



# SAN FRANCISCO

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## DISTRICT ATTORNEY'S OFFICE



### REPORT ON THE INVESTIGATION INTO THE DEATH OF OMAR REYES ON OCTOBER 4, 2022

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**INDEPENDENT INVESTIGATIONS BUREAU, February 2024**



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## Background

The San Francisco District Attorney's Office investigates, independently evaluates, and reviews all officer involved shooting incidents resulting in serious injury or death as well as any instance where the death of an individual occurs while in the custody of any peace officer in the City and County of San Francisco. This responsibility was assigned to the District Attorney's Office in conjunction with the San Francisco Police Department and is codified in the Memorandum of Understanding.<sup>1</sup>

The Independent Investigation Bureau (IIB) is an independent unit within the SFDA comprised of District Attorney Investigators (DAI) with decades of experience as law enforcement officers, Assistant District Attorneys (ADA), and specialized legal assistants. The IIB investigates covered incidents wholly independent from SFPD and other outside law enforcement agencies, reporting its findings directly to the elected District Attorney.

The investigation and review conducted by the Independent Investigation Bureau solely addresses whether any officers involved committed any crimes against any resident against whom force was used, or who died while in custody. As part of that investigation and review, the San Francisco District Attorney's Office does not consider or offer opinions on issues of civil liability for any involved officers, police tactics, or police department policies and procedures.

The role of the Independent Investigation Bureau is to ensure the residents of San Francisco City and County that the investigation and review of qualifying events are conducted in a fair and objective manner that will serve the interests of justice to the community, the officers involved, the injured persons and their families.

The San Francisco District Attorney's Office understands how these events affect the community at large and believes the loss of life during an event involving any police officer or police agency leaves everyone affected with extreme grief, questions, and concerns. It is the intention of the San Francisco District Attorney's Office to do what can be done to explain what took place in hope that the truth about the events will assist with healing in the wake of these tragedies.

## Privacy Statement

This report includes redactions of the names and other identifying information of witnesses. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as readability of this report, the witnesses are indexed as follows:

Witness 1 (W-1), female passenger in vehicle.

Witness 2 (W-2), female pedestrian injured by accident.

Witness 3 (W-3), male bystander witness to accident.

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<sup>1</sup> Memorandum of Understanding, eff. April 2019.



Witness 4 (W-4), female bystander witness to accident.

Witness 5 (W-5), Emergency Medical Technician (EMT) at Stanyan Street and Carl Street.

Witness 6 (W-6), Emergency Medical Technician (EMT) at Park Station.

## Introduction

The San Francisco District Attorney's Office Independent Investigations Bureau conducts thorough investigations into cases involving in-custody deaths that occur within the City and County of San Francisco. Upon thorough examination of the facts available and applicable law, we conclude that no criminal charges will be filed in this matter because the evidence is insufficient to prove that any officer involved committed a crime or was criminally negligent.

## Summary of Incident

On October 4, 2022, at 9:52 A.M., SFPD dispatch received a call for service regarding a solo car collision at Carl Street and Stanyan Street. A 911 caller described the car that ran a red light and struck a traffic control pole at approximately 10 mph as a green Toyota minivan. A witness to the crash reported the male driver of the minivan appeared to be "unconscious."

At 9:55 A.M., SFPD Ofc. Howard Brown, Star # 1243 (Brown), arrived on scene and identified Omar Reyes (Reyes) as the driver of the crashed green Toyota minivan. Brown observed that Reyes was breathing but unconscious. Brown also identified a female front passenger (W-1) in the vehicle. Brown noted no smell of alcohol coming from Reyes but was unable to conduct any field sobriety tests or ask Reyes any pertinent questions due to prioritizing Reyes's need for medical attention. Brown immediately requested emergency medical care for Reyes.

W-1 observed Reyes snort a white powder while driving the minivan moments before the collision which Reyes admitted later was cocaine. A female bystander (W-2) reported she hurt her ankle when she jumped out of the way of the minivan to avoid being hit. SFPD later determined Reyes violated California Vehicle Code section 23153(f), because he drove under the influence of a controlled substance and caused injury.

