Office of the New York State Attorney General Letitia James

Office of Special Investigation

March 11, 2025

Report on the Investigation into the Death of Yi Qin Chen

INTRODUCTION

New York Executive Law 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 a peace officer, as defined. When OSI does not seek charges, as in this case, Section 70-b requires OSI to issue a public report. This is the public report of OSI's investigation of the death of Yi Qin Chen, who was struck on November 13, 2023, by a car driven by Louis Galasso, an off-duty peace officer employed by the New York City Department of Sanitation (DOS) as Ms. Chen was crossing 64th Street at the intersection with Eleventh Avenue, in Brooklyn. Ms. Chen died of her injuries the next day. Having thoroughly investigated the matter and analyzed the law, OSI concludes a prosecutor would not be able to prove beyond a reasonable doubt at trial that Officer Galasso committed a crime when he caused Ms. Chen's death and, therefore, will not seek charges.

FACTS

Video

Eleventh Avenue is a two-lane, two-direction street running northeast-southwest. 64th Street is a one-way street, with southeast traffic, which crosses Eleventh Avenue. There are overheard traffic signals and pedestrian crosswalk signals at the intersection. Both streets are lined with storefronts. Security video from a camera near the intersection showed that on November 13, 2023 a pickup truck, later determined to be driven by Officer Galasso, was traveling southwest-bound on Eleventh Avenue, and that, at the same time, a person, later identified as Ms. Chen, was walking on the sidewalk of Eleventh Avenue, on the side of the street across from Officer Galasso's lane, in the same direction. The timestamp on the video was 9:29 p.m. The video showed that Ms. Chen walked into the crosswalk across 64th Street and that Officer Galasso's truck struck her in the crosswalk as the truck made a left hand turn onto 64th Street. Ms. Chen had a steady "walk" signal and Officer Galasso had a green light. Video showed that, after the collision, Officer Galasso stopped his truck, got out, and walked toward Ms. Chen, though the camera does not show Mr. Chen's position. Officer Galasso then returned to his truck and got a cell phone. See photos below, Figures 1 through 5.

Figure 1: Google Earth image of the incident area. The yellow arrows show Ms. Chen's path, and the blue arrows show Officer Galasso's path. The red X shows the site of the collision.

Figure 2: NYPD Collision Investigation Squad (CIS) photo of Officer Galasso's pickup truck.

