Office of the New York State Attorney General Letitia James

Office of Special Investigation

September 19, 2024

Report on the Investigation into the Death of Elijah Muhammad

SUMMARY

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or peace officer. When OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of Elijah Muhammad, who died on July 10, 2022 from a drug overdose while incarcerated in the George R. Vierno Center (GRVC), a New York City Department of Correction (DOC) jail on Rikers Island, Bronx County.

OVERVIEW

On the afternoon and evening of July 10, 2022, in the section of GRVC where Mr. Muhammad was incarcerated, Correction Officer Ezra Lewis was the assigned "B" post (or floor) officer. At 2:56 pm surveillance video showed that Mr. Muhammad was severely disoriented and falling to the floor and that CO Lewis saw him in this condition. At 3:00 pm video showed that CO Lewis held Mr. Muhammad's cell door open while other people[1] physically assisted Mr. Muhammad into his cell. Despite his training and DOC rules that required him to do so, CO Lewis did not call a medical emergency for Mr. Muhammad or otherwise render aid, such as by administering Narcan. From 3:08 pm through 5:13 pm video showed that CO Lewis went to Mr. Muhammad's cell ten times and looked inside, seeming to check on Mr. Muhammad. Video did not show that CO Lewis conducted a round or came by or looked into Mr. Muhammad's cell between 5:13 pm and 9:43 pm. Video showed that other people began to become alarmed by Mr. Muhammad's condition, beginning a few minutes after 8:00 pm. However, it was not until 9:43 pm that CO Lewis, apparently alerted by an incarcerated person, finally reappeared at Mr. Muhammad's cell, seemed to understand the gravity of his condition, and began the process of obtaining medical aid. Although aid began at 9:48 pm, Mr. Muhammad was declared dead at 10:30 pm.

The autopsy report states the cause of Mr. Muhammad's death as "acute fentanyl intoxication" and the manner of death as "accident (substance abuse)." The medical examiner, in an interview with OSI, said that earlier medical intervention could have saved Mr. Muhammad.

New York law imposes a duty on correction officers to make sure that prisoners receive appropriate medical care. DOC's policies and training require that correction officers obtain medical care immediately for any prisoner they observe to be "disoriented" or suffering a "loss of consciousness."

[1] In this report, references to a "person" or "people" mean incarcerated people, unless otherwise indicated, such as references to correction officers or medical staff.

OSI concludes that CO Lewis failed to perform his duty to obtain medical care for Mr. Muhammad at the time he observed Mr. Muhammad severely disoriented and apparently about to lose consciousness. According to the medical examiner, if CO Lewis had performed his duty and followed his training and DOC's policies Mr. Muhammad's life could have been saved, though the outcome would not have been guaranteed. CO Lewis's failure to call a medical emergency or otherwise render aid was legally an omission – a failure to perform a duty imposed by law – and therefore there is a substantial question whether CO Lewis caused Mr. Muhammad's death by omission. An outstanding question whether an officer caused a death brings a case within the scope of Executive Law Section 70-b.[2]

However, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt at trial that CO Lewis's omission caused Mr. Muhammad's death, and therefore would not be able to prove beyond a reasonable doubt that CO Lewis committed a crime. For this reason, OSI closes the matter with this report rather than by seeking criminal charges.[3]

FACTS

Mr. Muhammad arrived on Rikers Island on June 9, 2022, after being charged with Assault in the First Degree. On June 25, 2022, Mr. Muhammad was housed in Housing Area 5B at GRVC in general population and assigned to cell #13, a single occupancy cell on the lower tier of the housing area. The door to Mr. Muhammed's cell was a solid metal door with one vertical rectangular window in the top left portion of the door.

Medical Records

According to Mr. Muhammad's Correctional Heath Services (CHS)[4] records from June 15, 2022 and June 17, 2022, during his initial assessment he admitted to using heroin, cocaine, methamphetamines, amphetamine, cannabis, and alcohol, and reported a prior mental health diagnosis.[5] The intake clinician reviewed his PSYCKES, CHER, and EPIC electronic mental health records, which detailed an extensive history of hospitalizations for mental health and substance abuse, and diagnosed Mr. Muhammad with Substance Induced Mood Disorder, Cocaine Use Disorder, Cannabis Use Disorder, Amphetamine Dependence, and

[2] Section 70-b states, in part, that OSI "shall investigate and, if warranted, prosecute any alleged criminal offense committed by [an officer, as defined] … concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such [officer] or in which the attorney general determines there is a question as to whether the death was in fact caused by an act or omission of such [officer] [emphasis added]."

[3] See also the New York City Board of Correction's "Report and Recommendations on 2022 Deaths in New York City Department of Correction Custody," which addressed the death of Mr. Muhammad, here.

[4] CHS is a division of the New York City Health & Hospitals Corporation and provides medical services at DOC facilities.

[5] Mr. Muhammad's urine toxicology upon admission was positive for cocaine, methamphetamine, and amphetamine.

Antisocial Personality Disorder. He was housed in general population with mental health follow-up.

While incarcerated, Mr. Muhammad was prescribed the daily medications related to his mental health, as well as methadone, which is a substitute drug for morphine and heroin.

On July 7, 2022, Mr. Muhammad was not produced by DOC for a scheduled medication re-evaluation appointment and his methadone prescription was discontinued. On July 8, 2022, Mr. Muhammad was evaluated by the medical staff during a sick call after he complained of shortness of breath, fever, chills, and headaches, and requested to be placed back on methadone. A referral was made to KEEP (Key Extended Entry Program), a Rikers Island opioid treatment program that provides methadone maintenance. The medical records after July 8, 2022 do not indicate when Mr. Muhammad resumed methadone treatment; Mr. Muhammad's autopsy report includes a forensic toxicology report which shows, among other drugs, 13ng/mL of methadone in his blood.

Requests for CO Interviews

On October 7, 2022, CO Lewis and his attorney Patrick Okeke were present at an OSI office for a scheduled interview. Mr. Okeke said his client would not answer questions without full immunity. CO Lewis confirmed he would not speak with OSI without full immunity. OSI did not offer CO Lewis full immunity for his testimony and the interview concluded.

OSI contacted attorney Joey Jackson, who represents members of the Correction Officers' Benevolent Association (COBA), and requested interviews of two other correction officers whom OSI believed to be witnesses to the events, CO John Carozza and CO Kafka Laroque. After consulting with his clients, Mr. Jackson advised OSI that the officers declined to be interviewed.

DOC Staff Incident Reports

OSI reviewed the Incident Report Forms of Correction Officers Ezra Lewis, Kafka Laroque, John Carozza, Erica Corulla, Jimmy Point Du Joir, and Safraz Newton, and Correction Captain Jonathan Peters.