By 10:25 A.M., Reyes regained consciousness and was transported to St. Mary's Hospital at 450 Stanyan Street in San Francisco.

At 11:15 A.M., while still at the hospital, Brown admonished Reyes of his rights pursuant to *Miranda v. Arizona*, (1966) 384 U.S. 436. Reyes acknowledged his rights, waived them, and agreed to answer Brown's questions regarding the solo vehicle collision. Reyes told Brown that he snorted approximately .1 grams of cocaine at about 9 A.M., while driving and about 45 minutes before the first 911 call was made to report the accident.

At 12:12 P.M., a phlebotomist arrived at St. Mary's Hospital to draw Reyes's blood for testing to determine drug and/or alcohol content. The blood draw was completed in a medically approved manner and complied with Title 17 of the California Code of Regulations.<sup>2</sup>

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<sup>2</sup> § 1219.1 of the Cal. Code Regs. Tit. 17 provides the regulations in which an agency must comply when collecting a blood sample in a criminal case.



By 1:11 P.M., Reyes was transported from St. Mary's to Park Station where he was booked into detox cell #3 eight minutes later to wait for clearance for transport to the San Francisco County Jail. Later obtained surveillance footage from SFPD Park station where Reyes was transported showed Reyes walked without incident with Brown into SFPD Park Station where he was booked to wait for transport to the jail.

Between 2:00 P.M. and 6:30 P.M., SFPD officers at Park Station physically observed Reyes through ten cell-checks, conducted at thirty-minute intervals, and determined Reyes was not in medical or physical distress.<sup>3 4</sup>

It was during the 6:42 P.M. cell check, that SFPD officers discovered Reyes was not breathing and unconscious. Officer Brown and another deputy immediately rendered aid and summoned medical attention. Emergency medical personnel arrived and administered first aid, performed CPR and administered naloxone (an opioid reversal medication), and an AED (Automated External Defibrillator) to revive Reyes. At 7:24 P.M., Reyes was transported to UCSF Hospital located at 505 Parnassus Avenue, where he was intubated and diagnosed with brain damage due to the deprivation of oxygen. On October 7, 2022, at approximately 5:57 P.M., Reyes was removed from life support, pronounced dead by UCSF Hospital physicians and the San Francisco Office of the Chief Medical Examiner (OCME).

## Investigation

The San Francisco District Attorney's Office IIB investigation into the death of Omar Reyes was comprehensive, thorough, and objective. Investigators conducted seven interviews, reviewed crime scenes, prepared a search warrant, observed an autopsy, and compiled and reviewed numerous photographs and video footage from body worn camera (BWC) and surveillance video from Park Station.

## Evidence Reviewed

- The incident scene located at Carl Street and Stanyan Street in San Francisco.
- Dispatch records.
- Criminal history information for Reyes.
- Toxicology reports.
- Autopsy report.
- Interviews of civilian witnesses.
- Interviews of involved witnesses.
- Interviews of responding Emergency Medical Technicians (EMT) personnel.
- Photographs of incident scene and vehicle.
- Video of traffic collision.
- Videos from Park Station – Sally Port, Parking Lot, and Front Door.

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<sup>3</sup> § 3287 of the Cal. Code Regs. Tit. 15 provides the regulations in which an adult institution must comply with in their daily operations regarding the housing of individuals.

<sup>4</sup> § 1027.5 of the Cal. Code Regs. Tit. 15 requires the facility to implement a policy of safety checks to determine the safety and well-being of individuals that shall be conducted at least hourly through direct visual observation of the individual and shall document the time, location, and staff identification number of who completed the checks.



- Park Station cell check logs.

## Incident Scene Descriptions

There were two incident scenes associated with this matter.

Location 1: Intersection of Carl Street and Stanyan Street, San Francisco where the vehicle collision occurred. This is a paved road and intersection controlled by a traffic light. The incident occurred in daylight and was observed by numerous bystanders and pedestrians.

