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SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA  
BROWARD COUNTY COURTHOUSE  
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**CLOSE-OUT MEMORANDUM**

**To:** File  
**From:** Christopher Killoran, ASAIC - PCU  
**Re:** BSO Detention Deputies  
Incident on January 17, 2021, involving Kevin Desir  
**Date:** February 2, 2022

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**Reason for Close-out:**

On January 17, 2021, at approximately 10 pm, Kevin Desir ("Desir"), an inmate in Unit #4, Cell #8, at the North Broward Bureau Jail ("NBB"), located in Pompano Beach, had a physical altercation with detention staff which resulted in Desir being hospitalized. On January 21, 2021, at approximately 9:55 pm, Desir was pronounced deceased at Broward Health North. This investigation was conducted to determine if any of the actions by any employees of BSO, including BSO Detention Deputy Jeremiah Howard ("Howard"), caused the death of Desir and whether Howard, or any other BSO employee, could be criminally charged for their actions on January 17, 2021. After an exhaustive investigation, the Undersigned has determined that no crime occurred and as such, no charges will be filed related to this incident.

On January 6, 2021, Desir was arrested for one count of Criminal Mischief over \$1000, a third-degree felony. Desir was granted pre-trial release and was released on January 7, 2021. On January 13, 2021, Desir was arrested for Possession of Cannabis over 20 grams, a third-degree felony. This arrest violated Desir's pre-trial release. Therefore, Desir was remanded to BSO custody.

Due to Desir's lengthy mental health history, Desir was housed at the NBB, which specializes in housing inmates with mental health issues.

## **BSO Investigation**

BSO Homicide was tasked with investigating Desir's interaction with BSO detention deputies to see if any criminality occurred as a result of the actions of any BSO personnel on January 17, 2021. BSO Homicide Det. Mike Roque ("Roque") was assigned as the lead detective for this investigation and he procured both physical and testimonial evidence, that was provided to the SAO for review in this matter. The Undersigned reviewed the following:

- 1) Police report authored by Roque (16 pages)
- 2) Supplemental police reports from various witnesses at NBB (19 pages)
- 3) Police report from Desir's 1/13/21 arrest (7 pages)
- 4) BSO Use of Force Report (10 pages)
- 5) Three (3) property receipts (3 pages)
- 6) JMS records (8 pages)
- 7) TASER records (1 page)
- 8) CCS/Wellpath records (26 pages – from 1/14 until 1/19)
- 9) Pompano Beach Fire Rescue Records (5 pages)
- 10) Medical records from the hospital (3 packets: 21 pages, 25 pages, and 38 pages)  
\* It should be noted that the medical records list the patient under another name. The Undersigned confirmed that the name used is an alias utilized by the hospital. The name Kevin Desir is used on page 11 of the 25-page report. This information was confirmed with Roque.
- 11) ECG Report (23 pages)
- 12) Records from the Broward County Medical Examiner's Office (35 pages including 7-page autopsy report),
- 13) Sworn statements from eight (8) witnesses, including a voluntary statement given by Howard
- 14) Surveillance videos from multiple angles,
- 15) Ninety-four (94) photographs.

A portion of the evidence was provided in hard copy form, while additional evidence was shared over evidence.com.

## **Review of various surveillance video angles**

The details regarding the pertinent surveillance videos are as follows:

### **1) Review of Camera “M Infirmary Unit 4”**

This camera is a birds-eye view of Unit #4 at NBB. This camera is a 360-degree camera that captures the outside of the various cell doors in unit #4 and captures a portion of the interaction between Desir and BSO personnel. The pertinent portion of the video from this angle occurred between 9:01 pm and 10:10 pm. At approximately 9:01 pm, video surveillance shows Desir in his cell and he appears to be making a hand gesture as if speaking to someone or attempting to call the attention of someone. Debris can also be seen in front of Desir’s cell. According to the report generated in this case, the debris was caused as a result of Desir flooding his cell. At this time, there is only one other inmate, Patrick Clavelo (“Clavelo”), an inmate in a red jumpsuit, who can be seen on the surveillance video. According to information relayed to Roque, Clavelo was the only inmate permitted outside his cell in Unit #4 at the time of this event. At approximately 9:32 pm, it appears as if Desir is interacting with Clavelo. While there is no audio on any of the surveillance videos, it appears that any conversation between Desir and Clavelo does not appear to be cordial. Clavelo leaves the area and he later returns with Sergeant Ryan Daniel (“Daniel”) at approximately 9:35 pm. Clavelo appears to be pointing out something in Desir’s cell to Daniel. Clavelo’s statement was taken by Roque reflecting his limited involvement on January 17, 2021. Desir can also be seen in his cell while Daniel is conducting some sort of visual inspection of the cell. Video also shows a conversation between Daniel and Desir. Daniel then leaves the unit.

