

Investigative Summary of Officer Involved Death of Christopher L. Cary

On 12/23/18, the Fond du Lac Police Department requested assistance from the Sheboygan Police Department as part of the Regional Response Team to investigate the in-custody death of Christopher L. Cary age 37. This pertains to Fond du Lac Police Department case number CR18-10361. This summary is intended to provide an overview of the investigation.

On 12/24/18, at approximately 01:30 AM, assisting officers arrived at the Fond du Lac Police Department and were briefed by administrative staff. Captain Brassler assumed the role of Regional Response Team Supervisor, Detective Paul Olsen was assigned as the lead investigator, and Detective Paul Hammann was assigned as an investigator. Administrative staff advised Mr. Cary had been secured at the Fond du Lac County Medical Examiner's Office and an autopsy was completed on Monday 12/24/18 at 10 AM.

The vehicles operated by Mr. Cary and Fond du Lac squad #12, used to detain him, were secured in the Fond du Lac police garage. The subsequent investigation included a review of squad videos, search of involved vehicles, interviews of responding paramedics/firefighters, police officers and the decedent's girlfriend, Nicole L Schaub. The investigation also included attending the autopsy at the Fond du Lac Medical Examiner's Office and obtaining the official cause and manner of death. Additional investigation included reviewing the 911 call made by Schaub during the time she witnessed the incident and reviewing all radio transmissions related to this case.

The investigation concluded with a review by District Attorney Eric Toney.

Squad Video

Squad #12 Primary Squad used by Officer O'Donnell

Investigating detectives reviewed the squad camera recordings from Officer Sandra O'Donnell's squad car, #12. On Sunday, 12/23/18 at 21:31 hours, Officer O'Donnell was operating Squad #12 south on N. Main Street. She initiated a 180 degree turn at the intersection of S. Main Street and Forest Avenue and conducted a traffic stop of a Blue 2009 Chevrolet Impala at N. Main and Division Avenue. The vehicle was operated by Mr. Cary and he was the lone occupant. The vehicle is owned by Nicole L. Schaub.

After dispatch was notified, Officer O'Donnell (#42) approached the driver's side door and spoke with Mr. Cary. Officer O'Donnell explained that the reason for the stop was because the vehicle he was operating had no front license plate. Upon further investigation, she discovered additional traffic violations including, no proof of insurance and failure to wear seatbelt. Mr. Cary did not have his WI driver's license in his possession and verbally identified himself. Officer O'Donnell returned to her squad at 21:33 hours and began completing a traffic citation and warnings. She also conducted an additional inquiry and determined Cary had an open criminal case, 18CF41, which included a bail bond. The

pending felony case was for: Manufacture/Deliver Cocaine, Possess with intent to Deliver-Cocaine, Maintain Drug Trafficking Place, Possession of Narcotic Drugs and Possess Drug Paraphernalia with modifiers of Repeater and PTC.

During the traffic stop Officer O'Donnell inquired about the availability of a canine unit and requested a backup officer. Dispatch advised Fond du Lac County canine was responding from the Mount Calvary area. She continued to complete the citation and warnings and observed Mr. Cary moving around inside his vehicle. At 21:48 hours, Officer Smith (#56) arrived in squad #13 and parked directly behind Officer O'Donnell. At 21:57 hours, Fond du Lac County canine Deputy Weisbecker (County #64) arrived on scene and parked facing west on Division Avenue east of N. Main Avenue.

At 21:59 hours, Officer O'Donnell approached the vehicle on the driver's side and requested that Mr. Cary exit the vehicle so she could explain the traffic citation to him. At 22:00 hours Mr. Cary exited his vehicle and walked with Officers O'Donnell and Smith to the east sidewalk. The contact officers had with Cary on the sidewalk was out of view of the squad camera; but the conversation is heard on officer's microphones. As Officer O'Donnell explained the citation/warnings to Mr. Cary, the exterior canine sniff occurred to his vehicle. Deputy Weisbecker stated the canine indicated on the vehicle.

