



Office of the New York State Attorney General Letitia James  
Office of Special Investigation

September 21, 2023

# Report on the Investigation into the Death of Amos Domfeh

## Summary

New York Executive Law Section 70-b authorizes the Office of the Attorney General, through the Office of Special Investigation (OSI), to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer or peace officer. When OSI does not seek charges, Section 70-b requires issuance of a public report. This is OSI's report concerning the death of Amos Domfeh.

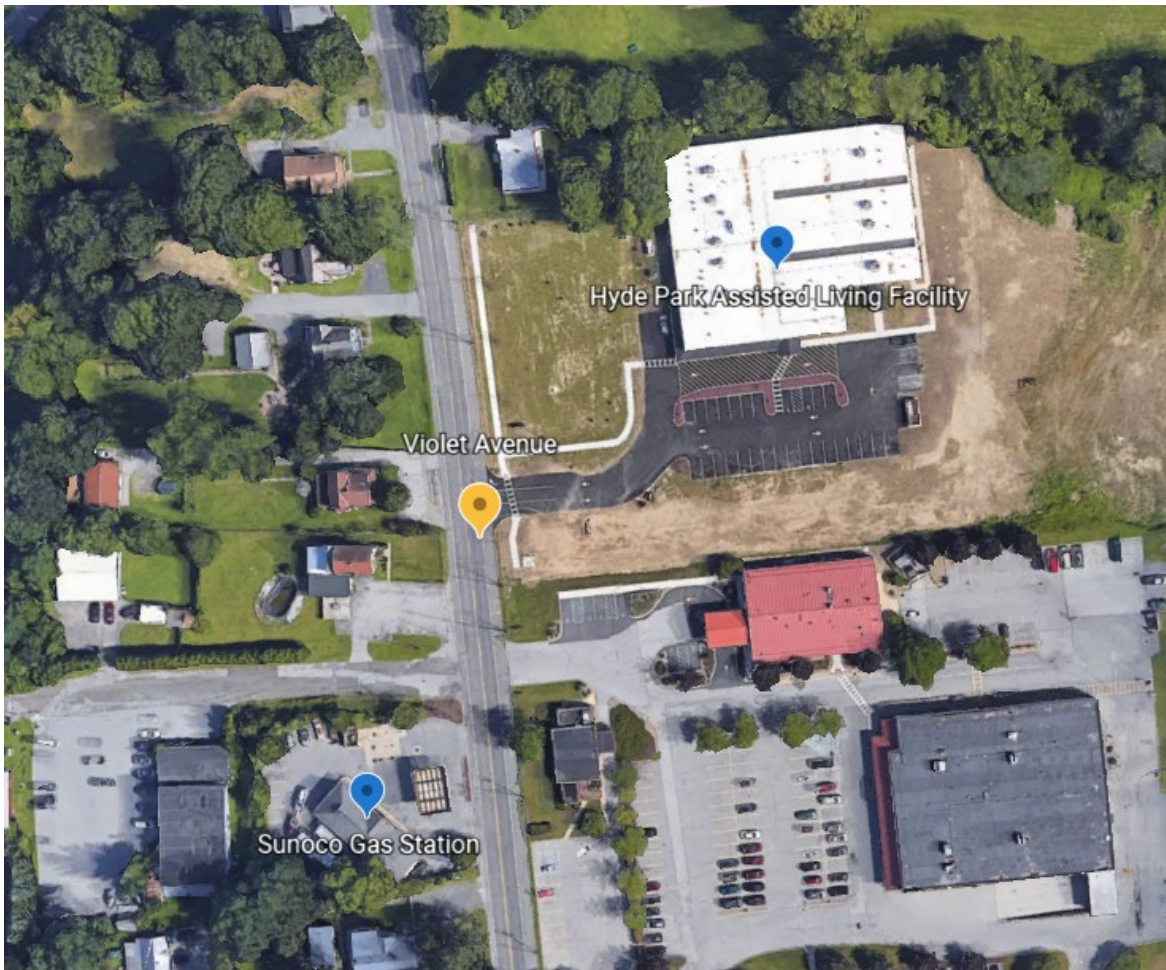
In the evening of September 16, 2021, Amos Domfeh left his residence in Poughkeepsie, Dutchess County, and began crossing Violet Avenue in an area without a crosswalk as a marked police SUV approached, going 7 to 14 mph over the speed limit of 35 mph. The SUV, driven by Deputy Georgie-Rose Super of the Dutchess County Sherriff's Office (DCSO), braked a half second before hitting Mr. Domfeh, who was in the middle of the southbound lane. The force of the impact threw Mr. Domfeh sixty-five feet.

