



The Commonwealth of Massachusetts
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- INTERVENTION & PREVENTION PROGRAMS
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July 11, 2013

Acting Superintendent Deborah Friedl
 Lowell Police Department
 50 Arcand Drive
 Lowell MA 01852

Dear Superintendent Friedl,

The Middlesex District Attorney's Office has concluded its investigation into the death of Alyssa Brame that occurred January 13, 2013 while she was in the custody of the Lowell Police Department at the Lowell Police station.

Based upon this investigation and applying the relevant case law, the Middlesex District Attorney's Office has determined that this was an accidental death that occurred in police custody and that the conduct of the parties involved does not rise to the level of wanton and reckless conduct that would support or warrant criminal charges. Our report is enclosed.

Our office has now closed its investigation into this matter. We turn the matter over to the department. We would, however, like to provide the following recommendations the department to consider in order to address the findings of our investigation:

- (1) Training of all personnel, sworn and civilian, to afford a better understanding of the difference between being "passed out" from alcohol or drugs and being "unconscious";
- (2) Addressing the circumstances in which medical attention will be called to the station to evaluate persons in custody to determine whether they need medical treatment. Over time there appears to be a perception among police personnel that there was push back from the hospitals regarding the number of prisoners being transported to the hospital for evaluation. However, on at least one prior occasion when Brame was brought into the police station EMTs were called in to the station to evaluate her and it did not result in her being transported to the hospital;
- (3) Implementing a well understood mechanism for medical attention to be summoned to the cell area. Civilian Attendant Lombard did not



feel that he was permitted to contact 911 for medical assistance himself. He went to the OIC and made that request. The OIC made calls to notify detectives and the chief but not dispatch to request medical attention, which resulted in the loss of time before medical attention could be summoned. While in this case this delay may not have changed the outcome for Ms. Brame, in another situation it could be the difference between life and death;

- (4) Implementing a well-defined protocol for checking on a detainee's well-being every 30 minutes (or more often as determined by the OIC) on those occasions when the Electronic Watchman is not working. This could be a log setting forth the time a person is physically placed in a cell and, thereafter, the exact times the person is checked in order to assure that the checks are made and are documented. Although it is called for the Lowell police procedures, no such log was in use nor was it known to the civilian attendant. Here neither attendant checked Brame within the requisite 30 minutes. Neither could say precisely when they last checked the detainee, each giving an estimate that was greater than the thirty minutes that the Lowell written procedure requires. The video shows that it was almost twice the time they were required to check on Brame; and
- (5) Adherence to policies and procedures for training and on-going training of civilian cell personnel. Neither Lombard nor Tetrault had current medical certifications necessary to the performance of their duties.

Please contact me should you wish discuss this report and recommendations further.

Thank you,

Marian T. Ryan
Middlesex District Attorney

TO: Marian T. Ryan, District Attorney
FROM: Adrienne C. Lynch
DATE: June 18, 2013
RE: Death of Alyssa Brame
January 13, 2013 While in Custody of Lowell Police

On the evening of January 12, 2013, at 10:15 p.m., Alyssa Brame was arrested by the Lowell Police and charged with soliciting sexual conduct for a fee. She was transported to the Lowell Police Station by the wagon officer. She was unable to be booked because it appeared to the cell attendants and police personnel present that she was intoxicated, passed out at the station and was therefore unable to cooperate with the booking process. Brame was carried into a cell and placed down on the bench on her side at 10:58 p.m. She was next checked by the Lowell police civilian cell attendants at 12:04 a.m., 66 minutes after she was placed in the cell. At that time, she was found to be unresponsive and was not breathing. Initial first responders from the Lowell Fire Department believed Brame was dead when they checked her, however, EMTs and then paramedics who subsequently arrived did not believe it was that clear and transported her to Lowell General Hospital where she was pronounced dead.

Massachusetts State Police CPAC detectives were notified and an investigation was commenced which included (1) tape recorded interviews of all Lowell police and fire personnel who had contact with Brame on January 12 into 13, 2013, as well as the EMTs from Trinity and paramedics attached to Lowell General Hospital, with their respective legal counsel present; (2) reviewing surveillance video¹ of Brame from the time of her arrival at the police station to her removal from the cell by medical personnel; (3) review of all prior police reports related to Alyssa Brame from October 13, 2012 through her arrest on January 12, 2013; and (4) results of the autopsy of Alyssa Brame and an interview with Dr. Renee Robinson who certified the cause of death to be "acute ethanol toxicity" and the manner of death to be "accident".

