Office of the New York State Attorney General Letitia James

Office of Special Investigation

December 12, 2024

Report on the Investigation into the Death of Zabina Gafoor

DEATH OF ZABINA GAFOOR
FEBRUARY 17, 2023

SUMMARY

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

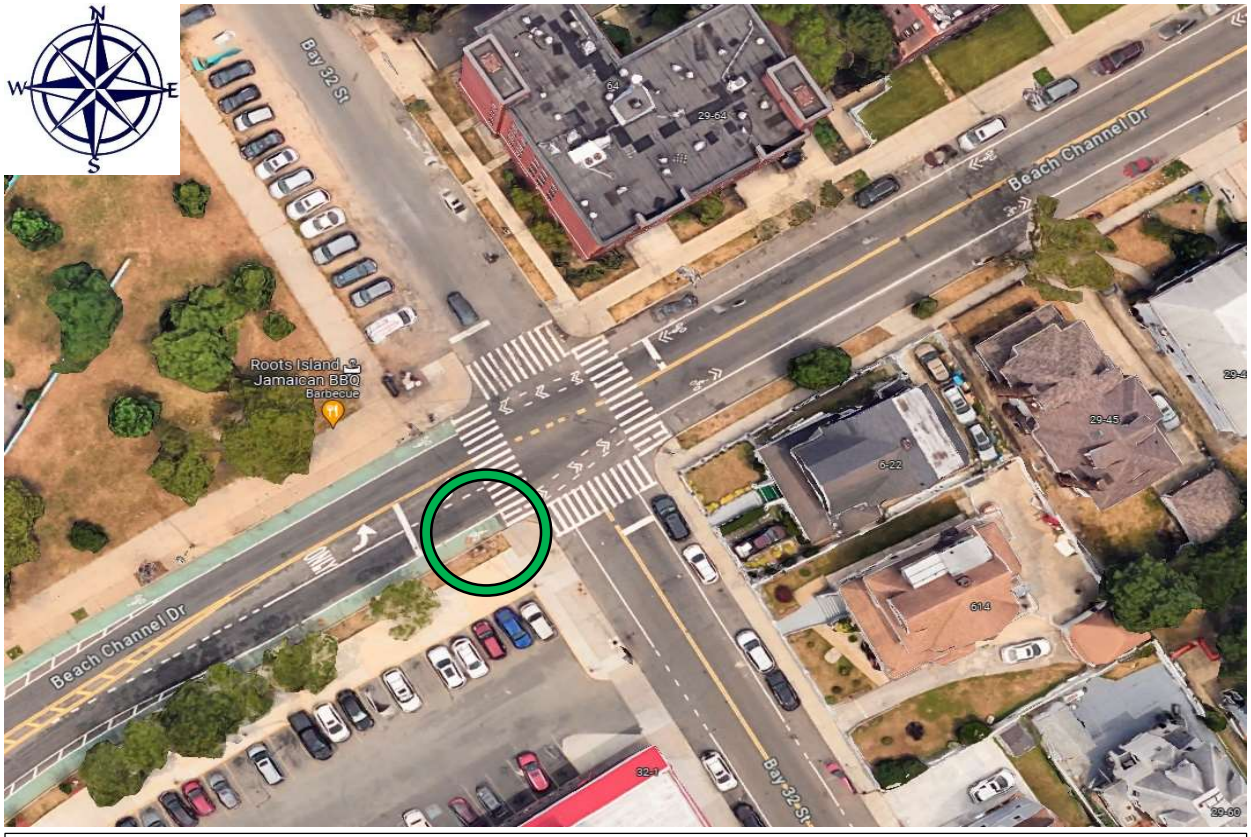
On February 17, 2023, at 8:32 p.m., Officer Osorio was driving a marked radio motor patrol car (RMP) with siren and turret lights activated, responding, with other officers, to a call of "officer in need of additional units." He was driving on Beach Channel Drive in Far Rockaway, Queens, a local road with a 25-mph speed limit, at speeds at times exceeding 70 mph. As he approached Bay 32nd Street there was a car in front of him. The light at the intersection was green, but the car slowed down to make a left turn. Officer Osorio attempted to drive around the car by going into the opposing lane of traffic and passing it on the left, but the car turned left at the intersection and the RMP and the car collided. The RMP's momentum and the collision sent the RMP diagonally across the intersection, where it struck Ms. Gafoor, who was standing just off the curb, in the bike lane of Beach Channel Drive. She died of her injuries.

Having thoroughly investigated the matter and analyzed the law, OSI concludes a prosecutor would not be able to prove beyond a reasonable doubt that Officer Osorio committed a crime when he caused Ms. Gafoor's death. Therefore will not seek charges and closes the matter with the issuance of this report.