Between 22:02 hours and 22:04 hours, Mr. Cary was searched. US Currency (\$626) was located in his left front pants pocket. Officers observed Mr. Cary's zipper on his pants was open. While Mr. Cary was being searched, Nicole Schaub arrived on the east sidewalk on foot.

At 22:06 hours, Officer O'Donnell and Deputy Weisbecker conduct a search of the vehicle based on the canine indication. Officer O'Donnell located plastic sandwich baggies that had been torn open in the driver's door storage area and pieces of suspected crack cocaine lying loose on the driver's seat. Officer O'Donnell was suspicious Mr. Cary hid possible drugs in his underwear based on her observations that Cary's zipper to his pants was down, the torn open sandwich baggies and unpackaged crack cocaine on the driver's seat.

At 22:07 hours, Officer O'Donnell and Deputy Weisbecker approach Mr. Cary and he was taken into custody, handcuffed behind his back and searched by Officer O'Donnell. Officer O'Donnell asked Officer Smith to perform a more thorough search of Cary due to her suspicions that he may have concealed something in his underwear. Officer Smith did not locate any additional evidence. The search was conducted in front of squad #12. The video shows Cary standing and speaking with officers.

At 22:09 hours, Cary was placed in the rear passenger seat of squad #12 and seat belted in. Officer Smith told Officer O'Donnell he would monitor Cary. Cary was observed to open his mouth and make noises with his mouth. Cary stated, "You guys lock me up for some shit man". "What the fuck is this". Officer Smith shuts the rear passenger squad door. Cary continued mouth movement, stuck his tongue out and continued making noises with his mouth.

At 22:10 hours Officer Smith sat in the driver's seat of squad #12 and monitored Cary by monitoring the squad's computer showing live rear seat video. Officer O'Donnell and Deputy Weisbecker returned to the vehicle and continued searching it.

Nicole Schaub was still present and standing on the side walk east of the traffic stop. Cary continued to stick his tongue out, chew and look around. Cary said, "I can't believe this shit".

Between 22:10 hours and 22:11 hours, Cary while seated in an upright position, repeatedly stuck his tongue out, opened and closed his mouth, looked around and made movements with his mouth as though he was manipulating something in it.

At 22:11:40 hours Cary took a deep breath and blew air out of his mouth. At 22:11:48 hours his tongue was stuck out. At 22:11:52 hours, Cary had rapid foot movement and his body bounced up and down and tongue stuck out. At 22:11:55 hours, Officer Smith asked Cary, "You all right man"? At 22:11:57 hours, Cary responded in a slurred voice with tongue stuck out, "Help me, help me". At 22:11:58 hours, Officer Smith asked Cary, "What's going on"?

From 22:11:59 hours to 22:12:12 hours, Cary said, "I don't know, I don't know" then repeatedly screamed, "Help me" and was rapidly moving around in a seated position. While this occurred, at 22:12:05 hours, Officer Smith exited the front driver seat of squad #12, called dispatch for an ambulance on his portable radio and walked to rear passenger side of squad #12. At 22:12:15 hours, Officer Smith opened the rear passenger door of squad #12. Cary continued with rapid leg and foot movements and screamed "Help me, help me". Cary continued to have seizure/convulsion like activity which consisted of his body being fully extended, shaking, his mouth opened, eyes fluttered and looked around, body twitching and snoring noises. Cary eventually slowed this activity and continued to breathe while still in a seated position.

From 22:12:05 hours until 22:19:04 hours Officer Smith continued to monitor Cary and attempted to calm Cary while asking if he ingested something. At 22:12:53 hours, Officer Smith removed Cary's seatbelt. Officer O'Donnell asked Cary if he swallowed his crack and received no answer. Cary was non-verbal to officers' questions during this time. Cary remained seated in the rear of squad #12 as Officer Smith stood next to him, continuously monitoring him.

