Office of the New York State Attorney General Letitia James

Office of Special Investigation

February 10, 2025

Report on the Investigation into the Death of Sabeeh Alalkawi

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 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 Sabeeh Alalkawi.

OVERVIEW

Shortly after midnight on February 22, 2023, Troy Police Department (TPD) Officer Justin Byrnes responded to a call the police dispatcher described as a "very active" incident with "yelling and screaming." PO Byrnes drove toward the address provided in the call by traveling west on Hoosick Street, a main road in Troy. He was going more than 70 mph as he entered the intersection with 15th Street against a standing red light, with his emergency lights and siren activated. Under New York's Vehicle and Traffic Law (VTL), Officer Byrnes was a police officer responding to an emergency and could exceed the speed limit and violate a standing red light as long as he exercised certain levels of care and was not reckless.

As PO Byrnes approached the intersection, Sabeeh Alalkawi was driving southbound on 15th Street at 33 mph, coming from PO Byrnes's right; PO Byrnes's view of Mr. Alalkawi's car was blocked by a row of buildings. Mr. Alalkawi had a green light. Mr. Alalkawi's car entered the intersection a split second before PO Byrnes's car. PO Byrnes braked and swerved but struck Mr. Alalkawi's car in the driver's side door, killing him. There was no evidence that PO Byrnes was impaired by alcohol or drugs or distracted by cell phone use.

After a thorough investigation, OSI will not seek charges against PO Byrnes because it concludes that a prosecutor could not prove beyond a reasonable doubt that PO Byrnes committed a crime when he caused Mr. Alalkawi's death.

FACTS

Video Compilation

The following link is to a compilation of the most relevant audio recordings and video footage from the incident: Alalkawi Video Compilation.

Before the Crash

On February 22, 2023, at 12:51 a.m., a TPD operator received a 911 call. The recording of the call captured people yelling and arguing. The operator asked twice for the address of the emergency while people shouted in the background. All the caller said was "319 Ninth Street," and hung up shortly after a man yelled, "You're not calling the police!" The call lasted less than 30 seconds, and no one answered the phone when the operator called back, according to the Computer Aided Dispatch (CAD) report.

TPD Officers Byrnes, Tanner King, Adam Harbour, and Nick Peter were working the midnight shift. At 12:50 a.m. PO Harbour was at the Cumberland Farms gas station on Hoosick Street and was getting ready to leave when POs King, Peter, and Byrnes pulled in, each in a separate car. At 12:53 a.m. the dispatcher radioed, "319, three nineteen, Ninth Street. Call taker states very active. Lot of activity in the background, gave the address then hung up. Don't know which floor. Lot of yelling and screaming. 319 Ninth Street."

According to a video recording from a Cumberland Farms security camera, PO Harbour left the gas station first, at 12:52 a.m.,[1] driving westbound on Hoosick Street. PO King left a minute later, turning his emergency lights on as he turned onto Hoosick Street. He was followed a minute later by PO Byrnes, with his emergency lights on. PO Peter left last, at 12:54 a.m., with his emergency lights on. PO Peter's car was the only one equipped with a dashboard camera, which showed that he activated his siren immediately. The Cumberland Farms cameras did not capture audio, so it is not known whether the other officers activated their sirens at that moment.

Hoosick Street is a two-way, four-lane paved road. The half mile traversed by PO Byrnes before the crash is straight and downhill with rows of buildings on both sides of the street. On the south side are businesses, including a Rite Aid drug store, the Empire Car used car dealership, the Hoosick Street Wine Cellar, and a Popeye's restaurant. On the north side are houses and apartment buildings, and a Hilton Garden Inn. At the 15th Street intersection are a McDonald's restaurant on the southwest corner, a Speedway gas station on the northwest corner, and a closed pizza shop on the northeast corner. The map below shows PO Byrnes's route and the locations of security cameras that recorded parts of the incident. The Google Earth image below the map shows the area and PO Byrnes's and Mr. Alalkawi's direction of travel.

[1] The time stamp on the Cumberland Farms camera was not synchronized with the times recorded for the police dispatches, and it is not clear if PO Harbour left before or after the dispatch concerning 319 Ninth Street.

