Office of the New York State Attorney General Letitia James

Office of Special Investigation

March 13, 2025

Report on the Investigation into the Death of A.S., a Minor

New York Executive Law Section 70-b (Section 70-b) authorizes the Attorney General's Office of Special Investigation (OSI) to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or peace officer. When, as in this case, OSI does not seek charges, Section 70-b requires issuance of a public report. This is the public report of OSI's investigation of the death of A.S., a minor, which was caused by Police Officer Sarah Tryon, a member of the Suffolk County Police Department (SCPD).

OVERVIEW

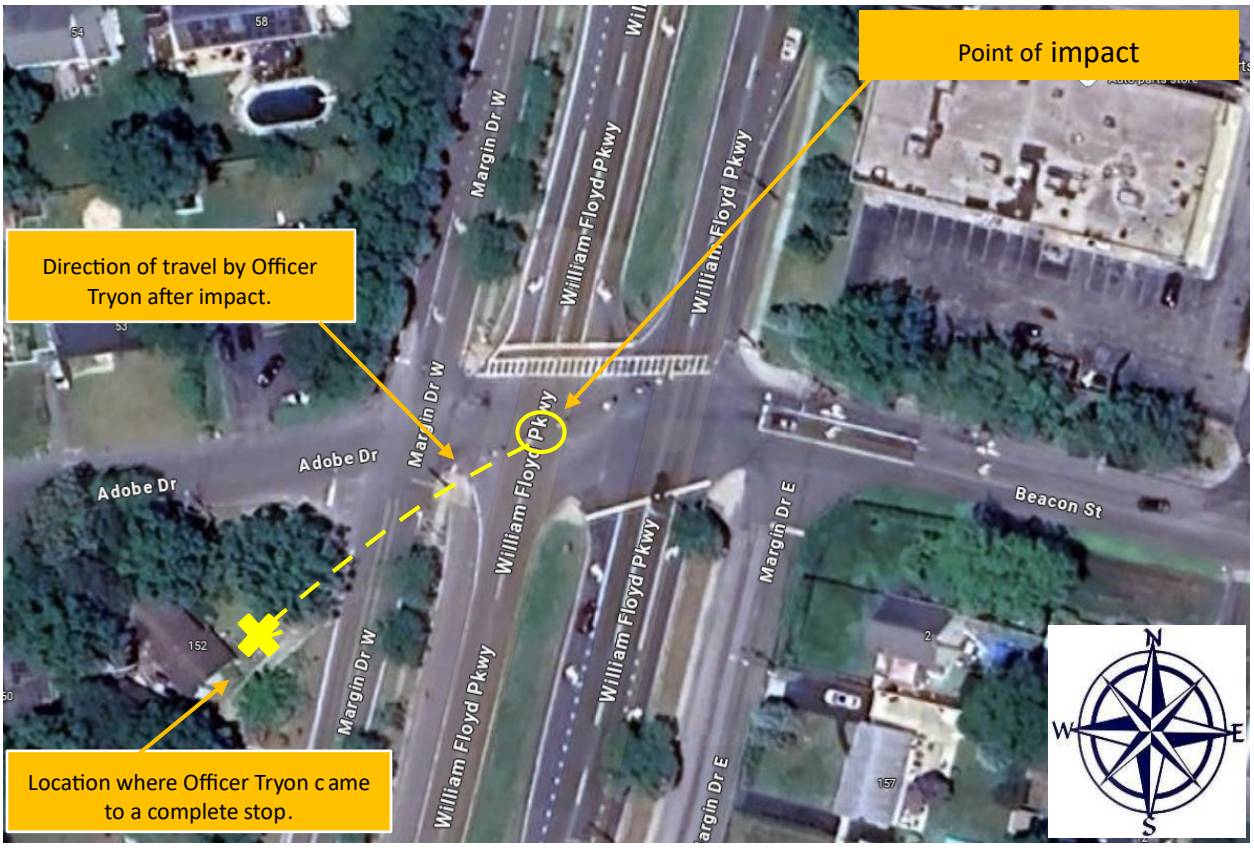
On September 9, 2023, at 7:54 p.m., Officer Tryon drove southbound on William Floyd Parkway in a marked SCPD police car with the emergency lights and siren activated, at speeds exceeding 85 mph, after she was dispatched to a medical emergency. Officer Tryon was in the left turn lane when she approached the intersection of William Floyd Parkway and Adobe Drive/Beacon Street. She maneuvered around a car stopped ahead of her, entered the travel lane to the right of the left turn lane, and proceeded into the intersection through a green traffic light. At the same time, A.S. was riding his bicycle east from Beacon Street across William Floyd Parkway and was struck by Officer Tryon. After the collision Officer Tryon's police car veered right, struck a car in the roadway, jumped a curb onto the lawn of a house, and collided with two cars parked in front of the house. A.S. was transported to Stony Brook University Hospital where he later died of his injuries.

Having thoroughly investigated the matter and analyzed the law, OSI will not seek charges against Officer Tryon, concluding that a prosecutor would not be able to prove beyond a reasonable doubt that Officer Tryon committed a crime when she caused A.S.'s death.