At 22:19:04 hours EMS contacted Cary inside the rear of squad #12 and assessed his condition. Cary was still breathing and looked around but was non-verbal. At 22:22:36 Cary was removed from the rear of squad #12 and placed on the EMS cot.

At 22:24:07 hours, Cary was placed in the rear of the ambulance. At 22:42:47 hours, the ambulance left for St. Agnes Hospital.

At 22:31 the blue 2009 Chevrolet Impala was released to Nicole Schaub. She removed her vehicle from the traffic stop and drove north on N. Main Street.

EMS Interview

On Monday 12/24/18, Firefighter/Paramedic Adam Stephens was interviewed at Fond Du Lac Fire Station #1 by Sheboygan Police Detectives. The interview was audio recorded. Stephens was the Lead Medic involving the incident with Mr. Cary. Stephens advised once he arrived he was briefed by officers on scene. He went to check on the patient (Cary) who was not responding to questions or to painful stimuli consisting of sternum rubs. Stephens indicated Cary was awake and appeared to have difficulty breathing. Stephens advised they retrieved the cot and removed Cary from the squad and placed him in the ambulance. Once in the ambulance, Stephens advised the handcuffs were removed from Cary. Stephens indicated once Cary was in the ambulance he became PNB (pulseless not breathing). CPR and life saving measures were administered. This included five doses of epinephrine, 2mg of Narcan and one dose of Sodium Bicarbonate. They transport Cary code 3 (emergency) to St. Agnes and turned Cary over to St. Agnes staff in ED Room #5.

Witness Interview

On Monday 12/24/18, Nicole L Schaub was interviewed at the Fond du Lac Police Department by Sheboygan Police Detectives. Schaub is the registered owner of the vehicle Christopher Cary was operating. Schaub and Cary also have at least one child together. Schaub explained Cary called her at 9:50 PM after he saw the second Fond du Lac squad arrive at the traffic stop. She stated he sounded normal and maybe a little nervous for being stopped. Cary told Schaub to come to the scene to pick up her vehicle so it wouldn't get impounded as he believed he may have warrants or may be going to jail.

Schaub walked to the scene of the traffic stop and observed Cary being searched by police. Cary was not handcuffed and in her opinion appeared fine. Schaub observed two officers search the vehicle and locate residue and baggies. Schaub witnessed Cary get handcuffed and placed in the passenger rear side of the squad and he still appeared normal at that time. She saw an officer get in the driver's seat of the squad Cary was seated in. She saw officers go back to the vehicle and the female officer was at the driver's side of the vehicle testing something, believed to be drugs.

According to Schaub, Cary was not even in the squad for five minutes and the officer from the driver's seat exited and was calling for paramedics. Officers opened the back passenger door and she moved closer and saw Cary seizing. She screamed to have the officers help him and she called 911. Schaub said she never saw Cary like this and advised there would be no medical reason why he was having this medical episode. The vehicle was released to her at the scene and she went directly to St. Agnes Hospital. Her vehicle was later impounded. She later gave Sheboygan Police Detectives consent to search it. Schaub denied removing Cary's cell phone from her vehicle; however Cary's cell phone was never located.

Officer Interviews

On Wednesday 12/26/18, Officer O'Donnell, Deputy Weisbecker, Officer Smith, Officer Meudt and Officer Pfalzgraf were interviewed at the Fond du Lac Police Department by Sheboygan Police Detectives. Also present during the unrecorded statements were Attorney Andrew Schauer and WPPA representative Tom Shrank.

Officer O'Donnell's verbal statement was consistent with what was viewed and heard while reviewing her video from squad #12. She also confirmed she placed three envelopes containing evidence on the front passenger floor of her squad. She also confirmed the \$626 removed from Cary's pocket during the search was placed on her front passenger seat.

Deputy Wiesbecker's verbal statement was consistent with details observed on the squad #12 video. Deputy Weisbecker also confirmed during his verbal statement that he collected and labeled the evidence located in Officer O'Donnell's squad. He also advised his canine is a passive indicator and the canine will sit when alerting to the odor of narcotics, which was observed two times on squad #12 video during the canine sniff.