At approximately 9:40 pm, Daniel and another BSO deputy, Howard, can be seen outside of cell #8 speaking with Desir. Two additional individuals can be seen on video as well and they appear to be nurses. All four individuals eventually leave the unit area. At approximately 9:48 pm, Deputy Angela McNeal (“McNeal”), Howard and Daniel go back to Desir’s cell and it appears as if McNeal is attempting to speak with Desir. At 9:52 pm, Deputy Kimberly Green (“Green”) arrives. According to the report generated, Roque, McNeal and Green attempt to calm down Desir to provide medical attention to him. At 9:53 pm, Howard can be seen sweeping away the debris in front of Desir’s cell. At approximately 9:59 pm, deputies enter a closet near Desir’s cell to turn off the water to the cell to avoid any further flooding. At 10:02 pm, Deputy Christopher Williams (“Williams”) arrives in front of Desir’s cell. Once Williams arrives, he can

be seen speaking with Desir and the other BSO employees. At 10:03 pm, Deputy Devon Parker (“Parker”) arrives. At 10:04 pm, it appears that Parker was able to convince Desir to exit his cell and Desir can be seen placing both of his hands through the flap in his cell door to be handcuffed, per standard operating procedure. At approximately 10:05 pm, Desir’s hands can be seen through the flap in the cell and deputies can be seen grabbing his hands. It appears as if Desir begins to struggle with the deputies at this point in time. At 10:05:05 pm, the deputies open up the cell, with Desir’s hands still controlled through the flap and Howard is attempting to control Desir’s body. Desir is struggling with the six deputies. At 10:05:20 pm, the deputies move Desir toward the exit of unit #4. There is a physical scuffle occurring but part of the video is partially obstructed by a pillar in the middle of the room. While zooming in on the video, it is apparent there is a physical altercation while the deputies are attempting to subdue Desir. This physical interaction continues for minutes. At approximately 10:07:02 pm, Howard can be seen striking Desir with a closed left fist. According to the zoomed-in video, in conjunction with statements taken, this is the point in time where Desir bit Howard’s right wrist. According to the police report, the bite on Howard’s wrist broke the skin and he started bleeding. At the same time, according to the reports, Daniel utilized his Taser in a “drive stun” and stunned Desir two times on his right shoulder. According to the report, which is supported by the video evidence, the “drive stun” was ineffective at subduing Desir. The video shows that Howard struck Desir approximately 9 times with his fist. From this camera angle, it can be seen that at approximately 10:09:25 pm, Desir is finally brought outside of unit #4.

## **2) Review of Camera “M Infirmary Vest Deputy Station L”**

This camera is positioned outside of Unit #4 wherein the door to the unit can be seen at the bottom right-hand corner of the video. The video picks up with Daniel holding open the door at 9:40 pm and Howard entering the unit shortly thereafter with Daniel. Over the next seven minutes, a variety of people enter and exit unit #4. The pertinent part of the video begins at approximately 10:06 pm when Parker exits unit #4 to get the restraint chair and puts it directly outside unit #4, propping open the door. A short time later, Parker puts the restraint chair back where he originally got it. However, at 10:08:35 pm, Parker gets the restraint chair again and pushes it into the threshold of unit #4. At approximately 10:09:29 pm, the video shows Desir being put in the restraint chair and he can be seen struggling with deputies. At approximately 10:09:40 pm, the video shows Howard placing his hands under Desir’s chin as Desir is in the

restraint chair. Other deputies appear to be attempting to hold down Desir to strap him into the chair. A portion of this view is obstructed due to the open door blocking the camera view. At approximately 10:09:44 pm, Desir can be seen kicking at the deputies, while Howard's hands are still under his chin. Desir is sprayed with OC spray. Deputies continue to struggle with Desir as they try to strap him to the chair. At approximately 10:10:40 pm, deputies are still attempting to strap in Desir and there continues to be a struggle and again it appears that Desir is hit with OC spray. Directly after this, Desir is seen getting out of the chair and deputies wrestle to subdue him back in the chair. Howard is seen with his hands under Desir's chin again as Desir continues to struggle with deputies. From this camera angle, the struggle is seen until approximately 10:12:45 pm when the video shows Desir is limp in the chair. Williams is seen checking for a pulse and deputies and nurses appear to be administering first aid. At approximately 10:17:36 pm, Desir is removed from the chair and placed on the floor and CPR is commenced. Staff also attempted to use an automated external defibrillator (AED) but the reading on the machine said not to use the device due to a faint heartbeat detected by the machine. EMS arrived on the scene at approximately 10:27 pm to administer further aid.