FACTS

William Floyd Parkway and Adobe Drive/Beacon Street

William Floyd Parkway had four travel lanes in the main road, two southbound and two northbound, divided by a grass median. Margin Drive W was a two-way, two-lane service road, parallel to William Floyd Parkway, west of the parkway. Adobe Drive had two travel lanes, an eastbound lane and a westbound lane. At the William Floyd Parkway intersection, Adobe Drive was west of the intersection, and Beacon Street was east of the intersection. The southbound roadway of William Floyd Parkway, north of the Adobe Drive intersection, had two additional lanes, a left-turn lane and a right-turn lane. The posted speed limit on William Floyd Parkway in the vicinity of Adobe Drive was 30 mph. The intersection had overhead traffic signals and pedestrian signals.



Aerial view of the intersection at William Floyd Parkway and Adobe Drive, from Google Maps, William Floyd Parkway and Adobe Drive.

Pre-Collision

The SCPD's 911 event detail report (911 Report) from September 9, 2023 showed that at 7:38:20 p.m. a call was received by SCPD requesting assistance for a 66 year old woman with difficulty breathing at an address in Shirley. According to the 911 Report, at 7:38:50 p.m. Officer Anthony Cardinale was dispatched to the address, at 7:45:12 p.m. he arrived at the address, and at 7:49:23 p.m. he began cardiopulmonary resuscitation. At 7:49:49 p.m. Officer Tryon was dispatched to the address.

The Collision

In an interview with OSI (described in more detail later in this report), Officer Tryon said she was dispatched to a medical emergency call and proceeded to the address with her police car lights and siren activated. According to Officer Tryon, when she approached the intersection at William Floyd Parkway and Adobe Drive the traffic light was green and she proceeded through the intersection. She said she saw A.S. in the roadway and attempted to swerve around him but struck him and collided with two cars parked on Margin Drive W.

Video surveillance from an address on Adobe Drive showed that Officer Tryon's car, with lights and sirens activated, veered across William Floyd Parkway and onto the lawn of a house on Margin Drive W. The video showed that someone, presumably Officer Tryon, ran from that lawn

onto William Floyd Parkway where others were gathered around a figure in the roadway. The video did not show the impact with A.S., nor did the video have a time and date stamp. The video surveillance may be accessed here.

According to OSI's review of the SCPD dispatch records and recorded police radio transmissions, at 7:54:01 p.m. Officer Tryon radioed to dispatch that she was involved in a motor vehicle accident, at 7:54:06 p.m. requested that dispatch "start rescue," and at 7:54:12 p.m. advised dispatch that a pedestrian on a bicycle was hit.

There were two calls placed to 911 following the collision. The 911 Report indicates that the first call, from DK (OSI does not publish the names of civilian witnesses), was received at 7:54:35 p.m., and the second call, from CK, was received at 7:55:30 p.m. DK said she observed a police car traveling south on William Floyd Parkway heading to a call when it crashed with another car, spun around, and ended up on the west side of William Floyd Parkway. CK said a police officer hit a woman on a bicycle and ended up on someone's front yard; CK said the officer "was flying, doing 80 mph down the road, down William Floyd Parkway. He just killed someone, there is someone dead in the street."

Officer Tryon was equipped with a body worn camera (BWC) and activated it at 7:54:38 p.m. The video showed A.S. in the roadway and Officer Tryon kneeling over him. Officer Tryon checked A.S.'s pulse and repeatedly said he had a pulse and was breathing. According to OSI's review of the BWC, Officer Tryon did not perform any life-saving measures on A.S. At 8:01:40 p.m., a Shirley Community Ambulance arrived and assumed medical care for A.S.

The traffic lights at the intersection of William Floyd Parkway and Adobe Drive/Beacon Street were not equipped with cameras at the time of this incident.

Witness Interviews

DK

OSI interviewed DK, one of the 911 callers. DK said she was walking on the east side of William Floyd Parkway, near the Beacon Street intersection, when she heard police sirens, a horn blowing, and saw a police car with its lights flashing. DK said the officer traveled southbound on William Floyd Parkway and, at the intersection, went around a car that failed to move out of the officer's path. According to DK, as the officer entered the intersection a bicyclist crossed the intersection at the same time and was struck by the police car. DK did not recall the color sequence of the traffic lights at the time of the collision.

When interviewed by SCPD, DK said the officer proceeded through a green traffic light and collided with another car. Her statement to SCPD was otherwise consistent with her OSI interview.

CK

OSI interviewed CK, the second 911 caller. CK said she first saw the police car when it was two cars behind her; the police car was speeding with its lights activated, not the siren. She said the officer nearly hit the car directly behind her car before it swerved into the right turn lane, proceeded through a red traffic light at the William Floyd Parkway and Flintlock Drive intersection, and sped away. According to CK, the officer was, "driving recklessly, she was purely reckless. She was flying down William Floyd Parkway." CK said she did not see the officer hit A.S., but saw the car veer off the road and onto the lawn of a house where it became wedged between two cars. CK said she first observed A.S. in the roadway when she approached the intersection after the collision. CK added that she lived near the home to which the officer was responding and, when she arrived at her house soon after the collision, CK saw an ambulance at the home of the emergency call. CK opined that there was no need for the officer to have been speeding to the emergency call since medical assistance was already there. CK did not recall the color sequence of the traffic lights at the William Floyd Parkway and Adobe Drive intersection prior to the collision.

