Office of the New York State Attorney General Letitia James

Office of Special Investigation

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Report on the Investigation into the Death of Lynn Walsh

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REPORT: DEATH OF LYNN WALSH
Nassau County, March 10, 2023

SUMMARY

New York Executive Law Section 70-b authorizes the Office of the Attorney General, through the 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 OSI does not seek charges, as in this case, Section 70-b requires issuance of a public report. This is OSI's report concerning the death of Lynn Walsh.

OVERVIEW

New York Executive Law Section 70-b authorizes the Office of the Attorney General, through the 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 OSI does not seek charges, as in this case, Section 70-b requires issuance of a public report. This is OSI's report concerning the death of Lynn Walsh.

On March 10, 2023, at 9:15 p.m., when Lynn Walsh was crossing Sunrise Highway in the pedestrian crosswalk, at the intersection with Unqua Road, in Massapequa Park, Nassau County, she was struck by three vehicles in succession. The second vehicle was driven by off-duty New York City Police Department (NYPD) Sergeant Keith Weber. Sgt. Weber was approaching the intersection when the light was green in his favor, but swerved out of his lane of travel to avoid hitting a car that had stopped in front of him. When his car continued into the intersection, he struck Ms. Walsh, who was in the crosswalk. He pulled over to attempt to help Ms. Walsh, but she was struck by a third car, which left the scene without stopping. Ms. Walsh was in the hospital for a week, and died on March 17, 2023.

Having thoroughly investigated the case and analyzed the law, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Sgt. Weber committed a crime, and closes the matter with the issuance of this report.

FACTS

Scene

Sunrise Highway (also known as NYS Route 27) is a multi-lane eastbound/westbound road. The intersection of the collision was controlled by traffic lights in all directions and pedestrian

walk/don't walk signals. On the west side of Unqua Road was a pedestrian crosswalk from the south side of Sunrise Highway to the north side. OSI went to the intersection to evaluate the crossing signals. There was a pedestrian walk signal that can be activated by pushing a button on a control pad; once activated it stayed illuminated for forty seconds.

Google map photograph of intersection. Red box shows the pedestrian walkway where the collision occurred.

Google map photograph of the collision intersection: Sunrise Highway looking west – Sgt. Weber's perspective.

Pedestrian crosswalk at Unqua Rd and Sunrise Highway, looking north – Ms. Walsh's perspective.

Investigation

OSI spoke to D.G. who witnessed the collision. (OSI does not publish the names of civilian witnesses.) D.G. said he was a passenger in a Tesla traveling on Sunrise Highway westbound, and his friend L.P. was driving. While waiting at the red light in the left lane on Sunrise Highway at Unqua Road, D.G. heard the car in the middle lane next to him blowing their horn and yelling "No!" D.G. saw a white car (Sgt. Weber's car) in the extreme right lane going into the intersection with the green light, then swerving into the middle lane to avoid hitting a car that had stopped in the right lane, and then striking Ms. Walsh, who was standing in the intersection. Ms. Walsh was struck by the left front quarter panel of the white car. The white car pulled over to the side of the road and stopped immediately. D.G. said he did not believe the driver of the white car saw Ms. Walsh until it was too late to stop because their view would have been blocked by the car that had stopped in front of them. D.G. said it was raining and Ms. Walsh was wearing dark clothing. D.G. said they pulled over in the Tesla to try to help Ms. Walsh, but before they could help, Ms. Walsh was struck by a dark SUV, which was traveling at a high rate of speed and did not stop after hitting Ms. Walsh. D.G. could not describe the make or model of the SUV.

OSI did not interview Tesla driver L.P., but reviewed their statements, recorded on body worn camera by a Nassau County Police Department (NCPD) officer at the scene, and their statements were consistent with OSI's interview of D.G.