CO Lewis wrote in his incident report that on July 10, 2022, he was assigned to the 5B post for the 1:00 pm to 9:31 pm tour, on overtime. CO Lewis said that at 3:02 pm Mr. Muhammad went to his cell to rest and he (CO Lewis) frequently toured Mr. Muhammad's cell and observed him walking around inside the cell and later lying down. CO Lewis said he did not "observe any unusual behavior which required medical attention." According to CO Lewis, after a fight

between people in custody, the Strategic Response Team (SRT)[6] reported to the housing area, sprayed chemical agents, and locked down the housing area. CO Lewis "was instructed to exit the area until lock in was complete, and all inmates secured inside their assigned cells." After the SRT left the housing area, "inmates shortly 'popped out' of their cells by manipulation of the cell door locking mechanism. Once out of their cells [CO Lewis] was verbally threatened to open other cells or else they would physically assault [him]." CO Lewis requested assistance from the control room to lock in the people "who popped out of their cells but to no availability." CO Lewis said he was still trying to secure the housing area at 9:46 pm with the assistance of his relieving officer when he noticed Mr. Muhammad had "minimal movement." CO Lewis said he called his relieving officer over to help and together they notified the command of the medical emergency, entered Mr. Muhammed's cell, and performed chest compressions until medical staff arrived.

CO Laroque wrote in her incident report that on July 10, 2022, at 9:30 pm, she was taking over the "B Post"[7] in GRVC and conducting an inmate count when CO Lewis asked her to check on Mr. Muhammad because he (Mr. Muhammad) did not look okay. CO Laroque went to Mr. Muhammad's cell, and he "had no pulse, no sign of life and skin was cold to touch." CO Laroque said she ran to the control room and called a medical emergency using an institutional radio. According to her incident report, the housing area did not have an AED and their CPR mask was compromised (already used). CO Laroque went back to Mr. Muhammad "to double check for sign of life, there was no sign of life." She turned on CO Lewis's BWC and they moved Mr. Muhammad onto the floor in front of his cell where they began chest compressions until the medical team arrived and took over medical care.

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[6] Strategic Response Teams are COs trained to respond to emergencies and deployed to facilities for operational security.

[7] "B" or "C" post officers are "security" post officers and are required to be in the housing area supervising people in custody and conducting tours. DOC Directive 4514R-C defines tours as General Supervision and Active Supervision: *General supervision*: "This type of supervision shall apply to cell housing areas and is primarily employed during the 2100 x 0500 hours tour of duty and any other time inmates are secured in their individual cells or a holding cell. Correction officers responsible for the care, custody, and control of the inmates shall remain in their assigned areas and conduct visual observations at 30-minute intervals in accordance with the procedures outlined in Directive 4517R, 'Inmate Count Procedures' (e.g., walking through the area and making a visual observation of each inmate when locked in their cell, observe signs of life, the cell is properly secured, etc.)." *Active Supervision*: "This type of supervision shall apply to all non-cell housing areas at all times. It shall also apply to cell housing areas during all lock out periods when inmates are allowed to freely move about the confines of the housing area (0500 x2100 hours) and those inmates who remain in their cells during lock out hours. Some characteristics of such supervision include but are not limited to: a. Direct and uninterrupted communication with each inmate, unaided by any electronic or other artificial amplifying device; b. The conducting of Active Supervision tour at 30-minute intervals; c. The ability of the officer on post to immediately respond to emergency situations; and d. If a facility housing area houses 20 or more inmates, the continuous presence of an assigned correction officer within that housing area to ensure optimal safety and security are provided." See the section below on "Medical Intervention by Correction Officers" for Directive 4517R, "Inmate Count Procedures."

CO Carozza wrote in his incident report that, on July 10, 2022, he was assigned to "Post 5 Control"[8] in GRVC for the 3:00 pm to 11:00 pm tour, on overtime. CO Carozza said that at 9:46 pm, CO Laroque was relieving CO Lewis and while conducting a tour she called for a medical emergency from the control room phone. Both CO Lewis and CO Laroque performed CPR on Mr. Muhammad until medical staff responded at 9:51 pm. (At 10:28 pm a medical emergency was called for another person in the same housing area, and he was removed from the housing area at 11:00 pm.)

CO Corulla wrote in her incident report that on July 10, 2022, at 10:00 pm, she arrived in "5 Control" in GRVC to assume the "A" post and saw CO Lewis, CO Laroque, CO Newton, CO Point Du Joir, and Capt. Peters alongside the medical staff performing CPR on Mr. Muhammad. CO Corulla said that instead of assuming the "A" post she assisted with the lock-in in 5B and observed medical staff rendering aid to another person (not Mr. Muhammad). At 10:50 pm, CO Corulla, CO Lewis, and CO Laroque conducted a full security inspection and tour of the housing area and removed cell manipulations from several cell doors.

CO Point Du Joir wrote in his incident report that on July 10, 2022, at 9:46 pm, he was assigned to the medical service security desk in the GRVC main clinic when a medical emergency was activated in "5 Building" for Mr. Muhammad. At 9:52 pm CO Point Du Joir, CO Newton, Capt. Peters, and the medical staff arrived in the 5B housing area and found Mr. Muhammad "unresponsive on the floor in front of his cell." They began chest compressions, "applied medical devices and administered medications." CO Point Du Joir said EMS arrived and declared Mr. Muhammad dead.

CO Newton wrote in his incident report that on July 10, 2022, at 9:48 pm, he was assigned to the GRVC clinic waiting room and responded with Capt. Peters to "5 Building" where he observed Mr. Muhammad on the floor outside his cell as CO Lewis performed chest compressions on him. CO Newton began chest compressions and shortly thereafter the medical staff arrived and "started to immediately render medical attention." CO Newton, CO Point De Joir, CO Lewis, and Capt. Peters assisted with chest compressions until EMS arrived and took over medical care.

Capt. Peters wrote in his incident report that on July 10, 2022 he was feeling sick and reported to work at 6:30 pm. He was assigned to "Charlie" house which covered GRVC housing areas 3A and 5A/B. He said that at 9:46 pm he was in the GRVC main clinic when he heard a radio

[8] The "Control" post officer, also known as the "A" post officer, is assigned to the control room, also referred to as "the Bubble." The control room is a glass enclosed room located at or near the entry point of each housing area. The facility phones and controls for the entry door to the housing area are in the control room. There is a control board in the control room from which officers can open the cell doors (but floor officers also have keys to open doors manually). Officers assigned to the "A" post monitor the entry door and conduct general and active supervision tours of the housing area; they are not to leave the bubble unless they are properly relieved (see NYC DOC "Post Description, Housing Area Control Post, Index 005C").

transmission for a medical emergency in 5B. He advised the medical staff of the emergency in 5B and ran out of the clinic toward 5B with CO Newton. When he arrived in the housing area he saw CO Lewis performing chest compressions on Mr. Muhammad. According to Capt. Peters, Mr. Muhammad "appeared bluish in the face and was foaming through both nostrils." He administered one application of Narcan through Mr. Muhammad's nostril as CO Lewis and CO Newton continued chest compressions. Capt. Peters said "it appeared inmate Muhammad started breathing due to the air bubbles coming through the inmate's nostrils, so [I] turned the inmate on his side and patted his back to no avail. [I] then cleared the foam like mucus which was red in color from the inmate's facial area and started conducting a series of chest compressions." At 9:52 pm the medical staff arrived with a LUCAS device;[9] they did not know how to use it and were unable to set it up on Mr. Muhammad. Capt. Peters, CO Lewis, CO Newton, and CO Point Du Joir continued chest compressions until EMS arrived at 10:17 pm and took over medical care. CO Laroque advised Capt. Peters that another person, in cell #22, appeared to be breathing but was unresponsive; Capt. Peters and the medical staff responded to cell #22 and the medical staff rendered aid to that person. Capt. Peters, with the assistance of CO Corulla, then secured all the inmates in their cells and, at 10:30 pm, EMS declared Mr. Muhammad dead.

