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MEMORANDUM

TO: File and Sheriff Pat Garrett  
FROM: John Gerhard, Senior Deputy District Attorney  
DATE: April 18, 2023  
RE: Jail Death Investigation – Bybee, Bryce, DA no. 409849

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On April 17, 2022, Bryce Bybee died in the custody of the Washington County Jail. Pursuant to ORS 146.090 and 146.095, the District Attorney's Office and Medical Examiner's Office are required to investigate all deaths of incarcerated persons. The Washington County Major Crimes Team (MCT) conducted an investigation into Mr. Bybee's death and that investigation is now complete. Despite a thorough investigation and autopsy, Mr. Bybee's cause of death is uncertain but may have resulted from his mental disorder. Mr. Bybee's manner of death remains undetermined.

After reviewing the investigative materials, including interviews of jail deputies and jail medical staff, Mr. Bybee's medical records, e-mail communications relating to Mr. Bybee, and the Medical Examiner's autopsy report, I have concluded that there is insufficient evidence to support criminal liability by jail staff, the contracted jail medical staff, or the administrators of the Oregon State Hospital (OSH). This memorandum summarizes the findings of the MCT investigation and related legal analysis.

I have provided the following chronology of events to summarize the voluminous records compiled in this investigation:

**I. SUMMARY OF MEDICAL RECORDS, COURT RECORDS, AND JAIL REPORTS**

On February 27, 2022, at about 6:00 p.m., Mr. Bybee was lodged in the Washington County Jail after being arrested for an armed robbery in Sherwood. Upon arrival in the jail, Mr. Bybee was uncooperative with jail staff and refused to obey commands. At the time, the County contracted with Correctional Health Partners (CHP) to provide healthcare services to jail inmates. During his intake, CHP staff asked Mr. Bybee if he suffered from any mental disorders, which he denied. Soon after his intake, Mr. Bybee had to be forcibly removed from his jail cell. When jail staff asked Mr. Bybee if they would need to use a chemical spray to get him to leave his jail cell, he nodded in agreement. At intake, it does not appear that jail or CHP staff could distinguish between Mr. Bybee's mental disorder or purposeful refusal to obey commands.

On February 28, 2022, Mr. Bybee's father contacted the jail to relay that Mr. Bybee was recently discharged from a behavioral health hospital in Texas. Mr. Bybee was generally polite with CHP staff but did not want to engage with medical screening. He appeared to be in generally good physical health.

On March 9, 2022, CHP staff sought to begin treating Mr. Bybee's mental disorder, which a Texas mental health hospital diagnosed as schizoaffective disorder – depressed type. However, Mr. Bybee refused to sign a consent form to allow CHP to provide him with medical care. Jail and CHP staff could not force Mr. Bybee to take medication. Medical records do not specify why mental health treatment did not begin earlier. However, it does not appear that Mr. Bybee would have agreed to take psychiatric medication anyway, as noted below.

On March 10, 2022, jail staff discovered that Mr. Bybee was physically ill and vomiting. Jail staff notified CHP and also appropriately reported that they were concerned for Mr. Bybee because it did not appear that he had eaten for the last two days. CHP staff offered Mr. Bybee nausea medication, but he declined. CHP began a log at this time to monitor his food and fluid intake. Neither the jail nor CHP staff could force Mr. Bybee to eat, drink, or take medication; they could only offer these items and did so.

On March 11, 2022, Judge Beth Roberts ordered OSH to evaluate Mr. Bybee's fitness to proceed pursuant to ORS 161.365. Judge Roberts authorized the evaluation to be conducted via commitment to OSH or by video. However, OSH never completed the evaluation by video or admission to OSH.

On March 16, 2022, jail and CHP staff became increasingly concerned because Mr. Bybee was no longer responsive to people. Previously, Mr. Bybee would engage in minimal conversation or offer gestures in response to people. After repeated efforts to get Mr. Bybee to respond, jail staff opened Mr. Bybee's cell door and CHP staff were able to convince Mr. Bybee to exit his cell. Mr. Bybee agreed to a medical assessment and blood draw. However, Mr. Bybee began dry heaving shortly after the medical assessment. Mr. Bybee did ask for water and food, though. Also on this day, Mr. Bybee was moved to the jail's Medical Observation Unit (MOU). The following day, CHP staff noted that Mr. Bybee was not eating, drinking little, and still vomiting.