FACTUAL SUMMARY

On January 12, 2013, at 10:33 p.m., Alyssa Brame was arrested by plainclothes Lowell **Officers Charles Pappaconstantinou and Robert Dyer** at 77 Middlesex Street for offering sexual conduct for a fee. While on patrol in an area where frequent street level prostitution was occurring, Brame, (who was known to the officers to have been previously arrested for common night walking), signaled to the officers to pull over. They pulled over and Brame approached the driver's side of the unmarked car and asked if they were looking to "party", a term often used by street level prostitutes to solicit sex

¹ A copy of a composite DVD showing Brame from the time of her arrival at the Lowell police station until the time she was taken out of the cell by medical personnel is submitted with this memorandum.

or sexual conduct for a fee. Officer Pappaconstantinou told her they were interested. She stated " [REDACTED] now let me in the back seat." She then asked if they were cops, because "you have to tell me if you're cops." It was at this point that Brame was placed under arrest. She begged them not to arrest her, but they proceeded to handcuff her. At that time there was a radio broadcast requesting a wagon car.

As they waited for the wagon car, Officer Pappaconstantinou observed a strong odor of alcohol coming from Brame and opined that she was under the influence of alcohol. Her speech was understandable but slurred. She was able to keep her balance fine. At the time she was arrested she was holding a Dunkin Donuts coffee cup. It took about five to ten minutes for the wagon to arrive. Meanwhile a marked police unit responded to the scene of the arrest and stood by. Brame was standing as they waited for the wagon car. The atmosphere lightened up and Brame was joking around and she didn't seem to the arresting officers to be as upset as she initially was about being arrested.

Officer Dyer did not notice anything out of the ordinary about Brame's balance or behavior. When he got out of the car and approached her, he first detected an odor of alcohol on her breath and person, but she was coherent when talking to them. She did not make any complaints to them about her physical condition or any ailments. She was allowed to drink her beverage and have a cigarette as they waited.

Officers Gil Rojas and Jason Gato were on patrol in a marked police cruiser. When they heard the radio call about the Brame arrest and the subsequent request for the wagon car, they responded to Middlesex from Appleton Street as back-up. Both officers remained in the cruiser. Brame was someone both officers had seen before; she had been arrested a few nights earlier. They had a brief conversation with her during which she seemed alert and responsive. Brame did not appear to have any problems with her balance; Rojas did not form an opinion as to her sobriety; Rojas said there was no indication that she was under the influence. Neither Rojas nor Gato got out of the cruiser and neither approached Brame. Gato indicated that Brame showed no marked difference in appearance or behavior from how she had seemed to him in the past.

Officer William Florence arrived in the wagon car by himself. As he approached, he saw Brame in handcuffs conversing with Pappaconstantinou and Dyer. Florence got out of the wagon and opened the back door to the wagon car. Pappaconstantinou walked Brame over to the wagon car. Florence described Brame as inebriated, but able to get into the wagon. Florence asked Brame if she had any needles on her person and then asked her to step into the wagon. Florence recalled her talking more to the arresting officers than to him and that she never actually responded directly to him. He remembered Brame laughing and speaking to the other officers. Florence felt that Brame was intoxicated by the way she was acting, by the way she was speaking, by the sound of her voice, by the unsteady way she walked and the odor of alcohol on her breath.

As Brame approached the wagon she appeared unsteady, walking side to side, rather than in a straight line. She had to walk around two car lengths to get to the wagon and Officer

Dyer assisted her to get into the wagon. She was holding herself up but hesitated stepping up on her own; they had to coax her and ultimately assist her getting up into the vehicle, where she sat down. According to Dyer, Brame was still coherent and was still talking to them. Pappaconstantinou wished Brame luck.