The map above shows PO Byrnes's route and security cameras along the route. PO Byrnes drove from right to left (westbound) along the route marked in blue and Mr. Alalkawi drove from top to bottom (southbound) along 15th Street, at the left end of the map. The security cameras that recorded the video reviewed for this investigation are numbered from left to right: 1. McDonalds, 2. Speedway, 3. Popeye's, 4. SEFCU, 5. Recovery Sports Grill, 6. Hoosick Street Wine Cellar, 7. Empire Car, 8. Valero, 9. Cumberland Farms. The photo below shows the reverse angle, with PO Byrnes's route from left to right and arrows indicating where PO Byrnes's and Mr. Alalkawi's cars would have been a second or less before the collision, and the locations of Empire Car, Popeye's, McDonald's, and Speedway.

The security cameras near the 15th Street intersection recorded POs King and Harbour driving with their emergency lights activated. The security camera at Empire Car, 0.3 miles before (east of) the intersection, had audio capability and showed that POs King and Harbour drove with their sirens on. The security camera at Popeye's showed that they drove through the 15th Street intersection with a green light. The two cars turned north on Ninth Street to the address of the emergency call.

The security camera at Empire Car showed PO Byrnes driving west on Hoosick Street with his emergency lights on and his siren off. Six seconds before the crash the camera recorded the sound of a police siren, which continued until there was a sound like a car crash, at which point the siren immediately ended. OSI concludes from this and other evidence that PO Byrnes activated his siren six seconds before arriving at the 15th Street intersection.

The Five Seconds Leading to the Crash

As PO Byrnes drove past Empire Car, Registered Nurse CB[2] was waiting for the light on 15th Street, facing north, according to her interview with OSI. She saw two police cars drive by and was concerned more police cars might be coming down Hoosick Street as she waited for the green light. When the light turned green, she told OSI that she looked up the hill (to her right) for a police car and, seeing none, turned left onto Hoosick Street. Security camera footage shows her waiting at the green light for five seconds before making the turn. As CB was making the turn, PO Byrnes was driving westbound along Hoosick Street. PO Byrnes would have seen CB's car coming from his left, making a left turn in front of him from 15th Street onto Hoosick Street, and then continuing in the same direction of travel on Hoosick Street as PO Byrnes. Security cameras and the data from PO Byrnes's car's Event Data Recorder (EDR) showed that PO Byrnes braked, slowing from 88 to 68 mph, as CB's car crossed in front of him.

Mr. Alalkawi was driving southbound (from PO Byrnes's right) on 15th Street in a 2012 silver Honda Civic and approaching the intersection at a speed of 33 mph, according to the Civic's EDR data. Mr. Alalkawi's wife told OSI that he worked at Amante Pizzeria, had just finished his last pizza delivery for the day, and was on his way back to the pizzeria before returning home.

A security camera at the Popeye's restaurant on Hoosick Street captured the crash. Ten seconds before the crash the Popeye's camera showed that the traffic light changed to red for traffic going west on Hoosick Street, as PO Byrnes was. PO Byrnes entered the frame of the camera six seconds later, driving toward the red light, just as CB began turning onto Hoosick Street.

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

Zoomed-in still from Popeye's camera facing west, showing PO Byrnes, traveling westbound, approaching the red light six seconds before the crash. CB had the green light and was just starting to turn left onto Hoosick Street, from the left.

The Popeye's camera showed that PO Byrnes's brake lights appeared to turn on as CB made the left turn from 15th Street onto Hoosick Street. She completed her turn through the intersection and pulled over to the right side of Hoosick Street and stopped as PO Byrnes continued toward the red light. Just before PO Byrnes entered the intersection, the Popeye's camera showed that Mr. Alalkawi's car approached from the right (southbound) on 15th Street and entered the intersection. PO Byrnes's car struck Mr. Alalkawi's car near the driver's side door and the two vehicles went careening down Hoosick Street. The traffic light was still red for westbound traffic at the time of the collision.

A civilian, MS, whose car had a dashboard camera, was driving in the opposite direction (eastbound) on Hoosick Street when the collision occurred. Stills from that dashboard camera are below.

Enlarged still from civilian MS's dashboard camera facing eastbound, showing PO Byrnes's, Mr. Alalkawi's, and CB's positions a second before the crash. CB's car had pulled to the side of the road and stopped, beyond the intersection from PO Byrnes's point of view, and PO Byrnes and Mr. Alalkawi were about to enter the intersection and collide.

Still from civilian MS's dashboard camera, facing east, showing Mr. Alalkawi's car being struck on the driver's side door by PO Byrnes's SUV. Mr. Alalkawi's car was about halfway across the intersection when it was hit.