On March 17, 2022 after 5:00pm, given Mr. Bybee's condition, CHP staff directed jail staff to take Mr. Bybee to a local hospital, Tuality Community Hospital. At Tuality, Mr. Bybee was diagnosed with dehydration and hypokalemia (low potassium). However, Mr. Bybee's treatment providers at Tuality did not prescribe any medications. Upon his return to the jail on March 18, 2022 shortly after midnight, CHP provided Mr. Bybee with potassium infused water and additional treatment items, but Mr. Bybee refused food. Through the day, Mr. Bybee had limited engagement with jail and CHP staff; he would gesture but would not speak.

On March 20, 2022, CHP staff noted that Mr. Bybee continued to refuse food and became concerned regarding his cognitive state.

On March 22, 2022, jail staff notified CHP staff that Mr. Bybee continued to refuse food and drink. However, Mr. Bybee was walking around his cell without support and walked with a steady gait. When CHP staff contacted Mr. Bybee, he continued to refuse drink and would not agree to medical assessment. CHP staff noted that Mr. Bybee had vomited partially digested food, indicating that he had consumed some food.

On March 26, 2022, CHP staff noted that Mr. Bybee was asleep on the floor of his cell. He was not responsive to CHP staff but had regular breathing. Jail staff noted that Mr. Bybee did not consume any breakfast or engage with jail staff.

On March 27, 2022, CHP staff noted that Mr. Bybee was lying on his bed and that he refused medical assessment. CHP staff did not observe issues with Mr. Bybee's visible skin, but they were unable to assess his right side or back.

On March 28, 2022, CHP staff noted that Mr. Bybee was unwilling to interact with medical staff around 7am. Mr. Bybee was asked to shower, but he refused. So, jail staff forced Mr. Bybee to shower. During this time, CHP staff noted that Mr. Bybee had dry, chapped lips and notified the CHP medical director, Dr. Jill Crum. Dr. Crum observed Mr. Bybee at around 3:30pm. She noted that Mr. Bybee was lying on a blanket on the floor of his cell. While he responded to Dr. Crum calling his name, Mr. Bybee would not speak to Dr. Crum. Dr. Crum did not observe wounds on Mr. Bybee's body but was unable to fully examine him. Dr. Crum noted that Mr. Bybee needed to be moved to a mental health facility, believing that forced psychotropic medication would help Mr. Bybee. Dr. Crum noted that she would contact Mr. Bybee's attorney about transferring Mr. Bybee to the Oregon State Hospital (OSH) and that she would attempt some medical intervention on Mr. Bybee, including intravenous fluids.

On March 29, 2022, CHP staff noted that Mr. Bybee engaged with CHP staff by refusing medication and reacting to his name being called. CHP staff determined that Mr. Bybee needed to be evaluated in a hospital due to his continued refusal to eat and drink. CHP staff provided Mr. Bybee's medical records to staff at Providence St. Vincent's Hospital (PSVH). CHP staff also coordinated with jail staff to have Mr. Bybee transported to the hospital. Jail staff determined that Mr. Bybee would need to be transported by ambulance and video recorded their extraction of Mr. Bybee from his cell. Mr. Bybee did not interact with jail staff until they lifted him from his bed at which time Mr. Bybee repeatedly yelled "No!"

Mr. Bybee was admitted to PSVH on March 29, 2022 and remained at PSVH until April 1, 2022. PSVH staff performed numerous medical assessments and testing. Medical staff noted that Mr. Bybee was responsive but would only provide short responses. A chest x-ray showed that Mr. Bybee had a collapsed right lung with no signs of external injury or internal bruising. Mr. Bybee was unable to provide any information regarding a possible fall that could have caused his collapsed lung. Additional testing indicated that Mr. Bybee had an elevated heart rate. The admitting physician also noted that he believed Mr. Bybee would be a poor candidate for the PSVH psychiatric floor. During his hospital stay, PSVH staff noted that Mr. Bybee was eating and drinking on his own.