Location 2: SFPD Park Station where the medical emergency occurred. Reyes was in holding cell #3, a detox cell, where he was found unresponsive. The cell was well lit and equipped with a live video feed monitored by SFPD officers at the time. The live video surveillance system is physically located in the front duty office of Park Station but does not record. Park Station has several other surveillance cameras that do record. These cameras are located on the station's exterior in the sally port (the secure, controlled entry way to the jail), the station's front entrance, and parking lot.

## Incident Scene Evidence Recovery

All evidence at the scenes was photographed, processed, and recovered by trained investigators. SFPD officers and crime lab technicians assisted in collecting, transporting, and booking physical evidence.

Sixteen BWC videos worn by different SFPD officers were provided by SFPD for investigators to review. The videos provided insight into SFPD officer involvement in their initial response to both the vehicle collision and medical care provided at both scenes.

A stationary camera at the intersection of Stanyan and Carl Street captured multiple angles of the single-car accident caused by Reyes and showed Reyes as the driver of the vehicle.

Surveillance camera video from SFPD's Park Station captured Brown with Reyes, who walked without difficulty or aid after clearance by the medical staff at St. Mary's, into Park Station prior to being booked.

Park Station maintained and produced cell check logs. The logs from the date Reyes was received and booked at the station were obtained and reviewed. The logs documented when Reyes was booked at Park Station and the number of times Cell #3 was checked by station personnel with corresponding timestamps.

## Sallyport Video

Below are two still frames from the Sallyport video that depict Reyes walked under his own power into Park Station with Brown who used his right arm to direct Reyes during the booking process.



## Search Warrant

On October 20, 2022, investigators obtained a search warrant for the green Toyota minivan Reyes drove and crashed. Investigators found an empty vodka bottle inside the vehicle, as well as marijuana paraphernalia and marijuana. Officers did not find cocaine or any other drugs, legal or illegal, in the vehicle. Of note, because of Reyes's condition and prioritization for medical care, he was not searched before transport to the hospital. And Reyes's personal property, was released by the SFPD to a family member as the DUI was initially not charged, pending further investigation from medical evaluations and the blood draw.

## Autopsy

Dr. Christopher Liverman, from the Office of the Chief Medical Examiner (OCME), performed the autopsy of Reyes on October 13, 2022, at the OCME. Members of the SFDA IIB Unit and SFPD attended the autopsy. Dr. Liverman determined Reyes's death to be "accidental... and due to [Reyes's] ingestion and toxic combination of fentanyl, cocaine, and alcohol."

And although injuries to Reyes's ribs and chest were observed, they were determined likely caused by the forceful chest compressions of CPR and resuscitation efforts made by first responders.

## Toxicology

Three toxicology tests were conducted on blood samples obtained from Reyes as part of this investigation. The first sample was collected on October 4, 2023, at 12:36 P.M. while Reyes was at St. Mary's Hospital. The chemical analysis showed Reyes had THC (the psychoactive compound in marijuana), cocaine, fentanyl and norfentanyl (the chemical metabolized when fentanyl is used), benzoylecgonine (the main metabolite when cocaine is used), and cocaethylene (a byproduct of concurrent consumption of alcohol and cocaine).



A second blood sample from Reyes obtained October 4, 2023, at 7:36 P.M. while Reyes was at UCSF reported Reyes's blood contained all of the above substances and their respective metabolites, as well as the metabolite for naloxone which was from the Narcan™ administered by officers and emergency responders.

The OCME took a third and final blood sample during Reyes's autopsy on October 13, 2023, that confirmed the presence of THC, fentanyl and norfentanyl, naloxone, benzoyllecgonine, and also lysergic acid diethylamide, a hallucinogen commonly known as LSD.

## Involved Police Officers

Brown was only part of the detail that took and maintained custody of Reyes from the collision scene, obtained medical clearance to transport and book Reyes to Park Station, and then monitored Reyes for a few hours while Reyes waited for transport to the main jail.