The EDR data from PO Byrnes's SUV indicates he was going 88 mph five seconds before the crash. He braked for 2.5 seconds, slowing to 68 mph, which coincides with CB's entering and then clearing the intersection. Two seconds before the crash, PO Byrnes pressed the gas pedal down 85-90% and held it there for one second, accelerating to 71 mph 0.5 second before the crash. At the moment of impact (shown as zero seconds in the EDR data) the EDR data show that PO Byrnes braked and turned the wheel, and that the car was traveling 65 mph.

The tables below show the EDR data for PO Byrnes's SUV and Mr. Alalkawi's Honda Civic. They show speed, accelerator pedal use, and brake pedal use for the five seconds before the crash, in half-second intervals. The maps below show the positions of the cars five seconds before the crash and two seconds before the crash, which is when PO Byrnes accelerated. Mr. Alalkawi's and PO Byrnes' positions on the maps are based on the speeds from the black box data, and CB's position is based on the security camera footage.

PO Byrnes's EDR data

Pre-Crash Data -5 to 0 sec [2 samples/sec] (First Record) - Table 1 of 2

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	88.3 [142]	OK	0.0	OK	On	OK	2,914	Non-engaged
- 4.5	85.6 [138]	OK	0.0	OK	On	OK	2,832	Non-engaged
- 4.0	81.2 [131]	OK	0.0	OK	On	OK	2,668	Non-engaged
- 3.5	75.9 [122]	OK	0.0	OK	On	OK	2,494	Non-engaged
- 3.0	71.3 [115]	OK	0.0	OK	On	OK	2,354	Non-engaged
- 2.5	68.7 [111]	OK	0.0	OK	On	OK	2,282	Non-engaged
- 2.0	68.7 [111]	OK	89.2	OK	Off	OK	2,480	Non-engaged
- 1.5	69.5 [112]	OK	84.2	OK	Off	OK	2,834	Non-engaged
- 1.0	70.4 [113]	OK	84.9	OK	Off	OK	2,978	Non-engaged
- 0.5	71.1 [114]	OK	0.0	OK	Off	OK	3,124	Non-engaged
0.0	65.2 [105]	OK	0.0	OK	On	OK	2,902	Engaged

Mr. Alalkawi's EDR Data:

Pre-Crash Data -5 to 0 sec [2 samples/sec] (Event Record 1)

(the most recent sampled values are recorded prior to the event)

Time Stamp (sec)	Speed, Vehicle Indicated (MPH [km/h])	PCM Derived Accelerator Pedal Position, % full	Service Brake (On, Off)	ABS Activity (On, Off)	Stability Control (On, Off, Engaged)	Steering Input (deg)	Engine RPM	Accelerator Pedal Position, % full
-5.0	34 [54]	0	On	Off	On Non-Engaged	5	1,400	0
-4.5	34 [54]	0	On	Off	On Non-Engaged	5	1,400	0
-4.0	32 [52]	0	On	Off	On Non-Engaged	5	1,400	0
-3.5	32 [51]	0	On	Off	On Non-Engaged	5	1,300	0
-3.0	32 [51]	0	On	Off	On Non-Engaged	0	1,300	0
-2.5	31 [50]	0	On	Off	On Non-Engaged	0	1,300	0
-2.0	31 [50]	0	On	Off	On Non-Engaged	5	1,300	0
-1.5	30 [49]	0	On	Off	On Non-Engaged	5	1,300	0
-1.0	30 [49]	0	On	Off	On Non-Engaged	5	1,100	0
-0.5	29 [47]	0	On	Off	On Non-Engaged	5	1,200	0
0.0	28 [45]	0	Off	Off	On Non-Engaged	0	1,000	0

Position of the three cars five seconds before the crash.

Position of the cars when PO Byrnes stopped braking and began accelerating toward the red light.

Crash

Mr. Alalkawi's car was halfway across the intersection when PO Byrnes's SUV crashed into his driver's side door at 70 mph, according to the EDR data and collision reconstruction report. The impact caused extensive damage and sent the car skidding down Hoosick Street. The car came to rest at the western entrance of the McDonald's, some one hundred feet from the intersection. After striking the Civic, PO Byrnes's police SUV continued forward and nearly collided with CB's car before stopping at the entrance to the Speedway gas station. Below are a still from the civilian dashcam (facing east) and two stills from Sgt. Charles Castle's Body Worn Camera (BWC) (facing west) showing the vehicles shortly after the collision.