Additionally, Mr. Bybee was taking psychiatric medications voluntarily. When Mr. Bybee returned to the jail on April 1, 2022, he refused medical assessment by CHP.

On April 2, 2022, Mr. Bybee had minimal interaction with CHP staff and again was not eating.

On April 3, 2022, Mr. Bybee was not interacting with CHP staff or jail staff. Again, Mr. Bybee was not eating or drinking. Mr. Bybee was also not responsive to CHP staff when offered medication.

On April 4, 2022, Mr. Bybee was unresponsive to CHP staff but was breathing regularly and did not appear to be in distress.

On April 5, 2022, Mr. Bybee was unresponsive to CHP staff and was lying in his bed. CHP staff offered Mr. Bybee Gatorade, medication, and a shower, but Mr. Bybee did not respond. Jail staff noted that Mr. Bybee did not eat his dinner the night prior. Jail staff decided to force shower Mr. Bybee because he soiled himself. Jail staff video recorded their extraction of Mr. Bybee from his cell. Mr. Bybee would not interact with CHP or jail staff, and jail staff ultimately pulled Mr. Bybee from his bed. At that time, Mr. Bybee began screaming in pain until he was placed in a restraint chair. The video recording also showed that Mr. Bybee had a red sore on his right hip. Due to his continued refusal to eat and drink, CHP staff coordinated with PSVH staff to return Mr. Bybee to PSVH for care.

Mr. Bybee was readmitted to PSVH on April 5, 2022 and discharged on April 6, 2022. Upon admission, Mr. Bybee had an elevated heart rate. However, his heart rate improved with IV hydration. Medical testing showed that Mr. Bybee's blood sugar and electrolyte levels were within normal ranges. Additionally, a chest x-ray showed that Mr. Bybee's collapsed right lung was improving. PSVH staff administered psychiatric medications, which seemed to improve Mr. Bybee's mental status because he began responding to medical staff. It appears that PSVH staff decided to discharge Mr. Bybee from the hospital because his mental status improved, he was voluntarily taking psychiatric medication, and he was eating and drinking again. Due to his improved status, Mr. Bybee did not meet admission criteria for the PSVH psychiatric floor.

On April 6, 2022, upon his return to the jail, Mr. Bybee was unresponsive to CHP staff.

On April 7, 2022, Mr. Bybee appeared in court on his criminal case by video. Judge Beth Roberts ordered that Mr. Bybee be committed to OSH because he was not competent to stand trial. A jail deputy reported that Mr. Bybee ate 100% of his lunch this day. Additionally, Mr. Bybee was responsive to CHP staff when asked about eating his lunch.

On April 8, 2022, Judge Roberts signed the order committing the defendant to OSH and ordered the Sheriff's Office to transport Mr. Bybee to OSH within seven days. Court staff transmitted Judge Roberts' order to OSH on this day.

On April 9, 2022, jail staff assisted Mr. Bybee with a voluntary shower because Mr. Bybee indicated that he was too weak to make it to the shower on his own. Jail and CHP staff noted bed sores developing on Mr. Bybee's right hip. During a medical evaluation, Mr. Bybee was communicative and cooperative with CHP staff and allowed a medical assessment. However, later in the day, CHP attempted to apply a medical bandage to Mr. Bybee's bed sore, and he was no longer cooperative. Mr. Bybee was initially responsive to CHP staff but then ignored CHP's request to apply medication.

On April 10, 2022, Mr. Bybee agreed to allow CHP staff to apply a bandage to his bed sore. However, he was non-communicative with CHP staff.

On April 11, 2022, Mr. Bybee was generally non-communicative with CHP staff. However, when a CHP nurse asked Mr. Bybee to come out of his cell so she could examine his bed sore, Mr. Bybee instead demanded food. Ultimately, Mr. Bybee refused to exit the cell, but the CHP nurse noted that he displayed normal breathing and did not appear in distress.