Dep. Super parked and radioed for medical assistance. She performed cardiopulmonary resuscitation (CPR) on Mr. Domfeh until the fire department arrived, which took less than five minutes. They assumed care of Mr. Domfeh and transported him to Dutchess Mid-Hudson Regional Hospital where he was later pronounced dead. The cause of death was multiple blunt impact injuries.

After a thorough factual investigation and legal analysis, OSI concludes that a prosecutor would not be able to prove Dep. Super guilty of a crime beyond a reasonable doubt and therefore will close this case without seeking charges.

## The Road

New York State Route 9G is a highway connecting Poughkeepsie and the town of Hudson. The collision occurred on a section of 9G called Violet Avenue, in Poughkeepsie, a two-lane asphalt roadway running north and south with a speed limit of 35 mph. It has a slight uphill grade going south. Mr. Domfeh lived on the east side of Violet Avenue at the Hyde Park Assisted Living Facility. On the west side of Violet Avenue is a Sunoco gas station. There are no streetlights or crosswalks in the area. A map of the area is below.



OSI Detective Supervisor Walter Lynch interviewed Jim Rogers, the owner of the assisted living facility, who said he knew of past incidents of pedestrians hit by cars on Violet Avenue, and he warned his residents to be careful when crossing the road to get to the gas station. He said the rise in the road makes it hard to see pedestrians, and he recently asked that a crosswalk, red light, or stop sign be installed near the facility. According to Dutchess County Dispatch Reports, there were five pedestrian/vehicle collisions on Violet Avenue in the last nine years.

### **The Collision**

Dep. Super<sup>1</sup> was hired by DCSO in June 2020 and was working a 4 p.m. to 12 a.m. shift the night of the collision. DCSO did not equip its fleet with dashboard cameras at the time of the incident,<sup>2</sup> but a security camera positioned over the entrance of the Hyde Park Assisted Living facility recorded the collision. The security camera footage shows that on September

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<sup>1</sup> Dep. Super declined OSI's request for an interview.

<sup>2</sup> In March 2023, DCSO began using BWCs and dashboard cameras.

16, 2022 at 7:32 p.m.,<sup>3</sup> Mr. Domfeh left the facility at dusk dressed in a light grey sweatshirt, light grey pants, and a black baseball cap, and began walking toward the Sunoco gas station.



*Still from the security camera footage showing Mr. Domfeh leaving the facility*

The footage momentarily stops at 7:33 p.m. and resumes a minute later,<sup>4</sup> at which point the footage shows Mr. Domfeh crossing Violet Ave at a section of road that does not have a crosswalk, traffic light, or streetlight, according to the scene photographs and the report of the New York State Police (NYSP) accident reconstructionist, discussed below. He was halfway across the road and starting to cross the southbound lane of travel when a marked police SUV, driven by Dep. Super, approached in the southbound lane with the headlights on and the emergency lights off. The still below shows the distance separating Mr. Domfeh and Dep. Super at the point the footage resumed.

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<sup>3</sup> It was dusk: sunset that day was at 6:44 pm. The time shown on the video camera footage is off by 1 hour, 2 minutes, and 12 seconds, according to an analysis of the security camera system performed by the New York State Police Forensic Video/Multimedia Services Unit. The times in the text are corrected to the actual times.