### **3) Review of Camera "M Infirmary Vest Nurse Station R"**

This camera angle is down the hallway from the outer door to unit #4. The pertinent action takes place in the upper right-hand corner of the video. When zoomed in, it does show the sequence of events from the time that Desir is put in the restraint chair at 10:09:40 pm. At 10:09:45 pm, it shows the other angle of when the OC spray was deployed and shows Desir kicking out of the chair. At approximately 10:10:49 pm, this angle shows Howard's hands under Desir's chin, in the neck area, as Desir struggles in the chair. The rest of this video shows the same activity as "M Infirmary Vest Deputy Station L" at a different angle.

### **4) Review of Camera "M Infirmary Vest Deputy Station R"**

This camera angle is down a short corridor from the outer door to unit #4. The pertinent activity related to this investigation transpires on the right side of the video. From this angle, the view shows a portion of inside unit #4 due to the glass windows separating unit #4 from the deputy station area. The windows are directly to the left of unit #4 door. As such, when zoomed in, the camera angle shows a portion of what transpired once Desir was removed from his cell at approximately 10:05 pm. The view is obstructed by both the door and the portion of the wall near the door. However, the struggle between the deputies and Desir is captured to a certain

extent. At 10:05:36 pm, it appears that Desir is trying to get out of unit #4 in that he is placing his left leg outside of the door and he is wrestled back inside by the deputies and taken to the floor. The strikes delivered by Howard are obstructed and cannot be seen from this angle. Once Desir is placed in the restraint chair, the camera angle shows the deputies continuing to struggle with Desir. At approximately 10:10:47 pm, when the liquid is splashed, the video shows Howard with his hands under Desir's chin, on his neck area, struggling with Desir. At 10:11:14 pm, the video appears to show Howard, while his hands are still on Desir, using his body weight to leverage Desir back into the chair. Howard can be seen using his body weight to try to keep Desir in place by placing his hands under Desir's chin while other deputies attempt to strap in Desir. At approximately 10:12:41 pm, Howard can be seen removing his hands from beneath Desir's chin/neck. It appears as if another detention deputy signals to Howard that Desir is unresponsive and that is when Howard removes his hands. The rest of the video captures the same activity as "M Infirmary Vest Deputy Station L".

### **Wellpath Records**

The Wellpath records detail Desir's mental health issues. The records also detail the medication prescribed for his mental health issues. The records show that Desir consumed dinner on 1/15/21. According to information provided by Roque, the inmate apparently did not consume any other food leading up to the incident in question. The records detail that beginning on the 15<sup>th</sup>, Desir refused to be interviewed for his mental health assessment and that by the afternoon of the 15<sup>th</sup> Desir "appeared to be responding to internal stimuli". Notes indicate that in the early morning of the 16<sup>th</sup>, Desir continues to be "not receptive". Around 1 pm the afternoon of the 17<sup>th</sup>, the notes indicate that Desir is "alert and oriented" and shows no "sign of distress". By 4 pm on the 17<sup>th</sup>, Desir is "standing by the cell door fully naked; holding his penis and then he smiled and laughed inappropriately...". The incident in question occurred the evening of the 17<sup>th</sup>.

### **Pompano Beach Fire Rescue Report**

The EMT report provided describes the efforts made by Fire Rescue on January 17, 2021. The records detail that when EMS arrives, BSO was performing CPR. EMS assessed Desir per "cardiac arrest protocol" and transported him to the hospital. The EMS records state that cardiac

arrest was “presumed”. The records show that Desir responded to CPR and was transported to Broward Health.

### **Medical Records**

According to the medical reports from the hospital, there is an indication that Desir had a cardiac incident prior to arriving at the hospital. The notes indicate a “post cardio respiratory arrest of uncertain etiology after pepper spray”. This means that there was some sort of cardiac episode from an uncertain cause after the pepper spray. The medical records further note that when EMS arrived at the jail, Desir “had an arrest and received 2 amps of epinephrine. His blood pressure came back...” It is clear from the medical records that Desir suffered from a heart attack but the autopsy did not show that the cardiac episode was the cause of death. The records show Desir suffered from seizures while hospitalized and was intubated as well. The assessment plan on January 20, 2021, at 13:11, states “Status post cardiac arrest patient was having multiple seizures at this point is on medication for the control of seizure and appears to be under control. Patient had EEG that was done that showed there was a bilateral cortical dysfunction with no epileptiform focus. At this point the patient’s prognosis extremely poor.” (sic). Additionally, there are notes from January 19, 2021, that state “1/17/21 cardiac arrest likely due to status epilepticus.” In layman’s terms, this means that a heart attack was likely due to a prolonged seizure.

