

The City of New York
Department of Investigation

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**FOR IMMEDIATE RELEASE
FRIDAY, JUNE 5, 2020**

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**DOI REFERRAL TO THE CITY DEPARTMENT OF CORRECTION (DOC) ON DOC ACTIONS SURROUNDING
THE DEATH IN CUSTODY OF LAYLEEN POLANCO**

Margaret Garnett, Commissioner of the New York City Department of Investigation ("DOI"), released DOI's referral letter to the City Department of Correction (DOC) on the actions by DOC surrounding the death of inmate Layleen Polanco, in Rose M. Singer Center Building 2, punitive segregation. This referral letter is released today in conjunction with the Bronx District Attorney's findings involving this matter, in which that office determined the evidence did not support criminal charges.

DOI's investigation identified no evidence that the actions of any DOC personnel contributed to Polanco's death. However, there was a 47-minute gap between a Correction Officer's tours of Polanco's housing area between 13:40 and 14:27 hours on June 7, 2019, in violation of DOC Directive 4501R-D (II)(B), which requires "At a minimum, every inmate housed in Punitive Segregation shall be observed at least once every 15 minutes at irregular intervals " The matter was referred to DOC to take any action it deemed appropriate.

DOI's referral is attached to this release. Some inmate names and information deemed private have been redacted.

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April 2, 2020

Deputy Commissioner Sarena Townsend
New York City Department of Correction
75-20 Astoria Boulevard, Suite 350
East Elmhurst, NY 11370
BY EMAIL

Re: Death in Custody of Daniel Polanco, aka Layleen Cubilette Polanco

Dear Deputy Commissioner Townsend:

On June 7, 2019, the Department of Correction (DOC) Central Operations Desk (COD) reported inmate Daniel Polanco Cubilette (B/C 3471900243, date of birth October 4, 1991), also known as Layleen Xtravaganza Cubilette-Polanco, housed at Rose M. Singer Center (RMSC) Building 12, punitive segregation, was unconscious/unresponsive. On June 7, 2019, at approximately 14:40 hours, Correction Officer (CO) Tykisha Williams (shield #15974) conducted a tour of the housing area and found Cubilette unresponsive in cell # 6. CO Williams declared a medical emergency and medical staff responded to the area. At approximately 15:00 hours, medical staff deemed Cubilette unconscious. At 15:05 hours, DOC established a crime scene. At 15:45 hours, urgent care medical staff pronounced Cubilette deceased.

DOC DIRECTIVES/COMMAND LEVEL ORDERS

DOC Directive 4501R-D "Pre-Hearing Detention and Punitive Segregation Status Inmates," establishes that inmates who demonstrate violent behavior or violate the law or inmate rules while in DOC custody can be assigned Pre-Hearing Detention or Punitive Segregation status. Inmates with these statuses "will be held under lock-in for up to twenty-three (23) hours a day, except when participating in daily recreation or other mandated services."

Directive 4501R-D (II)(B) requires "At a minimum, every inmate housed in Punitive Segregation shall be observed at least once every 15 minutes at irregular intervals...."

Directive 4501R-D (IV) (D) (8). Under RMSC Command Level Order guidelines (CLO) section III, subsection G: “No inmate shall be transferred into the Punitive Segregation unit without the authorization of the Deputy Warden for Security and/or their designee. The inmate must have a review for Mental Health form completed by Mental Health staff. All admissions/discharges shall be facilitated Monday through Friday and no later than 1500 hours by the assigned area Supervisor, unless otherwise directed by the Deputy Warden for Security and/or their designee.”

RESULTS OF INVESTIGATION

DOI investigators reviewed Genetec and handheld video footage, staff incident reports, injury to inmate reports, medical reports, incident photos, and inmate fight tracking database documents. DOI also interviewed witness inmates and reviewed DOC records relating to Cubilette’s overall incarceration, including but not limited to, Cubilette’s medical history, interactions with staff and inmates, and Securus-recorded inmate phone calls.¹

Cubilette’s Background

Cubilette was arrested on April 13, 2019, for Failure to Pay Based on Stealth (PL § 165.15) and Assault with Intent to Cause Physical Injury (PL § 120.00) after she allegedly refused to pay a taxi fare and then bit the taxi driver’s face. She entered DOC custody on April 16, 2019, and reported [REDACTED]

- ***Cubilette’s DOC Behavioral History***

According to the DOC Inmate Fight Tracking database, Cubilette was involved in an inmate-on-inmate fight on May 6, 2019 in the RMSC clinic. Cubilette struck an inmate in the face without provocation, and the two engaged in a physical altercation. Both inmates sustained scratches that did not require additional medical attention.