OSI obtained a video clip of the collision from the Tesla's dashboard camera, linked here. The video is of limited quality because of the rain and glare from the wet road. The video begins immediately after the westbound traffic light turned green. The video shows a car in the far-right lane stop to avoid colliding with Ms. Walsh, who was slowly moving across the pedestrian walkway. The video shows Sgt. Weber's car swerve out of the far-right lane and into the middle lane, to avoid hitting the car that had stopped, and then strike Ms. Walsh. The Tesla moved slowly forward and pulled off to the side of the road. The collision involving the SUV happened off-camera.

OSI contacted the attorney representing Sgt. Weber and requested an interview. The attorney informed OSI that Sgt. Weber cooperated with the police, and provided them with a written statement, but would not be interviewed by the Attorney General's Office.

In his written statement to NCPD, which he signed under penalty of perjury on March 10, 2023, Sgt. Weber said he was driving westbound on Sunrise Highway when a white car stopped abruptly in front of him. Sgt. Weber swerved to the left to avoid the white car and hit a woman (Ms. Walsh) with the driver's side front fender of his car. Sgt. Weber said he pulled over to the right side of the road and as he was getting out of the car, a dark SUV driving westbound on Sunrise Highway ran over Ms. Walsh while she was lying on the ground and did not stop.

OSI spoke to NCPD Homicide Detective Jason Gaertner who went to the scene and investigated the collision before OSI was notified of the incident. According to Det. Gaertner, the first car to strike Ms. Walsh was driven by S.C., who stopped to help Ms. Walsh and remained on scene for interviews with NCPD. OSI attempted to speak to S.C. but he refused to speak with OSI. S.C. provided a written statement to NCPD, signed under penalty of perjury, on the night of the collision. S.C. acknowledged in the written statement that he was the first driver to strike Ms. Walsh. He said he was driving a Chevrolet Malibu on Unqua Road, facing north, waiting at the light for the turning lane signal. When the light turned green, he turned left onto Sunrise Highway into the middle lane. At the last minute, he saw a person (Ms. Walsh) in the crosswalk crossing Sunrise Highway northbound. S.C. tried to slow down but could not avoid hitting the person, whom he struck with his left-side rear-view mirror. He pulled over and saw Ms. Walsh was standing. S.C. said he was on the shoulder of Sunrise Highway facing west when the westbound traffic light turned green. He saw Ms. Walsh get struck by another car (Sgt. Weber), which knocked her to the ground. S.C. said he then saw a reddish maroon sedan run over Ms. Walsh without stopping.

Google map photograph labeled with witnesses.

OSI spoke to P.S. who said a dark colored, older Nissan or Lexus came from behind his own car, struck Ms. Walsh at a high rate of speed, and left the scene. He said the drivers of two other cars stopped and tried to help Ms. Walsh.

OSI spoke J.P. and A.D., who were together at the time of the crash in J.P.'s Acura. Both stated they were driving westbound on Sunrise Highway at Unqua Road when they saw a dark car (S.C.) make a left turn from Unqua Road and strike Ms. Walsh, who was in the crosswalk within the area of the middle lane. Ms. Walsh fell down but was able to get up quickly. J.P. and A.D. said that, seconds later, a white car (Sgt. Weber) swerved to avoid striking a stopped car in its lane and struck Ms. Walsh with its front left side. Ms. Walsh fell to the ground a second time. As they were pulling to the side to help, a third car struck and drove over Ms. Walsh and fled west on Sunrise Highway. They do not know the make, model, or color of the third car. J.P. described the conditions as poor and rainy, and he stated it was very difficult to see Ms. Walsh as she crossed the street.

OSI obtained body worn camera (BWC) video from responding NCPD Officer David Pyes, whose BWC showed him administering Portable Breathalyzer Tests (PBT) Horizontal Gaze Nystagmus (HGN) tests to S.C. (beginning at 9:48 p.m.) and Sgt. Weber (beginning at 9:58 p.m.). (HGN is a common field sobriety test where the administrator evaluates the movement of the subject's eyes, which are involuntary. Movement such as bounces or shakes indicate the subject may be impaired by drugs and/or alcohol.) S.C. and Sgt. Weber both registered 0% blood alcohol content on the PBT and had no indicia of impairment on the HGN.