Florence drove Brame from Middlesex Street to the police station which took a few minutes. When he opened the back door at the station, (at 10:41 p.m. on the surveillance footage), Brame was in the same position as she was when they left Middlesex Street; she was sitting upright, still talking, and mumbling words. Florence asked Brame to step out. At that time she did not seem coherent and seemed to be intoxicated. Florence assisted Brame out of the wagon with the help of civilian attendant **Kevin Lombard**². Lombard had learned of the Brame arrest over the police radio. Although the attendants usually wait for the prisoner in the cell area, Lombard happened to be in the sallyport when he noticed Officer Florence having a hard time getting Brame out of the wagon. As they tried to get her out of the wagon, Florence thought Brame was going to give them a hard time. They asked her and then physically tried to remove her from the wagon and had a difficult time. Lombard stepped on to the back of the wagon, took one arm and helped step her out of the wagon and then brought her over to the landing to take her downstairs to the booking/cell area. They held onto her as they helped her out and had to help her stand. As they were walking her over to the landing, Brame's weight gave out and she fell down. Two UMass officers happened to be in the sally port and they came over to assist them in bringing Brame over. Brame was put on the ground when she would not work on her own to stand. Lombard could tell that she was intoxicated by her slurred speech. Brame was conscious. This was observed from a distance by **Officer Michael Farnum** who formed the opinion that Brame was being uncooperative. Meanwhile UMass Lowell Police **Officers Kaitlin McNamara**³ and **Rivera**⁴ were bringing in another prisoner to be booked. Brame was sitting on the ground as Officer Florence went down to the booking area. When Officer Florence left the landing he saw that Brame was sitting on the ground (per surveillance tape she sat on ground from 10:43:51 – 10:47 p.m.); when Florence returned to the area, Brame was on her back and the handcuffs were off.

Sergeant Frank Nobrega came down to the landing and saw that Florence and Lombard were having difficulty getting Brame out of the cruiser. He told them not to drag her. He was told that Brame was always in that condition. Nobrega approached and bent down to have a conversation with Brame who was seated on the ground. Sergeant Nobrega explained the bail process to Brame, told her "you've been here before" and she smiled. Nobrega could smell alcohol and felt Brame was intoxicated but did not think drugs were

² Kevin Lombard, 24 years old, had been working at the Lowell Police Department for five years. He started out working at the main desk as clerical staff and then became a detention attendant. As such, his responsibilities are to book persons, monitor them while in custody, inventory their property, and fingerprint and photograph them. According to Lombard, Lowell police did not provide on-going training to the detention attendants.

³ Officer McNamara briefly assisted in carrying Brame to the stairway. She did not make any observations or form any opinions on Brame's sobriety.

⁴ Officer Rivera saw that Brame was breathing, mumbling and had her eyes open. She seemed uncooperative to him

involved. She was slurring her answers to the questions. Brame was not able to keep her balance. Lombard had dealt with Brame numerous times in the past few weeks and every time he dealt with her she was intoxicated, although never to the point she was that night; Lombard informed Sergeant Nobrega of that observation. Nobrega felt Brame was too intoxicated to be street-walking and went into the CO's office to talk to Lt. Cioppes about his concerns about the charges.

At that time of Brame's arrival at the police station, the radio room was notified so that, as per procedure, the Lieutenant-in-Charge could come out and visually inspect Brame in the normal course. **Lt. Cioppes** was informed by Sgt. Nobrega that he had concerns about the arrest because he did not see how someone in Brame's condition could be a nightwalker. Lt. Cioppes went halfway down the stairs and he too observed that Brame did not appear to be someone who could be hustling on the streets in her condition. **Lt. Michael Kilmartin**, the street supervisor, and **Sergeant Fay, the west sector sergeant**, and **Sergeant Michael Giuffreda** had heard Nobrega report his concerns about the arrest to Cioppes, so out of curiosity they went out to the landing to see the prisoner. Sergeant Nobrega as well and Sgt Fay were also present.

Brame appeared to be clearly intoxicated to Lt. Cioppes, who recognized her to be someone with a well-documented history of alcohol abuse. She was swaying, jabbering and slurring her words, but Cioppes did not get close enough to determine whether she had an odor of alcohol. Lt. Cioppes wanted the arresting officer to come into the station and look at her, because he too questioned how someone in that condition could solicit anyone. At that point Cioppes told the police personnel with Brame to let her lay down and they would have "Papps" come in and he can explain how this person could be out working as a prostitute.

Similarly, Kilmartin thought Brame appeared to be intoxicated. He described that her eyes were open and she was speaking a lot, but she was not articulate. Kilmartin had seen her on January 7 when she was arrested as he was the OIC that night, and her condition then was very similar, i.e., she was intoxicated then too. Kilmartin was only in her presence on January 12th for 1 - 2 minutes.