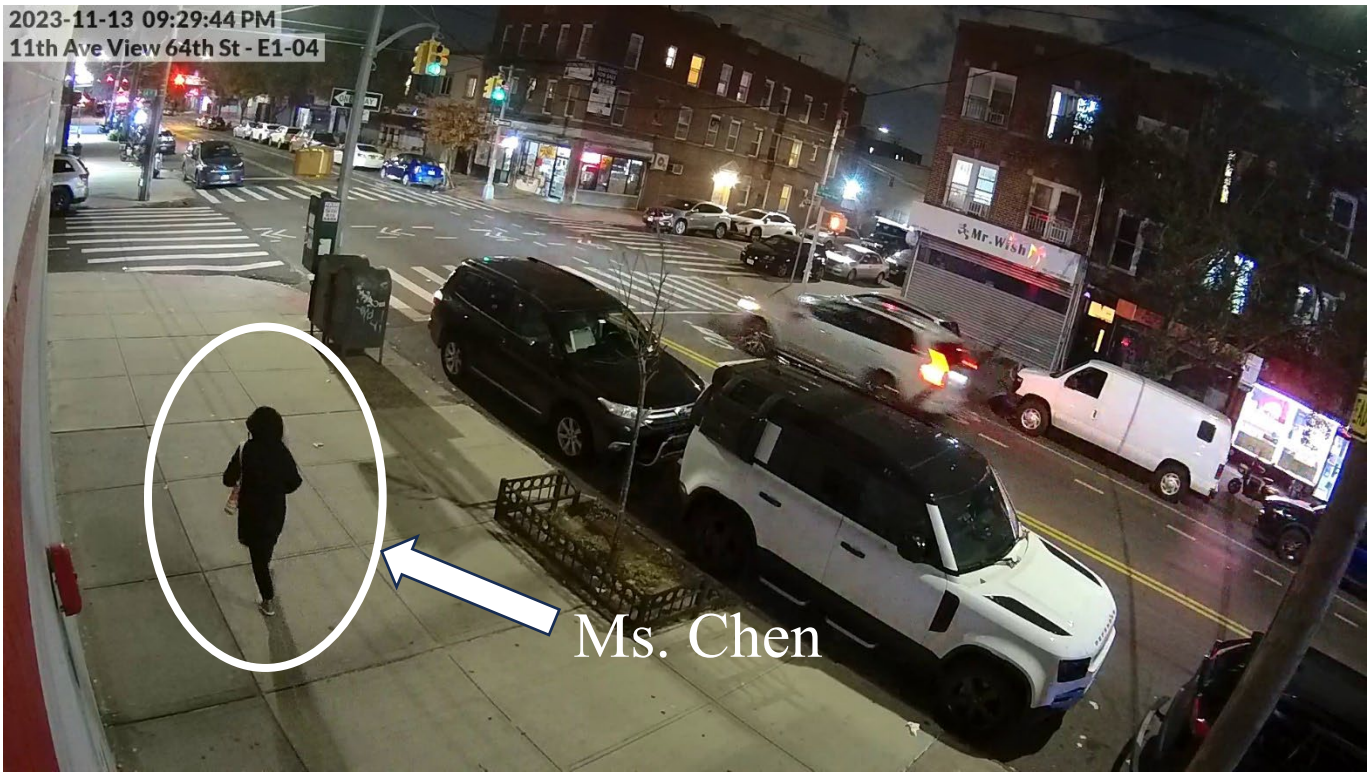

Figure 3: Still from security video of Ms. Chen walking on Eleventh Avenue.