DD

OSI interviewed DD, who said he was stopped at a red light on Adobe Drive at the William Floyd Parkway intersection when he saw police lights flashing on William Floyd Parkway; DD said he did not hear a police siren. DD said when the police car approached the intersection it moved from the left turn lane to the travel lane on the right, proceeded through a green traffic light, and swerved to avoid the bicyclist in the crosswalk. The officer struck the bicyclist and ended up on the front lawn of a house. DD said the officer got out of the police car and assisted the bicyclist. DD estimated the officer was traveling over 60 mph.

DJ

In a sworn statement taken by SCPD, DJ, a passenger in DD's car, said their car was stopped at a red traffic light on Adobe Drive facing William Floyd Parkway when he saw a child riding a bicycle across William Floyd Parkway and, at the same time, saw a police car traveling south in the left lane of William Floyd Parkway with its lights and sirens activated. DJ said there was a car in front of the police car and that the police car moved to the right, entered the intersection through a green traffic light, struck the bicyclist, and went off road onto the lawn of a nearby house. According to DJ, the officer got out of the police car and tried to assist the child.

MD

In a sworn statement taken by SCPD, MD said he was stopped at a red traffic light on Beacon Street at the William Floyd Parkway intersection when he saw a police car with its lights and sirens activated traveling southbound on William Floyd Parkway. MD said the police car maneuvered around a car in the left lane and entered the right lane at the same time that a boy on a bicycle rode across William Floyd Parkway from east to west. The boy rode across the southbound left turn lane, the left lane of travel, and when he entered the right lane, he was

struck by the police car. MD said the police car swerved right, drove between a pole and a car stopped on Adobe Drive, and ended up between two cars parked on the front lawn of a house. MD said he was certain that the police car proceeded through the William Floyd Parkway intersection through a green traffic light because he was stopped at a red traffic light on Beacon Street, the intersection's cross street. MD said that after the collision the officer got out of her car and rendered first aid to the bicyclist.

JY

In a sworn statement taken by SCPD, JY said he was stopped at a stop sign on the northbound side of Margin Drive W, watching the intersection of Adobe Drive and William Floyd Parkway, when he saw a police car driving south on William Floyd Parkway with its lights and siren activated. JY said the police car entered the intersection, "made a last second reaction," turned right onto Adobe Drive, and struck the front driver side of his car. JY said the police car then went up onto the front lawn of the corner house on Adobe Drive and Margin Drive W. JY recalled that the traffic light at Adobe Drive was red, but he did not know the color sequence of the traffic lights on William Floyd Parkway.

Police Officer Sarah Tryon's Interview

OSI interviewed Officer Tryon in the presence of her attorney, and she said that on September 9, 2023, she had just finished a job at a 7-Eleven convenience store on Montauk Highway when she received a communication from dispatch about a CPR (cardio pulmonary resuscitation) in progress. She said the emergency call was not assigned to her, but that she was dispatched for additional assistance and that CPR was in progress at the location by another police unit. Officer Tryon drove southbound on William Floyd Parkway with her police car lights and siren activated and when she approached the intersection at Adobe Drive the traffic light was green. Officer Tryon said she did not recall how fast she was traveling, but said she slowed down as she entered the intersection. Officer Tryon said she saw A.S. a few seconds before the collision and tried to avoid hitting him by swerving around a stopped car. According to Officer Tryon, she first realized that she struck A.S. after she crashed into two cars in front of a house, got out of her car, and saw A.S. in the roadway. Officer Tryon said she approached A.S., checked him for a pulse, and noticed that he had a pulse and was breathing. She radioed dispatch for an ambulance but acknowledged that she did not perform CPR on A.S. Officer Tryon said she received medical training in the police academy and is certified as an emergency medical technician (EMT). She said that CPR is required when a person does not have a pulse and is not breathing. According to Officer Tryon, her training requires her to slow down and make sure an intersection is safe when proceeding through a green traffic light with lights and siren activated.

Post Collision Investigation

Officer Tryon

Police Officer Sarah Tryon had been employed with the SCPD since September 2022 and, at the time of this incident, was assigned to the 7th Precinct. According to Detective Genevie

Vesely, of the SCPD Major Case Squad, Officer Tryon did not exhibit any signs of impairment or intoxication at the scene or at the hospital, and, therefore, a breathalyzer was not utilized to determine Officer Tryon's blood alcohol content.

On December 2, 2022, according to Officer Tryon's Emergency Vehicle Operation Course (EVOC) scoresheet, she successfully completed the five day basic EVOC training. EVOC training teaches first responders how to safely operate emergency vehicles in a variety of situations.

The SCPD Internal Affairs Bureau (IAB) commenced an internal administrative investigation into Officer Tryon's conduct on the date of this incident; SCPD NY LE Policy 305, "OfficerInvolved Shootings and Deaths," mandates IAB to investigate all officer-involved deaths. As of the date of this report, IAB's investigation is ongoing, and a final determination of disciplinary findings has not been made.