Search of Mr. Muhammad's Cell

On July 10, 2022 OSI Detective Brian Metz was present in GRVC cell #13, Mr. Muhammad's cell, when DOC Investigation Division (ID) Investigators Hussain and McGovern searched the cell and recovered the following:

1. an inhaler;[10]
2. a bag of vitamin B pills prescribed to another person;
3. two rolled up pieces of paper with burn marks, with an unknown substance inside the paper (later identified as tobacco);
4. a piece of folded paper with an unknown white powdery substance (which field tested positive for fentanyl);
5. a bag with an unknown green leafy substance (which field tested positive for synthetic cannabinoids);
6. a mini Bible with pages ripped out;
7. a book soaked with an unknown substance.

[9] LUCAS (Lund University Cardiopulmonary Assist System) is a device that provides mechanical chest compressions to patients in cardiac arrest.

[10] According to Mr. Muhammad's Correctional Health Services medical records he was prescribed Albuterol and provided with an inhaler pump.

Interviews of Incarcerated People

OSI and the Civil Rights Division, Criminal Section, of the United States Attorney's Office, Southern District of New York, jointly interviewed four people: DS, SW, GA, and JS.[11]

DS, housed in cell # 03, said he met Mr. Muhammad a month before his death and that Mr. Muhammad appeared to have medical problems: he didn't take showers, was on medication, wouldn't come out of his cell for days, and appeared "high" every day. DS said he previously saw Mr. Muhammad leave with the "methadone people," but sometimes he went days without his medication. On July 10, 2022, DS said he saw Mr. Muhammad leaning against a wall and falling down. He said CO Lewis asked what was wrong with him and DS said it's likely his medications. DS told Mr. Muhammad he was going to put him in his cell and Mr. Muhammed agreed and asked that DS close the door. DS and another person put him in his cell and told CO Lewis to call medical, but CO Lewis said he didn't want to "make the house hot," meaning he didn't want to call attention to the housing area, because all the cells would be searched and people would get upset with him. DS said he had seen Mr. Muhammad on the floor before, but he would get up on his own and he never had to bring him to his cell. He said Mr. Muhammad appeared "more high" on this date than on prior occasions. DS said he checked on Mr. Muhammad a few times; he knocked on his door and Mr. Muhammad would look up and go back to bed. When CO Lewis was ending his tour he told DS he was going to check on Mr. Muhammad one last time and DS went with him; they found Mr. Muhammad unresponsive.

GA, housed in cell #35, said Mr. Muhammad appeared to have mental health issues and was on daily medications, including methadone. On July 10, 2022, he saw Mr. Muhammad eating Cheerios with water, and he appeared "high" and sluggish, but was not "acting crazy" or throwing up. GA asked him what was wrong and he did not respond. GA said he had observed Mr. Muhammad high in the past, but on this date he appeared "extra high." He said CO Lewis told someone in the "Bubble" to open Mr. Muhammad's cell door and two people put him in his cell; Mr. Muhammad fell onto his bed and everyone left him alone. CO Lewis asked people, "What did he smoke?" GA did not hear a response but believed Mr. Muhammad received methadone earlier in the day, between 11:00 am and 1:00 pm. GA checked on Mr. Muhammad a few times by looking through his cell door window and heard him snoring and saw his stomach going up and down. The first time GA saw him he was lying on his back, the second time he saw him he was lying on his side. He said CO Lewis and other people also checked on him.

[11] OSI does not publish the names of civilian witnesses. The BOC report, referenced and linked above in Footnote 3, on page 16, says, "According to people in custody, Mr. Muhammad requested medical help." None of the people OSI interviewed made that statement to OSI. OSI does not know who made those statements to BOC, as the BOC report does not name the people they interviewed.

SW said Mr. Muhammad was in the housing area for about a month and spent most of his time locked in. He said Mr. Muhammad received methadone and psychiatric medication. SW would accompany Mr. Muhammad when they got their medications. He said methadone makes people "act a certain way" and causes some people to fall asleep. On July 10, 2022, SW said he did not see much of Mr. Muhammad; he said the last time he saw him, he was getting water and was calm and smiling. SW said sometime between 6:00 pm and 8:00 pm he (SW) was sprayed during an incident in the housing area and after that he saw CO Lewis checking on Mr. Muhammad. Medical arrived soon after to assist Mr. Muhammad.

JS, housed in cell #01, said he met Mr. Muhammad a couple of weeks before his death and witnessed him "high" most days. On July 10, 2022, he said Mr. Muhammad looked "really high" and was leaning against a wall with his eyes partially open. JS and another person helped him get into his cell and laid him on his bed. JS recalled that a CO[12] was present and asked if Mr. Muhammad was breathing; JS said he checked Mr. Muhammad and confirmed he was breathing. He did not recall checking on Mr. Muhammad after helping him into his cell. JS said he believed Mr. Muhammad was willing to try different drugs, including fentanyl, and that fentanyl was in the jail around the time of this incident. JS said he didn't believe Mr. Muhammad's condition was serious or that he needed medical attention since he was able to walk to his cell with assistance. He recalled other inmates telling the CO that Mr. Muhammad would be fine.

Interviews of Medical Staff

OSI interviewed Dr. Khin Kyu who said that on July 10, 2022, she was in the GRVC clinic when she received a medical call for an unresponsive person. She said the medical unit was informed that the CO staff was performing chest compressions on the person but the reporter did not elaborate any further on the person's condition. Dr. Kyu said once the medical staff is advised that a person is receiving chest compressions they respond immediately and do not delay their response by asking further questions. When Dr. Kyu arrived at the housing area Mr. Muhammad was not breathing and was unresponsive, his extremities were cold, and his pupils were dilated. Narcan and epinephrine were administered, and they continued chest compressions. She asked when Mr. Muhammad was last seen responsive, but no one could provide an answer, and no one mentioned his behavior earlier in the day. Dr. Kyu said if she observed someone disoriented, she would send them to the hospital for an assessment. Dr. Kyu said she does not train DOC staff on appropriate medical response, nor is she familiar with their training.

OSI interviewed Physician Assistant Yves Duverne who said that on July 10, 2022 he was in the GRVC clinic when they received a call for a medical emergency and immediately responded to the housing area. When PA Duverne arrived at Mr. Muhammad's cell the DOC

[12] JS did not know the name of the CO but his description was consistent with CO Lewis.

staff were giving him first aid; he did not speak with the staff about Mr. Muhammad's condition, as it was obvious he was experiencing an overdose, and the medical staff assumed his care. When asked what the appropriate response would be for a disoriented person, PA Duverne said to notify medical immediately and administer Narcan. He said some of the common indicators of a drug overdose are shallow breathing, unconsciousness or near unconsciousness, and slurred speech. According to PA Duverne some psychiatric medications cause sleepiness, which is also a common side effect of some controlled substances, like methadone.

OSI interviewed Urgicare doctor Adam Litroff, who explained that Urgicare responds to critical emergencies on Rikers Island and provides care more advanced than the care the housing unit's main clinic can provide. On July 10, 2022, Dr. Litroff arrived at Mr. Muhammad's cell and saw the medical staff already performing first aid; he did not speak with any of the COs or other people present regarding Mr. Muhammad's condition. Dr. Litroff said if someone is observed disoriented to the point where they are not ambulatory, they should be placed on a stretcher and taken to the hospital for an evaluation. According to Dr. Litroff, drug overdose symptoms vary depending on the drug, but generally a person may experience an altered mental state, breathing issues, and abnormal heart rate and blood pressure. Dr. Litroff said he does not train DOC staff, nor is he familiar with their first aid or medical training.