Treatment

PO Peter arrived less than a minute after the crash. The footage from his dashboard camera showed that PO Byrnes had left his car to help Mr. Alalkawi. PO Byrnes activated his BWC at 12:59 a.m. and it showed that Mr. Alalkawi was unresponsive in the driver's seat of his car with his head covered in blood and the door next to him crushed. The footage showed that PO Byrnes checked Mr. Alalkawi's pulse from the passenger seat, saying he felt a faint pulse; he detached Mr. Alalkawi's seatbelt and checked his pulse again, saying he felt nothing. The footage showed that CB took PO Byrnes's place and began chest compressions while PO Peter held Mr. Alalkawi's neck from the back seat. CB said in a sworn statement that she asked to take over care of Mr. Alalkawi because she believed PO Byrnes was in shock. At 1:02 a.m., shortly after she began CPR, the Troy Fire Department arrived and assumed care of Mr. Alalkawi. At 1:27 a.m. security camera and BWC footage showed that the fire department extricated Mr. Alalkawi from his car and placed him in an ambulance. They brought Mr. Alalkawi to Samaritan Hospital where he was pronounced dead later that night.

MS

MS was a civilian who was driving eastbound on Hoosick Street and was about 400 feet from the 15th Street intersection when the crash occurred, according to the dashboard camera footage from his car. Just before 1:00 a.m., Sgt. Castle arrived and activated his BWC, which shows that MS walked over and told Sgt. Castle he had helped PO Byrnes out of his SUV and he appeared okay. He gave Sgt. Castle Mr. Alalkawi's cellphone, which he said he found on the ground near the McDonald's. He then described the event: "I was coming up the hill, your boy was coming down the hill. He started yielding to this, but the car blew through the fucking light, just like here," pointing to 15th Street, "and he fucking smoked him." He said PO Byrnes was "fully activated coming through the intersection" with lights and sirens. When Sgt. Castle asked him to clarify whether it was Mr. Alalkawi who ran the red light, MS said he was "not 100 percent" sure, and would have to look at the dashboard camera recording. When OSI interviewed MS he said he had reviewed the footage, and it was PO Byrnes who had run the red light.

PO Byrnes's Statements on BWC

According to Sgt. Castle's BWC, after he spoke to MS he walked over to PO Byrnes, who was shining a flashlight for CB as she performed chest compressions on Mr. Alalkawi. PO Byrnes said, "I'm good, I'm trying to help," and denied having any injuries. Sgt. Castle told PO Byrnes to rest. A few minutes later, at 1:04 a.m., Sgt. Castle's BWC showed that he approached PO Byrnes and asked him what happened. This exchange followed:

BYRNES: I was backing Tanner up. He got through the intersection a little bit ahead of me. I slowed down, lights and sirens. I did a quick look, punched it through, and…
CASTLE: You had the red, don't you remember, or no?
BYRNES: I don't know, Sarge.

CASTLE: But you gave a quick look? And then?
BYRNES: I looked quick to try and catch up to Tanner to get to that call because it was active.
CASTLE: You were activated with lights and sirens? You were active with lights and sirens?
BYRNES: Yeah.
KEBEA: He was coming north?
BYRNES: No, he was coming south.
KEBEA: He was coming south?
Byrnes: Yeah.
CASTLE: Alright.

Breath Test

Two officers took PO Byrnes to a hospital to be evaluated. At 1:40 a.m., PO Harbour, with BWC activated, administered a portable breath test to PO Byrnes. The footage showed that the test registered 0.00 blood alcohol content (BAC), indicating no alcohol in PO Byrnes's blood. PO Byrnes was released from the hospital after the portable breath test.

Incident at 319 Ninth Street

At 12:56 a.m., POs King, Harbour, Richard Romero, and Aaron Tilley arrived at 319 Ninth Street, activated their BWCs, and knocked on the door. The footage showed that a woman answered the door and said, "There's nothing going on, just brothers and sisters having a conversation." The officers entered the building and walked down the hall to the open front door of an apartment. The woman told the officers they did not have permission to enter and that everybody was fine. A man and woman inside the apartment told the officers that everyone was fine and asked them to leave. When the officers requested to speak with the 911 caller, the people in the apartment told them no one called 911, repeatedly said everyone was fine, that it was a brother and sister argument, and told them to leave. PO King said to keep the noise down as the officers left the building to respond to the crash. The incident lasted less than three minutes, and the officers said nothing relevant regarding PO Byrnes or the crash.