<sup>4</sup> Mr. Rogers said the camera is motion activated.



The footage shows Mr. Domfeh continued to walk across the southbound lane without changing pace or direction as the SUV drew closer. A half second before impact, with about 30 to 40 feet between the SUV and Mr. Domfeh, the SUV's brake light activated, suggesting Dep. Super saw Mr. Domfeh in the road and was applying the brake to avoid a collision. Mr. Domfeh appeared to be near the center of southbound lane at the time of impact. The force of the collision lifted Mr. Domfeh off the ground and propelled him forward to the gas station parking lot where he came to rest near a gas pump. After striking Mr. Domfeh, Dep. Super's SUV swerved into the northbound lane, which caused a passing car to drive onto the shoulder to avoid a collision. The SUV quickly turned back into the southbound lane and parked in the gas station parking lot. A link to the video footage is here: [surveillance video](#).



*Still showing the position of Mr. Domfeh and the SUV the moment the brake light was activated.*

The motorist who nearly collided with Dep. Super has not been identified; however, James McQuaid, who was driving just behind that motorist, gave a sworn, typewritten statement to DCSO and was interviewed by OSI. He told OSI that it was nearly dark as he was driving home on Violet Avenue. As he neared the Sunoco gas station, he saw Dep. Super's SUV suddenly swerve half-way into his lane and then quickly swerve back to the other lane. He said in the statement to DCSO that it was "as if a deer had jumped out in front of [Dep. Super] and she was trying to avoid it and then get back into her lane." He drove onto the shoulder to avoid colliding with Dep. Super's SUV and then looked over and saw Mr. Domfeh lying on the ground of the parking lot. Mr. McQuaid said he did not see Mr. Domfeh in the road prior to the collision.

### **Post-Collision**

Dep. Super radioed headquarters at 7:32:30 p.m., "Get in contact with County. My car versus pedestrian at Violet Avenue and Colby Terrace [a nearby cross street]." The gas station security cameras did not have a clear view of the medical response and DCSO did not equip their officers with body worn camera at the time of the incident.<sup>5</sup> The Sunoco security camera footage shows Dep. Super parked her SUV, turned on the emergency lights, and got out to help Mr. Domfeh. Mr. McQuaid, who parked his car and went over to help, said Dep. Super performed CPR until EMS arrived. He described Mr. Domfeh as unresponsive except for two brief movements of his right arm and a gasp for air. Security camera footage shows the Fairview Fire Department arrived at the scene four minutes after the collision. They took Mr. Domfeh to Mid-Hudson Regional Hospital where he was pronounced dead at 9:00 p.m.

### **Analysis of Dep. Super's Cellular Phone**

OSI subpoenaed Deputy Super's cellular phone records and found no evidence that Dep. Super was calling or texting around the time of the collision. Based on the radio dispatches, the statements of witnesses, and the security camera footage, OSI determined that the collision took place between 7:30:00 and 7:32:30 p.m. The records indicate the last time Dep. Super made or received a phone call prior to the collision was at 7:05:30 p.m. and the last text she sent or received was at 7:15:05 p.m. All other texts and calls on Dep. Super's cellphone were sent or received after 7:38:18 p.m., some six minutes after Dep. Super radioed dispatch that she had been involved in a collision.

### **Alcohol**

There was no indication Dep. Super was under the influence of alcohol at the time of the incident. In a video recorded at 10:24 p.m. the night of the incident, members of the NYS

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<sup>5</sup> As mentioned above, DCSO now equips its members with BWCs.

had Dep. Super blow into a portable breath test that registered a blood alcohol content of 0.0. Sergeant Joel Ryan Petrus and Detective Sergeant Adam Harris of DCSO spoke to Dep. Super and told Det. Sup. Lynch that they saw nothing to suggest that Dep. Super was under the influence. Mr. McQuaid said in an interview with OSI that he did not smell any alcohol on Dep. Super's breath and that she acted professionally and conscientiously throughout the incident.