Sergeant Fay also thought Brame was intoxicated. She had slurred speech and was unsteady on her feet. She was not the first person he had seen in that state at the police station. He had seen Brame on three earlier occasions at the police station. Guiffreda observed that Brame was talkative at first, although he did not pay attention to what she was saying.

As they awaited the arrival of the arresting officer, Lombard stood next to Brame. At one point she laid down (10:47 p.m.) and Lombard tried to pick her up but was told to let her lay down. It seemed to Lombard as if Brame was snoring. At some point Sgt Giuffreda came out of the CO's office and he saw Brame was no longer talkative and she was lying on her back. Sergeant Guiffreda ordered Lombard to taken off Brame's handcuffs and her jacket and that was done (at 10:52:40 p.m. per video). Guiffreda touched her carotid artery and felt a pulse. He saw Brame open and close her eyes and saw her chest rise and

fall. She did not have any problems breathing, did not appear to be in peril or distress, she did not have any labored breathing and her skin was pink and dry.

Five to ten minutes later, Officer Pappaconstantinou arrived at the station. When he saw Brame at the station at the top of the stairs to the booking area, she appeared to be "passed out." Pappaconstantinou explained to Lieutenant Cioppes that she was not in the same condition as she was on the street. After speaking to the OIC, the charges were approved and authorization was given to move forward with the booking. Lombard said that while they were still on the landing he asked Sergeant Fay if they were going to call an ambulance to check her. He was reportedly told no.

Officer Florence, assisted by Lombard and Sergeant Fay, carried Brame down to the booking area (at 10:55:49 p.m. -10:56:34 p.m. per video). She was not saying anything and her eyes were not open. **Shawn Tetrault**, the second detention attendant, opened the door to the booking area and Brame was laid on the floor face up, where she was searched quickly. A lighter was removed from her person and her belt and shoes were taken off. Officer Dyer again saw Brame in the cell area when he reported to the booking area to retrieve his handcuffs. When he saw Brame in the booking room she was on the floor, face up, quiet and appeared to be unconscious. Sergeant Fay said that when they put Brame on the floor in the booking area she was snoring.

Brame was in no condition to be booked but was told "when you wake up you can make a call". The attendants had information from Brame's recent past arrest to fill out some of the paper work. At that point, Officer Florence and the two cell attendants Lombard and Shawn Tetrault carried Brame from the booking room to the first cell in the cell block area (at 10:57 p.m. per video). They laid her on the bench in the cell on her left side so she would not aspirate and she said nothing as they did so. Tetrault put a blanket on her and then the cell door was closed (at 10:58 p.m. per video). Officer Florence last saw Brame in the cell at that time. Brame was breathing; her chest was rising and falling. Her eyes were not open and she was not moving. Officer Florence went off duty at 11:30 p.m. Lombard also described hearing and seeing Brame breathe as they left her in the cell. The time was 10:58 p.m.⁵

The video of the Brame cell show that from 11:07:02 p.m. to 11:07:37 p.m., there is some movement of the body. It is the only movement for the entire time Brame was in the cell alone. It appears to be involuntary movement.

The booking sheet for Brame prepared by Shawn Tetrault, from earlier booking sheets, listed the time of booking to be 11:07 p.m. However, the surveillance tape shows that Brame was in the booking room at 10:56 p.m. and was placed in the cell at 10:57 p.m. and left alone in the cell at 10:58 p.m.

⁵ Standing Order 415, section VI. F. states, "At no time will an unconscious prisoner be placed into a cell. Unconscious prisoners shall be examined by trained medical individuals as soon as possible."

G. L. c. 40, § 36B, in pertinent part states,

Each occupied cell within such a lockup facility should be physically or visibly checked by a law enforcement officer or other lockup personnel as often as is required by a reasonable standard of care of detainees.

Every lockup facility shall have installed within the cell area an electronic security device which will record the date and time of day of each cell check made by a law enforcement officer or other lockup personnel. All checks shall be recorded on such electronic security device.