The SCPD Critical Incident Board reviews incidents submitted to it by the SCPD Police Commissioner and issues a report to identify any potentially faulty, inappropriate, or outdated departmental procedures. The Critical Incident Board also identifies additional training needs for the SCPD and provides recommendations to the Police Commissioner to improve and enhance the mission of the SCPD. The SCPD Police Commissioner at the time of this incident, Rodney Harrison, did not convene the Critical Incident Board to review this incident.

Involved Police Car

According to the police car's global positioning system (GPS), at 7:53:28 p.m. the car was traveling 71 mph on William Floyd Parkway near Lama Drive, and, at 7:54:07 p.m., was stopped at William Floyd Parkway near Adobe drive. The distance between the two locations is 0.2 mile, or 1,056 feet.

OSI reviewed the data from the Crash Data Retrieval (CDR) for the police car's Event Data Recorder (EDR) and conferred with Thomas D. Zaveski, a forensic scientist with the Suffolk County Crime Laboratory who reviewed the CDR and generated a report. An EDR records data, including accelerator use, brake use, and steering, for a number of seconds before, during, and after a crash; not all impacts are strong enough to trigger the EDR to preserve data. https://www.nhtsa.gov/research-data/event-data-recorder.

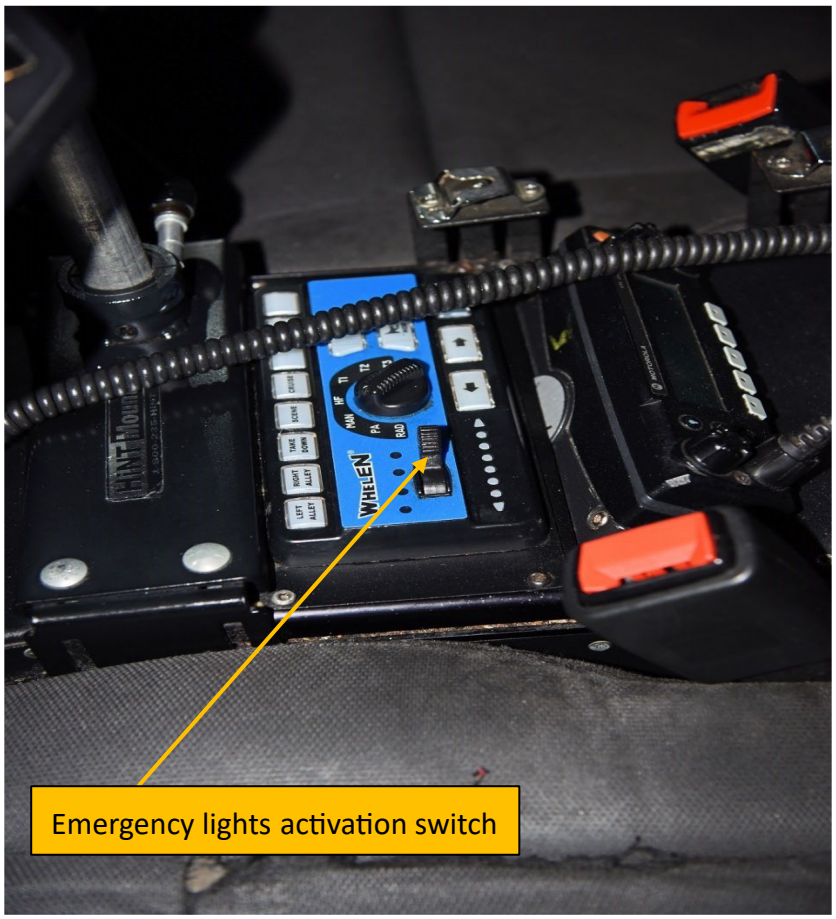
According to Mr. Zaveski, the EDR was triggered in this collision, meaning there was an impact with the police car sufficient in force to activate the system to record data. Mr. Zaveski explained that there was one triggering event and opined that the impact with the two cars likely triggered the EDR, not the impact with A.S., since the force from the collision with A.S. would have been significantly less than the force from the two parked cars. Mr. Zaveski said the EDR model installed in the police car did not record date or time.

The CDR showed that the police car was traveling 87.1 mph five seconds before the triggering event, and 44.1 mph at the moment of the triggering event. Officer Tryon first applied the brakes three seconds before the triggering event, when the car was traveling at 87 mph. The CDR data are shown below.

Time (sec)	Speed, Vehicle Indicated (MPH [km/h])	Speed, Vehicle Indicated, Quality Factor	Accelerator Pedal, % Full	Accelerator Pedal, % Full, Quality Factor	Service Brake, On/Off	Service brake, Quality Factor	Engine RPM	ABS Activity (Engaged, Non-Engaged)
- 5.0	87.1 [140]	OK	43.4	OK	Off	OK	3,918	Non-engaged
- 4.5	87.5 [141]	OK	40.6	OK	Off	OK	3,930	Non-engaged
- 4.0	88.0 [142]	OK	40.6	OK	Off	OK	3,950	Non-engaged
- 3.5	88.5 [142]	OK	30.6	OK	Off	OK	3,954	Non-engaged
- 3.0	87.0 [140]	OK	0.0	OK	On	OK	3,700	Non-engaged
- 2.5	82.4 [133]	OK	0.0	OK	On	OK	2,712	Non-engaged
- 2.0	75.1 [121]	OK	0.0	OK	On	OK	2,460	Non-engaged
- 1.5	66.6 [107]	OK	0.0	OK	On	OK	2,346	Non-engaged
- 1.0	55.0 [88]	OK	0.0	OK	On	OK	2,348	Engaged
- 0.5	46.9 [75]	OK	0.0	OK	On	OK	2,560	Engaged
0.0	44.1 [71]	OK	0.0	OK	On	OK	3,166	Engaged

Data from the EDR in Officer Tryon's car from five seconds prior to the triggering event through the triggering event.

