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## Judge releases Oakland murder defendant in case where prosecutors allege he deliberately ran over homeless man

Defense calls it a tragic accident



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OAKLAND — In a development rarely seen in murder cases, an Alameda County judge has approved the release of an Oakland man accused of murdering a homeless man during an argument about vandalism in the neighborhood, according to court records.

Kevin Mak, 41, is charged with running 66-year-old Chi Leung over [during a March 18 confrontation](#) on the 800 block of Alice Street in

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not possess weapons, and adhere to other standard conditions.

Mak's attorney wrote a 69-page legal motion arguing for the release, in which he described Leung's killing as an accident. Prosecutors allege that Mak deliberately ran Leung over during a heated confrontation and that evidence shows Mak drove onto a sidewalk to run Leung over.

In the defense motion, Mak's attorney wrote that he stayed at the scene and cooperated with police after the collision, and that Mak initially posted bail when he was charged with assault with a deadly weapon. The charges were upgraded to murder days after the incident, when Leung died from his injuries.

"As tragic as this incident is, with less than one second between reversing and accelerating forward, and less than one second between acceleration and collision, Mr. Mak cannot and should not be held to have known that Mr. Leung was standing where he was when the collision occurred," defense attorney Neil Hallinan wrote in the motion, later adding that video taken by Mak's passenger shows him swearing after the collision.

Hallinan wrote that Mak and his passenger were questioning Leung about vandalism in their neighborhood after seeing him walking around with a shovel that appeared similar to one used in a prior property destruction incident. Hallinan claimed the two were not accusatory and that

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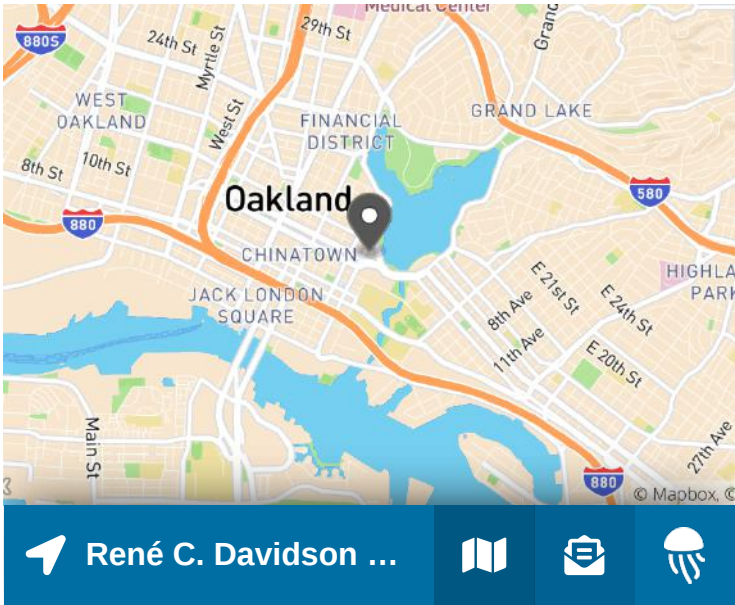
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Prosecutors argued at Mak's preliminary hearing — where Judge Mark McCannon ordered him to stand trial on murder charges — that Mak had enough time to see Leung and drive into him on purpose, rather than simply leave the area in his van. They argued Leung posed no threat to Mak nor his passenger when he was struck.

"This was a willful, premeditated and deliberate act," Deputy District Attorney Michael Hartman said at the hearing. "The victim is 66 years old. He's not in a vehicle. He's on a sidewalk. And then he's struck by the accelerating van after the victim and the defendant had some sort of confrontation."

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