### **Driving Record**

OSI subpoenaed and reviewed Dep. Super's driver's abstract, which showed no history of suspension, revocations, or convictions.

### **Medical Examiner Report**

Dr. Denis Chute, the Chief Medical Examiner at the Dutchess County Medical Examiner's Office performed the autopsy of Mr. Domfeh. He described Mr. Domfeh as a 57-year-old male, 150 pounds in weight and five feet, six inches tall. Dr. Chute noted abrasions, fractures, lacerations, and hemorrhaging throughout the body, including lacerations of the heart, aorta, and liver, and fractures of the ribs and spine. The toxicological analysis of Mr. Domfeh's blood showed no intoxicant.<sup>6</sup> Dr. Chute examined the brain and found indications of an old traumatic brain injury combined with hypoxic/ischemic injury. Dr. Chute determined the cause of death to be multiple blunt impact injuries to Mr. Domfeh's torso and the manner of death to be accident.

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<sup>6</sup> A toxicological analysis of blood detects for the presence of alcohol, opioids, barbiturates, amphetamine, methamphetamine, and cocaine.

## Collision Reconstruction Report



*Map showing the area of the collision.*

Investigator Peter Maczkiewicz, of NYSP's Collision Reconstruction Unit (CRU), responded the night of the incident and processed the scene along with other members of the unit. Inv. Maczkiewicz, an accident reconstructionist certified by the Accreditation Commission for Traffic Accident Reconstruction, performed a Motor Vehicle Collision Investigation and Analysis and issued a report (Reconstruction Report).

According to the Reconstruction Report, Dep. Super was traveling southbound on Violet Avenue at 42 to 49 mph when Mr. Domfeh began to walk westbound across Violet Avenue. Dep. Super saw Mr. Domfeh applied the brake and slowed the Dodge Durango SUV to 40 to 43 mph at the time it struck Mr. Domfeh. The Durango hit Mr. Domfeh with the front end near the passenger side headlight. Mr. Domfeh was standing in the center of the south bound lane when he was hit. The force of the collision threw him 65 feet toward the gas station. His body tumbled along the road, hit the curb, and came to rest in the gas station parking lot.

Inv. Maczkiewicz told OSI that the unit collected and documented the physical evidence at the scene, which included a white scuff mark in the middle of the southbound lane, SUV debris south of the scuff mark, damage to the SUV's passenger side front end, and, on the side of the road north of the gas station, Mr. Domfeh's hat and left shoe alongside flattened campaign signs.





*Photo of Dep. Super's SUV showing damage on the passenger side front end.*

Inv. Maczkiewicz said that after looking at the physical evidence and comparing the sole of Mr. Domfeh's left shoe to the white scuff mark, he determined that Mr. Domfeh was standing at the location of the scuff mark when he was hit by the Durango. He said the force of the collision caused Mr. Domfeh's foot to scrape across the ground. Due to the flat front end of the Durango, he said Mr. Domfeh traveled through the air at relatively flat trajectory, hit the curb, and then continued another few feet until he came to rest in the parking lot. He based Mr. Domfeh's trajectory of travel on the flattened campaign signs, the location of the hat and shoes, and where his body came to rest. Having established the area of impact and Mr. Domfeh's path of travel, Inv. Maczkiewicz next measured from the scuff mark to the location where Mr. Domfeh was treated by EMS and determined he had been thrown 65 feet by the force of the collision.



*Photograph of the white scuff mark in the middle of the southbound lane. The yellow arrow is pointing to the scuff mark.*



*Photograph of the sole of Mr. Domfeh's left shoe*

Inv. Maczkiewicz said the unit downloaded the data from the SUV's Event Data Recorder (EDR), sometimes called the "black box," and determined the EDR had not recorded the

collision. He told OSI this is common in a pedestrian/vehicle collision, where the force of the impact does not cause the car to sharply decelerate or discharge the airbag, events which would trigger the EDR.