Officer Smith's verbal statement was consistent with details observed on the forward looking and rear seat videos of squad #12. Officer Smith advised when he was seated in the driver's seat of squad #12 he pulled up the live rear seat video on the MDC to monitor Cary. Smith advised while waiting for the ambulance to arrive, the safest place for Cary was to remain where he was as he was conscious and breathing on his own. Smith also indicated once Cary was in the ambulance, he removed the handcuff from Cary's left wrist.

Officer Meudt's verbal statement indicated he self-dispatched himself to assist Officer Pfalzgraf at the traffic stop with a hysterical female subject on the sidewalk. The female was later identified as Nicole Schaub. Officer Meudt stood by with Nicole and he later assisted EMS with getting Cary out of squad #12 and placing him on the cot. Nicole told Officer Meudt she was unaware of why Cary would need any medical assistance. Officer Meudt proceeded to the hospital (St. Agnes) and located Nicole's vehicle. He stood by until Whealon's Towing arrived and towed the vehicle to the Fond du Lac Police Department. Officer Meudt rode with the Whealon's Towing operator.

Officer Pfalzgraf's verbal statement indicated he was dispatched to assist Officer O'Donnell at her traffic stop with a hysterical female on the east side walk. Officer Pfalzgraf assisted with the female, later identified as Nicole Schaub. He spoke with Officer Meudt and Nicole now had calmed down. Officer Pfalzgraf needed to complete a priority report so Officer Meudt stayed and Officer Pfalzgraf cleared. Officer Pfalzgraf drove away as the ambulance was arriving.

911 Call

On Sunday 12/23/18 Fond Du Lac County Dispatch received a 911 from Nicole Schaub. Thirty-eight seconds into the call Nicole said: "The cops have somebody in the back of the car and he's overdosing." Forty-six seconds into the call Nicole said: "All they did was call another cop, call an ambulance."

Vehicle Search

Squad 12 was photographed and searched. The evidence collected from squad #12 included: \$626 US Currency, traffic citations and warnings, an envelope labeled "empty baggies-driver's door" (contained 4 plastic baggie tie offs with white residue / field tested positive for cocaine), an envelope labeled "crack driver seat" (contained .11 grams of crack / field tested positive for cocaine), an envelope labeled "crack in baggie center console" (.27 grams of crack cocaine in small zip-lock/ field tested positive for cocaine). All items removed as evidence from squad #12 were secured as evidence at the Sheboygan Police Department.

The 2009 Chevrolet Impala was photographed and searched on consent from Nicole Schaub while secured at the Fond du Lac police impound. No additional evidence was located. This vehicle was later released to Nicole Schaub by the Fond du Lac Police Department.

Autopsy

On Monday 12/24/18, at approximately 10:00AM, an autopsy was performed by ME Adam Covach M.D. at the Fond du Lac Medical Examiner's Office. ME Covach provided Sheboygan Police Detectives with provisional autopsy findings of:

- 1) Bilateral edematous in lungs.
- 2) Stomach with white hard chunks in contents.
- 3) No evidence of traumatic injuries.
- 4) Urine drug screen positive for cocaine.
- 5) Final toxicology pending.

Cause/Manner of Death

On 1/14/19, Sheboygan Police received a copy of the Fond du Lac County Medical Examiner's Autopsy Protocol from ME Adam Covach dated 1/9/19. Cause of death was listed as Acute Cocaine Toxicity. The manner of death was accident.

Crime Lab report

On, 01/16/2019, Sheboygan Police received a copy of the crime lab report from the Wisconsin State Crime Lab in connection with the suspected cocaine located in Cary's vehicle. The examination revealed the presence of cocaine base in both of the tested items.

Review of Incident by Fond du Lac County District Attorney Eric Toney

On 1/16/18, the investigative report was provided to Fond du Lac County District Attorney Eric Toney for review. DA Toney's final ruling is documented in a supplemental narrative.