On May 9, DOC served Cubilette with infraction #0663-19 that contained the high charge 101.12.² During her May 14, 2019, disciplinary hearing, Cubilette stated she knew what she had done and understood why she was at the hearing. Cubilette then refused to answer questions and was removed from the hearing. She received a penalty of twenty punitive segregation days because of the infraction.

On May 14, 2019, CO Louise Gay (shield #8542) filled out a Referral of Inmates to Mental Health Services form for Cubilette. CO Gay said of Cubilette’s behavior: “showing radical changes in behavior;” “unusual action or behavior that should be brought to the attention of the

¹ Securus calls revealed that Cubilette’s last completed phone call was on May 20, 2019. The majority of phone calls that used Cubilette’s Securus pin were made by other inmates (a commonplace occurrence). None of the phone calls reviewed revealed any pertinent information about her death.

² Inmate Rule Book § 1-03 (c) (2), Assault and Fighting, Grade I, 101.12: “An inmate is guilty of Grade I assault on an inmate when he or she injures any other inmate or when he or she spits on or throws any object or substance at any other inmate.”

Mental Health Staff;” and “showing different behaviors mentally, and inmate fight.” Captain Diatiema Daniels (shield #1772) was the supervisor notified of the referral. The relevant findings section of the form detailed there was an unexplained altercation, and that Cubilette stated, “I was an asshole.” Mental Health staff “provided supportive counseling,” and an unidentified Mental Health Clinician recommended that Cubilette be returned to her housing unit.

DOC’s Incident Reporting System further detailed a logbook entry of a May 15, 2019, incident that transpired in RMSC Building 6 involving Cubilette.³ The entry stated that Cubilette advanced toward CO Zenetria Williams (shield #1903) with “aggressive hand gestures towards the facial area.” CO Williams ordered Cubilette to stop, but she did not comply and struck CO Williams.

- ***Cubilette’s Housing Status***

On May 24, 2019, RMSC Assistant Deputy Warden (ADW) Jessica Rodriguez (shield #1338) emailed Captain Rosemary Ellerbe (shield #195) and others that Cubilette returned from Elmhurst Hospital Prison Ward (Elmhurst) and was in the RMSC main intake. ADW Rodriguez requested that Cubilette be transferred to another facility because Cubilette had assaulted staff (CO Williams) in RMSC Building 6, had trouble in transgender housing units, and “the disposition” states she could be in general population. Captain Ellerbe suggested ADW Rodriguez process Cubilette for protective custody (PC) and indicate on the paperwork that Cubilette had issues with other transgender inmates in the unit. Captain Ellerbe explained that if ADW Rodriguez noted only “fear for safety” on the paperwork, Cubilette would be denied PC. ADW Rodriguez informed Captain Ellerbe that Cubilette was being processed for pre-hearing detention (PHD) and “owed days.”⁴ She also stated that Dr. Calicdan reviewed Cubilette’s mental health chart, and informed her that, “due to the subject inmate’s medical history as it pertains to seizure disorder...he would not be able to authorize a cell housing placement for inmate Cubilette.” Captain Ellerbe responded that Cubilette would have to be transferred to the Restrictive Housing Unit (RHU) or Clinical Alternative to Punitive Segregation (CAPS), and that they still needed to determine where to house her that night. Captain Ellerbe stated that was another reason to place Cubilette in PC.

On May 25, 2019, at approximately 03:41 hours, Deputy Warden of Security Robin Collins requested a status update on Cubilette’s PC paperwork, but as of 04:29 hours, they were still waiting for a response from DOC Operations Security Intelligence Unit (OSIU). Also at this time, Captain Jennifer Cruz (shield #1197) emailed a memorandum to RMSC Acting Warden Bibi Ogburn-Suares (shield #634), requesting that Cubilette be placed in PC. The email detailed that on May 24, Cubilette communicated, both orally to staff and in a written statement,⁵ that she was

³ There were two additional entries related to Cubilette, both from June 7, 2019: the first reported her as unconscious/unresponsive (COD 1534/19), and the second reported her deceased (COD 1535/19).

