutor must be satisfied that the evidence will show beyond a reasonable doubt that the charged crime was committed. Based on our review of the evidence of Margo's continued resistance, yelling, and screaming, however, we cannot prove beyond a reasonable doubt that the officers' conduct in restraining Margo was "reckless" or "so different from the way an ordinarily careful person would act in the same situation."

First, given Margo's resistance and flailing, his erratic behavior, and most importantly, his prior attempts to harm himself, we cannot prove that it was reckless for the officers to have restrained him on the ground, stomach down, and held his limbs for several minutes. Second, although Margo said he could not breathe several times, we cannot prove it was reckless for the officers to have believed he was able to breathe because he continued to scream and resist. That is, it was not unreasonable for them to have believed Margo was panicking but medically okay, since he continued to scream and flail for minutes after saying he could not breathe, as captured by multiple body-worn cameras. Third, there is no evidence that the officers were unduly delayed in responding to Margo's agitated state, or were otherwise indifferent to his care. They turned him face up once he was calm and restrained. They also checked his breathing at several points. Looking at these circumstances as a whole, there is insufficient evidence to show that the officers' conduct rises to a level of recklessness that would create "a high risk of death." For example, there is insufficient evidence that a reasonable person in the position of the officers would have known that their conduct in restraining him would have created a potential hormonal surge such that there was a high risk of death. Moreover, none of the medical personnel told the officers not to continue restraining him or that there could be medical consequences. Accordingly, looking at the totality of the evidence, we decline to pursue criminal charges relating to the officers' use of force.

Because the Medical Examiner concluded that the administration of the sedative, Versed, did not contribute to Margo's death, we decline to pursue any criminal charges relating to Margo's death against the SFFD medical personnel involved in administering the drug.

IV. CONCLUSION

For the reasons discussed above, we conclude that criminal charges against the officers and medical personnel involved in this incident are not warranted. The medical personnel's conduct was not the cause of Margo's death. In addition, the District Attorney cannot prove beyond a reasonable doubt that the officer's conduct in restraining Margo was undertaken "in a reckless way that creates a high risk of death or great bodily injury." Therefore, the District Attorney declines to file any criminal charges in this matter.