### **Medical Examiner Autopsy Report**

The autopsy of Desir was conducted by Dr. Gertrude Juste (“Juste”) of the Broward County Medical Examiner’s Office on January 28, 2021, and her opinion was rendered on June 1, 2021. Dr. Juste found that the cause of death was undetermined and the manner of death was undetermined. According to the autopsy report, Dr. Juste reviewed Desir’s medical records and then conducted a physical autopsy of the decedent. The final diagnosis according to Juste was as follows: 1) Desir was a 43-year-old incarcerated man with a history of bipolar disorder and sudden agitated behavior, 2) loss of consciousness following restraint, 3) hypoxic-anoxic encephalopathy, 4) minor, non-lethal trauma at autopsy, 5) in hospital development of cerebral edema, global hypoxic cerebral changes, right lower lobe pneumonia and status epilepticus and

6) toxicology testing was not performed due to lack of admission specimen. Juste's opinion stated that she reviewed the incident video two times, the day of the autopsy and again on April 13, 2021. Juste stated she reviewed the medical records which showed a normal initial brain CAT scan on 1/17/21, and a subsequent MRI on 1/20/21, and another CAT scan on 1/21/21, which revealed a hypoxic-ischemic injury. Additionally, there was interval development of seizures, aspiration pneumonia and ventilator-dependent respiratory failure. The autopsy itself revealed minor trauma consisting of contusions and abrasions. Postmortem toxicology could not be performed by the Medical Examiner's Office because they were not able to obtain a specimen of Desir's blood that was taken during his admission to the hospital. According to the detectives, hospitals typically keep the admission blood specimen for three to four days. In this instance, Roque stated he requested the admission specimen from the hospital but he never received it. The hospital took an admission specimen of Desir's blood but according to Roque, the hospital only keeps the initial blood specimen for approximately three to four days. Roque verbally requested from the nurse the initial admission specimen; however, that blood specimen was never given to BSO before it was destroyed as standard procedure at the hospital. Additionally, another doctor performed a neuropathological exam of the brain which resulted in a determination that his brain was normal.

On July 13, 2021, the Undersigned met with Dr. Juste, Dr. Rebecca MacDougall, the head of the Broward County Medical Examiner's Office, BSO Homicide Detective Kevin Forsberg, BSO Homicide Lieutenant Cody Gill and Det. Roque. This meeting was held to discuss why the cause and manner of death were undetermined. The Undersigned requested BSO be present as well to have all parties in the same room to discuss any issues. At the meeting, it was explained to the Undersigned by Roque that while in custody, Desir refused "medical everyday" (meaning medicine) as well as he refused meals. On the day in question, Desir flooded his room and was cutting himself with a small piece of metal. It should be noted that it appears that small blood splatter can be seen on the wall of Desir's cell on the video surveillance tape before any physical interaction with any deputies. This blood splatter is also described in the voluntary statement from Howard. Additionally, it was explained to the Undersigned that Desir's troponin levels were not elevated upon his admission to the hospital and that his glucose level was 36 (indicative of severe hypoglycemia – likely from his refusal to eat). Desir was pronounced dead four days after he was admitted to the hospital. It was relayed to the



Undersigned that Desir's heart was a normal size. In terms of any injuries displayed by Desir, his hyoid bone was intact. According to the doctors, very often the hyoid is broken when an individual is strangled. The only injury around the neck area was a contusion likely related to the central line being put into Desir at the hospital. Likewise, the larynx was intact. The analysis of his brain showed that it was normal. According to the doctors, this is important because a decrease in oxygen would cause the brain to swell, but in this instance, this didn't occur. This is indicative that there was not an issue related to a lack of oxygen to the brain. This finding, coupled with the hyoid being intact, led the doctors to opine that Desir was not strangled and he was not physically prevented from breathing. Based upon the lack of blood from the admission specimen, the Medical Examiner's Office could not run a full toxicology screen to see if Desir had any other medical ailments. The lack of testing on the admission blood specimen hindered the medical examiner from conducting all of the tests they typically do, but it was explained that in this instance, any testing would not have pointed this investigation to a finding of a homicide, but rather would likely point the outcome to a more definitive cause of death from a pre-existing medical condition. It was explained to the Undersigned that Desir suffered from seizures while at the hospital and this could have contributed to his death, but the Medical Examiner's Office could not be definitively certain. The Medical Examiner's Office could not opine as to why Desir suffered from said seizures but stated it could have been an anoxic event.