## Interviews of Witnesses

The following statements are summaries of interviews with civilian witnesses.

**W-1** was the female passenger in the Toyota minivan with Reyes when he crashed. W-1 stated Reyes passed out while behind the wheel and struck a pole on the southwest corner of Carl Street. W-1 told investigators she saw Reyes snort a white powdered substance that she thought might be cocaine about 30 minutes before he crashed the car. W-1 was not injured and refused medical treatment at the scene.

W-1 did not see Reyes drink alcohol that day but was "pretty sure he was intoxicated" by the way he drove.

**W-2** walked on Carl Street approaching Stanyan Street, when she saw a green Toyota driving towards her. She ran out of the way to avoid being struck and sustained an injury to her right ankle with a visible cut and swelling.

**W-3** also witnessed the vehicle collision. W-3 walked with W-2 and saw a minivan coming towards them. W-3 initially believed the minivan would continue through the intersection but then saw the minivan make a hard right turn, drive onto the sidewalk, and head directly towards them. W-3 and W-2 ran behind a pillar to protect themselves. After the crash, W-3 observed the male driver through the open driver's side window and that the driver appeared to be "seizing" with his eyes rolled back. W-3 heard the minivan's female passenger scream and saw her pull the hand brake of the minivan.

**W-4** saw a minivan approach Carl Street, run the red light, and drive towards her at approximately seven to eight miles per hour. She ran out of the intersection and parallel with the minivan—which placed her in a position of safety. W-4 heard a woman yell that they were going to crash. W-4 told investigators she could see the driver of the minivan appeared to be unconscious because his eyes were closed.

**W-5**, an Emergency Medical Technician (EMT) with the San Francisco Fire Department, responded to Stanyan Street and Carl Street and the call of a car crash. W-5 observed the driver of the car was uninjured but was told by other medics on scene that Reyes had pinpoint pupils which indicated opiate overdose. Two rounds of Narcan™ were administered by medics to combat possible opiate overdose. Reyes was then observed to be breathing on his own and regaining mental awareness.





W-5 transported Reyes to UCSF. Within the first moments of transport, Reyes became “completely alert and oriented” and answered W-5’s questions “appropriately.” Reyes told W-5 he used cocaine prior to the crash. W-5 suspected the cocaine potentially contained fentanyl, given Reyes’s overall presentation. W-5 conducted another head-to-toe observation on Reyes and noted no signs of a head injury. Reyes did not complain of pain and appeared stable.

W-6, a paramedic with the San Francisco Fire Department, responded to Park Station for the emergency call at the jail that concerned Reyes. SFFD was already in one of the jail cells providing CPR to Reyes when W-6 arrived. Due to the limited space in the cell, emergency personnel moved Reyes out of the cell and into the lobby area. W-6 observed that Reyes was without a pulse and not breathing. After the resuscitation attempts which included CPR, a defibrillator, and more overdose reversal medication, medical professionals were able to obtain a pulse with good pressure and emergency transported Reyes to UCSF. W-6 did not observe any signs of trauma or fresh injury on Reyes’s face or chest.

## Omar Reyes - Background

Reyes was 34 years of age and a resident of Richmond, California at his time of death.

## Legal Standard

In every criminal trial, the prosecution must prove the corpus delicti, or the body of a crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal act or actor as its cause. *People v. Alvarez* (2002) 27 Cal.4th 1161, 1168. This rule requires that a criminal prosecution has enough evidence that a crime has even occurred before an individual may be charged with that crime. This is a threshold determination to any criminal charging decision and requires a prosecutor to establish these basic criteria before looking to any actor as the cause of the unfortunate event. Not all fact of injury, loss, or harm suffered by an individual occurs as of the result of a criminal act or actor and the fact of the death of another, as we have here, does not pre-suppose that the death was caused by wrongdoing by another.

