Office of the New York State Attorney General Letitia James

Office of Special Investigation

September 17, 2024

Report on the Investigation into the Death of Miguel Romero

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, Section 70-b requires issuance of a public report. This is OSI's report concerning the death of Miguel Romero.

On the evening of November 19, 2022, Nassau County Police Department (NCPD) Officers Michael Gironda (the driver) and Nicholas Stephani were traveling in an unmarked police car on Front Street in Uniondale, on the way to help other officers with an arrest. Miguel Romero was waiting to cross Front Street by a parked car. Mr. Romero looked in the direction of the police car and sprinted across. The police car struck Mr. Romero. The car was traveling 62 mph in a 40 mph zone. There is no evidence that Officer Gironda was impaired by drugs or alcohol and no evidence that he was distracted by texting or other cell phone use.

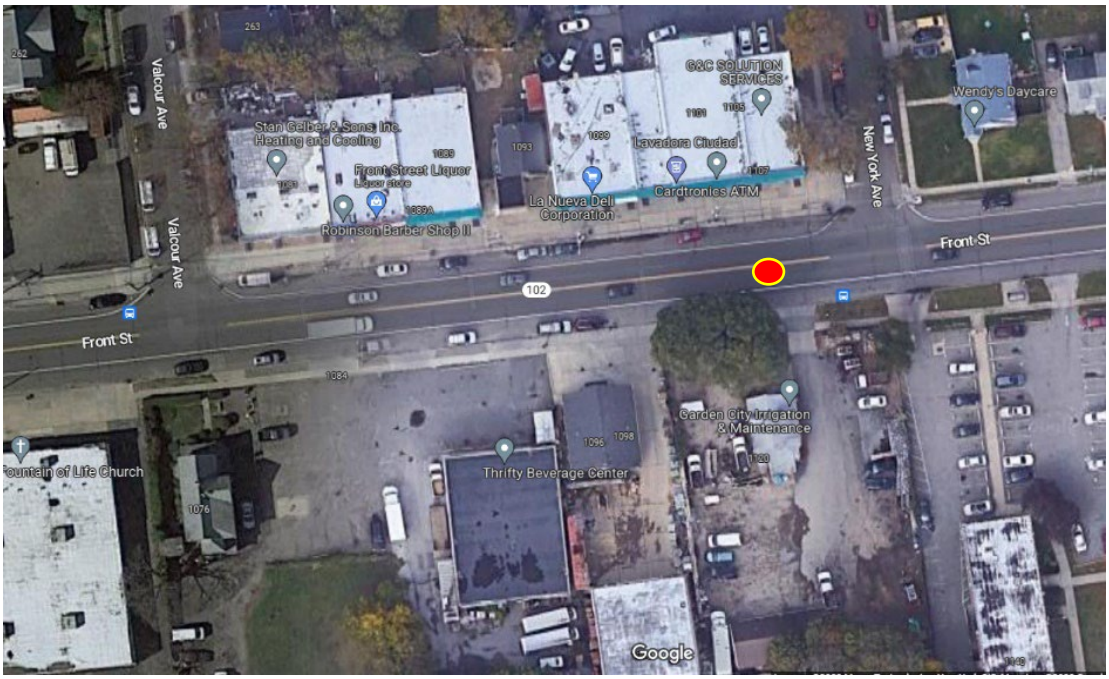
Immediately after the collision, Officer Gironda stopped the car and the officers got out, went to Mr. Romero, and called for an ambulance. Paramedics brought Mr. Romero to the hospital but he was pronounced dead soon after arrival. An autopsy showed that Mr. Romero died of blunt force injuries.

Having comprehensively reviewed the facts and analyzed the law, OSI concludes that the evidence is insufficient to prove beyond a reasonable doubt that Officer Gironda committed the crime of Criminally Negligent Homicide or any other crime. OSI therefore will not present evidence to a grand jury and closes the matter with the publication of this report.

FACTS

Scene

Security video from nearby buildings and body worn camera (BWC) video from the officers involved show that the collision occurred at 9:25 p.m. on Front Street, near the intersection with New York Avenue, in Uniondale. In this area, Front Street is mixed commercial and residential. The scene of the collision is shown in the aerial view below.



In this photo the red circle marks the approximate location of the collision. The police car was traveling from left to right (eastbound). Mr. Romero was crossing from top to bottom (southbound).