FACTS

Pre-Collision

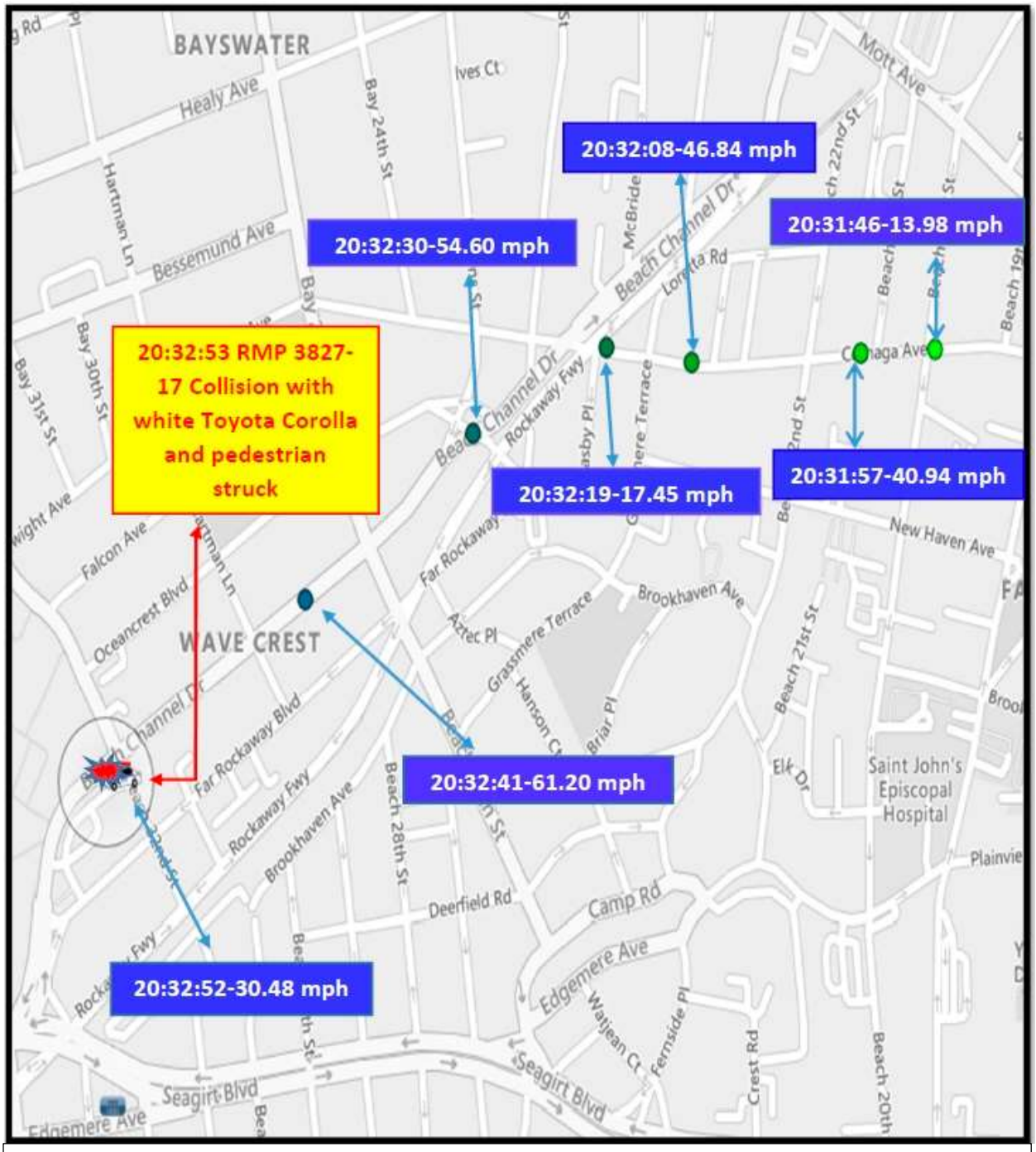
Before the collision, video from a New York City Department of Transportation (DOT) camera showed Ms. Gafoor standing in the bike lane along the south side of Beach Channel Drive, on the southwest side of the intersection with Bay 32nd Street, as shown in the map and still photo below.



Google Maps aerial view of the intersection of Beach Channel Drive and Bay 32nd Street. The spot where Ms. Gafoor was standing just before the collision, in the bike lane, is circled in green. Before the collision, the police car was driving from the upper right toward the intersection (westbound) along Beach Channel Drive.

Still from a New York City Department of Transportation (DOT) camera, just before the collision, showing Ms. Gafoor standing in the bike lane (circled in green).

According to NYPD dispatch records, on February 17, 2023, at 8:30 p.m., officers radioed "10-85" (officer in need of additional units) for assistance in making an arrest at Beach Channel Drive and Beach 51st Street. Officer Osorio, in uniform and driving a marked RMP, responded with Officers Xavier Alvarado and Osvaldo Nunez and Detective Jacqueline Demerest. Officer Osorio left the 101st Precinct stationhouse and drove west on Cornaga Avenue and then southwest on Beach Channel Drive toward Beach 51st Street. The map of the route shown below is taken from NYPD's Automated Vehicle Location (AVL) system, which shows the position and speed of police cars at 10-second intervals via information from GPS satellites.



AVL map of Officer Osorio's route prior to the collision.

The Collision

In an interview with OSI (described in more detail later in this report), Officer Osorio said he was traveling westbound on Beach Channel Drive toward Bay 32nd Street, responding to an emergency. The traffic light was green, and he saw cars in front of him in the westbound lane.

Officer Osorio said he crossed the double-yellow line into the eastbound lane because he did not see any cars coming toward him from the other direction. He saw a white Toyota in the westbound lane at the intersection, slowing down, and thought it had stopped to let him pass, but instead it turned left in front of him, and the cars collided. Based on data from the Event Data Recorder (EDR, explained in more detail later in this report) in Officer Osorio's RMP, he was going 54.5 mph when he collided with the Toyota. After colliding with the Toyota, the RMP struck Ms. Gafoor who was standing in the bike lane diagonally across the intersection.

