



**Commission of
Correction**

**Final Report of the
New York State Commission of Correction:**

In the Matter of the Death of

**David Foster
an incarcerated individual of the
Cattaraugus County Jail**

March 27, 2024

**To: Sheriff Timothy S. Whitcomb
Cattaraugus County Sheriff's Office
301 Court Street
Little Valley, New York 14755**

Allen Riley
Chairman

Yolanda Canty
Commissioner

GREETINGS:

WHEREAS, the Medical Review Board has reported to the NYS Commission of Correction pursuant to Correction Law, section 47(1)(d), regarding the death of David Foster, who died on August 28, 2022, as a result of circumstances which occurred while an incarcerated individual in the custody of the Cattaraugus County Sheriff at the Cattaraugus County Jail, the Commission has determined that the following final report be issued.

FINDINGS:

1. David Foster was a 30-year-old male who died on 8/28/22 from a Fentanyl and Cocaine intoxication while the custody of the Cattaraugus County Sheriff's Office at the Cattaraugus County Jail (CJ).
2. There was minimal social history available on Foster. He was a high school graduate and occasionally worked in construction. He came from a blended family with reportedly 11 brothers and 15 sisters.
3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] Foster was arrested in March 2022 for the instant offenses of Burglary 1st Degree, 2 counts of Criminal Possession of a Weapon 3rd Degree, Assault 3rd Degree, and 2 counts of Act in Manner Injurious to a Child and was committed to the Cattaraugus CJ. He was indicted by a grand jury in May 2022 and was awaiting trial at the time of his death.
4. Foster did not have any significant medical history. He had no chronic or acute conditions nor was he on any medications. [REDACTED]
[REDACTED]
5. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
6. Foster was admitted to the Cattaraugus CJ on 3/9/22. Foster had a few disciplinary matters and minimal sick call encounters in an otherwise unremarkable course of incarceration.

7. On 8/28/22, Correction Officer (CO) F.H. supervised 1st Floor B Block for the 7:00 a.m. to 3:00 p.m. tour. CO F.H. documented Foster going out to exercise at 9:14 a.m. and returning at 10:11 a.m. At 12:38 p.m., CO F.H. documented that [REDACTED]. Foster had reportedly punched a wall the day before after having a bad phone call. At 2:30 p.m., all of the incarcerated individuals on B-1 were secured in their cells for shift change and count.
8. On 8/28/22 at approximately 3:00 p.m., CO B.B. came in to supervise 1st Floor B block for the 3:00 p.m. to 11:00 p.m. tour. CO B.B. completed a tour of the housing area and confirmed the count. CO B.B. next completed medication delivery for both B1 and B2 housing units. Once the medication delivery was completed, the cell doors were opened and the incarcerated individuals were allowed out into the day space. CO B.B. then completed another round of the housing areas. CO B.B. reported seeing Foster in his cell laying on his bunk appearing to be sleeping. A review of recorded video of the B1 cell block showed that once the cells were opened, individuals can be seen walking down to and looking into Foster's cell, #3. Incarcerated Individual (II) [REDACTED] is seen going down to Foster's cell then running down to cell 12 occupied by II [REDACTED]. II [REDACTED] is seen coming out of his cell, going down to Foster's cell then returning to his cell.
9. At approximately 3:15 p.m., the IIs in B-1 began alerting CO B.B. that they needed medical help in Foster's cell. CO B.B. responded to B1 Cell 3 and observed Foster unresponsive in his cell. Other IIs in Foster's cell had rolled him over in his bunk and were shaking him to try and get a response. CO B.B. called for a medical emergency and began securing all cells on both B1 and B2 units.
10. Sergeants (Sgt.) D.A. and B.C. along with Officers B.M., D.M., T.S., D.M., A.R. and S.T. responded. RN [REDACTED] also responded to the scene. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
11. At approximately 3:40 p.m., EMS providers from Little Valley Fire Department arrived. At approximately 3:47 p.m., Advanced Life Support providers from Randolph Regional EMS arrived. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
12. At approximately 4:10 p.m. on 8/28/22, [REDACTED], an officer doing rounds found II [REDACTED] unresponsive in his cell, B1 cell 11. The officer called for assistance from other officers who were still on the unit from the Foster's incident. II [REDACTED] was found to be unresponsive but breathing shallow. A second ambulance was called for II [REDACTED] and nasal Narcan was administered. After about two minutes, a second dose of Narcan was administered to II [REDACTED]. II [REDACTED] then became responsive and was talking to officers. [REDACTED]
[REDACTED]
[REDACTED]

13. The investigation into Foster's death indicated that he died of an accidental overdose of illicit fentanyl and cocaine that was brought into the jail by another incarcerated individual. II [REDACTED] came into the Cattaraugus County Jail on 8/23/22 for Attempted Murder charges. II [REDACTED] was housed on B1 block cell 12 on 8/26/22. Upon his arrival on B1 block, II [REDACTED] began telling other IIs that he had "dope" and hard cocaine on him and was looking to see who had money and wanted some. The day before the terminal event, discussions were heard between II [REDACTED] and other IIs about having others put money in II [REDACTED] account to purchase drugs from him. "Fishing line" made of ripped bed sheets was made to send bundles of drugs between cell block sides. An II reported observing that fentanyl in white powder form was packaged in a folded piece of paper. The drugs were put inside a roll of toilet paper and then inside a sock. Then the drugs were sent between IIs in the blocks using the "fishing line".
14. The evening before the terminal, a note was made in the housing area logbook at 11:18 p.m. indicating that unit B2 IIs appeared to be possibly intoxicated due to being excessively loud. However, there was no indication that any search of the housing unit was done the following day. Later in the evening on 8/28/22, a sergeant supervising B 1 & 2 noticed an II appearing to be intoxicated. The II's cell was searched and contraband items consistent with homemade alcohol were removed.
15. After an investigation by the Cattaraugus County Sheriff Investigation Division, II [REDACTED] was arrested on November 28, 2022 and charged with Criminal Sale of a Controlled Substance 3rd Degree and Possession of Prison Contraband 1st Degree. II [REDACTED] was indicted by the grand jury in May 2023 and in October 2023, II [REDACTED] was convicted of Criminal Possession of a Controlled Substance 5th Degree after a guilty plea. II [REDACTED] is currently serving a seven year prison sentence for Criminal Possession of a Weapon 2nd Degree.

ACTIONS REQUIRED:

That this case be closed as an accidental overdose.

WITNESS, HONORABLE ALLEN RILEY, Chairman, NYS Commission of Correction, Alfred E. Smith State Office Building, 80 South Swan Street, 12th Floor, in the City of Albany, New York 12210 on this 27^h day of March 2024.



Allen Riley
Chairman
Commission of Correction

AR:CO:vc
2022-M-092
March 27, 2024