



Sacramento County District Attorney's Office

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December 2, 2019

Chief Daniel Hahn
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David Babby, Regional Parole Administrator
California Department of Corrections and Rehabilitation
Northern Region
9825 Goethe Road, Suite 200
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Re: In-Custody Death – Brandon Smith (DOB 9/20/87)
SPD Report No. 2018-171619
Date of Incident: June 6, 2018

Dear Chief Hahn & Mr. Babby:

The District Attorney's Office has completed an independent review of the above-referenced in-custody death. Issues of civil liability, tactics, and departmental policies and procedures were not considered. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the death of Brandon Smith. For the reasons set forth, we find no evidence of criminal misconduct.

The District Attorney's Office received and reviewed written reports and other items, including: Sacramento Police Department report number 2018-171619 and related dispatch logs and recordings; witness interview recordings; body-worn camera, in-car camera, and surveillance video recordings; photographs; diagrams; Sacramento County District Attorney Laboratory of Forensic Services Toxicology and Blood Alcohol reports; and the Sacramento County Coroner's Final Report of Investigation.

FACTUAL SUMMARY:

On June 6, 2018, at approximately 11:12 a.m., Smith went to the Sacramento Natomas and North Parole Unit with his mother. She was concerned Smith was using controlled substances and wanted to place him in a drug treatment program. Smith signed a statement of admission indicating he used controlled substances the prior evening and requested assistance. Smith was calm and told his parole agent, Angelle Garner, that he used heroin and methamphetamine.

At approximately 1:15 p.m., Agents Garner and Charles Mosby began transporting Smith and another parolee in an unmarked Ford Taurus to the Salvation Army Adult Rehabilitation Center for drug treatment. While riding there, Smith's behavior changed. He made random and incoherent statements to the agents and himself, moved his arms around, and could not sit still. Smith then apologized and stated, "Alright. It's messed up to be high." Smith did not request any medical assistance. After determining there were no available spots at the rehabilitation center, Agents Garner and Mosby transported Smith and the other parolee to the Volunteers of America Comprehensive Alcoholism Treatment Center.

When they arrived at approximately 1:30 p.m., Agent Garner handcuffed Smith with his hands behind his back. The agents escorted both parolees into the treatment center. After Agent Garner described Smith's condition, the employees at the treatment center indicated Smith could not be admitted. The treatment center did not have medical staff and equipment to treat individuals under the influence of heroin. Agent Garner decided to take Smith to the Sacramento County Main Jail because he had violated parole by being under the influence of methamphetamine and heroin.

Sacramento Police Officer Marcus Frank and Sacramento County Mental Health Counselor Elizabeth Almendarez were working together and arrived at the treatment center in a large police transportation van. They were checking on an unrelated individual. Almendarez observed the agents bring Smith into the treatment center. She heard Smith state, "I'm too high" or "I took too much." Smith continuously stood up, kicked his legs, and made loud noises.

Agent Garner requested Officer Frank's assistance to transport Smith to jail in the larger van. Officer Frank agreed to transport Smith to the jail if Agent Garner completed the booking process.

At this point, Smith was laying on chairs inside the treatment center. He then rolled to the ground. Agent Garner instructed him to sit up. Agent Garner and Officer Frank grabbed Smith, helped him stand up, and walked him towards the van. While still handcuffed, Smith was directed up the steps into the back of the van, where he fell over and laid down on the floor on his side. It is customary for individuals to just lay on the floor in the back of the van. At approximately 1:50 p.m., Officer Frank began transporting Smith to the jail while Agents Garner and Mosby followed in their vehicle.

There was a video monitor in the center console of the van which displayed Smith lying down in the back of the van. However, the video processing unit did not record the video and audio signals for this back area.¹ During the approximate five-minute trip to the jail, Officer Frank could not hear noise in the back. He observed Smith kicking his feet and moving around on the

¹ There were three in-car cameras in the transportation van. One camera pointed forward. This front camera recorded the van's path from the treatment center to the jail and then eventually to the hospital. A second camera was in the smaller center detention section of the van. This camera recorded video and audio from that center section. A third camera was in the back area where Smith was lying down. This camera did not directly record video or audio footage. However, outline images, possibly of Smith in the back area, can be seen overlaying the footage from the second camera in the smaller detention section of the van. These images are not clear.

video monitor. He communicated this information to Almandarez. Smith eventually rolled over onto his stomach, stopped kicking, and had no movement.