⁴ Directive 4019R, Attachment B: Form PSA-1, “RHU and CAPS Punitive Segregation Term Adjustment Authorization” mandates “[s]hould an inmate be infraacted and receive a newly imposed punitive segregation term, he/she will be required to serve any previously imposed punitive segregation time held in abeyance along with the newly imposed term combined.”

⁵ Cubilette wrote in her May 24, 2019, voluntary statement form, “me Daniel Cubilette do not want to go to (GP). I prefer going to transgender housing. Not in Rosie. I am scared of Rosie.”

afraid to be housed in RMSC. Captain Cruz recommended Cubilette be placed in PC due to her “vulnerability in general population.” Captain Cruz and ADW Antoinette Pinckney (shield #72) filled out a DOC “Initial Placement into Protective Custody Housing Form” for Cubilette, and Captain Cruz wrote that Cubilette claimed “[o]ther transgender females in RMSC have been threatening her. Inmate fears for her safety in RMSC.” Cubilette refused to sign the form.

At approximately 05:06 hours, OSIU Captain Leslie Wade (shield #1103) informed RMSC’s tour commander that OSIU denied PC for Cubilette because “there isn’t any evidence or documentation submitted to substantiate or validate this claim. According to The Nunez Committee, a fear for safety solely on an inmate’s word is insufficient for placement.” The tour commander requested OSIU’s advice on where to house Cubilette. DOC’s Inmate Inquiry System (IIS) database shows that on May 24, Cubilette was transferred from the Elmhurst Hospital prison ward, and thereafter was placed in the TGHU.

In a June 7, 2019, email to Chief of Staff Brenda Cooke and others, Assistant Commissioner Faye Yelardy stated that DOC placed Cubilette in Building 6⁶ due to her “previous assaultive behavior in both GP and T[G]HU,” and cited three separate incidents that occurred on May 2, 6, and 14, 2019, where Cubilette assaulted inmates. AC Yelardy further stated that DOC placed Cubilette in Building 12 punitive segregation on May 30, 2019, which was confirmed by IIS inmate movement history logs.

June 7, 2019 – Unresponsive Inmate

- *Genetec Video Footage*⁷

Below is a timeline of Cubilette’s movements on June 7, 2019:

Time	Description
05:10	CO Tahiesha Hollington (shield #1715) provided Cubilette breakfast through cell cuffing port
05:29	CO Hollington retrieved breakfast tray from Cubilette
06:49	CO Hollington escorted Cubilette to showers
07:34	CO Tykisha Williams escorted Cubilette back to cell
07:53	Medical staff provided Cubilette medication
08:19	Officers escorted Cubilette to the 3-point search area then to the yard for recreation
09:20	Cubilette escorted to her cell
09:56	Suicide Prevention Aid (SPA) [REDACTED] toured housing area

⁶ AC Yelardy stated that at this time, Building 6 was being “used as [general population] while no new admission inmates were housed there.”

⁷ DOI also reviewed the June 7, 2019 handheld video footage of Cubilette, which showed some of Cubilette’s movements between 0819 and 0920, when she attended recreation. Besides throwing a basketball and speaking with inmates, Cubilette spoke with a female medical staff member for approximately six and a half minutes. Their conversation was inaudible due to ambient noise. DOI did not observe any unusual activity, incidents or interactions on the handheld video footage.