A review of TPD records shows seven incidents at that address in the previous two years, most of which were described in the reports as disturbances or domestic arguments, although one report involved a man in the street waving a gun. The caller's phone number for the February 22nd incident did not match any of the phone numbers from the previous incidents.

Crash Reconstruction

According to the CAD report, at 1:50 a.m. Sgt. Castle contacted the New York State Police (NYSP) and requested a response from the collision reconstruction unit (CRU). Investigator Amanda Puckett and other members of NYSP responded that night. In her report, Inv. Puckett wrote that CRU photographed the scene, retrieved the EDR data from both vehicles, and collected and analyzed the physical evidence, which included vehicular debris, fluid patterns,

pavement scarring, and tire marks. Based on her review of the evidence, Inv. Puckett concluded that Mr. Alalkawi was traveling southbound when he entered the 15th Street and Hoosick Steet intersection with the green light. As Mr. Alalkawi went across the intersection, PO Byrnes entered the same intersection westbound on Hoosick Street in the passing lane. PO Byrnes's SUV struck Mr. Alalkawi's car on the left side, with the area of impact in the middle of the intersection, in the Hoosick Street westbound passing lane. The collision redirected Mr. Alalkawi's car southwest, sending it crossing over both eastbound lanes and over the sidewalk before coming to rest at the entrance to the McDonald's parking lot, as indicated by tire marks tracks showing the vehicle's path.

Inv. Puckett noted that the physical evidence indicated Mr. Alalkawi was wearing his seatbelt, and that all the airbags deployed during the collision. She wrote that he was going 34 mph five seconds before the collision, and 28 mph at the time of the collision, with the brake applied for five seconds as he approached the intersection. Inv. Puckett said that PO Byrnes's SUV was traveling 88 mph five seconds before the collision, and that its brakes were applied for 2.5 seconds, slowing to 68 mph 2.5 seconds before the collision. The SUV's accelerator was applied until 0.5 second before the collision, when the brake was engaged and the SUV slowed to 65 mph. Inv. Puckett noted that a building on the northeast corner of the intersection at Hoosick Street and 15th Street blocked the view of Hoosick Steet to the east as a car approached southbound on 15th Street, and blocked the view of 15th Street to the north as a car approached westbound on Hoosick Street. She said it was unclear whether the siren was activated at the time of the collision.

Scene facing west.

Based on the foregoing, Inv. Puckett concluded, "The primary contributing factor for this collision was [a] failure to exercise due caution, while in emergency operation, when entering an intersection against a red light on the part of the operator of vehicle #1, Troy Police Department Officer Justin Byrnes."

Autopsy

Dr. Kia Newman performed the autopsy of Mr. Alalkawi on February 22, the day he died. In her report she noted that the toxicological analysis of Mr. Alalkawi's blood came back negative for alcohol and drugs. She concluded that the cause of Mr. Alalkawi's death was blunt force injuries to the head, neck, torso, and extremities, and that the manner of his death was "accident."

PO Byrnes's Background

PO Byrnes has been a member of TPD since 2019. Prior to joining TPD he served as a combat medic in the Army and did a nine-month tour in Afghanistan that ended in July 2014, according to a letter written by his former attorney.[3]

PO Byrnes was charged with running a steady red light, a violation of VTL 1111(d) (1), in May 2012, which he resolved with a plea to a parking infraction. In connection with conduct in October 2014, he was convicted in 2016 of driving 84 mph in a 55-mph zone.

In November 2014 he was charged with aggravated driving while intoxicated with a BAC of 0.18 percent. According to Watertown PO Kenny Noone's incident report, he pulled up behind PO Byrnes's car and saw him brake hard and skid to a stop to avoid running a red light. He followed PO Byrnes, who drove in the opposing lane of travel and at one point almost collided with PO Noone's car. When PO Noone activated his emergency lights, PO Byrnes drove off the road and almost struck a telephone pole before going into a snowbank. During the traffic stop, PO Byrnes said he was the designated driver, and he was "trying to take my friends home safe" to Fort Drum. He said he had "one to two drinks," but failed the Standard Field Sobriety Tests (SFSTs). A breath test at the police station indicated BAC of .18. In March 2015, he pleaded guilty to the reduced charge of driving while intoxicated, a misdemeanor, and had his license revoked for six months.[4] He also had to install an interlock device for at least six months once he resumed driving. On June 9, 2015, the court received a "Declaration of Delinquency" from the probation officer in charge of monitoring his interlock device. According to the letter, PO Byrnes failed to have his interlock serviced on two occasions and did not respond to the probation officer's repeated phone calls to discuss the matter.[5] The court issued a bench warrant. According to court paperwork, in October 2015 the defendant applied for the removal of the interlock device, and the court granted the request. His license was suspended again in 2016 for failure to pay the driver's responsibility assessment, a fee

[3] This information is taken from a letter the attorney wrote to the Assistant District Attorney prosecuting the 2014 DWI case against PO Byrnes.