Logbook Review

On July 10, 2022, CO Carozza's logbook entries in the "GRVC 5B Post A" logbook state that he conducted an active supervision tour of the housing area with nothing unusual to report every thirty minutes from 2:30 pm through 9:30 pm. At 4:20 pm, CO Carozza noted that a level B[13] was called for a "multiple inmate fight." At 4:40 pm, SRT responded to the level B alarm; at 5:30 pm, SRT left the unit with one person. According to CO Carozza's logbook entries, at 9:46 pm, a medical emergency was called for Mr. Muhammad and, at 9:51 pm, the medical staff arrived.

On July 10, 2022, CO Lewis's logbook entries in the "GRVC 5B Post B" logbook state that he conducted an active supervision tour with nothing unusual to report every thirty minutes from 6:00 am through 6:30 pm, and a general supervision tour with nothing unusual to report every thirty minutes from 7:00 pm through 9:30 pm. CO Lewis's regular round entries are not supported by video, as described below; video does not show that CO Lewis conducted a round or came by or looked into Mr. Muhammad's cell between 5:13 pm and 9:43 pm.

On July 10 2022, at 9:30 pm, CO Laroque assumed the GRVC 5B B post and noted in the logbook, "No body count available as per control room. This writer has reviewed the previous tour logbook entries, nothing unusual noted. A security check and a tour of area completed.

[13] Based on OSI's review of DOC's Operations Order for Facility Response Teams, there are four response levels, "A", "B", "C", and "D.""

Inmates are in the day room, multiple inmates in cells. Cell doors are not secure. Inmates were instructed to remove all obstacles from the cell doors and windows. House is not secure." CO Laroque's next entry states, "[9:30 pm], Active supervision tour of area completed. ~~Nothing unusual to report~~" (strikethrough in original).

Capt. Peters did not make any logbook entries in either of the GRVC logbooks on July 10, 2022.

Body-Worn Camera (BWC) Review

On July 10, 2022, at 9:45 pm,[14] CO Lewis activated his BWC and the footage showed him, CO Laroque, and several incarcerated people standing at the threshold of Mr. Muhammad's cell; Mr. Muhammad is visible in the cell on his bed, lying on his side, facing the wall. The footage showed that CO Laroque entered the cell, seemed to check Mr. Muhammad's pulse by holding his wrist, and quickly left the cell. At 9:46 pm CO Lewis entered the cell, stood over Mr. Muhammad, returned to the cell door and called out toward the control room, requesting they call a medical emergency. CO Lewis returned to Mr. Muhammad and turned him over to his back as he called out his name; once Mr. Muhammad was on his back, foam was visible coming out of his nose. At 9:47 pm CO Lewis tapped Mr. Muhammad's back and called his name. At 9:48 pm CO Lewis and CO Laroque carried him out of his cell and laid him on the floor in front of his cell; CO Laroque instructed CO Lewis to commence chest compressions. As CO Lewis performed chest compressions on Mr. Muhammad, people yelled at the COs, blaming them for Mr. Muhammad's medical emergency (though no specifics are audible). At 9:50 pm Capt. Peters arrived and administered the first dose of Narcan. At 9:51 pm the COs said, "he's breathing." At 9:52 pm the medical staff arrived at the cell and began life saving measures with the assistance of the COs, alternating chest compressions. At 9:56 pm Capt. Peters instructed the COs to call Urgent Care. At 9:57 pm Capt. Peters asked CO Lewis when he last saw Mr. Muhammad; CO Lewis responded, "he was up, he was up, he was breathing, last time I checked. And then afterwards he kept going in and out, then they locked them in, checked on him and he was still breathing, last time I checked on him. He was up, waking up and going to sleep, waking up and going to sleep. I'm trying to remember the time right now." At 10:10 pm someone said that a person in cell #22 was not breathing. At 10:13 pm staff activated the LUCAS device and began mechanical chest compressions on Mr. Muhammad. At 10:15 pm a male CO instructed CO Laroque to check on cell #22. At 10:17 pm a clinician asked CO Lewis when he last saw Mr. Muhammad; CO Lewis said it was sometime before 9:00 pm. At 10:22 pm someone said the person in cell #22 was unconscious and, soon after, the medical staff, COs, and other people congregated at a cell at the other end of the corridor; CO Lewis remained with the medical staff tending to Mr. Muhammad. At 10:28 pm a clinician asked CO Lewis if Mr. Muhammad was unresponsive when he found him and asked CO Lewis how long he had been unresponsive. CO Lewis said he was unresponsive when he found him

[14] Times are from the timestamps in the BWC recording.

in the cell and that he last saw him alive sometime before 9:00 pm. The clinician said she believed he was "out already." At 10:30 pm another clinician walked over and reported on the status of the other unconscious person. At 10:31 pm the medical staff ceased treatment of Mr. Muhammad and began clearing up their equipment. CO Lewis's BWC video ended at 10:40 pm.

Capt. Peters activated his BWC at 9:50 pm and the footage showed him entering the housing area and running to Mr. Muhammad's cell, where CO Lewis was on the floor performing chest compressions on Mr. Muhammad. At 9:51 pm Capt. Peters administered two doses of Narcan in Mr. Muhammad's nose, and at 9:52 pm the medical staff arrived. Capt. Peters, CO Lewis, and other COs alternated chest compressions until staff activated the LUCAS device. Capt. Peters remained at Mr. Muhammad's cell as the medical staff and EMS rendered aid. At 10:26 pm Capt. Peters walked to another cell where medical staff and EMS personnel were treating a different person. The BWC captured audio of people criticizing the COs for locking them in their cells and accusing Capt. Peters of not performing a tour the entire day. At 10:57 pm Capt. Peters, CO Lewis, and other COs toured the housing area, checked all locked-in people, removed tissue in the locking mechanisms of some cell doors and coverings on cell door windows. At 10:59 pm someone asked Capt. Peters about the situation, and he responded, "I don't know, people gotta stop smoking whatever you guys smoking man. Whatever you guys using, I don't know." Capt. Peters's BWC footage ended at 11:12 pm.

Surveillance Video Review

Surveillance video from Mr. Muhammad's housing area showed the housing area and the cell doors but did not provide a direct view into cell interiors; the video did not have audio. The following is a summary of surveillance video from July 10, 2022, beginning at 2:53 pm:

- 2:53 pm: Mr. Muhammad appeared to pour water from a water cooler into a container of cereal; he walked to the CO desk; no CO was at the desk.

- 2:54 pm: CO Lewis conducted a tour of the housing area and walked over to the CO desk where Mr. Muhammad was standing. CO Lewis spoke with Mr. Muhammad and other people at the CO desk.

- 2:56 pm: Mr. Muhammad walked away from the CO desk and appeared unsteady as he approached the stairs. He stopped at the base of the stairs, held onto the railing with both hands and stood there for a few seconds as many people appeared to watch him.