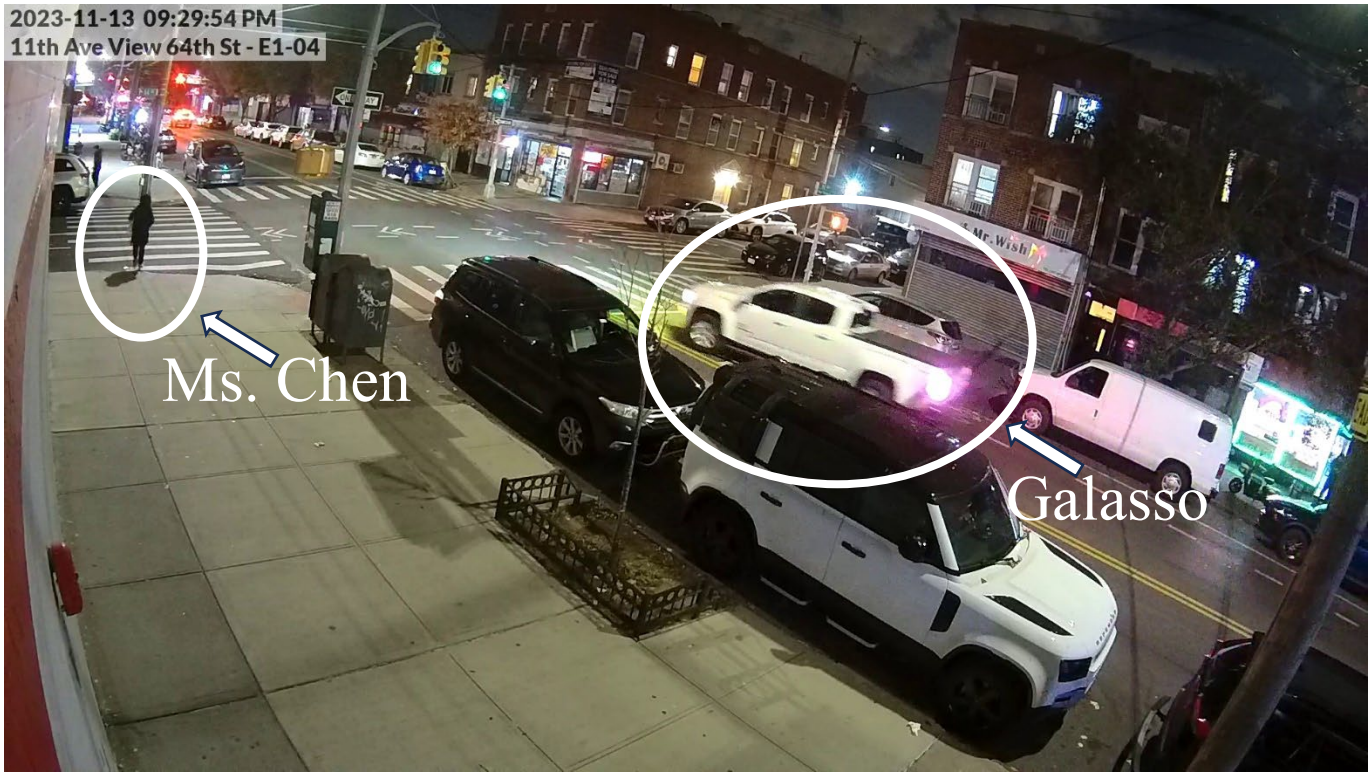

Figure 4: Still from security video showing Ms. Chen and Officer Galasso's truck.

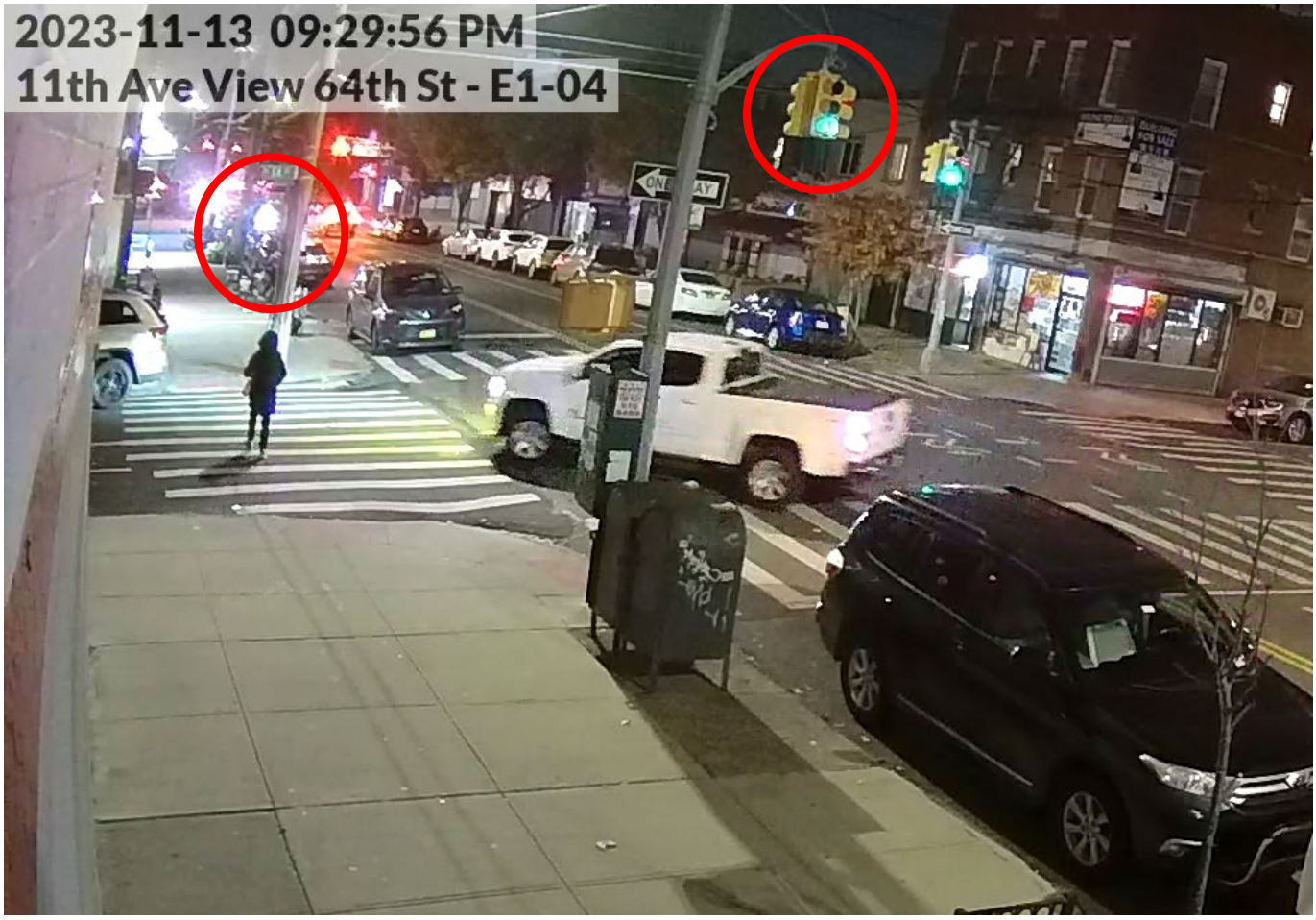

Figure 5: Still from security video of the moment before *the collision, with the walk signal and green light circled.*