[4] Although a defendant's license is revoked, he or she can often enroll in the Impaired Driver Program and secure a conditional license that allows the defendant to go to work, school, or treatment.

[5] Servicing the interlock allows the probation officer to retrieve the interlock data and check for violations.

charged by the state for certain VTL convictions or point accumulations, according to court paperwork.

After becoming a police officer in 2019 PO Byrnes was involved in two accidents while on duty. According to a July 2020 accident report, PO Byrnes was parked at the police station when he received an emergency call. He backed out of the parking lot and into a car that was on 6th Avenue in Troy waiting for the red light. According to the report, the collision caused minimal damage. The second incident occurred in July 2021 when, according to the accident report, PO Byrnes's police car suffered major damage when a deer ran into it.

According to the Troy Chief of Police, Dan DeWolf, PO Byrnes had no founded complaints against him.

Selected Troy Police Department Driving Policies

General Order No. 08.12 is TPD's policy for emergency responses. The purpose of the policy is to "facilitate the safety of department personnel and citizens by ensuring that department members are aware of the legal requirements and department policies governing their operation of police department vehicles." The policy states that "all members of the Troy Police Department are responsible for exercising due care and defensive driving techniques when operating vehicles." The policy requires officers to operate their vehicles "as specified" in Section 1104 of the VTL and related general orders. The policy states, "Personnel responding to calls for service should remember that their first task is to arrive safely. Operators should be aware of and consider traffic (vehicle and pedestrian), weather, and time of day and road conditions…the driver of a police vehicle…is not relieved from their duty to drive with reasonable care and consideration for all persons using the highway [emphasis in original]."

The policy defines "emergency response mode" as "a response in which the operator of the police vehicle utilizes any of the vehicle's visual or audible emergency equipment," which includes the red and blue overhead lights, and the siren. The policy requires the overhead lights to be activated when in emergency response mode. It also states, "the siren should be used in emergency response mode," and may be excluded, or used sporadically, only when the responding officer "can articulate sound judgment for doing so."

The policy sets forth what types of calls should be treated as requiring an emergency response from an officer. Included in that list are calls for an "assault in progress/fight," "disturbance calls with both parties at the scene," and "domestic incidents with threats of violence." The policy guidelines on emergency response include:

1. Drive safely. Do not jeopardize your safety or that of other motorist and pedestrians.
    a. Although the Vehicle and Traffic Law gives you certain legal privileges during emergency driving, it DOES NOT permit you to operate a vehicle in a dangerous or reckless manner.

b. You cannot help anybody if you do not arrive at the scene because you were involved in an accident.

2. Do not place total confidence in the emergency light and siren.

a. Motorist may not see your emergency lights if you are too close to them.

b. Motorist may not hear your siren if they are listening to a car radio, CB, alternatively, stereo….

5. Approach ALL intersections, railroad crossings, and other hazardous areas CAUTIOUSLY. Avoid passing vehicles at intersections.

6. Give motorists an opportunity to yield to your patrol vehicle.

7. Reduce speed as necessary upon approaching all stops signs, traffic signals exhibiting a steady red light, or stop signs and yield to any vehicles which are obviously not yielding to you. Proceed only after you are sure that other vehicles in the intersection are yielding your emergency vehicle.

PO Byrnes's Training

According to PO Byrnes's training records, in July 2019 PO Byrnes joined the Troy Police Department and took a 26-week training course at the "Zone 5 Regional Law Enforcement Training Academy,"[6] which included 40 hours of Emergency Vehicle Operation and Control (EVOC), six hours of defensive driving, and 192 hours of supervised field training.

Driving Trainer Jay Waring

OSI Spoke to retired Deputy Jay Waring, PO Byrnes's EVOC instructor at the academy. Retired Deputy Waring was a member of the Saratoga County Sheriff's Office for 33 years and an EVOC trainer at the academy for over 20 years. He told OSI that EVOC training at the academy consisted of skills learned on a closed track followed by a discussion of how those skills should be applied on the job.