According to Sgt. Nabil Hussein of the NCPD Homicide Squad, Officers Gironda and Stephani were responding to a scene in East Meadow to help with a narcotics arrest being coordinated by Detective Thomas Marr. NCPD police activity records obtained by OSI show that T.F.[1] was arrested by Detective Marr for two narcotics sales at 9:30 p.m. in East Meadow. According to a Google Maps search, the arrest scene is a five-minute drive from the intersection where Mr. Romero was struck at 9:25 p.m.

Video

OSI obtained video from local establishments, including video from a local landscaping company which captured the collision (Video of Collision). The video shows Mr. Romero in the street on the north side of Front Street, waiting to cross by a parked car.

[1] OSI does not publish the names of civilians other than the decedent.

Still from landscaping company security video showing Mr. Romero in white clothing waiting to cross the street, five seconds before the police car struck him.

Mr. Romero turned his head westbound; the police car was not yet visible in the video. Mr. Romero started to run straight out into the street, southbound. The headlight beams of the police car began to be visible in the video, and they illuminated Mr. Romero. As the police car itself came into the video frame Mr. Romero turned and ran faster in an eastbound direction nearly parallel with the double yellow line. The police car struck Mr. Romero and Mr. Romero hit the windshield and was thrown forward. Officer Gironda stopped the car in the eastbound lane and Officers Gironda and Stephani immediately left the car and approached Mr. Romero.

Still photograph from the landscaping company video showing Mr. Romero running across the street as the police car approached.

Crime scene photo of the collision area. Marker #1 shows approximately where Mr. Romero was struck. Marker #2 shows where Mr. Romero's body came to a rest.

Crime scene photo showing Front Street after the collision. The unmarked police car is to the left, with its damage circled in green. The debris in the roadway, circled in yellow, is approximately where Mr. Romero's body was before it was removed from the scene.

Medical Response

According to the NCPD computerized reports that memorialize police radio transmissions, Officers Stephani and Gironda made a notification at 9:26 p.m. of the pedestrian strike. An ambulance arrived at 9:28 p.m. OSI obtained the Patient Care Report created by EMT Diane McCauley, who was on the scene by 9:29 p.m. She initially assisted Mr. Romero's breathing with a bag valve mask. She noted in the Report that Mr. Romero was unconscious and his primary injury was an open skull fracture. EMT McCauley noted that Mr. Romero smelled like alcohol. She suctioned blood from Mr. Romero's airway and intubated him to assist his breathing. Mr. Romero lost his pulse at 9:40 p.m. EMT McCauley administered two IV doses of epinephrine, but neither revived Mr. Romero's pulse. The ambulance arrived at Nassau University Medical Center (NUMC) with Mr. Romero at 9:46 p.m., and he was pronounced dead at 10:04 p.m. According to Mr. Romero's hospital records, he never regained a pulse after arriving at NUMC. NUMC canceled all blood work and testing when Mr. Romero was pronounced dead, and therefore there are no toxicology reports in his hospital records.

Civilian Interview

OSI spoke with H.V. who was driving on Front Street at the time of the incident. H.V. said he did not know Mr. Romero and had no connection to the involved police officers. H.V. said he was driving westbound on Front Street (in the opposite direction of Officer Gironda) and he

saw Mr. Romero standing in the street behind another car. H.V. said Mr. Romero ran from north to south and struck a car traveling eastbound. H.V. said he did not see emergency lights activated on the police car and he estimated it was traveling 35 to 40 mph. He said Mr. Romero was thrown into the air and landed in the street in front of H.V.'s car.