Upon observing that Smith was no longer moving, Officer Frank stopped the van in the driveway before entering the jail. Officer Frank exited the van, proceeded towards the back, and opened the door. Officer Frank grabbed Smith's leg, called out to Smith, checked on him, and noticed Smith had a weak pulse and shallow breathing. Agent Garner entered the transportation van and attempted to speak to Smith, but there was no response. Officer Frank immediately requested medical assistance and noticed Smith had no pulse and stopped breathing. Agent Garner and Officer Frank then began cardiopulmonary resuscitation (CPR) at approximately 1:57 p.m. A few minutes later, Fire Department personnel arrived at the scene. The handcuffs were removed. Smith was treated and transported to Sutter General Hospital. He was declared deceased at 2:29 p.m.

Investigators interviewed the parolee passenger in Agent Garner's vehicle. The witness stated that during the car ride, Smith apologized and told everyone he loved them. Smith felt "stupid for messing his life up." Smith rubbed himself and moved around in the seat while they rode to the treatment center. The witness did not pay much attention to Smith. While sitting inside the treatment center, the witness heard Smith say his heart was beating rapidly and it would not stop. Smith did not make this statement to anyone specifically. The witness also observed Smith standing up and sitting down. Smith stated he was "tweaking." Smith was talking calmly and appeared in control. However, he became more vocal.

Investigators interviewed an administrative assistant, cook, program case manager, and support staff at the treatment center. The employees stated Smith was sweating profusely, moving around, speaking loudly, or talking incoherently when he was inside the treatment center. Some of the employees also heard Smith say he was "high." The employees did not observe the agents or officer use any force on Smith.

Officer Frank's body-worn camera video was reviewed. The video shows Officer Frank walking into the treatment center. Smith is already in handcuffs and lying face-down on the ground near Agents Garner and Mosby. Smith repeatedly states, "I'm good" and makes loud noises. The agents and officer help Smith stand up. As he is standing up, Smith says something that includes the words "heart attack."² As they begin walking, Smith continues to mumble. Smith walks out of the building with the agents and officer to the van. He continues to mumble as he walks to the van. He can be heard saying, "I'm good." He also says, "I'm sorry," and mumbles something about "respect shit" and "being a fool." Officer Frank and the parole agents guide Smith into the back of the van, where Smith falls down on his side with his feet towards the door. Approximately one minute later, Officer Frank begins driving to the jail.

² The Sacramento Bee reported that Smith stated, "I feel like I'm having a heart attack." <https://www.sacbee.com/news/local/crime/article213105559.html> The District Attorney's Office enhanced the audio of this portion of the recording. Smith is difficult to understand and talks incoherently. The words "heart attack" can be heard, but are not made in any context of a request for medical assistance. Nor does it sound like Smith is reporting his own physical condition. Instead, it sounds like Smith states, "Can't make no heart attack," and then either repeats again "I'm good" or says something like "no gun."

While en route to the jail, Almdarez asks, "Is he ok?" Officer Frank responds, "Yeah, he's laying down now with his feet up on the bench." A few minutes later, Almdarez asks, "Is he still laying down?" Officer Frank states, "Yeah, he's still laying on the floor. He had them like resting on top of the bench... Yeah, he's moving." Officer Frank later says, "He's still there, he's just not kicking anymore. He's just kind of moving around."

Officer Frank arrives at the jail approximately one minute after the last comment about Smith moving around. Officer Frank exits the van and opens the back door. Smith is lying face-down with his feet towards the door. Officer Frank tries to wake Smith, but there is no response. Officer Frank immediately requests medical assistance and then turns Smith around on his back. Officer Frank retrieves his CPR breathing mask and searches for Smith's pulse, while Agent Garner tries to talk to Smith. With no response, Agent Garner begins performing chest compressions and Officer Frank places the breathing mask on Smith's mouth. Approximately five minutes after Officer Frank radioed for medical assistance, Fire Department and medic personnel arrive and move Smith to the sidewalk to continue chest compressions and further medical treatment. They eventually transport Smith to the hospital by ambulance.

A surveillance video facing the north front parking lot at the treatment center was reviewed. The video depicts the police transportation van arriving in the lot and parking next to the red curb. The time stamp on the video at this point is approximately 1:26:55. At approximately 1:29:11, Agent Garner and Smith walk through the parking lot towards the shelter. Smith is handcuffed behind his back. At approximately 1:40:31, Officer Frank walks toward the shelter from the van. At approximately 1:48:21, Agents Garner and Mosby and Officer Frank escort Smith to the transportation van. They guide Smith into the back of the van and he falls down on the floor. Smith is still handcuffed. At approximately 1:49:52, Officer Frank drives off and the agents follow behind.