Det. Vesely conducted an initial examination of Officer Tryon's police car and confirmed that the emergency light activation switch was positioned entirely to the right, indicating that the emergency lights were activated at the time of the collision. (*See image below*).



SCPD Crime Scene Section photo, post-collision, of the emergency light Switch Panel in Officer Tryon's police car.

Subsequent to the collision Officer Tryon's police car was inspected by Eric Jansen from the Suffolk County Department of Public Works. Mr. Jansen noted that the brake discs, pads, and hoses were free of defects, that the steering was "broken from crash," and listed the following areas of body damage: windshield, front left fender, right fender, nose and headlights, lower bumper, right rear panel and door, and the front left door and mirror. According to the inspection report the car's airbags did not deploy.

Videos

According to Det. Vesely, Officer Tryon's police car was equipped with a dashboard camera, but it was not activated prior to the collision. On September 11, 2023, Anthony Maglione, of the Information Technology Section at Axon (the company that supplies SCPD with body worn cameras and dashboard cameras) advised SCPD that the dashboard cameras Axon supplied to SCPD do not automatically record when the police car's emergency lights are activated, but must be manually activated. Mr. Maglione confirmed to SCPD that the dashboard camera in Officer Tryon's police car was not activated prior to the collision.

On September 9, 2023, at 7:53:04 p.m., video from a traffic light camera at the intersection of William Floyd Parkway and Lawrence Road/Flintlock Drive, 0.5 mile north of the Adobe Drive/Beacon Street intersection, showed that Officer Tryon's police car, with its lights activated, approached the intersection, slowed to a near stop, and then proceeded through a red traffic light. As mentioned above, there was no traffic light camera at the intersection with Adobe Drive/Beacon Street.

Crime Scene Investigation

SCPD Police Officer Christopher Draskin of the Crime Scene Section responded to the collision scene, took photographs, and created a diagram documenting the scene, including those below:

Crime Scene Section photo showing A.S.'s bicycle in the intersection.

Two Crime Scene Section photos showing the police car in front of a house on Margin Drive W.

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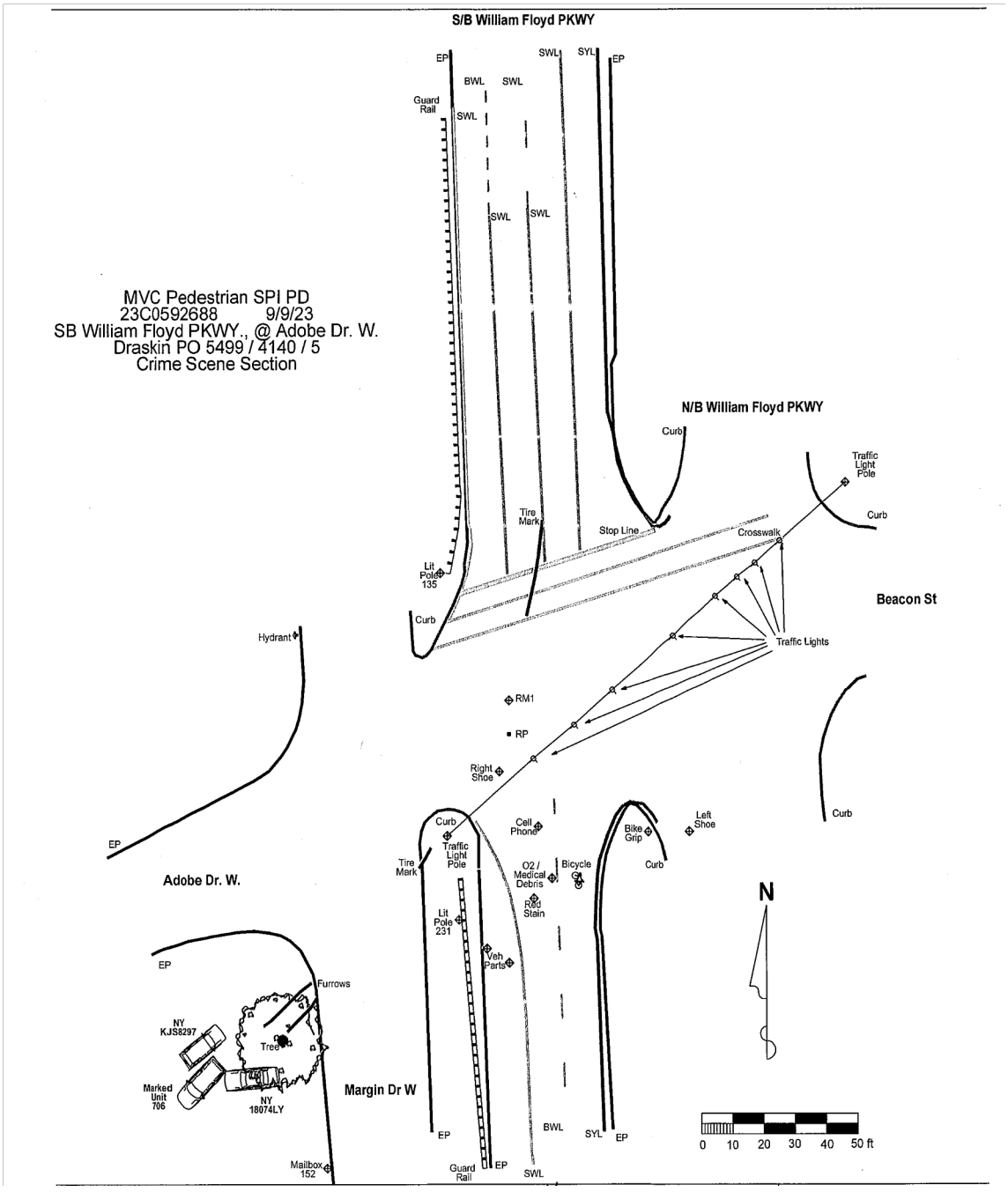
Three Crime Scene Section photos showing damage to the police car.