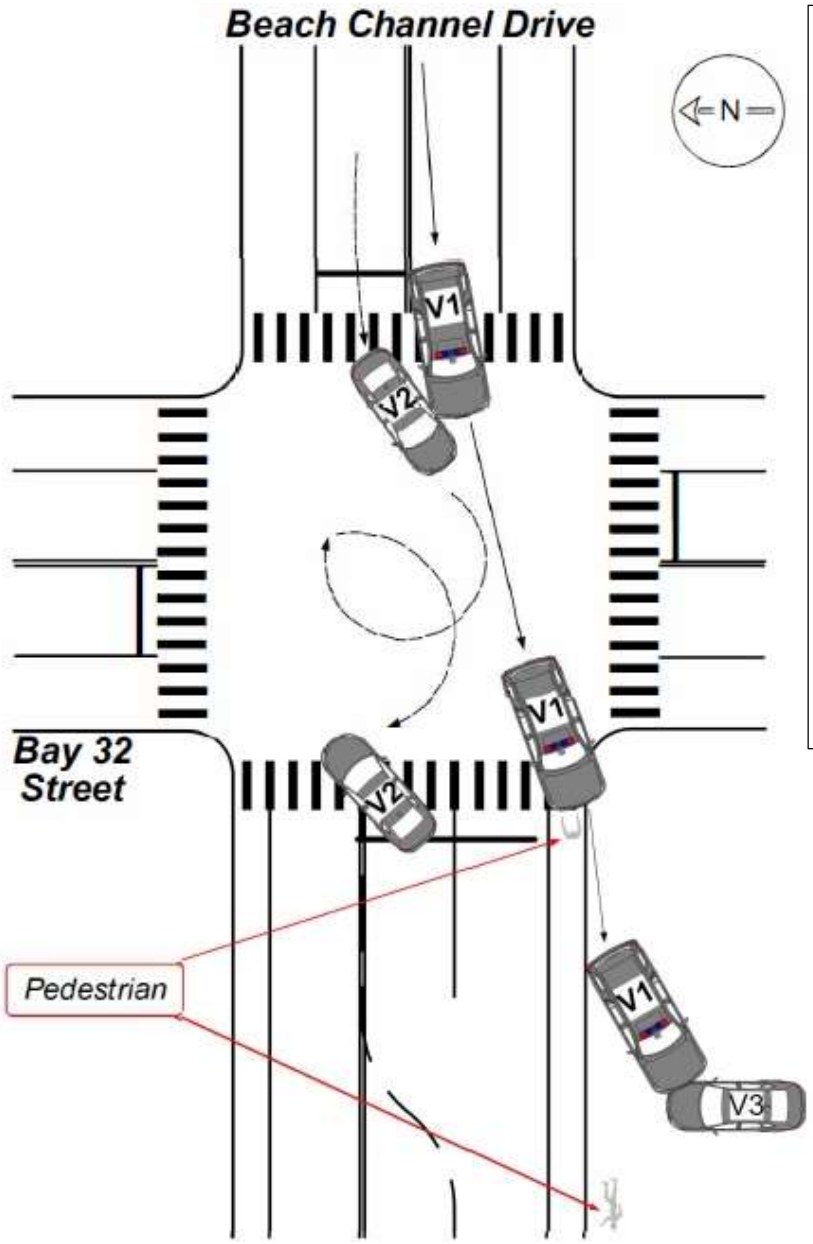
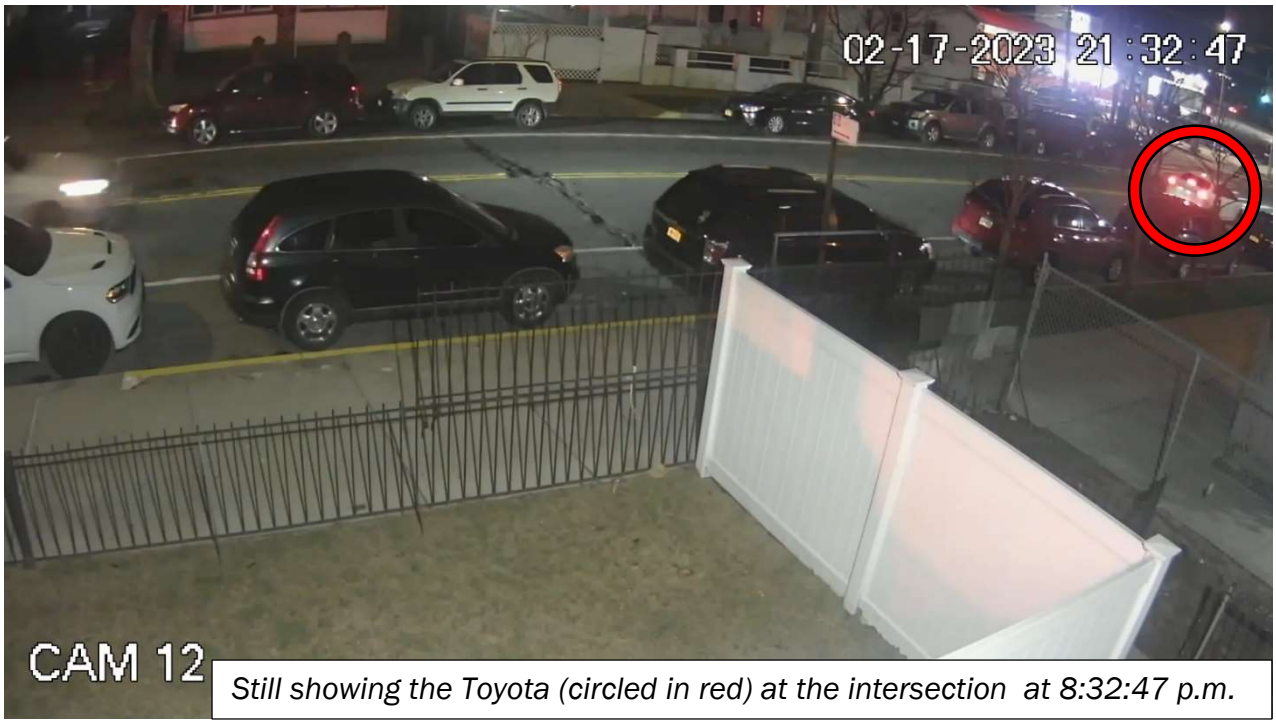


Diagram (not to scale) prepared by the NYPD Highway District Collision Investigation Squad (CIS). V1 is Officer Osorio's car, V2 is the white Toyota, V3 is a parked car, and Pedestrian is Ms. Gafoor, shown both where she was standing before the collision and where her body landed after the collision.

