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# S.F. District Attorney Chesa Boudin dismissed charges against cops in infamous alley beating

**Rachel Swan**

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Photo: Scott Strazzante / The Chronicle 2019

Five years ago, two Alameda County sheriff's deputies chased a car theft suspect across the Bay Bridge, from Castro Valley to an alley in San Francisco's Mission District. There, they tackled him and beat him with batons, giving him a concussion and breaking bones in his hands and arms.

Paul Wieber — knocking Stanislav Petrov to the ground, punching him and bludgeoning him, even after he appeared to surrender. In 2016, Alameda County agreed to pay Petrov a \$5.5 million civil settlement.

Yet in March, the San Francisco District Attorney's Office dismissed the criminal case against the deputies, The Chronicle has learned. Although the dismissal happened in an open proceeding, the office did not publicize it or tell city leaders. As a reckoning on police brutality swept the country this year, the case — which had bounced from one prosecutor to another since 2016 — remained shelved.

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District Attorney Chesa Boudin, who took office in January promising to be tough on police officers accused of excessive force, said in an interview last week that he plans to refile “as soon as we’re able to do so successfully.” He did not offer a timeline, blaming the pandemic for the delay, though criminal courts remain in session.

“I wish I could tell you when COVID was going to end, courts were going to open back up, and we’d have full access to our courthouse, full access to witnesses we need ... but I can’t tell you when that’s going to happen,” Boudin said.



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Investigations Bureau.

But some legal observers familiar with the Petrov case said they were skeptical of the delays and Boudin's reasoning. Michael Cardoza, a former prosecutor in San Francisco and Alameda counties who now works as a defense lawyer, said that a "short hiatus" in refiling made sense if there was a flaw in the case.

"But eight months seems like an extraordinarily long time," Cardoza said, noting that Boudin had campaigned as a progressive standard-bearer who would clamp down on police misconduct while offering second chances to other defendants. Dismissing or even postponing a case like this one "flies in the face of who he is, and who he said he will go after."

Oakland attorney Julia Sherwin, who represented Petrov in his 2016 civil rights suit against Alameda County, its sheriff and eight deputies — including Santamaria and Wieber — said she was stunned this past week when she learned of the dismissal from a Chronicle reporter.

"This is about as much a slam dunk of a criminal case against law enforcement as you would hope to find," Sherwin said.

Video of the incident, which was uploaded to YouTube by Adachi, who died in February 2019, shows Petrov writhing on the ground with his hands clasped over his head as the beating continues. "His hands that were protecting his head got crushed," Sherwin said of Petrov, now in federal prison in Pennsylvania. "The last time I saw him, his hands were still disfigured."

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A poster of Stanislav Petrov, 29, in a hospital bed stands next to Petrov's attorney, Michael Haddad, speaking at a March 2016 news conference in Oakland.

Photo: Gabrielle Lurie / Special to The Chronicle 2016

In an extended version of the video, shared by the public defender in 2016, a third deputy is seen swinging a chain, apparently taken from Petrov. A homeless couple who saw the incident said that this deputy, later identified as Shawn Osborne, gave them the chain and some money as “hush goodies.” Osborne's attorney, Alison Berry Wilkinson, questioned the credibility of the homeless couple, according to court filings.

Adachi wrote in a letter to the district attorney in December 2015.

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piece in The Chronicle in December 2015.

“The camera, the ultimate objective witness, shows clear misconduct,” Adachi wrote. “As Petrov's blood dried in the street, neighbors who spied the brutality from their windows came forward.”

As criticism escalated, the Alameda County Sheriff's Office and the San Francisco District Attorney's Office took action. In May 2016, Gascón charged Wieber and



The Sheriff's Office fired the three deputies involved in the incident: Osborne, who allegedly grabbed the gold chain, was discharged in July 2016; Santamaria and Wieber followed in December.

For two years, Gascón's office appeared to make little progress on the case, which shuttled among prosecutors in the new investigative unit. Through a spokesperson, Gascón declined to comment for this story.

While it's not uncommon for criminal prosecutions to take a long time to go to trial — even years — Rains argued in court filings that the case was flawed, driven by politics and a desperation to be seen as holding police accountable. In an email to The Chronicle, the defense attorney said the road to court had been chaotic: A defense attorney died unexpectedly, and the prosecutor who handled the case through the preliminary hearing abruptly quit.



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from a video-recorded beating of 29-year-old Stanislav Petrov in November 2015.

“There was a period of time when the DA’s Office was scrambling to find another capable attorney to replace her with,” Rains said in the email.

In 2018, Gascón assigned the case to top prosecutors Michael Swart and David Ezgar, who gathered new evidence and asked for more time to examine it, according to court filings.

Gascón resigned last year and successfully ran for district attorney in Los Angeles, prompting a fierce contest for the open seat in San Francisco. Boudin, a public defender who had never prosecuted a case, became the upset winner.

When he took office in January, Boudin immediately fired several attorneys from the previous administration, including Swart. Shortly thereafter, Ezgar resigned.

Swart declined to comment for this story, and Ezgar did not return phone calls or text messages.

Boudin reassigned the case to an attorney in the Independent Investigations Bureau, Xochitl Carrion, and on Jan. 24, the defendants invoked their right to a speedy trial after previously waiving it. Both parties agreed to a date: March 16. Then, a week before the scheduled trial, Carrion filed a motion to delay until May 25, saying an expert witness was scheduled to have spinal surgery.

Defense lawyers Rains and Richard Pinckard objected, and the judge ruled in their favor. The defense then agreed to have the witness, Charles Key, do pre-recorded testimony and cross-examination by video. Despite this concession, the prosecution motioned to

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At about the same time, COVID-19 engulfed the Bay Area, sending workers home and forcing San Francisco courts to operate at a reduced capacity, beginning March 17. The courts gradually ramped up operations through spring and summer, and San Francisco Superior Court held its first socially distanced jury trial in July.

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Cases involving defendants in custody are receiving priority, Boudin said. A spokesman for the Superior Court said in an email Friday morning, “We have available courtrooms.” A case brought for an out-of-custody defendant, such as the Petrov prosecution, “would not be dismissed.”

Boudin’s spokesman, Alex Bastian, said the expert witness, Key, is “elderly” and at heightened risk for coronavirus.

John Crew, a retired ACLU lawyer and police watchdog who supports Boudin’s policies, said he generally had a favorable view of the district attorney. “The pandemic is a factor that would cause delay,” he said.

Historically, criminal prosecutions of law enforcement officers have been “exceedingly rare,” Crew said, in part because many district attorneys depend on police unions to get re-elected. That’s not the case with Boudin; leaders of the city’s police union opposed his

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Even when cases were brought, Crew said, it was difficult to persuade juries to convict officers or deputies. He said he hopes that the current political climate, in which people are demanding police accountability, changes that.

The long suspension of the Petrov beating case has created other problems. As Cardoza and other legal observers pointed out, criminal cases tend to get weaker with age.

no longer proceed.

San Francisco Superior Court officials do not keep statistics on how often cases are dismissed and refiled, and representatives from the District Attorney's Office could not immediately provide that data.

"Sometimes it happens immediately, and sometimes it takes quite a while," Boudin said. "It depends on what the reason for dismissing was."

With the pandemic surging, Boudin said he saw no reason to quickly refile the case. A cause for dismissal, he said, "might present itself again."

*Rachel Swan is a San Francisco Chronicle staff writer. Email: [rswan@sfchronicle.com](mailto:rswan@sfchronicle.com)  
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