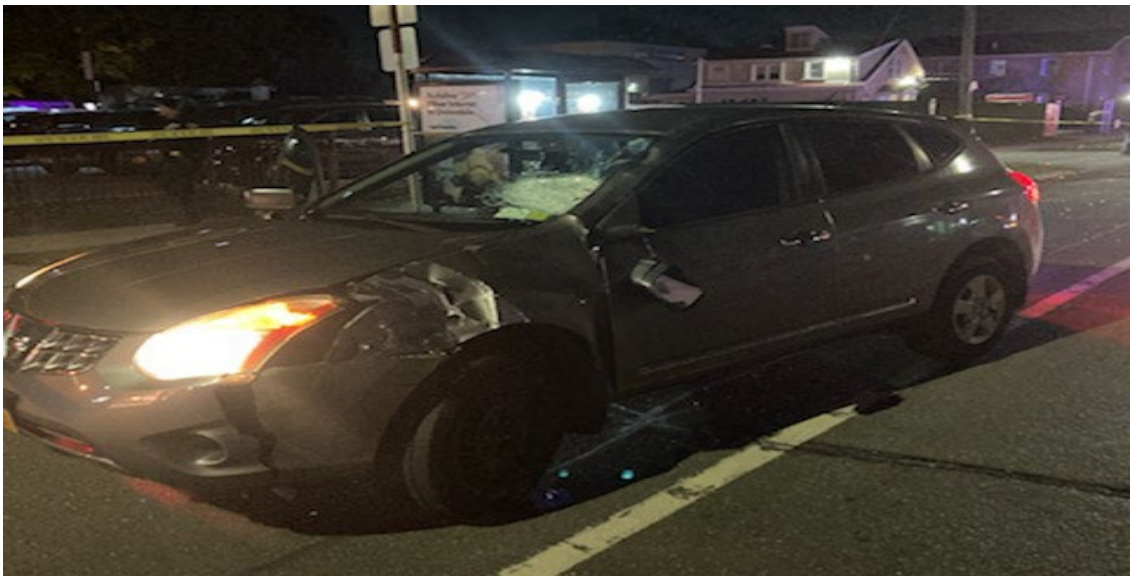
BWC

OSI obtained the BWC recordings of Officer Gironda and Officer Stephani (Officer Gironda BWC and Officer Stephani BWC). Both recordings indicate that the BWC was activated nearly immediately after the collision. NCPD's BWCs capture and retain thirty seconds of video prior to activation. Officer Gironda's BWC was equipped with GPS technology and the recording displays his GPS coordinates, speed of travel, time, and date. In the recording, Officer Gironda gradually increased his speed as he traveled on Front Street. Immediately before impact, Officer Gironda quickly turned the steering wheel to the right and then turned the wheel to the left, which is consistent an attempt to avoid Mr. Romero as he changed direction in his path across the street. Although the audio in the BWC is not yet activated, the BWC visually shows the moment of impact with a sudden vibration of the camera and the appearance of damage to the windshield glass. The speed limit on Front Street is 40 mph. The BWC recording displays 62 mph at the moment of impact.

Still from Officer Gironda's BWC video at the moment of impact.

Crime Scene

OSI personnel observed the police car at the scene and evaluated crime scene photographs. The police car was damaged on the front driver's side windshield, fender, and mirror. The car was a 2011 Nissan Rogue and did not contain an Event Data Recorder and, therefore, there is no recorded data from the car before or during the crash.



Photograph of police car after the collision.

Officer Interviews

OSI Interviewed Officer Stephani, the passenger in the police car. Officer Stephani said he had been working with Officer Gironda for about three years and was assigned to a special unit whose duties included quality of life conditions and assisting other units. Officer Stephani said he and his partner were notified to respond to assist in apprehending and arresting a suspect in East Meadow. Officer Stephani said their unit often assists with arrests. Officer Gironda drove the car toward the arrest location and did not turn on his police lights or sirens. Officer Stephani explained they were driving an unmarked car and did not want to alert the subject of police presence as they approached because it could jeopardize the arrest. Officer Stephani said he did not see Mr. Romero until moments before the collision. Officer Gironda swerved to avoid Mr. Romero but could not avoid him.

OSI interviewed Officer Gironda, the driver of the police car. Officer Gironda said he received a phone call from Detective Christopher Maher requesting assistance in effecting an arrest. Officer Gironda said he received three phone calls from Detective Maher while responding urging Officer Gironda to get to the scene quickly. Detective Maher's third call was about forty-five seconds before the collision with Mr. Romero. With that third phone call, Officer Gironda accelerated, based on the urgency of Detective Maher's request. Officer Gironda said he did not initiate lights and sirens because he did not want to alert the arrest subject of a police presence. Officer Gironda said he was familiar with the roadway. Officer Gironda said he did

not see Mr. Romero standing on the side of the road, and did not see him until he ran into the side of the car. Officer Gironda said he swerved but was nervous about striking cars and potential pedestrians on the side of the road and so straightened out. When Officer Gironda realized he had struck a person, he stopped the car and ran back to Mr. Romero. He said he saw Mr. Romero take a breath and could smell alcohol. Officer Gironda said he could see an ambulance approaching in the distance and so decided not to move Mr. Romero for fear of further injuring him. Officer Gironda said the ambulance arrived and took Mr. Romero to Nassau County Medical Center for treatment.