On April 12, 2022, Mr. Bybee participated in a psychiatric assessment by CHP staff. While he was mostly non-verbal, Mr. Bybee did respond to CHP staff by nodding or shaking his head and smiled in response to a joke. Mr. Bybee agreed to voluntarily shower, but he required wheelchair assistance due to weakness. Mr. Bybee also agreed to wound care of his bed sore. During a medical assessment, Mr. Bybee did verbalize feeling pain and wanting Tylenol. During these interactions, Mr. Bybee also consumed some fluids.

On April 13, 2022, Mr. Bybee was non-verbal again, but at the request of jail staff, he did communicate with CHP staff through gestures. Mr. Bybee refused most of his medications but did agree to eyedrops for treating an eye infection. Additionally, Mr. Bybee was consuming fluids during the CHP encounters but did not consume food.

On April 14, 2022, Dr. Crum visited Mr. Bybee for an assessment. She noted that Mr. Bybee's skin appeared dry and was deteriorating due to lack of movement and Mr. Bybee lying on one side. Dr. Crum did note that Mr. Bybee was willing to take medication if it was placed in his mouth and that he was non-verbally responsive during their interactions. Additionally, Dr. Crum noted that Mr. Bybee was willing to take a granola bar from her and later consumed his breakfast. Dr. Crum noted that Mr. Bybee had an elevated heart rate but was breathing normally. Finally, Dr. Crum noted that she had left two voicemail messages with the OSH intake coordinator to expedite Mr. Bybee's transport to OSH. Call logs from the jail medical phone confirm two calls being placed on this date. The first call was to OSH Admissions Main phone number (503-945-9265) as listed on the OSH website for expedited admission: <https://www.oregon.gov/oha/OSH/LEGAL/Pages/expeditedadmissions.aspx>. Dr. Crum then called a second number (503-947-4247), which is the admission director's direct line. OSH denies receiving the messages.

On April 15, 2022, CHP staff noted that Mr. Bybee was mostly observed lying in his bed. Mr. Bybee was tolerant of wound care, but CHP staff noted that he was developing bed sores on his left side. Dr. Crum provided CHP staff with instructions on care for Mr. Bybee's developing wounds. Mr. Bybee did take his medications in the evening and was provided with food and Gatorade. However, it is unclear if he consumed food or drink.

On April 16, 2022, CHP staff noted that Mr. Bybee tolerated his wound care and that no new wounds were apparent. CHP staff also observed Mr. Bybee standing with assistance from jail staff. Mr. Bybee did allow CHP staff to administer eye drops, he did interact with CHP staff when asked if he was in pain, and he was observed eating his breakfast and lunch. The last CHP note on April 16, 2022 was at 6:29pm. However, a later note indicates that CHP provided Mr. Bybee with medication and wound care at about 8:42pm. At that time, CHP staff noted that Mr. Bybee was able to take his medication with assistance and that jail staff reported that Mr. Bybee consumed half of his dinner.

A review of the jail records and surveillance footage from April 17, 2022, shows that jail staff conducted regular and routine rounds on the inmates in the MOU. At about 1:13am, Deputy Wagoner completed a round of checks on MOU inmates. In his interview, Deputy Wagoner stated he observed Mr. Bybee through a cell window and that Mr. Bybee was lying on his left side and facing away from the window. However, Deputy Wagoner could see Mr. Bybee's torso, and it appeared that Mr. Bybee was breathing normally. While not reflected in the Housing Activity Log for the MOU, the surveillance footage shows Deputy Wagoner conducting another round at approximately 1:26am. At about 1:27am, Deputy Wagoner enters the area of Mr. Bybee's cell. In his interview, Deputy Wagoner stated that it appeared Mr. Bybee was still breathing. However, when Deputy Wagoner knocked on Mr. Bybee's cell door, Mr. Bybee had no reaction, which was concerning to Deputy Wagoner and prompted him to call for an additional deputy and medical support. At about 1:29am, CHP staff arrive in the MOU along with additional jail staff. The entire group then moves directly towards the area of Mr. Bybee's cell. At about 1:38am, Hillsboro Fire Department personnel arrive in the MOU and make their way directly towards Mr. Bybee's cell. At about 1:39am, MetroWest Ambulance personnel arrive in the MOU and make their way directly towards Mr. Bybee's cell.