More specifically, Lowell Police General Order 415, V. M., requires that prisoners be visually checked in the cell area every thirty minutes.⁶ Additionally there are monitors so that prisoners can be checked at other times as well. That night the "electric watchman"⁷ was broken; the attendants told investigators that they were not required to record in written form when such required checks were made. Lombard believed that he and Tetrault checked on Brame 30 – 40 minutes after placing her in the cell. Tetrault thought they checked 45 – 50 minutes after putting her in the cell. At the time that they checked on Brame they banged on the door and saw no movement and heard no response from inside. They yelled to Brame and also got no response. Video surveillance showed that they entered the cell at 12:04:50 a.m. on January 13. This is actually fifty-six (56) minutes after she was left in the cell by the two attendants.⁸ They entered the cell and saw that Brame's arm and face were blue and she was unresponsive. Lombard checked for a pulse and found none. They yelled her name. Tetrault put gloves on and turned Brame on her back; her whole left side was blue. Lombard had received first responder CPR training a few years earlier but his certification had expired. Tetrault had no certifications in CPR.⁹

Lombard ran upstairs and notified the new¹⁰ CO, **Captain Meehan**, that there was an unresponsive female downstairs and they feared she was dead. Lombard provided the captain with the information and then ran back downstairs. Lombard thought/assumed Meehan was going to call for medical assistance; he did not.

⁶ Standing Order 415, section M. 1. states, "Except in the case of a potentially suicidal person, it will be up to the discretion of the Officer in Charge or Supervisory Detention Attendant to determine if constant or more frequent than the 30-minute monitoring of a prisoner is needed."

⁷ Electric watchman is a device that is hit by the attendant to document that the necessary rounds were made and when.

⁸ Standing Order 415, section V, M. states "The Officer in Charge and/or Supervisory Detention Attendant shall ensure that a physical check is made of the cellblock at least every 30 minutes. Each detainee must be observed. The Electronic Monitoring System shall be utilized. If this system is not in operation these checks shall be properly recorded on a report form."

⁹ Standing Order 415 IV. "Holding Facility Training", section A, 3 and 4 state that "every detention attendant shall receive training when hired, with periodic in-service training as necessary, in the following areas: ...3. Emergency procedures 4. First Responder, CPR, and First Aid.

¹⁰ The shift had changed as did the station command staff.

After reporting to the CO, Lombard ran back to the cell. En route, Lombard ran into **Officer Lou Gonzalez** and told him of the situation, i.e., that he believed Brame was dead. Gonzalez went in to the cell at 12:09 a.m. (per the video). He checked Brame for a pulse and, getting none, went and got the defibulator. With the assistance of Lombard and Tetrault, Officer Gonzalez tried to start CPR. Gonzalez had come on duty at 11:30 p.m. and was working as the wagon officer. Gonzalez was not able to get a pulse and waited for the fire department to come in. At one point, Gonzalez observed white liquid coming from Brame's mouth. Meanwhile, because no medics were yet arriving, Lombard called ECC to see if Trinity Ambulance was en route. That was the first request for medical assistance to be requested of the dispatcher. As a result of Lombard's call **Dispatcher Catherine Callery** then dispatched Lowell Fire Rescue and Trinity Ambulance to respond. The CAD report dated January 13, 2013 shows a report at 12:18:07 a.m. of an "Unresponsive female". It also shows that at 12:19:24 a.m. medical assistance was dispatched and en route.

Lowell Firefighters Ben Ratty and Pat McCabe and Fire Lieutenant Jose Rivera responded to the area by walking (their station is next door to the police station). When they arrived there (at 12:19 a.m., per the video) McCabe was first told that the female was dead. McCabe, Ratty and Rivera entered the cell. They observed Brame who was not breathing and not been breathing for a while. She had no pulse and appeared to be cyanotic. There was pooling of blood which is one of the seven signs of death and was a clear indicator that she was deceased. When they entered the cell, the defibulator machine was on (they could hear the machine talking), but it was not in use. Lt. Rivera determined that CPR should not be initiated because she was dead. When Trinity personnel, **Chad Rudd and Michael Cathorpe**¹¹, arrived (at 12:23 a.m. per the video) Rivera pointed out the pooling of blood to them but they decided that they wanted to start CPR¹². According to both Rudd and Cathorpe there were no obvious signs of death that they observed. Although Brame was not breathing and did not have a pulse, she was warm to the touch, so they initiated CPR.