*Giraldo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal. App. 4<sup>th</sup> 231, 250-251, established a “special relationship” between a jailer/custodial officer and the prisoner because an inmate is vulnerable and dependent in the custodial environment, and the duty of the jailer is to the prisoner is “protective by nature” as they are deprived of the normal opportunity to protect themselves from harm. California Government Code section 845.6 further codifies this “special relationship” articulated in *Giraldo* and sets forth the requirement that custodial officers must take reasonable action to summon medical care for anyone in their care because of the individual’s inability to summon their own care. Other examples of a “special relationship” exist with a parent-child or caregiver-dependent.

Any theory of liability under a criminal negligence theory would require that Brown or any SFPD officers failed to perform a legal duty owed to the person in custody or that they deliberately failed to act while knowing that failure was dangerous to human life or indifferent to those consequences.

### *Prosecutor’s Burden of Proof*

A prosecutor bears the burden of proving a criminal defendant’s guilt beyond a reasonable doubt. (Pen. Code, § 1096.) Where an investigation is complete and all of the evidence is available for review, prosecutors should file charges only if they believe there is sufficient admissible evidence to prove the



charges beyond a reasonable doubt at trial. (See, e.g., Nat. Dist. Attys. Assn., National Prosecution Standards (3d ed. 2009) Part IV, § 2 pp. 52-53; United States Department of Justice Manual § 9-27.220; Melilli, Prosecutorial Discretion in an Adversary System (1992) B.Y.U. L.Rev. 669, 684-685 [surveying ethical standards used in the exercise of charging discretion by prosecutors]; accord, *People v. Catlin* (2001) 26 Cal.4th 81, 109 [“A prosecutor abides by elementary standards of fair play and decency by refusing to seek indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt,” quotation and internal quotation marks omitted]; *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1374 [explaining that a prosecutor may have probable cause to charge a crime but reasonably decline to do so if they believe there is a lack of sufficient evidence to prove the charge beyond a reasonable doubt at trial]; cf. Rules Prof. Conduct, Rule 3.8(a) [prosecutor should not initiate or continue prosecution of charge that is not supported by probable cause].)

## Legal Analysis

Reyes’s death was determined by the medical examiner at autopsy to be caused by the lethal mixture of fentanyl, cocaine, and ethanol and ultimately an accident. Because Reyes’s death stemmed from drugs that he ingested, there is no causal link between any involved police officer’s action and Reyes’s death and no corpus delicti of any crime. Additionally, there is no evidence that proves that Brown or any other SFPD officer was the direct cause or indirect cause of Reyes’s death.

We would be likewise unable to proceed under a theory of criminal negligence for any claimed inaction by officers. Indeed, all available evidence supports that SFPD officers appropriately cared for Reyes when his medical needs became known.

Reyes was medically cleared by multiple medical professionals prior to transport back to Park Station Jail. Objectively, Reyes’s behavior and physical presentation once he was discharged from the hospital confirmed that his physical condition was improved. There is also documented evidence that SFPD officers fulfilled their duty and checked on Reyes in his cell at thirty-minute intervals without incident before he was found non-responsive. Once Reyes was found non-responsive, officers at Park Station did not delay in attempting resuscitation efforts, calling for paramedics, and immediately transported Reyes back to the hospital for more care. Based on the actions of the officers involved, there is no evidence available to prove that the officers at Park Station were in any way criminally negligent or failed to fulfill their duty to care for Reyes.

## Conclusion

There is no evidence to show that any action or inaction of any SFPD officer caused the death of Omar Reyes. The totality of the evidence, specifically the observations of percipient witnesses to Reyes’s driving and drug use, the solo car crash of the car Reyes drove, the toxicology reports, and post-mortem examination, reveal that Reyes used multiple drugs combined with alcohol which had cascading toxic consequences on October 4, 2022, which ultimately proved to be fatal.

This investigation uncovered no evidence of any foul play, or failure by police officers. For these reasons, no criminal charges are warranted, and no further action will be taken in this matter by the San Francisco District Attorney’s Office at this time.