- 2:57 pm: Mr. Muhammad turned away from the stairs and walked toward his cell. A person opened his cell door and motioned for Mr. Muhammad to go into the cell. Mr. Muhammad appeared disoriented, did not enter the cell, and the person closed his

cell door. Several people on the housing unit floor appeared to be watching Mr. Muhammad as he stood near his cell door, unsteady, disoriented, and with his eyes closed (see Figure 1, below). CO Lewis was at the CO desk during this time.

Figure 1: Mr. Muhammad standing near his cell.

- 2:58 pm: Mr. Muhammad leaned against a wall for support, was clearly unsteady and nearly fell to the floor. A person walked over to him, opened his cell door, and motioned for him to go into his cell. Mr. Muhammad did not enter his cell; he stood outside the cell facing away from the housing unit, leaning against a wall. The person closed the cell door and walked to the common area tables where several people congregated and appeared to be watching Mr. Muhammad and laughing.

- 2:59 pm: CO Lewis walked over to the common area tables and spoke with the people who were looking in the direction of Mr. Muhammad and seemed to be laughing.

- 3:00 pm: Mr. Muhammad slid down the wall he was leaning on and ended up in a sitting position on the floor. CO Lewis and several other people walked over to Mr. Muhammad. CO Lewis opened his cell door as two other people lifted Mr. Muhammad by the arms and carried him into his cell. CO Lewis and several other people stood by Mr. Muhammad's open cell, apparently looking into the cell.

- 3:04 pm: CO Lewis walked away from Mr. Muhammad's cell. A person entered the cell while another held the cell door open and looked inside. Several other people approached and either entered or looked into the cell.

- 3:06 pm: all people left Mr. Muhammad's cell and closed the door.

- 3:08 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside.

- 3:10 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside. As CO Lewis held the cell door open, two other people approached the cell and looked inside.

- 3:12 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside.

- 3:17 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside.

- 3:20 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside. He remained at the cell for over a minute.

- 3:31 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside. He remained at the cell for several seconds.

- 3:34 pm: CO Lewis conducted a tour of the housing unit and then joined a group of other people at the common area tables.

- 3:39 pm: a person looked into Mr. Muhammad's cell through the cell door window.

- 3:41 pm: a different person looked into Mr. Muhammad's cell through the cell door window.

- 3:43 pm: CO Lewis looked into Mr. Muhammad's cell through the cell door window, stood outside the cell for about a minute, then opened the cell door and looked inside.

- 3:54 pm: CO Lewis opened Mr. Muhammad's cell door and looked inside.

- 4:07 pm: a person looked into Mr. Muhammad's cell through the cell door window for several seconds. A second person walked over and looked into the cell through the cell door window, opened the cell door, and knocked on the door before walking away. The first person remained at the cell with his face pressed against the cell door window for several seconds. The second person returned and both people looked into the cell through the window. A third person approached the cell and looked into the cell through the window. The people opened the door and looked inside before a fourth person approached the cell. The people closed the cell door and remained outside the cell conversing.

- 4:11 pm: a fight began directly outside Mr. Muhammad's cell and moved toward the front of the housing unit. CO Lewis was seated at the front CO desk when the fight started, moved toward the front of the housing unit when the fight advanced toward the front CO desk, and ran behind the front desk when the fight moved toward the front of the housing unit. Some people retrieved what appeared to be sticks and used them as weapons in the altercation. CO Lewis did not intervene in the fight and knocked on the control room window. The fight ended within a few minutes.

- 4:14 pm: a person looked into Mr. Muhammad's cell through the cell door window.

- 4:23 pm: CO Lewis conducted a tour of the housing unit.

- 4:37 pm: a person looked into Mr. Muhammad's cell through the cell door window, opened the door, and looked inside for several seconds.

- 4:42 pm: CO Lewis sat at the front desk surrounded by other people. He left the desk and conducted a tour of the housing unit. CO Lewis did not check Mr. Muhammad's cell and returned to the front desk.

- 4:53 pm: CO Lewis opened Mr. Muhammad's cell door, looked inside the cell and began to walk away when another person approached him and entered Mr. Muhammad's cell as CO Lewis held the door open, seemingly looking in the cell. Two additional people approached the cell and entered as CO Lewis stood at the door holding it open. Two of the people walked away and one remained in the cell as CO Lewis continued to hold the door open and seemed to watch what was happening in the cell. The remaining person left the cell and CO Lewis closed the cell door at 4:57 pm. CO Lewis remained outside the cell door. Another person approached Mr. Muhammad's cell, entered the cell, and quickly walked away.

- 5:02 pm: a person looked into Mr. Muhammad's cell through the cell door window.

- 5:13 pm: CO Lewis looked into Mr. Muhammad's cell through the cell door window, opened the door and stood at the threshold with his body holding the door open for several seconds as he looked inside the cell. CO Lewis remained outside the cell as another person approached, looked into the cell through the cell door window, and opened the door. The other person and CO Lewis looked inside the cell. The other person entered the cell and CO Lewis walked away. Another person entered the cell. After a few seconds the two people left the cell. *This is the last time video captured CO Lewis looking into Mr. Muhammad's cell until 9:43 pm, four and a half hours later. Video did not capture any other correction officer looking into Mr. Muhammad's cell during that period.*

- 5:30 pm: the SRT team entered the housing area, physically restrained a person, and removed him from the housing area. SRT appeared to have deployed pepper spray in the housing area, as many people covered their faces with their shirts and waved their hands in front of them as if clearing the air. Most people retreated to their cells and a large number of COs remained at the front of the housing unit.

- 5:37: all people were locked in and SRT checked all cell doors.

- 5:40 pm: SRT checked Mr. Muhmmad's cell door but did not appear to look into the cell.

- 5:46 pm: SRT left the housing area.

- 6:00 pm: most people remained locked in; a few were locked out, cleaning the housing area and communicating with locked-in people through cell doors. The locked-in people slid items back and forth under their cell doors with the people who were out.

- 6:10 pm: a person looked into Mr. Muhammad's cell through the cell door window and ran to the control room. That person and another appeared to look into the control room.

- 6:24 pm: an unidentified CO entered the housing area, engaged with the people who were locked out, and left the housing area after two minutes without conducting a tour.

- 6:35 pm: a person looked into Mr. Muhammad's cell through the cell door window.

- 6:36 pm: CO Lewis and an unidentified captain entered the housing area and quickly left without conducting a tour.

- 6:54 pm: a person looked into Mr. Muhammad's cell through the cell door window.

- 6:55 pm: the locked-out people continued cleaning the housing area and exchanging items with some locked-in people underneath their cell doors. An SRT team entered the housing area with a person, placed him in a cell, and left without conducting a tour

- 7:58 pm: CO Lewis returned to the housing area and helped the locked-out people clean up the common area but did not conduct a tour from the time he entered until the time he left, 12 minutes later.

- 8:06 pm: a person looked into Mr. Muhammad's cell through the cell door window and knocked on the cell door. CO Lewis was cleaning up with the locked-out people.

- 8:10 pm: CO Lewis left the housing area. *Video did not capture CO Lewis in the housing area again until 9:43 pm*.

- 8:23 pm: a person looked into Mr. Muhammad's cell through the cell door window and knocked on the cell door. Another person approached and looked into the cell through the window and knocked on the cell door.

- 8:38 pm: a person looked into Mr. Muhammad's cell through the cell door window and repeatedly knocked and kicked the cell door. The person appeared to call over another person and the two people looked into the cell through the window and knocked on the cell door.