One skill was high speed braking, where an officer drove 35 to 40 mph and would be suddenly told on the radio to break hard and steer to the right or left to avoid a secondary collision. He said this was the most difficult skill to teach.

Mr. Waring said that in the discussion portions of the training he repeatedly emphasized that officers would not be able to help anyone if they crashed on the way to a call; in fact, their fellow officers would now be tasked with responding to two calls, the original and the crash. He taught them that the way you respond to a call is determined by the nature of the call. He said, "shots fired, officer in need of assistance" and a child drowning or similar emergency

[6] New York's Training Zone 5 is composed of Albany, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington Counties.

would be the highest priority call. Violence and the presence of a weapon would also require an aggressive response. On the other hand, if an officer was responding to a domestic call with no description of a weapon and "just yelling or screaming," an officer should not drive too aggressively. He told OSI that he once reviewed dashboard camera of an officer who drove 95 mph to a domestic and said such conduct was totally unacceptable.

Mr. Waring said he taught cadets that they could not "blow through red lights." He taught them to use "due care" and make sure no one was coming before proceeding through a red light. He said "due care" depended on your surroundings, and an officer should drive more carefully on a city road than an open county road. When asked if there is ever a type of call that would justify driving 70-80 mph through a red light on a city road, he could not think of one, but said each call is different and has to be assessed based on the facts known to the officer.

When asked if he remembered, PO Byrnes from teaching him at the academy in 2019, he said he did not remember him.

"Below 100" Presentation

PO Byrnes's training at the academy included a PowerPoint presentation titled "Below 100," focusing on reducing line-of-duty deaths, and highlighting the risks of recklessly speeding to a call. According to the PowerPoint, when officers drive at a high speed, their blood pressure and heart rate increase, they experience tunnel vision, their depth perception is diminished, and the car becomes difficult to control.

The PowerPoint showed nine videos of real-life incidents where police officers crashed while driving at high speeds, seriously injuring or killing a civilian. These videos included: dashboard camera footage of a Minnesota police officer driving through a red light at 74 mph without his lights and sirens activated and striking a civilian's car; a Dallas police officer driving 30 mph over the speed limit without lights and sirens and hitting a boy on a bicycle; news footage discussing Georgia state trooper Donald Crozier, who was convicted of vehicular homicide after he drove through a red light and struck an SUV, killing the passenger; and news footage of Matthew Mitchell, who pleaded guilty to two counts of reckless homicide because he lost control of his police car while driving 126 mph, talking on his cellphone, and using the car's dashboard computer, and crashed head-on into a car killing two young sisters.

Interviews with Officers

PO Byrnes declined OSI's request for an interview through his attorney.

OSI interviewed Sgt. Castle and POs Peter, Romero, King, Ewing, Ray, Tilley, Haller, and Kebea.

In their interviews, the officers agreed that an officer responding to an emergency had to slow down and make sure the intersection was clear before proceeding through a red traffic light. The officers had different recollections of their emergency response policy. Some said the officer has to slow down before proceeding through a red light; one said the officer has to

stop; another said an officer could only go 20 mph over the speed limit; and one officer admitted he had not read the policy. The officers agreed that while Hoosick Street is a very busy street during the day it is less busy at night, although there are often cars and pedestrians around the intersection of Hoosick Street and 15th Street, particularly at the McDonald's. Finally, every officer agreed that, if an officer was driving west on Hoosick Street, their view of traffic approaching from the right on 15th Street would be blocked by buildings, and the officer would have to slow down to make sure the intersection was clear before proceeding through a red light.

DMV Hearing

Administrative Law Judge Elizabeth Niemi of the New York Department of Motor Vehicles (DMV) held two hearings to investigate the crash and determine if any action should be taken on PO Byrnes driving privileges. PO Peters, called to testify by PO Byrnes's attorney, testified that the officers were dispatched to an unknown disturbance that dispatch described as "sounding physical and extremely active." He testified that dispatch described it as a domestic violence incident, which he felt required a quick response because "the potential for violence at domestic situations cannot be understated." He testified that he was the last of four officers to leave the Cumberland Farms on Hoosick Street to respond to the call, and was about 30 seconds behind PO Byrnes. He testified all the officers had their lights and sirens activated. According to his testimony, he drove 60-70 mph on Hoosick Street until he came upon PO Byrnes's severely damaged car resting sideways in the westbound lane with the airbags deployed. He said he did not see the collision. He notified dispatch and left his car to speak to PO Byrnes, who was standing outside his vehicle and said he was okay. He testified they went to help an unconscious Mr. Alalkawi sitting in a severely damaged gray Honda. As they attempted to stabilize him, an off-duty nurse came over and helped them until the fire department arrived and took over care of Mr. Alalkawi.