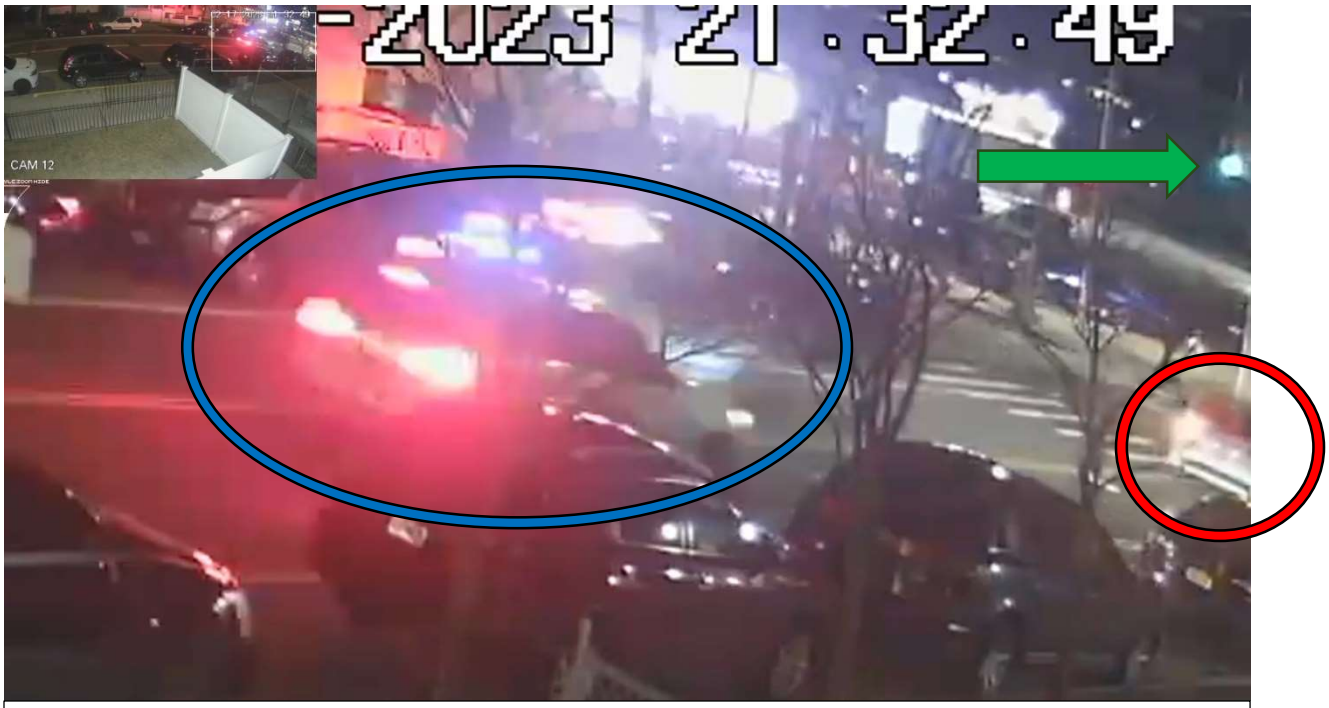
2932 Beach Channel Drive Security Video

External cameras from 2932 Beach Channel Drive, a residential building northeast of the intersection, showed the collision. The video can be seen here. Below are stills from the video (the time stamp in the video was an hour ahead of real time):

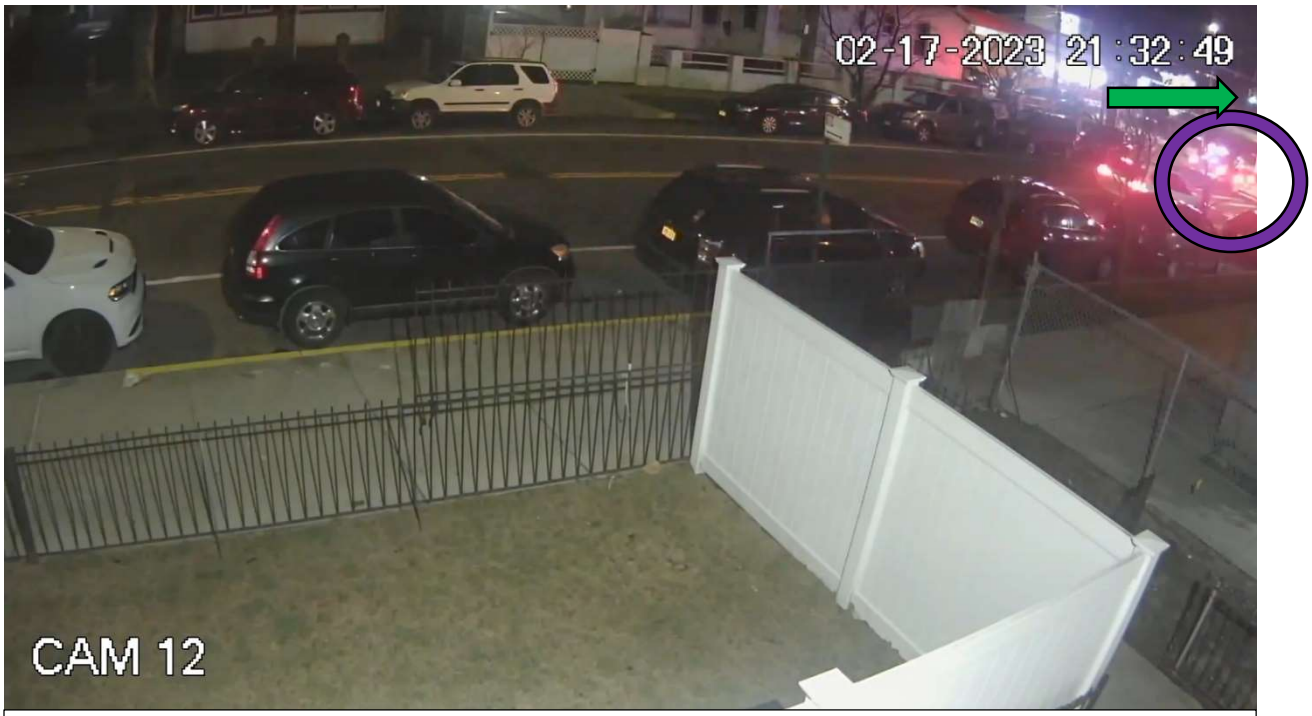


Still showing the Toyota (circled in red) at the intersection at 8:32:47 p.m.