In layman's terms, the Medical Examiner's Office could not state definitively what caused Desir's death. They excluded strangulation by stating that his hyoid bone was intact and his brain did not swell. They eliminated a fatal heart attack by stating his troponin levels were not elevated. They could not account for any pre-existing medical issues because they were not given the admission blood specimen. The Medical Examiner's Office opined the seizure(s) he suffered at the hospital could have caused his death but they could not say this definitively and could not say what caused the seizure(s). In essence, the Medical Examiner's Office could not determine what caused his death and, as such, could not determine his manner of death.

### **Analysis**

This investigation was launched to see if the conduct of any of the detention deputies rose to that of criminal conduct that caused the death of Desir. The potential charges related to Desir's

death that were considered by the state were second-degree murder, manslaughter and aggravated manslaughter of a disabled adult. The statute for second-degree murder is as follows:

**782.04 (2)** The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life.

In this particular instance, given the findings by the Medical Examiner's Office, the State is unable to prove that any actions by BSO detention deputies caused the death of Desir. As such, the State cannot prove the unlawful killing of Desir.

An additional statute the State considered was manslaughter and aggravated manslaughter of a disabled adult. The applicable statute reads:

**782.07 Manslaughter; aggravated manslaughter of an elderly person or disabled adult**

(1) The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3) commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

In reviewing the death of Desir, the State reviewed the altercation under two potential circumstances whereby the actions of the deputies could have caused the death of Desir; 1) Desir was strangled/choked to death, and 2) Desir suffered a fatal heart attack either from the "drive stun" from the Taser or the physicality of the altercation itself. Given those two potential circumstances, based upon the physical evidence from the medical and autopsy reports, the State

can eliminate either of those from being the cause of death. First, the evidence that Desir's hyoid bone was intact and Desir's brain was not swollen indicates that Desir was not choked/ strangled to death. If the actions of the deputies caused Desir to be unable to breathe, there would be physical evidence that the autopsy would have uncovered. This is not the case. The second circumstance wherein the actions of the deputies caused the death of Desir would be a fatal heart attack suffered either as a result of the Tasering or from the physicality of the altercation itself. The fact that troponins levels were within normal range in Desir's blood eliminates this possibility in that there is no physical evidence that Desir suffered a fatal heart attack. As such, the two main possibilities that Desir's death was caused primarily by the altercation with the deputies have been eliminated. Given the findings of the Medical Examiner's Office regarding the cause of death and manner of death, the State cannot prove that the conduct of any BSO detention deputies caused the death of Desir.

Additionally, notwithstanding that the Medical Examiner's Office could not determine a cause of death or manner of death, the State further investigated the actions of the deputies, most specifically Howard, to see if the force used during the altercation rose to the level of criminality under the rubric of excessive use of force.

Given that Desir's cell was flooded and that he was cutting himself in his cell, the detention deputies' actions were entirely appropriate to remove him from his cell for his own safety. From the video, it can be seen that Desir was resisting the detention deputies and the altercation became more physical. While on the ground, the evidence shows that Desir bit Howard's wrist, which would clearly constitute active physical resistance. Due to the actions of Desir, Howard struck Desir multiple times in order to stop Desir from biting him as well as to gain compliance from Desir. The struggle endured up until and continuing when Desir was placed in the restraint chair. The surveillance video shows that Howard placed his hands under Desir's chin in his neck area. The medical records and the Medical Examiner's Office autopsy report show that there was no evidence that Desir was choked or strangled by the placement of Howard's hands. While the struggle continued, it is clear that at a point in time Desir becomes clearly unconscious. There is nothing in the medical records or autopsy report that can definitively state what caused Desir to lose consciousness. Medical aid was rendered on Desir by BSO detention deputies, nursing staff at the jail as well as EMTs. Further details of the medical records do not specifically point out what caused Desir to suffer from seizures or what

specifically caused him to expire on January 21, 2021. What can definitively be stated, as supported by the video evidence, is that Desir was actively, physically resisting the deputies during the altercation. The actions of the deputies, while certainly not pleasant, do not constitute excessive use of force nor do the actions rise to the level of criminality.

As such, this matter is hereby closed with no criminal charges filed against any of the BSO employees involved in this altercation. While the death of Mr. Desir is tragic, the facts of this case do not support any criminal charges being filed.



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Christopher Killoran  
ASAIC- Public Corruption Unit

DATE: 2-2-22