- 8:45 pm: a person looked into Mr. Muhammad's cell through the cell door window.

- 9:11 pm: a person looked into Mr. Muhammad's cell through the cell door window and repeatedly kicked the cell door.

- 9:20 pm: a person looked into Mr. Muhammad's cell through the cell door window for several seconds and then knocked on the cell door. Another person approached, looked into the cell through the window, knocked on the cell door and walked away. The first person remained at the cell, looking through the window, and repeatedly knocking on the cell door. The first person left Mr. Muhammad's cell at 9:23 pm.

- 9:43 pm: CO Lewis returned to the housing area, was met by a person, and both walked over to Mr. Muhammad's cell. CO Lewis unlocked the cell door and the other person entered the cell as CO Lewis held the door open and shined his flashlight into the cell. The other person came out of the cell and CO Lewis walked away.

- 9:45 pm: CO Lewis returned to Mr. Muhammad's cell with CO Laroque and both entered the cell. CO Laroque ran out of the cell toward the control room and returned shortly thereafter. CO Lewis and CO Laroque entered the cell.

- 9:48 pm: CO Lewis and CO Laroque carried Mr. Muhammad out of his cell and CO Lewis began chest compressions.[15]

Compilation Video

OSI created a compilation video showing Mr. Muhammad from 2:56 pm, when he was first visible on video in a disoriented state, through 3:01 pm, when he was placed in his cell, as described above. The compilation video consists of two videos from two different cameras

[15] The subsequent events seen on video surveillance, including the medical attention, were captured on BWC and are described in the BWC section above.

positioned at opposite ends of the housing unit's corridor.[16] The compilation video may be viewed here.

Discipline of CO Lewis

CO Lewis was a probationary correction officer on July 10, 2022; he was in the DOC academy from December 16, 2021 through June 6, 2022 and assigned to GRVC on June 7, 2022. On July 11, 2022, GRVC Warden Jean H. Rene requested the Deputy Commissioner of Human Resources conduct a "Personnel Determination Review" of CO Lewis, stating, "Officer Lewis failed to notify the area Supervisor in addition to medical staff which delay [*sic*] aid to inmate Muhammed [sic]. Although the investigation into COD 2311/ 22 is still on going [*sic*], I am requesting this matter be placed on the agenda for Personnel Determination Review as the command is recommending the termination of Correction Officer Lewis." On July 11, 2022 CO Lewis was terminated by DOC.

First Aid Training for Correction Officers

OSI interviewed the DOC academy's first-aid instructor, Christopher Hennessey, who said that COs are given eight hours of first-aid training while in the academy, provided a first-aid manual, and shown a training video;[17] a refresher course is given every two years after recruits graduate from the academy. The training is primarily focused on CPR, AED and first aid. New recruits are given a DOC Learner Guide for medical emergencies and a CPR/First Aid & Medical Emergencies handout; these are specific to medical emergencies in DOC facilities and reference DOC rules and regulations (listed below). The CPR/First Aid & Medical Emergencies handout provides an overview of the procedures staff are to follow when presented with a medical emergency, which are to call the medical staff and a supervisor, commence CPR until medical staff arrive, and make a logbook entry of the incident. The Learner Guide defines a medical emergency as a "sudden injury, illness, or ailment that requires immediate medical attention; condition that, if not treated with prompt medical care, could be life-threatening," and includes "suspected overdose" in a list of examples.

The Learner Guide lists situations that warrant medical attention, including complaints from incarcerated people of disorientation, and advises correction officers on the appropriate response to medical emergencies: officers are to contact the medical unit and their supervisors, perform CPR if appropriate, clear the incident area, make logbook entries, and complete an incident report.

Instructor Hennessey said correction officers are trained to always call medical in a medical emergency. The only time officers are instructed to render aid is when a person is hanging

[16] The compilation video is redacted pursuant to the Attorney General's published video release policy.
[17] OSI was provided with a copy of the first-aid manual and training video. It is not specific to correctional institutions and does not provide guidance on the use of Narcan or treatment for drug overdose.

from a ligature (the officer must cut the ligature) or is unresponsive (the officer must perform CPR and administer Narcan). Instructor Hennessey said officers are trained to look for signs of overdose when tending to an unresponsive person, namely blue tinted skin and not breathing; officers are trained on the use of Narcan for suspected overdose. Instructor Hennessy said officers are trained to administer Narcan only to unconscious people, or to people who have requested it. He said if a person appears "high," the officers are to monitor the person and "keep an eye" on them. According to Instructor Hennessey the officers are not trained on the signs of intoxication short of overdose, either by drugs or alcohol, and the only guidance they are provided on disorientation is to call the medical staff. Instructor Hennessy acknowledged that drugs are prevalent in the facility and that officers have complained that far too often many incarcerated people appear to be under the influence of controlled substances.

DOC Rules on Medical Intervention by Correction Officers

The following DOC Rules and Regulations, among others, govern medical intervention by correction officers:

> 7.05.010: "It shall be the duty of members of the Department to look after the inmate's welfare and to ensure that the inmates receive proper food, clothing, and medical treatment… . Complaints made by inmates with regard to their welfare shall be investigated and reported immediately to a superior officer".
>
> 7.05.060: "The officer taking the count must observe 'signs of life' in each inmate on the post. A sign of life is any observation of the inmate that assures the officer the inmate is alive. For example, the rise and fall of the chest indicating the inmate is breathing, snoring, or some body movement, etc. If, after observing the inmate, no such 'sign of life' is observed, the officer is to make a reasonable attempt to obtain such a sign. This can be accomplished by making noise, such as jiggling keys or tapping cell bars/windows. The officer must continue these efforts until it is assured that the inmate is alive. If the officer reaches a point in these efforts where the officer feels the inmate may be in need of medical attention/assistance, the officer will alert the officer on post to notify the Control Room Captain and request medical assistance. The officer conducting the count shall remain in close proximity of the inmate or the inmate's cell, in order to keep the inmate under close observation, and shall render emergency first-aid as appropriate. The Control Room Captain shall direct immediate notification to a member of the medical staff and a superior officer to report to the area concerned".
>
> 7.10.040: "Whenever an inmate complains or appears to be injured or sick, prompt action shall be taken to ensure that the inmate is examined by authorized medical personnel. In instances where there are no authorized medical personnel within the facility, an ambulance shall be summoned. In the event that the urgency of the

situation precludes first notifying a supervisor because a delay in obtaining medical treatment could cause a worsening of the inmate's condition, the member of the Department shall take action to ensure that the inmate is examined by authorized medical personnel and shall notify the supervisor as soon as possible, either while the inmate is being treated or immediately thereafter. In an emergency situation, when time is of the essence, the member of the Department shall contact authorized medical personnel or, where there are no authorized medical personnel within the facility, an ambulance. (Emergency health care is defined as any circumstance, other than the standard sick call or follow-up, necessitating a face-to-face encounter between medical staff and an inmate patient, to prevent loss of life, disfigurement and/ or placing of an inmate in imminent danger.)"