Surveillance videos from the west side of the Main Jail entrance were also reviewed. The videos show the police transportation van arriving at the jail. After parking the van on the driveway, Officer Frank immediately walks to the back of the van, opens the rear door, and climbs inside. Agents Garner and Mosby also approach the rear door. Fire and medic personnel arrive at the scene. They remove Smith from the van and place him on a stretcher. They move him to the sidewalk area, continuously perform chest compressions, and provide other medical treatment. Smith is then transported from the scene by ambulance.

Forensic Pathologist Brian Nagao, M.D., conducted an autopsy and concluded the cause of Smith's death was sudden death with methamphetamine intoxication, while in custody of law enforcement. He noted there was no internal torso or intracranial trauma. There was also no evidence of neck compression or asphyxia. Dr. Nagao concluded that the manner of death was accident. During the autopsy, Dr. Nagao discovered a foreign material consistent with a plastic baggie in the stomach. The Sacramento County District Attorney's Crime Lab confirmed the presence of methamphetamine and amphetamine in Smith's blood sample.

LEGAL ANALYSIS:

The Sacramento County District Attorney's Office independently reviews deaths that occur when an individual is in police custody. This office conducted its review by applying the facts of this case to the controlling legal authority. The authority applicable here included California Penal Code sections 834, 834a, 835a, 843, 192(b) and state and federal published cases.

Officer Frank had probable cause to take Smith into custody for a parole violation. Smith admitted to the parole agents he used heroin and methamphetamine. His initial calm demeanor changed during his ride to the treatment center. Smith's behavior was consistent with being under the influence of controlled substances.

Because Officer Frank's efforts to take Smith into custody were lawful, and there is no evidence to support a finding that either Officer Frank or Agents Garner and Mosby intentionally tried to harm him, we next analyze whether there is criminal liability under California Penal Code section 192(b), involuntary manslaughter. Involuntary manslaughter requires proof that a person acted in an aggravated, culpable, gross or reckless manner with disregard for human life or with indifference to the consequences of the act. (*Somers v. Superior Court* (1973) 32 Cal.App.3d 961, 968-969; *People v. Villalobos* (1962) 208 Cal.App.2d 321, 326-328; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 437-441.)

Smith's mother told the agents she wanted Smith admitted into a drug treatment program. While transporting Smith in the vehicle, Agents Garner and Mosby noticed Smith moving his arms around, making random statements, and becoming louder. Smith also did not sit still and was sweating. While waiting at the treatment center, Smith continuously stood up and kicked his legs. Smith behaved consistently with being under the influence of a controlled substance or substances. However, this behavior did not indicate to the agents or Officer Frank that Smith was in acute medical distress. Although he possibly made a statement regarding a "heart attack," this statement did not appear to be regarding his own physical condition and Smith repeatedly stated that he was "good." Moreover, Smith was able to walk on his own out to the van. Smith did not request any medical assistance. Smith had no observable physical signs of medical distress that would have caused Officer Frank or Agents Garner and Mosby to further evaluate Smith's condition at that time.

While driving to the jail, Officer Frank observed Smith moving and kicking. When Officer Frank saw Smith lying motionless in contrast to his earlier behavior, Officer Frank immediately parked the vehicle, checked on Smith, and called for medical assistance. Officer Frank acted swiftly to check Smith's pulse and with Agent Garner's assistance they began cardiopulmonary resuscitation until Fire Department personnel arrived at the scene.

It cannot be said that Officer Frank, Agent Garner, or Agent Mosby acted in an aggravated, culpable, gross, or reckless manner. They did not act with disregard for human life or an indifference to the consequences of their actions. Therefore, their conduct on that day does not constitute a criminal act under any theory of liability.

CONCLUSION

While this case presents a tragic situation, our decision must be based on what the evidence proves. Accordingly, there is no legal basis for any further action by our office.

cc: Sacramento Police Detective Scot Krutz
Sacramento Police Officer Marcus Frank
CDCR Parole Agent Angelle Garner
CDCR Parole Agent Charles Mosby
Francine Tournour, Office of Public Safety Accountability
Kimberly Gin, Sacramento County Coroner's Officer