Mr. Bybee's jail medical records note that on April 17, 2022 at about 1:30am, CHP staff responded to Mr. Bybee's cell for a medical emergency. CHP staff could not detect Mr. Bybee's pulse and instructed jail staff to begin performing CPR. CHP and jail staff applied an AED device to Mr. Bybee, but the device did not indicate electrical discharge should be used. Jail staff continued with CPR until emergency medical personnel arrived and took over lifesaving measures. CHP staff attempted to use a breathing device but noted that Mr. Bybee's tongue appeared to be obstructing his airway and instructed jail staff to turn Mr. Bybee's head to the side to keep fluids draining from Mr. Bybee's nose and mouth. Ultimately, all measures failed, and emergency medical personnel pronounced Mr. Bybee deceased at 2:23am.

## **II. SUMMARY OF MEDICAL EXAMINER'S REPORT**

On April 17, 2022, Dr. Sean Hurst, MD, the Oregon Chief Medical Examiner, conducted an autopsy on Mr. Bybee's body at the Oregon State Medical Examiner's Office. Dr. Hurst issued his report on October 11, 2022, and his report was provided to my office on November 18, 2022. In his report, Dr. Hurst concluded that Mr. Bybee's cause of death was "[c]omplications of schizoaffective disorder and self-neglect." Additionally, Dr. Hurst could not determine a manner of death. Dr. Hurst noted that Mr. Bybee had a mildly enlarged heart, enlarged liver, enlarged spleen, swollen brain, swollen lungs, and blood in his lungs. Dr. Hurst concluded that laboratory tests did not show that Mr. Bybee died as a result of dehydration or starvation. Dr. Hurst instead concluded:

Though the mechanism [of death] is poorly established at this point in time, an association between sudden death and psychotic disorders has been described. Suggested mechanisms include autonomic instability that may contribute to the development of fatal arrhythmias.

The cause of death statement will reflect this. The corresponding manner of death is undetermined.

## **III. SUMMARY OF RESPONSE FROM OREGON STATE HOSPITAL**

On May 2, 2022, Brandy Eurto, the OSH Admissions Director responded to questions from Det. Chad Opitz, the MCT investigator assigned to investigate Mr. Bybee's death in the jail. In her response, Ms. Eurto indicated that OSH was aware that Judge Roberts committed Mr. Bybee to OSH for restoration. Ms. Eurto reported that OSH received the commitment order on April 8, 2022. However, Ms. Eurto indicated that the jail did not inquire about an admission date for Mr. Bybee and that CHP did not provide OSH with any of Mr. Bybee's medical records. Additionally, Ms. Eurto stated that she did not recall receiving any calls from Dr. Crum regarding Mr. Bybee on or after April 7, 2022.

Ms. Eurto's statement conflicts with the practice established by OSH that required the Jail to wait for OSH to provide notice that a bed was available. At that time, jail medical staff would send the inmate's jail medical records and transport the inmate to OSH. Additionally, her statement conflicts with the call logs confirming that Dr. Crum called Ms. Eurto's direct line, as stated. What is unknown is what OSH did with the messages left by Dr. Crum and why OSH never responded.