Still showing Officer Osorio's car (circled in blue) approaching the intersection, westbound in the eastbound lane, at 8:32:48 p.m., one second later.



Zoomed-in still showing the traffic light was green (green arrow), at 8:32:49 p.m.

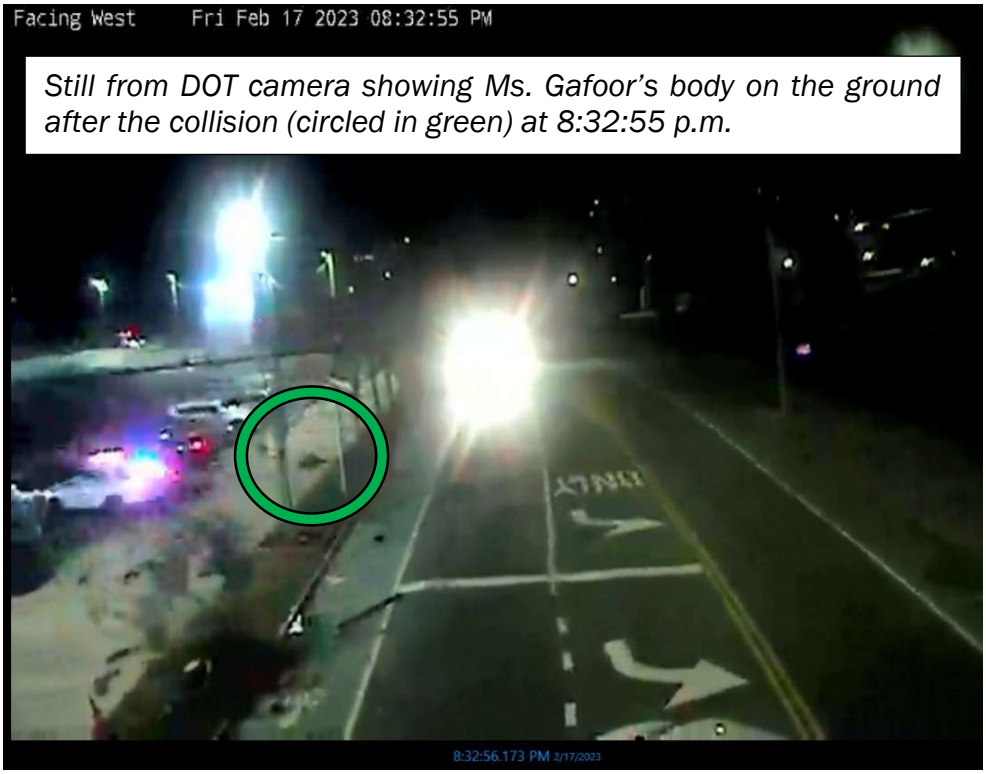


Still showing the police car colliding with the Toyota (circled in purple), at 8:32:49 p.m.

DOT Video

The DOT camera facing west at the intersection of Beach Channel Drive and Bay 32nd Street showed the collision. The video can be seen here. Stills from the video are below:

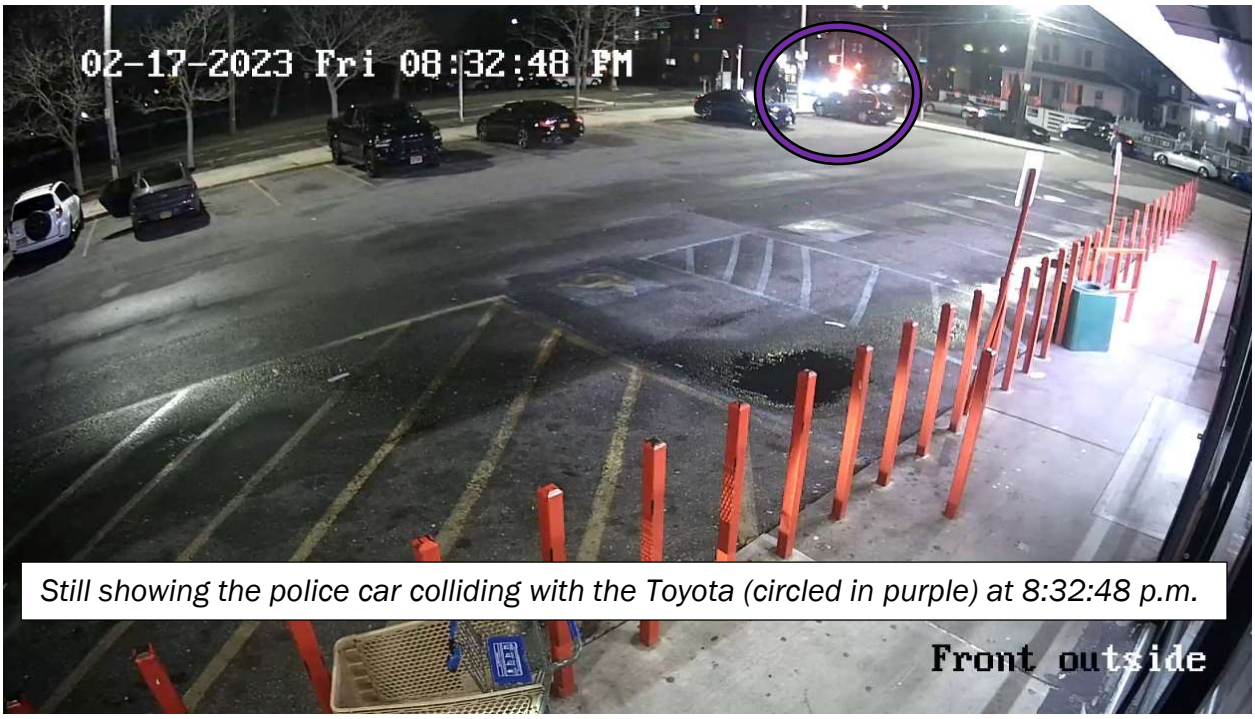
Still from DOT camera showing the police car colliding with Ms. Gafoor (circled in purple) at 8:32:51 p.m.