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09:56-10:47	██████████ and CO Williams conducted tours of the housing area
10:47	Cubilette escorted to the West Clinic
11:23	Cubilette returned from West Clinic and placed in cell
11:38	CO Williams provided Cubilette water through cell cuffing port
11:44	██████████ and CO Williams distributed lunch to Cubilette and the other inmates
11:49	██████████ provided Cubilette second lunch
12:01	██████████ retrieved Cubilette's food trays and refilled Cubilette's water cup
12:06	██████████ walked by Cubilette's cell and looked through cell door window
12:08	██████████ checked that Cubilette's cell cuffing port was closed completely
12:20	██████████ returned to Cubilette's cell and again closed part of the cuffing port
12:20-13:00	██████████ conducted tours of housing unit every 15 minutes
12:41	CO Averneil Popo (shield #13837) toured housing unit and looked into Cubilette's cell
12:51	Captain Shevonne Davis (shield #749) looked into Cubilette's cell
13:26	Unidentified civilian associate knocked on Cubilette's cell door window multiple times
13:27	CO Williams gestured to CO Bianca Garcia (shield #12606) to go to Cubilette's cell
13:27-13:30	CO Talaya Gales (shield # 9473) and CO Williams knocked on Cubilette's door several times, but received no response
13:33	CO Gales checked on Cubilette
13:40	CO Gales and CO Williams checked on Cubilette
14:27	CO Williams checked on Cubilette
14:41	CO Gales checked on Cubilette
14:43	CO Williams returned to Cubilette's cell, knocked on the door, opened the cuffing port, and appeared to call out to Cubilette
14:44	CO Gales returned to Cubilette's cell and knocked on the door window multiple times
14:45	CO Williams opened Cubilette's cell and appeared to call out to her from the doorway while knocking
14:47	CO Williams leaned her head into Cubilette's cell and then gestured multiple times for Captain Kimberly McZick (shield #605) to come to the cell; COs Williams and Gales and Captain McZick stood in Cubilette's doorway and called out to her; Captain McZick stepped further into the doorway of Cubilette's cell before stepping back out
14:48	CO Williams entered Cubilette's cell for a few seconds, quickly exited, returned to the 'A' post and used the phone; Captain McZick went to the control room for approximately 15 seconds; CO Gales stayed at the cell and continued to knock on the cell door
14:49	CO Williams walked to the back of the housing area, un-cuffed inmate ██████████ from a table, and returned ██████████ to her cell; Captain McZick reported to Cubilette's cell with a portable radio and appeared to make radio transmissions before returning to the control station
14:50	Captain McZick returned to Cubilette's cell with an Automated External Defibrillator (AED), which she placed on the lockers outside of Cubilette's cell
14:51	CO Williams entered Cubilette's cell and put on medical gloves
14:52	Captain Davis entered the housing area
14:53	Captain McZick, CO Gales and Captain Davis appeared to turn on the AED and, together, connected the chest pads to the AED

14:53	Captains McZick and Davis entered Cubilette's cell with the AED
14:55	Medical staff arrived to the housing area and entered Cubilette's cell
14:59	Additional medical staff arrived and entered Cubilette's cell with a body board
15:00	ADW Michael Nelson Jr. (shield #1017) arrived
15:20	DOC staff began to escort inmates out of housing area
15:22	ADW Nelson established a crime scene
15:27	EMS arrived and entered Cubilette's cell
15:55	All medical staff and EMS exited Cubilette's cell and the housing area

- ***Officer Incident Reports***

DOI reviewed all of the DOC Incident Reports submitted in connection with Cubilette's death on June 7, 2019. All of the statements made in the reports comported with Genetec video footage from the incident.

COs Williams and Gales described that starting at approximately 14:40 hours, they made multiple attempts to get Cubilette's attention. Captain McZick arrived and they opened Cubilette's cell and checked to see if she was breathing. Captain McZick reported that Cubilette was "lying on her stomach with a white head covering over her head." Captain McZick called for a medical emergency and retrieved the AED from the 'A' station. Upon returning to the cell, she instructed CO Williams to turn Cubilette over; she observed that Cubilette was "purple . . . and appeared to not be breathing." CO Williams began CPR on Cubilette until medical staff arrived. Captain McZick stated that chest compressions were not achieving the desired effect, so she retrieved the AED from the lockers in front of cell # 6 and attached the required equipment. Captain McZick passed the AED to CO Gales who was in the doorway of Cubilette's cell. CO Gales placed the AED patches on Cubilette's chest. Captain McZick stated that the AED was operable and the device issued audible instructions. Captain McZick stated that the officers continued CPR until medical staff arrived at approximately 14:54 hours. Captain McZick called the central control room at approximately 15:00 hours to request Emergency Medical Services (EMS).

COs Williams' and Gales' and Captain McZick's statements were corroborated by additional DOC employee Incident Reports, including but not limited to reports submitted by CO Garcia and Captains Briggs and Davis.