Crime Scene Section diagram of the post-collision scene.

Suffolk County Police Department Policies

SCPD NY LE Policy 501.3.5, "Accidents Involving Serious Injury or Death or a Child in Vehicle (CIV)," requires SCPD officers to administer a pre-screening breath test to drivers involved in specified collisions and reads, in part, as follows:

> An officer investigating an accident involving a serious injury or death shall request a pre-screening breath test from any driver involved in the accident unless the driver is physically incapable of performing the test. The result of such test or the driver's

refusal of such test shall be included in the accident investigation report (Vehicle and Traffic Law § 603-a, 1194.1 (b)).

SCPD NY Supplemental Manual Procedure 501.5, "Police Vehicle Accident Procedure," states that supervisors investigating police vehicle accidents "shall follow the general policies and procedures for investigating accidents."

SCPD NY LE Policy 309, "Officer Response to Calls," provides officers with a guideline for the safe and appropriate response to incident calls or requests for assistance. The policy states in part:

309.3 SAFETY CONSIDERATIONS

Responding with emergency lights and siren does not relieve the operator of an emergency vehicle of the duty to continue to drive with due regard for the safety of all persons and property, and does not protect the operator from the consequences of reckless disregard for the safety of others. However the officer may, when responding to a call with an emergency response, and provided there is no endangerment or unnecessary risk to persons and property (Vehicle and Traffic Law §1104):

- Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation,
- Exceed the speed limit,
- Disregard regulations governing direction of movement or turning in specified directions.

309.4 RESPONSE TO CALLS

Officers responding to calls shall proceed without delay unless redirected to a higher priority call. Officers should respond to a call as an emergency response (i.e. utilizing emergency lights and sirens) when circumstances reasonably indicate such a response is required. This includes, but is not limited to:

(a) When apprehending a violator or suspected violator.
(b) When responding to a reported emergency involving possible personal injury, death or significant property damage.
(c) When immediate assistance is requested by an officer or other law enforcement agency.

Officers responding as an emergency response shall proceed without delay as appropriate and should continuously operate the emergency vehicle lighting and siren for safety purposes (Vehicle and Traffic Law §114-b; Vehicle and Traffic Law §1104). Officers may discontinue the use of emergency lights and siren at such a time that using them would create a safety hazard for any person (i.e., crimes in progress where lights and siren may unintentionally alert a suspect to the police presence) or where

they may hamper the apprehension of a violator or suspect. Officers must continue to drive with due regard for the safety of all persons.

Officers responding to calls not requiring an emergency response should obey all traffic laws and proceed without the use of emergency lights and siren.

Medical Treatment and Autopsy

Medical Response On-Scene

According to the Prehospital Care Report, the Shirley Community Ambulance Emergency Medical Services unit responded to the scene at 8:00:14 p.m. Paramedic James Deutsch and EMT Tracy Davis, the primary patient caregivers, observed A.S. unconscious, in respiratory arrest with agonal breathing, with a detectable pulse, and a visible head injury that was actively bleeding. A.S was ventilated and, at 8:06:22 p.m., transported to Stony Brook University Children's Hospital. Paramedic Deutsch maintained ventilation for the duration of the transport to the hospital. At 8:29:27 p.m., A.S. arrived at Stony Brook University Children's Hospital, where medical care was transferred to the emergency room staff.

Stony Brook University Children's Hospital

According to Dr. Richard Weiss and Dr. Uchechi Oddiri, of Stony Brook University Children's Hospital, and A.S.'s autopsy report, A.S. arrived at the hospital unresponsive, with a Glasgow Coma Scale score of 3, a head injury, renal lacerations, and pulmonary contusions. On September 11, 2023, A.S. was declared brain dead and, on September 13, 2023, A.S. was removed from life support and declared dead.

Autopsy

Dr. Paul Mellen of the Suffolk County Office of the Medical Examiner performed the autopsy of A.S. on September 14, 2023. OSI reviewed the autopsy report, which said the cause of death was "multiple injuries" and that the manner of death was "accident (bicycle rider struck by motor vehicle)."