Phone Records

OSI obtained phone records for Officer Gironda and phone subscriber information for Detective Christopher Maher. The phone records show that Christopher Maher called Officer Gironda at 9:03 p.m., 9:22 p.m., and 9:24 p.m., prior to the collision at 9:25 p.m. The phone records show no phone call in progress at 9:25 p.m., the time of the collision. Officer Gironda's last text message before the collision was at 8:56 p.m. Officer Gironda's BWC begins about twelve seconds before the collision and it shows his left hand on the steering wheel and right hand resting on or near the gear shift, with no phone or other item in either hand, for the twelve seconds before the collision. The phone records corroborate Officer Gironda's statement that he received three calls from arresting narcotics detective Christopher Maher summoning him to the arrest scene, and that Officer Gironda was not on his phone at the time of the collision.

Breath Test

OSI interviewed NCPD Homicide members who said that NCPD First Precinct Officer Christopher Jata conducted a Portable Breath Test (PBT) on Officer Gironda at 11:57 p.m. The PBT result was 0.0%, indicating zero blood alcohol content. The PBT was recorded on BWC and the result was recorded in an NCPD memo book entry.

Autopsy

Dr. Ethan Stolzenberg of the Medical Examiner's Office of Nassau County conducted an autopsy of Mr. Romero. He determined the cause of death to be "Multiple blunt force trauma with basilar skull fracture, cerebral contusion and laceration of liver," and deemed the manner of death to be "accident."

Dr. Stolzenberg reported that toxicology was performed on Mr. Romero, as is standard procedure, and Mr. Romero had a blood alcohol content of 0.15 percent.[2] Dr. Stolzenberg explained that the blood alcohol result reflected Mr. Romero's blood alcohol content at the

[2] For reference, 0.08% and above is considered intoxication for the purposes of Driving While Intoxicated legal standards.

time of death. He cautioned, however, that some alcohol can disperse from the blood after death, leading to a lower alcohol content result in the toxicology performed after death.

LEGAL ANALYSIS

Under Penal Law 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 Penal Law Section 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).

In *Cabrera*, the Court reversed a conviction of criminally negligent homicide based on the defendant driver's excessive speed, saying "it takes some additional affirmative act by the defendant to transform speeding into dangerous speeding; conduct by which the defendant exhibits the kind of seriously blameworthy carelessness whose seriousness would be apparent to anyone who shares the community's general sense of right and wrong." *Cabrera*, 10 NY3d at 377, citing *Boutin*, 75 NY2d at 696 (internal quotation marks omitted; emphasis added). The Court continued:

> "Thus, in the cases where we have considered the evidence sufficient to establish criminally negligent homicide, the defendant has engaged in some other 'risk creating' behavior in addition to driving faster than the posted speed limit (***compare*** *People v Haney*, 30 N.Y.2d 328 [defendant was speeding on city street and failed to stop at red light before killing pedestrian crossing street with green light in her favor]; *People v Soto*, 44 N.Y.2d 683 [defendant, who was speeding and drag racing on city street, struck and killed driver stopped at red light]; *People v Ricardo B.*, 73 N.Y.2d 228 [defendant was drag racing at between 70 and 90 miles per hour on a busy metropolitan street, ran a red light and struck vehicle crossing intersection with light in its favor]; *People v Loughlin*, 76 N.Y.2d 804, 807 [intoxicated defendant was speeding on obstructed street under construction in residential neighborhood in Queens]; *People v Maker*, 79 N.Y.2d 978, 980 [intoxicated defendant drove at speeds

of 50 to 100 miles per hour in 35 miles per hour zone in Manhattan, disobeying several traffic signals]; *People v Harris*, 81 N.Y.2d 850, 851-852 ['defendant, while legally intoxicated, drove his motor vehicle in the dark of night from a public highway into an unfamiliar farmer's field, accelerated at times to a speed approximating 50 miles per hour, intermittently operated the vehicle without headlights, and suddenly and forcefully drove through a hedgerow of small trees and shrubs, not knowing what obstacles and dangers lurked on the other side']; *People v Ladd,* 89 N.Y.2d 893, 894-895 [intoxicated defendant driving on wrong side of a foggy road at 4:30 A.M.], ***with*** *People v Perry*, 123 A.D.2d 492, 493 [4th Dept 1986], affd 70 N.Y.2d 626 [no criminal negligence present where defendant was driving approximately 80 miles per hour in a 55 miles per hour zone 'on a rural road, on a dark night,' struck a utility pole, and killed two passengers; defendant's 'conduct . . .d(id) not constitute a gross deviation from the ordinary standard of care held by those who share the community's general sense of right and wrong' (citations omitted)]). The question [is whether the conduct] constituted 'not only a failure to perceive a risk of death, but also some serious blameworthiness in the conduct that caused it' (*Boutin*, 75 N.Y.2d at 696)."