## **IV. LEGAL ANALYSIS AND CONCLUSION**

Based upon the investigation completed by the MCT and my review of the evidence gathered, there is insufficient evidence to proceed with criminal charges against any individuals or entities entrusted with Mr. Bybee's care. The following criminal charges were considered:

- A. **Criminal Homicide** (ORS 163.005), which includes murder, manslaughter, and criminally negligent homicide. To prove criminal homicide, the State must prove that an actor caused Mr. Bybee's death intentionally, recklessly, or with criminal negligence. In this case, there is insufficient evidence to prove that jail staff, jail medical staff, or OSH personnel caused Mr. Bybee's death. Criminal Negligence (ORS 161.085(10)) is defined as "a person fail[ing] to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists." In this case, it appears that both jail deputies and jail medical staff rendered appropriate care to Mr. Bybee within the limits of what they were legally permitted to do. Neither the jail deputies nor jail medical staff were legally permitted to force Mr. Bybee to take psychotropic medication. Regarding OSH, there is insufficient evidence to prove that OSH personnel were aware of Mr. Bybee's rapid decompensation in the jail and urgent need for psychotropic medication and intervention. Consequently, there is insufficient evidence to prove beyond a reasonable doubt that OSH caused Mr. Bybee's death through criminal negligence.
- B. **Criminal Mistreatment in the Second Degree** (ORS 163.200). To prove criminal mistreatment in the second degree, the State must prove that the actor, with criminal negligence and in violation of a legal duty to provide care for another person, the actor withholds necessary and adequate food, physical care, or medical attention. Again, it is clear that jail deputies and jail medical staff provided Mr. Bybee with adequate food, physical care, and medical attention within the limits permitted by law. Regarding OSH, there is insufficient evidence to prove the crime beyond a reasonable doubt. There is insufficient evidence to prove that OSH was actually alerted to Mr. Bybee's rapid decompensation in the jail. Additionally, there is insufficient evidence that OSH was aware that Mr. Bybee's mental disorder was untreated and could result in his death.
- C. **Official Misconduct in the Second Degree** (ORS 162.405). To prove official misconduct in the second degree, the State must prove that a public servant knowingly violated any statute relating to the office of the public servant. The jail medical staff do not meet the definition of "public servant" since they are contractors. Regardless, jail deputies and jail medical staff appeared to have performed their statutory duties while caring for Mr. Bybee. Similarly, OSH did not violate a *statute*. While OSH failed to take Mr. Bybee into its care within 7 days, that time restraint was imposed by Judge Roberts' order under ORS 161.370 and *Oregon Advocacy Center v. Mink*, not a statute. No statute specifies when OSH must receive a patient under ORS 161.370.
- D. **Contempt of Court** (ORS 33.025). Judge Roberts' order pursuant to ORS 161.370 directed the Washington County Sheriff's Office to transport Mr. Bybee to OSH within 7 days. The Sheriff's Office did not comply with this order. However, the practice the Jail has established with OSH required the Jail to wait for notification from OSH that an admission appointment has been



scheduled for an inmate because OSH determines when it has available bedspace. OSH is a secured facility and non-OSH employees will not be granted access to the secured facility without an appointment and permission. The Sheriff's Office could not comply with Judge Roberts' order because it could not simply transport Mr. Bybee to OSH and leave him there. The Sheriff's Office was legally obligated to provide care to Mr. Bybee until OSH assumed Mr. Bybee's care. In Mr. Bybee's case, OSH did not notify the Sheriff's Office that it was ready to receive Mr. Bybee, despite Dr. Crum's request for expedited admission. Consequently, there is insufficient evidence that the Sheriff's Office or CHP are in contempt of court. Since Mr. Bybee's death, the Sheriff's Office has begun working with Disability Rights Oregon to assist with having OSH expedite admission of inmates with severely deteriorating mental health.

The federal district court's order in *Mink* requires OSH to admit patients under ORS 161.370 within 7 days of the order being issued. However, the district court must enforce that order against OSH. State courts are presently prohibited by a federal court order from holding OSH in contempt for its failure to admit patients in a timely manner.

Consequently, there is no evidence to support criminal charges against any jail staff or CHP staff. While it is clear that OSH failed to comply with the intent of Judge Roberts' order to transport Mr. Bybee to OSH within seven days of her order, it is unclear why that failure occurred. Regardless, there is insufficient evidence demonstrating criminal wrongdoing by OSH. Therefore, I will not present this case to a Washington County Grand Jury for consideration of criminal charges.