LEGAL ANALYSIS

To convict an officer for causing a death while responding to an emergency in their police car, OSI would need to prove beyond a reasonable doubt that the officer's actions were not protected by VTL 1104, and that the officer was guilty of a crime that requires the mental state of recklessness. A crime requiring only the mental state of criminal negligence would not be chargeable against an officer responding to an emergency, as long as the officer's conduct is enumerated in VTL 1104.

Under VTL 1104, "the driver of an authorized emergency vehicle, when involved in an emergency operation" (defined in VTL 114-B to include "pursuing an actual or suspected violator of the law" and "responding to … [a] police call"), may "proceed past a steady red signal…but only after slowing down as may be necessary for safe operation," and may "exceed

the maximum speed limits so long as he does not endanger life or property." VTL 1104(e) states that "the foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." See *Anderson v Commack Fire Dist.*, 39 NY3d 495, 498 (2023) (police officers responding to an emergency may disregard specific traffic laws "as long as specified safety precautions are observed and they do not act recklessly").

In *Saarinen v Kerr*, 84 NY2d 494 (1994), the Court of Appeals interpreted VTL 1104 to protect an officer from civil liability in cases of negligence.

> "[A] police officer's conduct in pursuing a suspected lawbreaker may not form the basis of civil liability to an injured bystander unless the officer acted in reckless disregard for the safety of others. This standard demands more than a showing of a lack of 'due care under the circumstances' – the showing typically associated with ordinary negligence claims. It requires evidence that 'the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow' and has done so with conscious indifference to the outcome." *Saarinen* at 501.

The *Saarinen* court pointed to the grim calculus of VTL 1104, permitting officers to go through red lights and to exceed speed limits, stating that these actions "will inevitably increase the risk of harm to innocent motorists and pedestrians." The court said limiting liability to cases of recklessness would be consistent with the legislative intent, as it would reduce "judicial second-guessing of the many split-second decisions that are made in the field under highly pressured conditions" and would reduce the risk that the threat of liability could "deter emergency personnel from acting decisively and taking calculated risks in order to save life or property." *Saarinen* at 502.

VTL 1104 by its terms is not stated to be a defense to crimes under the Penal Law, but OSI believes that courts would apply VTL 1104 to criminal cases, and that it would protect officers from liability in cases of criminal negligence. *See People v Emmi*, 146 Misc.2d 399 (Cayuga Co. Ct. 1990).

<u>Proving Recklessness</u>

Determining whether Officer Tryon recklessly disregarded the safety of others when she approached the intersection of William Floyd Parkway and Adobe Drive, at over 85 mph, is a "fact-specific inquiry" that balances "the precautionary measures" she took, the degree of risk her actions posed to motorists and pedestrians, and her "duty to respond to an urgent emergency situation." *Frezzell v City of New York*, 24 NY3d 213, 219 (2014).

Below are examples of factors courts have considered when balancing these competing interests:

Nature of the emergency. *Allen v Town of Amherst*, 8 AD3d 996, 997 (4th Dept 2004): "Although all police officers in patrol vehicles responding to police calls are involved in an emergency operation within the meaning of Vehicle and Traffic Law…the nature of the call nevertheless is relevant in determining whether a responding officer's conduct was in reckless disregard for the safety of others."

Whether the officer's emergency lights and siren were activated. *Regdos v City of Buffalo*, 132 AD3d 1343, 1343 (4th Dept 2015): "We conclude that the jury could have rationally determined that the combination of, inter alia, Officer Fera's excessive speed, her failure to activate the emergency lights and siren and slow down or brake as she approached plaintiff's vehicle from behind, plaintiff's timely and appropriate engagement of her left turn signal, and Officer Fera's attempt to pass plaintiff's vehicle on the left on the wrong side of the street at a city intersection constituted 'reckless disregard for the safety of others.'"

Officer's speed and knowledge of prior incidents; the weather, traffic, and road conditions. *Flack v State*, 57 AD3d 1199, 1200-01 (3d Dept 2008): "Here, it is undisputed that it was raining heavily at the time of the accident, other cars on the road were traveling well under the speed limit, the road contained S-curves and knolls, and Kijowski knew that there recently had been other serious accidents caused by inappropriate speed in the area where this collision occurred. Additionally, while Kijowski testified that the reason he was chasing the speeding vehicle—which was traveling at 73 miles per hour—was that it posed a risk to the public based on the above conditions, he nevertheless pursued that car at a speed of over 80 miles per hour, a speed at which he had never driven on that road even under ideal conditions and a speed which he admitted posed a significant risk to the public. Under these circumstances, we find that Kijowski's conduct was reckless."

Officer's failure to slow down before intersection. *Connelly v City of Syracuse*,

103 AD3d 1242, 1242 (4th Dept 2013): "…issue of fact whether defendant officer acted with reckless disregard for the safety of others by entering a limited-visibility intersection controlled by a four-way stop sign shortly before midnight without slowing, stopping."

Officer's obstructed view. *Destino v State*, 203 AD3d 1598 (4th Dept 2022): "We conclude that the evidence at trial established that the trooper passed a stop sign and entered an intersection at a high rate of speed and directly into oncoming traffic without a siren or horn in a situation where there was 'almost no visibility' due to 'extreme' and '[v]ery dense' fog. Contrary to the State's contention, such circumstances support a determination that the trooper acted with reckless disregard for the safety of others."