Still from DOT camera showing Ms. Gafoor's body on the ground after the collision (circled in green) at 8:32:55 p.m.

32-11 Beach Channel Drive Security Video

External video cameras from 32-11 Beach Channel Drive, a commercial building southwest of the intersection, showed the collision. The video can be seen here. Stills are below:



Still showing the police car colliding with the Toyota (circled in purple) at 8:32:48 p.m.

Zoomed-in still showing the police car striking Ms. Gafoor and propelling her into the air (circled in green), at 8:32:49 p.m.

Witness Interviews

Driver of White Toyota

OSI interviewed MO, who was the driver of the white Toyota (OSI does not publish the names of civilian witnesses). MO said she left work, drove to the intersection, and stopped and waited at a red light. She said her blinkers were on, and, when the light turned green, she inched forward and to the left as she looked around to make sure it was safe to make a turn. She said her car was at the intersection at a slanted angle toward the left and, as she was about to turn left, her car was hit by a police car or an ambulance. She said the impact spun her car around, and she blacked out and lost consciousness. MO said she thought she was hit by a police car or an ambulance because she saw flashing lights; she saw the flashing lights when she was stopped at the intersection but thought they were farther away; she did not hear a siren. MO regained consciousness at the intersection and was transported to the hospital by an ambulance.

Police Officer Interviews

Police Officer Sudan Osorio

OSI interviewed Officer Osorio in the presence of his attorney. He said that on February 17, 2023, shortly before 8:30 p.m., he was doing paperwork at his desk at the 101st Precinct stationhouse when he heard a radio transmission for a 10-85, which means "additional units needed," for officers trying to make an arrest at Beach Channel Drive and Beach 51st Street. A description of the subject was put over the radio, but with no description of the alleged crime. He said he heard that one person was arrested, one person fled, and that there was an altercation between the fleeing person and a police officer. Officers Osorio, Nunez, and Alvarado, and Det. Demerest got into a marked RMP and, with Officer Osorio driving, headed to the area of the call.

Officer Osorio said he activated the RMP's lights and siren and drove westbound on Beach Channel Drive toward Beach 51st Street. As he approached Bay 32nd Street, he saw that the traffic light was green and saw cars in front of him in the westbound lane. He said he crossed the double-yellow line into the eastbound lane because he did not see any cars coming toward him from the other direction. He saw a white Toyota at the intersection and thought it was

slowing down and stopping to let him pass. As Officer Osorio approached the intersection the Toyota turned left. Officer Osorio said he tried to avoid a collision by steering left, but he could not avoid hitting the Toyota. His RMP collided with the Toyota and then hit Ms. Gafoor, who was standing in the bike lane in the southwest corner of the intersection. Officer Osorio called for an ambulance and administered cardiopulmonary resuscitation (CPR) to Ms. Gafoor until an ambulance arrived a few minutes later.

Officer Osorio said he did not know how fast he was driving or what the speed limit was. Officer Osorio said he remembered driving fast, and probably faster than the speed limit. He recalls letting his foot off the accelerator to slow down as he reached the intersection, but he did not recall whether he activated the brakes or not.

Officer Osorio said he took an emergency vehicle operation course in the NYPD Academy and was taught to be cautious and to clear the intersection before proceeding (meaning to make sure the intersection was clear), and to exercise "due regard." His understanding of "due regard" was to exercise judgment for safety by clearing the intersection to make sure it was safe to proceed. Officer Osorio said his RMP was not equipped with a dashcam. He was not wearing his body-worn camera (BWC) because it was docked in the charger at the stationhouse, and he left in a hurry to respond to the emergency.

Police Officer Xavier Alvarado

Officer Alvarado said he was with Officer Osorio in the stationhouse when he heard the radio run. He and Officer Osorio got into the RMP driven by Officer Osorio, joined by Officer Nunez and Det. Demerest. Officer Alvarado did not recall how fast the RMP was going or what the speed limit was. He was not looking at the road because he was trying to get his phone when the collision occurred, and he did not see how the collision happened. After the RMP struck Ms. Gafoor, everyone got out of the car to render aid, and they administered CPR to Ms. Gafoor. Officer Alvarado was equipped with his BWC but did not turn it on until after the collision.

Police Officer Osvaldo Nunez

Officer Nunez said he was with Officer Osorio and Det. Demerest at the stationhouse, upstairs, processing an arrest. Officer Nunez heard a radio transmission for an officer in need of assistance for an arrest, which he understood to be an emergency. He had already docked his BWC and left the stationhouse without it. Officer Nunez recalled sitting in the rear passenger seat. The next thing he recalled was being in the ambulance and then being in the hospital. Officer Nunez said he did not recall the events between the time he got into the RMP and when he was in the ambulance after the collision. He said he was told by fellow officers after the fact that he administered CPR to Mr. Gafoor.