- ***Inmate Statements***

On June 7, DOC Investigation Division (ID) investigators attempted to interview inmates [REDACTED], [REDACTED], and [REDACTED], and on subsequent dates, DOI and Bronx County District Attorney's Office (BXDA) staff interviewed inmates [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. None noticed anything wrong or out of the ordinary with Cubilette on June 7, 2019. Notably, inmate [REDACTED] stated that she believed that Cubilette was detoxing from drugs while in DOC custody, and was struggling. [REDACTED] stated that she witnessed Cubilette having seizures before and that Cubilette was on medication. [REDACTED] stated that while being escorted out of the housing area during the medical emergency, she saw that Cubilette's stomach was swollen.

██████████ witnessed Captain Briggs and DOC officers providing medical care as she was escorted out of the housing area. ██████████ overheard a Captain call for medical, and witnessed the medical team arrive at the housing area and perform CPR on Cubilette.

██████████ stated she was the SPA for Cubilette's housing area on June 7, 2019, and made rounds every 15 minutes. Everything in the house, including Cubilette, appeared normal. ██████████ distributed food in the housing area, and provided Cubilette with two meals because she requested extra food. Cubilette was responsive and coherent. ██████████ saw other inmates come out for art therapy but not Cubilette. ██████████ did not see DOC staff doing anything wrong to Cubilette, and observed there was "no foul play," and "everyone was doing their jobs." ██████████ could not remember if Cubilette received medication that day, and recalled generally that after Cubilette received medication, she would go to sleep on her side with her back to the wall. ██████████ remembered Cubilette had clothes on and a blanket over her. ██████████ left the housing area at approximately 13:45 hours. ██████████ told investigators that she did not like Cubilette and described her as a "trouble maker" who "liked to beat people up." ██████████ also stated that Cubilette was "dominant" and "disrespectful," and that Cubilette "would spaz out" on people. ██████████ knew that Cubilette suffered from seizures.

- *OCME Autopsy Report*

On June 8, 2019, NYC Office of Chief Medical Examiner (OCME) Medical Examiner Dr. Avneesh Gupta performed Cubilette's autopsy. The report noted evidence of seizure activity, namely vomitus, was present in her oral cavity, and on her face and shirt. Additionally, Dr. Gupta noted three lacerations on Cubilette's lower lip, a laceration on her upper lip, and a bite mark on the right side of her tongue. Dr. Gupta's final diagnosis detailed a sudden unexpected death in epilepsy. Cubilette had a clinical history of seizure disorder beginning at 25 years old, and took prescribed anti-seizure medications. Cubilette showed evidence of recent seizure activity, and had microscopic neuropathological findings that were consistent with mesial temporal sclerosis.

CONCLUSIONS AND RECOMMENDATIONS

DOI's investigation revealed that on May 30, 2019, DOC placed Cubilette in punitive segregation in Building 12, to serve 20 days on an infraction (Cubilette assaulted inmates on multiple occasions). On the morning of June 7, 2019, Cubilette showered, took part in recreation, and ate both breakfast and lunch without incident. Later that day, between 13:27 and 13:40 hours, COs Williams and Gales conducted rounds and visited Cubilette's cell on five separate occasions. Forty-seven minutes later, at approximately 14:27 hours, officers re-checked on Cubilette. Once the officers opened Cubilette's cell door at approximately 14:47 and recognized that Cubilette was unresponsive, they escalated the matter to Captain McZick, who activated a medical emergency alarm. Attempts by both DOC and medical staff to revive Cubilette were unsuccessful. OCME reported that Cubilette's cause of death was a sudden unexpected death in epilepsy and noted Cubilette's history of seizure disorder.

DOI's review of the case did not reveal any actions taken by DOC staff that may have contributed to Cubilette's death. However, there was a forty-seven minute gap between CO

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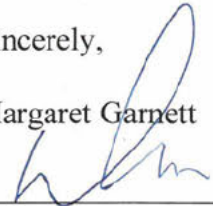
Williams's tours of Cubilette's housing area between 13:40 and 14:27 hours, in violation of Directive 4501R-D (II)(B), which requires "At a minimum, every inmate housed in Punitive Segregation shall be observed at least once every 15 minutes at irregular intervals...."

Based on the above, DOI is referring the investigation to DOC ID for whatever administrative action, including possible disciplinary action DOC deems appropriate. Please do not hesitate to contact me, or Special Investigator Stephen Dumas at 212-825-2179, if you have any questions or wish to discuss this further. Thank you.

Sincerely,

Margaret Garnett

BY:



Dana A. Roth
Inspector General

cc: Ruben Benitez, Assistant Commissioner
Hazel Jennings, Chief of Department