DOC Directive 4516R-D: "Injury to Inmate Reports" states in part: "Inmates who appear to have any of the following conditions or complain of any of these conditions must be brought directly to the Clinic location for medical attention and shall not be escorted to any intake location:

a. Loss of Consciousness
b. Respiratory or Breathing Issues
c. Seizures
d. Fractures
e. Swelling and/or Bruising to the Head or Face
f. Bleeding from the Head or Face
g. Bleeding from Eyes or Ears
h. Any bleeding that appears excessive to a reasonable person
i. Disorientation
j. Any other Class A injury as defined in Directive 5006R-D, 'Use of Force.'"

Autopsy

Dr. Michael Greenberg, Medical Examiner with the New York City Office of Chief Medical Examiner (OCME), performed the autopsy of Mr. Muhammad. The autopsy report states the cause of death as "acute fentanyl intoxication" and the manner of death as "accident (substance abuse)."

OSI interviewed Dr. Greenberg, who said that Mr. Muhammad was a healthy male with no underlying contributing health factors and that the concentration of fentanyl in his blood, 45ng/mL,[18] was extremely high and fatal on its own.[19] He said Mr. Muhammad had a low

[18] Mr. Muhammad's blood sample was taken at the time of his autopsy on the morning of July 12, 2022,

[19] By way of comparison, Dr. Greenberg cited other fentanyl overdose deaths he's encountered with single digit concentrations of fentanyl in the bloodstream. He said 45ng/mL was an excessive amount, even for frequent users.

dosage of methadone in his blood, 13 ng/mL, but that the combination of drugs was not what caused his death. Dr. Greenberg opined that, based on his body temperature and rigor, Mr. Muhammad's time of death was likely between 7:00 and 9:00 pm.[20] Regarding the foam that was present on Mr. Muhammad's nose when he was discovered unresponsive in his cell, Dr. Greenberg said foaming tends to occur at, or around, the time of death and represents terminal breathing activity. He said the foaming would stop at the time of death but may remain present for several hours and could reappear with resuscitative efforts. According to Dr. Greenberg, the manner in which a drug is introduced to the body affects the rate of absorption into the bloodstream: injecting or smoking drugs would be quicker than ingesting (eating) the drugs. He said if a lethal dose of fentanyl were ingested it might take hours to cause death; if it were smoked, death could occur sooner.[21] Dr. Greenberg said based on the high level of fentanyl in Mr. Muhammad's system, he may have taken a second dose of fentanyl after he was placed in his cell. He explained that, while the body needs time to absorb the fentanyl into the bloodstream, the number of hours between the time he was placed in his cell and later found unresponsive appear to be an excessive amount of time for the fentanyl to cause death, suggesting that he might have taken a second dose of fentanyl at some point between 3:00 pm and 9:43 pm. Dr. Greenberg said that if Narcan had been administered to Mr. Muhammad when he was first observed in a disorientated state, the likelihood of survival would have been greater since he was still responsive, though survival would not have been guaranteed. However, Dr. Greenberg said that Narcan is administered to unconscious individuals and since Mr. Muhammad was responsive before being placed in his cell there appeared to be no reason to administer Narcan, unless Mr. Muhammad asked for it.[22] Dr. Greenberg advised that fentanyl, as well as many other drugs, causes sedation. He said methadone and diphenhydramine, both of which were present in Mr. Muhammad's toxicology screening, are sedatives.[23]

LEGAL ANALYSIS

Under Penal Law 125.10, "A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person."

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[20] According to OCME Medico-Legal Investigator (MLI) Samantha Schuster's Investigation Report, on July 11, 2022, at 2:16 am, Mr. Muhammad's rectal temperature was 88 degrees Fahrenheit, and the ambient temperature was 68 degrees Fahrenheit. Dr. Greenberg said the rate of cooling of a dead body in room temperature is approximately 1.5 to 2 degrees per hour and the ambient temperature of Mr. Muhammad's cell is considered room temperature. Dr. Greenberg said, assuming Mr. Muhammad's body temperature was 98 degrees Fahrenheit at the time of his death, the time of death would be between 7:00 pm to 9:00 pm but cautioned that time of death based on body temperature calculations are purely estimations.

[21] There is no direct evidence indicating how the fentanyl entered Mr. Muhammad's system, and Dr. Greenberg said an autopsy cannot reveal the manner in which the drug entered the bloodstream.

[22] Dr. Greenberg's statement is consistent with Instructor Hennessy's training on the use of Narcan.

[23] As noted above, according to his CHS medical records, Mr. Muhammad was prescribed methadone and diphenhydramine.

"Criminal negligence" is defined in Penal Law Section 15.05(4): "A person acts with criminal negligence with respect to a result [in this case, death] … when he fails to perceive a substantial and unjustifiable risk that such result will occur …. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

A person can be convicted of criminally negligent homicide for an omission when the person (1) failed to perform an act as to which a duty of performance is imposed by law;[24] (2) the failure of performance was blameworthy conduct in that it created or contributed to a substantial and unjustifiable risk that a person's death would occur;[25] (3) the blameworthy conduct was in fact a contributory cause of the person's death;[26] (4) the person's death was a reasonably foreseeable result of the conduct;[27] and (5) the defendant's failure to perceive the risk of death was a gross deviation from the standard of care of a reasonable person.[28]

Duty

An omission is conduct defined as a "failure to perform a duty imposed by law." Penal Law Sections 15.00(3) and 15.10. The Court of Appeals has held that the state and its agents have a duty of care to the persons in their custody. *Sanchez v State of New York*, 99 NY2d 247, 250 (2002) ("having assumed physical custody of inmates, who cannot protect and defend themselves in the same way as those at liberty can, the State owes a duty of care to safeguard inmates."). This duty of care is found in the Correction Law, which explicitly states that the chief administrator of a jail has a duty to "receive and safely keep…each person lawfully committed to his custody." Correction Law Section 500-c. The Correction Law also requires that each facility be established and maintained with "due regard to the health and safety of every person in the custody of the department" and "the right of every person in the custody of the department to receive humane treatment." Correction Law Section 70. The duty of care is further defined in the regulations established by the local correctional facilities. As described above, DOC Rules and Regulations 7.05.010 states, "It shall be the duty of members of the Department to look after the inmate's welfare and to ensure that the inmates receive proper food, clothing, and medical treatment," and 7.10.040 states, "Whenever an inmate complains or appears to be injured or sick, prompt action shall be taken to ensure that the inmate is examined by authorized medical personnel." DOC Directive 4516R-D, "Injury to Inmate Reports," noted above, requires correction officers to transport incarcerated people experiencing specified medical conditions, including "loss of consciousness" and "disorientation," directly to a clinic for medical attention.

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[24] Penal Law Section 15.00(3)

[25] N.Y. Crim. Jury Instr. 2d Penal Law § 125.10; *People v Cabrera*, 10 NY3d 370, 376 (2008).

[26] *People v Fitzgerald*, 45 NY2d 574, 579 (1978).

[27] *People v Stan XuHui Li*, 34 NY3d 357, 369 (2019)

[28] *People v. Cabrera*, 10 NY3d 370, 376 (2008)

The scope of the duty of care is limited to protecting incarcerated people from risks of harm that are reasonably foreseeable i.e., "those that [correction officers] knew or should have known." *Vasquez v State*, 68 AD3d 1275, 1276 (3d Dept 2009), citing *Sanchez*, 99 NY2d 247, 255. This duty does not make a correction officer "an insurer of inmate safety." *Sanchez*, 99 NY2d 247, 253. The courts look to a facility's regulations, policies, past experience, and expertise to determine whether a harm was foreseeable. The duty of care includes providing reasonable care that an inmate showing signs of suicidal ideation does not take his or her own life, *Gordon v. City of New York*, 70 NY2d 839, 840 (1987), and providing timely and adequate medical care to an inmate who personnel are aware is experiencing a medical emergency, *Kagan v State*, 221 AD2d 7, 16 (2d Dept 1996) ("it is beyond cavil that the State owes a duty to provide medical care and treatment to its prisoners").