> Officer's violation of department policy. *Saarinen*, 84 NY2d 494, 503: "The characterization of the conduct McGown had observed is significant because the Village's own policy specifically provides that '[a] traffic infraction alone does not justify the risks of a high-speed pursuit.' A violation of this policy, if in fact it occurred, would be an important, although not dispositive, factor in determining whether McGown had acted recklessly."

Manslaughter in the Second Degree

Recklessness is the mental state a prosecutor must prove beyond a reasonable doubt to sustain a charge of Manslaughter in the Second Degree

Under Penal Law Section (PL) 15.05(3), "A person acts recklessly with respect to a result [e.g., death] … when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur…. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."

To prove manslaughter, the prosecutor must show that Officer Tryon was aware of and consciously disregarded that proceeding through a green light at a high rate of speed, with lights and siren activated, and with minimal or no precautionary slowing, created a substantial and unjustifiable risk of death, and that disregarding the risk was a gross deviation from the standard of conduct that a reasonable officer would have observed in the situation.

OSI's research has not found a case in New York in which a police officer was criminally charged for causing a death when responding to an emergency. In many cases involving civilian defendants, the evidence was that the defendant was intoxicated. *People v Williams*, 150 AD3d 1273, 1274 (2d Dept 2017) (defendant was intoxicated, fled from the police, and drove through an intersection at 80 mph when the light was likely red); *People v Briskin*, 125 AD3d 1113, 1120 (3d Dept 2015) (defendant was intoxicated and attempted to retrieve a GPS on the floor of the car and went through a stop sign without braking); *People v Walton*, 70 AD3d 871, 872 (2d Dept 2010) (defendant was intoxicated and racing a car on the highway when he lost control and crashed). There is no evidence that Officer Tryon was intoxicated, and there is no evidence that she was improperly distracted prior to the crash.

The investigation showed that Officer Tryon was responding to a medical emergency and took some precautionary measures when she drove on William Floyd Parkway at speeds over 85 mph. Officer Tryon activated the police car's emergency lights and siren and she proceeded through a green traffic light at the William Floyd Parkway and Adobe Drive intersection. Prior to the collision the officer drove around a car stopped in the left turn lane at the same time that A.S. rode his bicycle in front of the stopped car. Officer Tryon said she did not see A.S. until he was already in the intersection. In these circumstances, OSI believes it would not be able to prove beyond a reasonable doubt that Officer Tryon committed Manslaughter in the Second Degree.

As a result, OSI will not seek charges against Officer Tryon and closes the matter with the issuance of this report.

RECOMMENDATIONS

1. OSI recommends that SCPD hold officers to the same standards as civilians and breath-test them as quickly as practicable after a serious motor vehicle collision.

SCPD NY LE Policy 501.3.5, "Accidents Involving Serious Injury or Death or a Child in Vehicle (CIV)," requires the investigating officer of an accident involving a serious injury or death to request a pre-screening breath test from any driver involved in the accident. SCPD NY Supplemental Manual Procedure 501.5, "Police Vehicle Accident Procedure," requires supervisors investigating police vehicle accidents to follow the same general policies for investigating accidents.

In this instance, Officer Tryon was not asked to take a portable breath test or any other sobriety tests after the collision, even though other members of service responded to the scene of the collision and could have administered the test on-scene. It should have been immediately apparent to whichever officer had taken charge of the scene that A.S. was seriously or fatally injured in the collision and that testing the officer-driver was mandatory.

In the state of New York about 30% of fatal car crashes are alcohol related. In accordance with SCPD NY LE Policy 501.3.5, "Accidents Involving Serious Injury or Death or a Child in Vehicle (CIV)," civilian drivers are breath-tested even if they do not exhibit signs of impairment or intoxication. This same standard should be applied to police officers involved in motor vehicle incidents, especially collisions that result in death.

OSI therefore recommends that all precinct supervisors be trained in the administration of the portable breath test and field sobriety tests so that any on-duty or off-duty police officer (or any civilian) involved in a motor vehicle collision can be tested on scene as soon as practicable to determine with greater accuracy whether they were operating a vehicle while impaired by alcohol.

OSI has repeatedly made this recommendation, including in the recently released reports concerning the deaths of Miguel Romero, Lopamudra Desai, and Zabina Gafoor.

2. OSI recommends that SCPD equip all police cars with dashboard cameras that automatically record when officers activate the police car's emergency lights.

SCPD Axon dashcams do not automatically record when the police car's emergency lights are activated, but must be manually activated by an occupant in the car. Here, Officer Tryon's police car was equipped with a dashcam, but the officer did not activate the dashcam when she activated the car's emergency lights or sirens as she responded to the medical emergency. Had Officer Tryon activated the dashcam there would have been a clearer picture of the collision, which would have greatly facilitated the investigation of this case and provided the public with greater transparency of events.

OSI therefore recommends that all SCPD cars be equipped with dashboard cameras that automatically record when the car's emergency lights are activated in order to foster transparency, accountability, and evidence gathering.

Dated: March 13, 2025