Paramedic Andrew Delissio, a paramedic for Lowell General Hospital, responded to the police station. He and his partner, **Paramedic Wes Russell**, were dispatched by Trinity Ambulance. When they arrived, they found CPR was in progress and Brame was in cardiac arrest. She had no pulse, was cyanotic and apnic and there was no sign of trauma. Delissio did not observe pooling, rigor or lividity. He did observe an odor of alcohol. The fire medics assisted with CPR and later removal from the cell. McCabe and Rivera both noticed that Brame's jaw was starting to stiffen making it difficult for them to open an oral airway. Eventually, Brame was transferred to a backboard for transport to the hospital and removed from the cell at 12:38 a.m. One of the firefighters drove the ambulance while ambulance personnel worked on Brame. At Saints Memorial Hospital, Alyssa Brame was pronounced dead at 1:08 a.m.

¹¹ Rudd and Cathorpe were interviewed by Troopers Gagne and Banks, but their interviews were not audio-recorded.

¹² Lombard heard the EMT from Trinity tell Lt. Rivera that they could not pronounce her death.

An autopsy was performed on Alyssa Brame at the Office of the Chief Medical Examiner by **Dr. Renee Robinson** on January 14, 2013. Dr. Robinson ruled the cause of death to be “acute ethanol toxicity” and the manner of death to be “accident”. Toxicology testing was positive for ethanol with 0.42 G% in iliac blood and 0.46 G% in vitreous. It was also positive for nordiazepam¹³ (97ng/ml) and carboxy THC¹⁴ (9.8NG/ml). Additional findings included left temporalis muscle with focal hemorrhage and left posterior parietal focal subscalpular hemorrhage.

Dr. Robinson indicated that the appropriate course for treating someone in the throes of alcohol toxicity would be to pump the stomach, administer fluids by IV and intubation. Dr. Robinson stated that medical intervention at the point Brame became unconscious was necessary and, although she cannot say with certainty whether it would have saved Brame’s life, there was a chance that such intervention, at the earliest opportunity, could have prevented the death. Dr. Robinson who saw reviewed the video tape indicated that the activity observed at 11:02 p.m., could be indication of the effect of the alcohol toxicity impairing breathing and heart rate.

Prior History of Brame with Lowell Police

There were ten occasions prior to January 12, 2013 when Alyssa Brame was in the custody of the Lowell Police Department. On October 13, 2012, Brame was arrested for trespass and was described to be “highly intoxicated”. On November 2, 2012, she was found to be unconscious, was awakened by EMTs and was taken into protective custody when found to be “highly intoxicated”. On November 17, 2012, Brame was again placed into protective custody because she was “highly intoxicated”. On December 12, 2012, Brame was arrested for disturbing the peace. She was described to be “intoxicated”. Brame was next taken into protective custody on two sequential days – December 25, 2012 (“highly intoxicated”) and December 26, 2012 (“intoxicated”). Brame was arrested on December 29, 2013, for disorderly conduct (“intoxicated”). She was arrested for trespass on January 3, 2013 (“highly intoxicated”), for common nightwalking on January 6, 2013 and for drinking in public on January 7, 2013 (“highly intoxicated”).

LEGAL ANALYSIS

The issue raised here is whether the acts of the any of the various police department employees rose to the level of wanton and reckless conduct that would support/warrant an involuntary manslaughter charge. “Involuntary manslaughter is an “unlawful homicide unintentionally caused by an act which constitutes such a disregard of probable harmful consequences to another as to amount to wanton and reckless conduct.” Commonwealth v. Gonzalez, 443 Mass. 799, 808, quoting Commonwealth v. Godin, 374 Mass. 120, 126 (1977). It “requires more than negligence or gross negligence.” Commonwealth v. Life Care Centers of America, Inc., 456 Mass. 826, 832 (2010) citing Commonwealth v. Welansky, 316 Mass. 383, 399-400 (1944). As will be set out below, investigation did

¹³ Diazepam and Chlordiazepoxide each metabolize into nordiazepam after ingestion with a detection period up to ten days after ingestion

¹⁴ Carboxy THC indicates ingestion of marijuana within the past several weeks.

not establish that any one person acted in a wanton and reckless manner in connection with Ms. Brame. Therefore, by analogy, under Commonwealth v. Life Care Centers of America, Inc., 456 Mass. 826, 833-834 (2010) there can be no culpability for involuntary manslaughter in the absence of "at least one individual whose behavior could permissibly be found to have been wanton and reckless."