Officer Statements

OSI asked Officer Galasso for an interview, but, through his attorney, he refused.

After the collision, NYPD's Collision Investigation Squad (CIS) responded to the scene and, among other things, conducted a recorded interview of Officer Galasso. In the recording Officer Galasso said he was on his way to work at DOS, at 1824 Shore Parkway, Brooklyn, and that his shift was due to start at 10:00 p.m. Officer Galasso denied using his cell phone at the time of the incident; he said his phone was in its windshield mount at the time and was being used to play music. Officer Galasso allowed the CIS detective to inspect his phone to confirm this. Officer Galasso also consented to CIS's downloading the data from his truck's EDR.

Sobriety Tests

CIS asked Officer Galasso to submit to sobriety tests, and he agreed. A Preliminary Breath Test (PBT) resulted in a reading of 0.00% blood alcohol content (BAC). (A PBT device is a handheld initial assessment tool which tests BAC by analyzing a breath sample.) Officer Galasso provided a saliva sample to be tested on the Drager drug testing system (DTS) which yielded a negative result for the presence of drugs or metabolites. (DTS is a roadside device which analyzes saliva for drugs such as

amphetamines, opiates including methadone, cocaine and metabolites, benzodiazepines, and cannabinoids.) CIS Detectives noted that they observed no physical signs of impairment or intoxication.

CIS inspected the truck and determined that Officer Galasso struck Ms. Chen with the front driver's side, leaving a small crack in the hood guard, see Figure 6 below.

Figure 6: CIS photo of damage on Officer Galasso's truck.

Speed Estimate

The CIS detectives secured data from the truck's Event Data Recorder (EDR). An EDR records vehicle data for a very brief period of time before, during, and after a crash. CIS provided the data to OSI, and OSI provided it, as well as video and other information, to a collision reconstruction expert, Michael O'Connor of Lange Technical Services, Ltd. Mr. O'Connor retired from NYPD in 2017 after 25 years of service, including 15 years as a detective in CIS, where he investigated over 1000 vehicle collisions, including 750 fatal/serious collisions. Since his retirement, he has worked for Lange Technical Services investigating collisions. Mr. O'Connor holds many certifications in collision reconstruction and investigation and has testified in civil and criminal court as an expert.

Mr. O'Connor said the EDR did not record data at the time of the collision, probably because the impact of the collision was not strong enough to trigger the recording function. However, using the security video, Mr. O'Connor estimated the truck's speed at the time of impact as no more than 10 mph.

Phone Records

OSI obtained phone records for Officer Galasso, which show that he received an incoming call at 8:52 p.m. In Officer Galasso's recorded interview, the CIS officer said, as he was inspecting the phone, that the last call was 23 minutes long, which would have this incoming call ending at 9:15 p.m., 14 minutes prior to the crash, according to the security video time stamps. No other calls or text messages are shown in the records until after the collision.

Autopsy

Dr. Michelle Stram of the New York City Office of the Chief Medical Examiner conducted the autopsy and determined that Ms. Chen suffered injuries to her head, torso and extremities. She determined Ms. Chen's cause of death to be "multiple blunt force trauma injuries" and deemed the manner of death to be "accidental."

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 (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).

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.

The evidence in this investigation does not meet the standard the courts have set for proof of dangerous speeding or other "seriously blameworthy conduct." 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."

Like *Badke* and *Perry*, the evidence does not establish that Officer Galasso's speed was "dangerous speeding," as his speed was estimated to be no more than 10 mph. No screeching tires can be heard on the video of the crash, nor was any rubber residue found on the roadway that might have been caused by Mr. Galasso.

Based on the investigation, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Mr. Galasso committed a crime when he caused Ms. Chen's death, and, as a result, 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: March 11, 2025