OSI canvassed for video along Sunrise Highway, but found no video capturing the collision or the vehicles approaching the intersection. OSI unsuccessfully canvassed for witnesses who could identify the third, unidentified car. The driver of the third car remains unidentified.

OSI obtained Ms. Walsh's medical records from Nassau University Medical Center (NUMC). According to the pre-care report (PCR) completed by the paramedics who responded to the scene, Ms. Walsh was alert and aware when they arrived but did not recall being struck by any cars. Ms. Walsh had a head contusion and abrasion, apparent right shoulder injury, right chest pain with diminished lung sounds, right hip pain, right knee pain, possible fracture of the right ankle and right foot, and other minor abrasions. According to the PCR, Ms. Walsh's vital signs remained stable from the scene to the hospital. According to the medical records, Ms. Walsh's principal diagnoses were fractures of an unspecified part of the neck and right femur. Ms. Walsh was also diagnosed with a fracture of the upper right arm, multiple lumbar fractures, multiple rib fractures, and contusion of the abdominal wall. On March 13, 2023, three days after the collision, Ms. Walsh underwent surgery for replacement of the right hip joint. On March 14, Ms. Walsh's chest scans showed the development of a spontaneous pneumothorax (or collapsed lung, which occurs when air leaks into the space between the lung and chest

wall). On March 15, Ms. Walsh was placed on a respirator. On March 17, Ms. Walsh was declared brain-dead, and she died the same day.

Dr. Brian O'Reilly of the Nassau County Medical Examiner's Office conducted only an external examination of Ms. Walsh because Ms. Walsh's family declined a full internal examination. The autopsy report said the cause of death was "complications of blunt force trauma to head, torso and extremities," and the manner of death was "accident."

LEGAL ANALYSIS

Under Penal Law Section (PL) 125.10, "A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person." Criminal negligence is defined in PL 15.05(4): "A person acts with criminal negligence with respect to a result [e.g., death] ... when he fails to perceive a substantial and unjustifiable risk that such result will occur .... The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

In a series of decisions, the New York Court of Appeals has required prosecutors to establish criminal negligence in fatal vehicular cases with evidence not clearly implied in the statutory definition. Under these decisions, proof of the defendant's failure to perceive the risk of death is not sufficient to convict him or her of criminally negligent homicide, even if the failure is a "gross deviation" from a reasonable standard of care. Rather, the prosecutor must also prove that the defendant committed an "additional affirmative act" or engaged in "risk-creating behavior" amounting to "seriously blameworthy carelessness." *People v Cabrera*, 10 NY3d 370 (2008); *People v Boutin*, 75 NY2d 692 (1990). The New York Court of Appeals has explained that the carelessness required for criminal negligence must be such that its seriousness would be apparent to "anyone who shares the community's general sense of right and wrong." *People v Conway*, 6 NY3d 869 (2006).

There is no evidence in this investigation that Sgt. Weber failed to perceive the risk of killing Ms. Walsh in a manner constituting a "gross deviation" from the standard of care of a reasonable person, or that he engaged in seriously blameworthy conduct. The evidence is that he approached an intersection with a green light and swerved out of his lane of travel to avoid striking a stopped car. There is no evidence that he was speeding or driving in a dangerous manner. After leaving his original lane of travel he struck Ms. Walsh, who had already been struck by S.C.'s car. There is no evidence that Sgt. Weber observed or should have observed Ms. Walsh in the pedestrian walkway.

In addition, the evidence that Sgt. Weber caused Ms. Walsh's death is unclear. Ms. Walsh was struck three times. The second strike was by Sgt. Weber, but, based on witness accounts, the

third and final strike seemed to be the more serious blow, with witnesses saying the third car ran over Ms. Walsh. In the absence of video evidence of the three strikes, and in the absence of a full autopsy examination, it is difficult to say whether Sgt. Weber caused Ms. Walsh's death.

Therefore, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Sgt. Weber committed a crime when he struck Ms. Walsh with his car. As a result, OSI will not present this case to a grand jury for consideration of criminal charges, and closes the matter with the issuance of this report.

Dated: January 13, 2025