Blameworthy Conduct and Causation

Criminally negligent homicide requires proof the defendant engaged in "'blameworthy conduct' so serious that it creates or contributes to a substantial and unjustifiable risk that another person's death will occur." NY Crim Jury Instr 2d Penal Law § 125.10; *People v. Cabrera*, 10 NY3d 370, 376 (2008). Blameworthy conduct must cause a person's death to sustain a conviction for criminally negligent homicide. *People v Fitzgerald*, 45 NY2d 574, 579 (1978). A person causes the death of another person when "(1) that defendant's actions were an actual contributory cause of the death, in the sense that they forged a link in the chain of causes which actually brought about the death; and (2) that the fatal result was reasonably foreseeable." *People v Stan XuHui Li*, 34 NY3d 357, 369 (2019), quoting *People v. Davis*, 28 NY3d 294, 300, (2016) (internal quotation marks omitted). The defendant's actions need not be the only cause of death; "it is enough that the defendant's conduct set in motion" or continued in motion the events which ultimately resulted in death. *People v Matos*, 83 NY2d 509, 511 (1994).

If the decedent could not have been saved with prompt medical intervention, there is no causation, as the defendant's failure to seek medical care did not contribute to his death. *See People v. Dlugash*, 41 NY2d 725, 730-31 (1977) (defendant not guilty of homicide because the People did not prove beyond a reasonable doubt that the victim was alive at the time defendant shot him). Proof on this issue is usually provided by physicians. In *People v Henson*, 33 NY2d 63, 71 (1973), for example, the Court of Appeals cited a doctor's testimony that "the injuries suffered by [the decedent], even complicated, as they were…could have been treated almost up to the last moment of his life."

Failure to Perceive

To convict a person of criminally negligent homicide, a prosecutor must prove that the defendant had the mental state of criminal negligence.

The Court of Appeals described the mental state as "the failure to perceive the risk in a situation where the offender has a legal duty of awareness. It, thus, serves to provide an offense applicable to conduct which is obviously socially undesirable." *People v Haney*, 30 NY2d 328, 334 (1972). What separates negligence from criminal negligence is the magnitude of the failure to perceive the risk, in that "the carelessness must be such that its seriousness would be apparent to anyone who shares the community's general sense of right and wrong." *Cabrera*, 10 NY3d 370, 376.

To determine whether the defendant's failure to perceive the risk was criminally culpable, courts look to the training, experience, and expertise of the defendant, as what would be obvious to a doctor may be imperceptible to a parent with no medical training, *People v Wong*, 81 NY2d 600, 608 (1993). In *Wong*, two caregivers contracted to care for a three-month-old infant; the evidence showed that one of the caregivers forcefully shook the infant, leading to the baby's death. There were no external injuries, and it was unclear which defendant shook the baby. As an initial matter, the Court held that the defendants had a duty of care, arising out of their contract with the parents. *Wong*, 81 NY2d 600, 608. The court then overturned the convictions for manslaughter and dismissed the indictments. The court found that the evidence did not demonstrate whether the "passive" (i.e. non-shaking) defendant was aware the other defendant had shaken the baby. Further, the court observed that while "there are situations where the need for prompt medical attention would be obvious to anyone—a child bleeding profusely, for example," that was not the case in *Wong*, where the baby had no external injuries and the baby's symptoms of a coma could be mistaken for ordinary sleep to someone without medical training. Id. at 608, quoting *People v Steinberg,* 79 NY2d 673, 681 (1992).

In *People v. Mayo*, 4 AD3d 827, 828 (4th Dept 2004), the court sustained the conviction of a mother who was found guilty of criminally negligent homicide for failing to seek medical care for her child, who had suffered a broken rib, puncturing his intestines; the child would have exhibited signs of excruciating pain, which would have worsened as peritonitis set in. In *People v Goddard*, 206 AD2d 653, 655 (3d Dept 1994), the court dismissed an indictment charging a babysitter with criminally negligent homicide because his failure to perceive that a baby was severely dehydrated and needed medical attention was not a gross deviation from the standard of care of a reasonable person, considering that the babysitter had no medical training and limited knowledge of the baby's medical condition.

Analysis and Conclusion

Duty

Based on the New York Correction Law and case law, CO Lewis was legally responsible for the care of Mr. Muhammad, and had a duty to call for medical assistance immediately when he observed him leaning against a wall and sliding down to the floor, clearly disoriented, unable

to stand up, and apparently about to lose consciousness, as captured on video at 3:00 pm. CO Lewis continued to violate the duty of care in the period from 3:00 pm to 5:13 pm, during which he seemed to be aware of the seriousness of Mr. Muhammad's condition, repeatedly returning to his cell to check on him, by continuing to fail to call the medical staff for assistance. CO Lewis continued to violate his duty of care in the four-and-a-half-hour period from 5:13 pm to 9:43 pm, during which, despite his awareness of the seriousness of Mr. Muhammad's condition, he failed to look into Mr. Muhammad's cell at all.

If during that period Mr. Muhammad took additional fentanyl, which worsened his condition, as posited by Dr. Greenberg, CO Lewis, by failing to conduct rounds as required, had no way of knowing that Mr. Muhammad's condition was deteriorating. Indeed, after SRT locked people in their cells, including Mr. Muhammad, video indicates that people who looked into Mr. Muhammad's cell at 8:06 pm, 8:23 pm, 8:38 pm, 9:11 pm, and 9:20 pm, became increasingly alarmed, knocking on and kicking at the door to the cell in an apparent attempt to determine whether he was merely sleeping or had ceased breathing.

As a result, Mr. Muhammad was not provided medical attention until he was found unconscious in his cell, nearly seven hours after CO Lewis saw him showing significant disorientation and four and a half hours after CO Lewis last checked on him.

Causation

According to Dr. Greenberg, the concentration of fentanyl in Mr. Muhammad's blood was a fatal dose (possibly the result of a second dose after he was placed in his cell) and prompt medical attention, including the use of Narcan, might not have guaranteed his survival. Dr. Greenberg said Mr. Muhammad's time of death was likely between 7:00 pm and 9:00 pm, which is consistent with the apparent alarm of the incarcerated persons who looked into Mr. Muhammad's cell between 8:06 pm and 9:20 pm.

Conclusion

Although CO Lewis failed to perform the duty imposed on him by law to obtain emergency medical aid for Mr. Muhammad when he saw him severely disoriented and about to lose consciousness at 3:00 pm, and although timely medical intervention might have saved Mr. Muhammad, OSI concludes that the evidence is not sufficient to prove beyond a reasonable doubt at trial that such intervention would have saved Mr. Muhammad. Therefore, as the evidence is not sufficient to prove that CO Lewis committed, by omission, the crime of Criminally Negligent Homicide, OSI will not seek charges against CO Lewis and closes the matter with the issuance of this report.

Dated: September 19, 2024