Detective Jacqueline Demerest

Det. Demerest said she heard a radio run for "officer in need of additional units." She left the stationhouse without her BWC because it was docked. She said all officers dock their BWCs when they return from patrol so that the data in the BWC can be uploaded and the batteries can be recharged. When she came outside, she saw Officer Osorio and others getting into an RMP, and asked to ride with them to Beach Channel Drive and Beach 51st Street. Det. Demerest said she did not know what the speed limit at the site of the collision was. As Officer Osorio reached the intersection of Beach Channel Drive and Bay 32nd Street, she did not recall how fast he was driving. At the intersection, she saw that the traffic light was green. She saw a car turning left, and the RMP collided with the turning car. She did not remember which side of the double-yellow line the RMP was on. After the collision, they saw Ms. Gafoor on the ground and rendered aid to her until the ambulance arrived.

Post-Collision Investigation

Among other responsibilities, NYPD's Highway District investigates motor vehicle collisions through its Collision Technician Group (CTG) and Collision Investigation Squad (CIS). According to NYPD's Intergraph Computer Aided Dispatch System report, at 8:46 p.m. a captain from the 101st Precinct asked CIS to respond to the collision; CIS arrived at 11:15 p.m. CTG officers photographed Officer Osorio's RMP, which had side and front-end damage, as shown below:

CTG photograph of Officer Osorio's RMP.

Police Officer Edwards of CTG noted that the brake pedal pressure, taillights, brake lights, and windshield wipers of the police car could not be tested, and that the front windshield had collision damage. He further noted that the weather was "clear," the lighting conditions were "dark-road lighted," and the road condition was "dry."

OSI reviewed the data from the police car's EDR, which showed that it was traveling 74.2 mph four and a half seconds before impact, had slowed to 64.4 mph a half second before impact, and was traveling 54.5 mph at the moment of impact with the white Toyota. Officer Osorio used the car's brakes twice in the five seconds before impact, at four seconds and at half a second before impact. The EDR data are shown below.

Time (sec)	Speed, Vehicle Indicated (MPH [km/h])	Speed, Vehicle Indicated, Quality Factor	Accelerator Pedal, % Full	Accelerator Pedal, % Full, Quality Factor	Service Brake, On/Off	Service brake, Quality Factor	Engine RPM	ABS Activity (Engaged, Non-Engaged)
- 5.0	73.1 [118]	OK	93.4	OK	Off	OK	6,148	Non-engaged
- 4.5	74.2 [119]	OK	0.0	OK	Off	OK	6,102	Non-engaged
- 4.0	72.8 [117]	OK	0.0	OK	On	OK	4,524	Non-engaged
- 3.5	70.6 [114]	OK	30.4	OK	Off	OK	4,086	Non-engaged
- 3.0	70.3 [113]	OK	0.0	OK	Off	OK	3,170	Non-engaged
- 2.5	70.1 [113]	OK	0.0	OK	Off	OK	2,918	Non-engaged
- 2.0	69.8 [112]	OK	72.4	OK	Off	OK	2,510	Non-engaged
- 1.5	69.4 [112]	OK	0.0	OK	Off	OK	3,294	Non-engaged
- 1.0	69.2 [111]	OK	0.0	OK	Off	OK	2,610	Non-engaged
- 0.5	64.4 [104]	OK	0.0	OK	On	OK	2,150	Non-engaged
0.0	54.5 [88]	OK	0.0	OK	On	OK	1,538	Engaged

Data from the EDR in Officer Osorio's RMP from five seconds prior to the collision through the moment of impact with the Toyota.

CIS Sergeant Robert Denig told OSI that CIS did not conduct a portable breath test (PBT) or other sobriety tests for Officer Osorio when CIS arrived at the scene because the on-scene NYPD supervisor initially called CIS to the scene for a "technical assist" job. A technical assist is when CIS is called to collision sites to assist other investigatory units within NYPD by taking photographs and preparing a report of the collision site. Sgt. Denig told OSI CIS does not conduct sobriety tests on motorists in a technical assist job. Although other police units responded to the incident, including the 101st Precinct and the Force Investigation Division, it does not appear that any supervising officer took charge and saw to it that sobriety tests were administered.

OSI reviewed records of Officer Osorio's NYPD-issued cell phone, which showed he did not use the phone at the time of or before the collision.

NYPD Driver Rules and Training

NYPD Patrol Guide 202-02, "Radio Motor Patrol Operator," says an RMP operator should "Operate [the] car in manner to avoid injury to person or damage to property; Drive at slow rate of speed except under exceptional circumstances or extreme emergency."

According to NYPD records, Officer Osorio joined NYPD in 2019 and completed the emergency vehicle operation course in November 2019 as part of the Recruit Academic Program. The 2019 emergency driving lesson plan references Vehicle & Traffic Law Section 1104 (VTL 1104) and states in part as follows:

"*VTL 1104 Emergency Driving…*

> The operator of an authorized emergency vehicle, when involved in emergency operation, may exercise the following privileges of VTL sec 1104.
>
> > 1) Stop, stand or park against parking rules;
> > 2) 'Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation';
> > 3) Exceed maximum speed limits provided it does not endanger life or property;
> > 4) Disregard regulations governing directions of movement or turning in specified directions;
>
> The above provisions should only be used only when absolutely necessary….
>
> VTL 1104 mandates that the driver of an authorized emergency vehicle must drive with due regard for the safety of all persons.
>
> VTL 1104 does not protect the driver from the consequences of reckless disregard for the safety of others…"

The 2019 Intersection Safety lesson plan reads in part as follows:

"Intersection Safety…

> **Approach:** The RMP operator should approach every intersection with their foot off of the gas and covering the brake. The driver should brake early to slow down and observe traffic conditions. Speed affects your ability to control the vehicle. The driver should not rush into the intersection. The operator must give sufficient warning of their vehicle's approach to allow other motorists and pedestrians the opportunity to provide an opening and reach a safe location.
>
> **Assessment:** The assessment of the intersection is critical in the decision making process. Reading a driver's intentions and understanding the vehicles limitations are key factors. Obstructions such as construction zones and double parked commercial vehicles can further compromise visibility and complicate how others may respond. The driver should prioritize which hazards to assess first.