Regarding his training, PO Peters testified that when he is proceeding through a red traffic light with lights and sirens activated, he was trained to make sure his lane of travel is clear before proceeding through the light. He testified there are buildings on both corners of the intersection. where the crash took place.

ALJ Niemi issued a written decision suspending PO Byrnes's driving privileges. In making that decision, she considered the officers' testimony, the accident reports, and the NYSP Accident Reconstruction Report. In her decision, ALJ Niemi highlighted the speeds of PO Byrnes and Mr. Alalkawi just prior to the crash, the building blocking PO Byrnes's view of approaching traffic on 15th Street, and the conclusion of the reconstruction report finding that the primary contributing factor to the crash was PO Byrnes's "failure to exercise due care." ALJ Niemi concluded that VTL 1104 did not protect PO Byrnes actions, as he "acted in reckless disregard to the safety of others on the roadway when he passed through a steady red traffic signal at a blind intersection traveling approximately 88 miles an hour," and suspended his driving privileges.

PO Byrnes's Employment Status

In July 2024, TPD terminated PO Byrnes's employment with the police department.

LEGAL ANALYSIS

To convict an officer for causing a death while responding to an emergency in his police car, OSI would need to prove beyond a reasonable doubt that the officer's actions were not protected by Vehicle and Traffic Law Section 1104 (VTL 1104), and that the officer was guilty of a crime 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.

Under VTL 1104, "the driver of an authorized emergency vehicle, when involved in an emergency operation" [7] may "proceed past a steady red signal…but only after slowing down as may be necessary for safe operation," and the driver 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, quoting Prosser and Keeton, Torts § 34, at 213 (5th ed).

The 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

[7] VTL Section 114-B defines "Emergency Operation" as "the operation…of an authorized emergency vehicle, when such vehicle is engaged in… 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 materials or other emergency."

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.

Proving Recklessness

Determining whether PO Byrnes recklessly disregarded the safety of others when he sped through a red traffic light is a "fact-specific inquiry" that balances "the precautionary measures taken by [PO Byrnes]," the degree of risk his actions posed to motorists and pedestrians, and the officer's "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

Assuming OSI were able to prove beyond a reasonable doubt that PO Byrnes recklessly exercised his privilege to speed and drive through a red traffic light, it would still need to prove that PO Byrnes was guilty of a crime.

OSI believes it could not charge PO Byrnes with criminally negligent homicide because a court would likely find that VTL 1104 protects the officer from harmful conduct unless it is committed recklessly or intentionally. The criminal charge that requires recklessness is Manslaughter in the Second Degree, PL 125.15(1). A person is guilty of Manslaughter in the Second Degree when that person "recklessly causes the death of another person." There is no question that PO Byrnes caused the death of Mr. Alalkawi; the question is whether he did so recklessly, as defined in the Penal Law.

Under 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 PO Byrnes was aware of and consciously disregarded that proceeding through a red light at a high rate of speed, with lights and sirens activated, with minimal precautionary slowing, and without visibility to crossing traffic, 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 PO Byrnes was intoxicated, and there is no evidence that he was improperly distracted by cellphone use or otherwise prior to the crash.

OSI believes that it could not prove beyond a reasonable doubt that PO Byrnes committed reckless manslaughter. The investigation shows that PO Byrnes took some precautions before passing through the red traffic light at the intersection of Hoosick Street and 15th Street. Surveillance footage shows PO Byrnes activate his emergency lights leaving the Cumberland Farms and activate his siren six seconds before the crash. He slowed down when CB made a left onto Hoosick Street. When CB cleared the intersection, PO Byrnes briefly accelerated, indicating he was not aware Mr. Alalkawi was approaching the intersection and they were about to crash. When he did see Mr. Alalkawi, PO Byrnes braked hard and turned the wheel to avoid the collision. Immediately afterwards, he provided medical care to Mr. Alalkawi. Given these precautionary and reactionary measures, OSI believes it would not be able to prove beyond a reasonable doubt that PO Byrnes committed Manslaughter in the Second Degree.

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

Dated: February 10, 2025