There were more than the usual number of persons who made observations of Ms. Brame's condition at the police station – some with responsibilities related to her arrest, processing and booking and others who expressed "curiosity" that led them to place themselves in a position to observe her. Only one person, civilian booking attendant Kevin Lombard, mentioned or asked about seeking medical attention for Ms. Brame and he claimed he was told no. Investigation revealed that given the number of intoxicated/impaired people arrested by the Lowell police over the years there was either push back from the hospitals in Lowell resisting acceptance of such patients or just a perception that that was the case that led the police to limit the number of intoxicated/under the influence persons transported to the hospital for assessment. Of note is that on November 2, 2013, Brame was found to be unconscious by the police and an EMT was summonsed to examine her.

On January 12 into January 13, 2013, there was a change of shift for supervisory personnel at the time Ms. Brame was in the cell and it is unclear whether that played a role in supervisory personnel not being more concerned about Brame's condition, i.e. they had not seen her condition and were merely informed that she needed to be booked because she had been in no condition to be booked when arrested. Based on recent past experience with Ms. Brame by the Lowell Police when she was described as "highly intoxicated" on six of ten occasions, including one where she was examined by an EMT, and "intoxicated" on three of ten occasions, police personnel determined that this was another one of those occasions where Ms. Brame was intoxicated and needed to sleep it off.

From a viewing of the tape, it appears that Brame had an episode which resulted in involuntary movement at around 11:07 p.m. That was either not seen by the attendants monitoring the cell or was not perceived to be something that merited attention. If the standing order had been followed Brame would have been checked at 11:28 p.m. However, it is unclear whether checking at that time would have made a difference.

Both Lombard and Tetrault claimed that although they had received some training when first hired, as of the time of Ms. Brame's death, neither was certified or had received recent retraining in first responder or CPR. When Lombard and Tetrault became aware that Ms. Brame needed help, Lombard went to the OIC Captain Meehan to request that emergency medical assistance be summonsed because they believed Brame was deceased. Captain Meehan, believing that Lombard was going to do it himself, instead contacted detectives and his supervisor, and it was only when Lombard called the dispatcher to see where the fire rescue medics and EMTs were that a dispatch was first sent for both to respond to the station.

While violation of a statute or a rule or regulation may be considered some evidence of negligence, such evidence does not rise to the level of wanton and reckless conduct. There were instances which indicated that written policies of the police department were not followed. Although a case can be made that there were several instances of negligent conduct by various individuals, it is not clear that "but for" each of those negligent acts the death from alcohol toxicity would not have occurred. Commonwealth v. Life Care Centers of America, 456 Mass. 826 (2010) and Commonwealth v. Springfield Terminal Railway Company, 80 Mass. App. Ct. 22 (2011) and Commonwealth v. Figueroa, 83 Mass. App. Ct. 251 (2013) are instructive.

SUMMARY CONCLUSION

After reviewing the evidence gathered and the relevant case law, it is my recommendation that the investigation of the death of Alyssa Brame should be closed as an accidental death in police custody.

RELEVANT LOWELL POLICE DEPARTMENT GENERAL ORDERS

Lowell Police Department General Order No. 415 - Holding Facility and Booking Procedures

415 IV. "Holding Facility Training" states that "every detention attendant shall receive training when hired, with periodic in-service training as necessary in the following areas: ...3. Emergency procedures 4. First Responder, CPR, and First Aid

415 V. "Security and Control" sections L and M require that the detainee be monitored via video monitor whenever a person is placed into one of the cells

M. "The Officer in Charge and/or Supervisory Detention Attendant shall ensure that a physical check is made of the cellblock at least every 30 minutes. Each detainee must be observed. The Electronic Monitoring System shall be utilized. If this system is not in operation these checks shall be properly recorded on a report form." Subparagraph 1. states, "Except in the case of a potentially suicidal person, it will be up to the discretion of the Officer in Charge or Supervisory Detention Attendant to determine if constant or more frequent than the 30-minute monitoring of a prisoner is needed."

415 VI. Medical Care section F states, "At no time will an unconscious prisoner be placed into a cell. Unconscious prisoners shall be examined by trained medical individuals as soon as possible."