Cabrera, at 377-378, emphasis added, all material in square brackets in original.

In *People v Badke*, 21 Misc3d 471, (Suffolk Co Ct 2008), the court dismissed criminally negligent homicide counts, finding insufficient the grand jury evidence that defendant drove at excessive speed with passengers in his car, collided with another vehicle, and caused the deaths of three passengers. The court said, "Criminal negligence requires some additional affirmative act by the defendant to transform speeding into dangerous speeding, that is, conduct by which the defendant exhibits the kind of seriously blameworthy carelessness whose seriousness would be apparent to anyone who shares the community's general sense of right and wrong." 21 Misc3d at 476.

Another factor to consider is the effect of the Vehicle & Traffic Law (VTL) provisions on emergency driving by police officers. VTL Section 1104 (b) permits the driver of an emergency vehicle engaged in an emergency operation to (3) "Exceed the maximum speed limits so long as he does not endanger life or property." Under VTL 1104 (e), the exemptions of VTL 1104 (b) "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."

VTL Section 101 defines "Authorized Emergency Vehicle" to include "Every ... police vehicle...." VTL Section 114-b defines "Emergency Operation" of a vehicle as "The operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous material or other emergency."

Although other emergency vehicles must use lights and sirens when engaged in emergency operation, a police vehicle need not do so, VTL 1104(c). Failing to activate sirens and lights does not by itself establish recklessness for police officers engaged in emergency operation, but evidence that officers used sirens and lights is relevant to establish non-recklessness, *e.g.*, *Martinez v. City of Rochester*, 164 AD3d 1655, 1656, (4th Dept 2018) (evidence of lights and sirens and of reduced speed established officer did not act with "reckless disregard"); *Hodder v. United States*, 328 F Supp 2d 335, 345 (EDNY 2004) (officer's use of lights and sirens and cautious driving showed officer drove reasonably without "reckless disregard"); *Flynn v. Sambuca Taxi, LLC*, 123 AD3d 501, 502 (1st Dept 2014) (failure to activate police siren was not reckless conduct).

Even in civil cases involving police officers who injured people in the course of emergency driving, the Court of Appeals has required evidence of "conscious indifference to the outcome" to establish liability. *Saarinen v. Kerr*, 84 NY2d 494 (1994), was a civil case in which a police officer injured a civilian in a high-speed chase. The Court said:

> "[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, citations omitted, emphasis added.)

The Court went on to say that VTL 1104

> "... represents a recognition that the duties of police officers and other emergency personnel often bring them into conflict with the rules and laws that are intended to regulate citizens' daily conduct and that, consequently, they should be afforded a qualified privilege to disregard those laws where necessary to carry out their important responsibilities. Where the laws in question involve the regulation of vehicular traffic, the exercise of this privilege will inevitably increase the risk of harm to innocent motorists and pedestrians. Indeed, emergency personnel must routinely make conscious choices that will necessarily escalate the overall risk to the public at large in the service of an immediate, specific law enforcement or public safety goal. Measuring the reasonableness of these choices against the yardstick of the traditional 'due care under the circumstances' standard would undermine the evident legislative purpose of Vehicle and Traffic Law § 1104, i.e., affording operators of emergency vehicles the freedom to perform their duties unhampered by the normal rules of the road .... [T]he possibility of incurring civil liability for what amounts to a mere failure of judgment could deter emergency personnel from acting decisively and taking

> calculated risks in order to save life or property or to apprehend miscreants." (*Saarinen* at 502).

In *Criscione v. City of New York*, 97 NY2d 152, 157-158 (2001), the Court of Appeals found that officers operating a police vehicle under circumstances specified in VTL 114-b are granted "a qualified privilege to disregard the ordinary rules of prudent and responsible driving, subject to a reckless disregard standard of liability" and not the ordinary negligence standard (internal quotation marks omitted).