> **Clearing:** When clearing the intersection visually, it should be done one lane at a time so that the operator can properly plan a path. Starting with the crosswalk, each individual lane is only deemed clear if the pedestrians and vehicles in it have successfully yielded.
>
> **Departure:** The RMP operator should depart the intersection cautiously while maintaining optimum visibility…"

Medical Treatment and Autopsy

According to the Prehospital Care Report (PCR), New York City Fire Department (FDNY) Emergency Medical Services (EMS) responded to the collision at 8:39:33 p.m. FDNY Emergency Medical Technicians (EMTs) Jose Huaman and Margot Loth observed that Ms. Gafoor was in traumatic cardiac arrest and had no pulse. She had lacerations to her forehead, her right leg was fractured, and she was not responsive during transport. EMTs continued CPR during transport to Jamaica Hospital. According to Jamaica Hospital records, Advanced Cardiovascular Life Support was initiated by EMS, and Ms. Gafoor was intubated in the field. Ms. Gafoor arrived at the hospital at 9:04 p.m. with bleeding from her forehead, a fractured right leg, no cardiac activity, and no pulse. She was declared dead at 9:08 p.m. by Dr. Danielle DeFoe.

Dr. Victor D. Sanchez of the Office of Chief Medical Examiner (OCME) performed the autopsy of Ms. Gafoor on February 19, 2023. The autopsy report said the cause of death was "multiple blunt impact injuries" and the manner of death was "accident." The report said Ms. Gafoor suffered severe injuries, including blunt impact injuries of the head and torso, with fractured ribs, a complete fracture of the right femur, and a shattering fracture of the left femur.

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 VTL 1104, and that the officer was guilty of a crime that requires the mental state of recklessness. A crime requiring only the mental state of criminal negligence would not be chargeable against an officer responding to an emergency, as long as the officer's conduct is enumerated in VTL 1104.

Under VTL 1104, "the driver of an authorized emergency vehicle, when involved in an emergency operation" (defined in VTL 114-B to include "pursuing an actual or suspected violator of the law" and "responding to … [a] police call"), may "proceed past a steady red signal…but only after slowing down as may be necessary for safe operation," and may "exceed the maximum speed limits so long as he does not endanger life or property." VTL 1104(e) states that "the foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." See *Anderson v Commack Fire Dist.*, 39 NY3d 495, 498 (2023) (police officers responding to an emergency may disregard specific traffic laws "as long as specified safety precautions are observed and they do not act recklessly").

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

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

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

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

Proving Recklessness

Determining whether Officer Osorio recklessly disregarded the safety of others when he approached the intersection of Bay 32nd Street is a "fact-specific inquiry" that balances "the precautionary measures" he took, the degree of risk his actions posed to motorists and pedestrians, and his "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

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."

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

To prove manslaughter, the prosecutor would need to prove beyond a reasonable doubt that Officer Osorio was aware of and consciously disregarded that proceeding at a high rate of speed, with lights and sirens activated, with minimal precautionary slowing, driving across the double-yellow lines, and driving in the opposite direction, 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 criminal cases charging civilian defendants with Manslaughter in the Second Degree for motor vehicle deaths, 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). Despite the failure of the responding officers to perform any sobriety tests, there is no evidence in the present case that Officer Osorio was intoxicated or impaired, and there is no evidence that he was improperly distracted by cellphone use or otherwise prior to the crash.

The investigation shows that Officer Osorio took some precautions before the collision. Officer Osorio said he had the police car's turret lights and sirens activated. As he approached the intersection the light was green to him, and he slowed from 73.1 mph to 54.5 mph in the five seconds prior to the impact. As Officer Osorio drove toward the intersection, he saw the car in front of him slowing down, and he thought it was stopping to let him pass. When he saw the white Toyota turning left, he engaged the brakes and steered left in an attempt to avoid the collision. Officer Osorio's statement indicates he failed to perceive the risk that death could result from his actions, and therefore did not consciously disregard that risk. There is no reason to believe he saw Ms. Gafoor in the bike lane. In these circumstances, OSI believes it would not be able to prove beyond a reasonable doubt that Officer Osorio committed Manslaughter in the Second Degree.

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

RECOMMENDATIONS

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

NYPD's Patrol Guide Section 217.06, "Department Vehicle Collisions," requires that, if a police officer is involved in a collision which results in death or serious physical injury, the patrol supervisor should administer the breath test if he is qualified to do so; if not qualified, the patrol supervisor should request a qualified Highway Unit officer to administer the PBT.

In this instance, Officer Osorio was not given a PBT or any other sobriety tests after the collision. It should have been immediately apparent to whichever officer had taken charge of the scene that Ms. Gafoor was seriously or fatally injured in the collision and that testing the officer-driver was mandatory.

OSI therefore recommends that all patrol supervisors be trained in the administration of the PBT and field sobriety tests so that any on-duty or off-duty police officer (or any civilian)

involved in a motor vehicle collision can be tested on scene as soon as practicable to determine whether they were operating a vehicle while impaired by alcohol.

OSI recommends that the NYPD Driver Education Training Unit administer the Emergency Vehicle Operator Course (EVOC) more than once in a career.

NYPD officers receive EVOC training only once during their careers, as recruits at the police academy, unless they are mandated to re-take the training after being involved in accidents. In contrast, NYPD requires that police officers go to the firing range twice a year to train in shooting – but officers drive all the time, unlike shooting, which is a relatively rare occurrence in a police career. As in this case, one incident involving a death is one too many. Re-taking EVOC after a collision comes too late – the damage has already been done. OSI recommends that every NYPD officer receive EVOC training once per year in an effort to prevent future collisions between police cars and civilians.

Dated: December 12, 2024