In *Frezzell v. City of New York*, 24 NY3d 213 (2014), also a civil case, the Court said that the approach in *Saarinen v. Kerr*,

> "... avoids judicial second-guessing of the many split-second decisions that are made in the field under highly pressured conditions and mitigates the risk that possible liability could deter emergency personnel from acting decisively and taking calculated risks in order to save life or property or to apprehend miscreants." (*Frezzell* at 217, internal quotation marks and citations omitted).

In *Ferrer v. Harris*, 55 NY2d 285, 292 (1982), the Court of Appeals said an emergency situation, which leaves little or no time for reflection, "itself may be a significant circumstance which should enter into the determination of the reasonableness of the choice of action pursued." *See also*, *Gonzalez v. Zavala*, 88 AD3d 946 (2d Dept 2011) *and Nurse v. City of New York*, 56 AD3d 442 (2d Dept 2008).

The Court in *Staton v. State of New York*, 29 AD2d 612, 614 (3d Dept 1967), said the actions of a "police officer performing his duty in an emergency situation...must be weighed in the light of the circumstances as they developed and not by subsequent facts or in retrospect." *See also, Palella v. State of New York*, 141 AD2d 999, 1000 (3d Dept 1988) ("The reasonableness of the officer's conduct must be gauged as of the time and under the circumstances in which he acted, not in retrospect"); and *Kerwin v. County of Broome*, 134 AD2d 812, 813 (3d Dept 1987) ("the acts of the police officer are to be considered as of the time and under the circumstances in which they occurred").

The evidence in this investigation does not meet the standard the courts have set for proof of dangerous speeding. Examples of "dangerous speeding" include running a red light while racing another car on a busy city street, *People v Ricardo B.*, 73 NY2d 228 (1989); driving drunk in Manhattan while going 25 to 50 mph over the speed limit and disobeying traffic signs, *People v Maher*, 79 NY2d 978 (1989); and driving through a red light at 52 miles per hour, *People v Haney*, 30 NY2d 328 (1972). In contrast, in *People v. Perry*, 23 AD2d 492 (4th Dept 1986), affd, 70 NY2d 626 (1987), a court overturned a conviction where the defendant was driving at night and going 25 mph over the speed limit on a rural road when he struck a utility pole and killed a passenger, holding that such "conduct d[id] not constitute a gross

deviation from the ordinary standard of care held by those who share the community's general sense of right and wrong." Similarly, in *People v Badke*, 21 Misc3d 471, 477-78 (Suffolk Co Ct 2008), a court dismissed an indictment when the evidence failed to show "any other factor *in addition to speed* [that] convert[ed] Mr. Badke's actions to dangerous speeding" (emphasis in original).

Like *Badke* and *Perry*, the evidence does not establish that Officer Gironda's speeding was "dangerous speeding." Attempting to apprehend a suspected violator of the law is an emergency vehicle operation within VTL Section 1104(b)(3), under which speeding without police vehicle lights and sirens is permissible. Officer Gironda was traveling above the posted speed limit of 40 mph when the collision took place, but the evidence does not show any other culpable conduct. The evidence is that Officer Gironda was driving in the correct lane and there is no evidence he was impaired or distracted. He was speeding but was not going excessively fast, and he swerved to avoid Mr. Romero.

Based on the investigation, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Officer Gironda committed a crime when he caused Mr. Romero's death, and, as a result, will not present this case to a grand jury for consideration of criminal charges.

RECOMMENDATION

The Nassau County Police Department should administer Portable Breath Tests to police officers involved in collisions consistently and in close proximity to the collision time.

OSI has investigated a number of police-involved fatal vehicular collisions in the State of New York. An essential component of vehicular investigation is the determination of possible alcohol impairment. The NCPD has the capability of quickly and efficiently testing drivers for alcohol impairment by using Portable Breath Tests (PBTs) which are reliable and convenient. Because alcohol metabolizes from the body over time, the PBT should be administered soon after a collision to determine the blood alcohol content of the driver close in time to the moment of the crash. The PBT was administered in this case over two hours after the time of collision, despite the fact that investigating officers responded to the collision immediately. OSI therefore recommends that the NCPD administer PBTs in law enforcement related collisions consistently and reliably soon after the time of collision.

Dated: September 17, 2024