A day after the collision, Inv. Maczkiewicz contacted the NYSP Forensic Video/Multimedia Services Unit (FVMSU) for assistance in determining the speed of Dep. Super's SUV prior to the collision. After reviewing the assisted living security camera footage and conducting field tests at the scene, FVMSU Analysts James Cooper and Alison Wilkes issued a report concluding that Dep. Super was driving southbound on Violet Avenue between 42 to 49 mph until the moment the brake light activated. In the report, the analysts explained that they calculated her speed by using a technique known as "Reverse Projection." On October 28, 2021, NYSP closed Violet Avenue to perform the tests. Inv. Maczkiewicz took a 3D scan of the area while members of FVMSU climbed onto the roof of the assisted living facility and used a Variable Frame Rate Lightboard to verify the frame rate of the security camera. Once the frame rate was verified, FVMSU directed an NYSP patrol car to drive southbound on Violet Avenue at the speed limit while the security camera was recording and the patrol car's speed was being measured by radar. FVMSU then used a program known as INPUT-ACE to overlay the recordings of Dep. Super's SUV and the patrol car onto the 3D scan. Using the overlay, FVMSU compared the speed of the SUV to the patrol car and calculated the SUV's speed to be 42 to 49 mph prior to braking. Inv. Maczkiewicz then used that range of speeds to mathematically model the different speeds the SUV could have been going at the time of impact. His analysis indicated the SUV was more likely than not going 40 to 43 mph at the time of impact, according to the collision reconstruction report.

## **LEGAL ANALYSIS**

A person commits criminally negligent homicide when, "with criminal negligence, he or she causes the death of another person." Penal Law Section (PL) 125.10. A person is criminally negligent "with respect to a result or circumstance ... when [that person] fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists" and when the risk is "of such a 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." PL 15.05(4).

The Court of Appeals held in *People v. Boutin*, 75 NY2d 692, 696 (1990), that "criminally negligent homicide requires not only a failure to perceive a risk of death, but also some serious blameworthiness in the conduct that caused it." In cases where a defendant was charged with criminally negligent homicide for causing the death of a person while speeding, "it takes some additional affirmative act by the defendant to transform 'speeding' into 'dangerous speeding'" and thus criminal negligence. *People v. Palombi*, 204 AD3d 1481 (4<sup>th</sup> Dept 2022), quoting *People v. Cabrera*, 10 NY3d 370, 377 (2008).

To convict Dep. Super of criminally negligent homicide, a prosecutor would need to prove beyond a reasonable doubt that her driving created a substantial and unjustifiable risk that a person would die, that she failed to perceive that risk, that her failure to perceive it was a gross deviation from the conduct of a reasonable person, and that she engaged in “additional risk-creating behavior” that transformed her speeding into “dangerous speeding.”

The evidence in this investigation does not meet the standard the courts have set for proof of dangerous speeding. Examples of “dangerous speeding” include running a red light while racing another car on a busy city street, *People v Ricardo B.*, 73 NY2d 228 (1989); driving drunk in Manhattan while going 25 to 50 mph over the speed limit and disobeying traffic signs, *People v Maher*, 79 NY2d 978 (1989); and driving through a red light at 52 miles per hour, *People v Haney*, 30 NY2d 328 (1972). In contrast, in *People v. Perry*, 23 AD2d 492 (4th Dept 1986), *affd*, 70 NY2d 626 (1987), a court overturned a conviction where the defendant was driving at night and going 25 mph over the speed limit on a rural road when he struck a utility pole, holding that such “conduct d[id] not constitute a gross deviation from the ordinary standard of care held by those who share the community's general sense of right and wrong.” Similarly, in *People v Badke*, 21 Misc3d 471, 477-78 (Suffolk Co Ct 2008), a court dismissed an indictment when the evidence failed to show “any other factor *in addition to speed* [that] convert[ed] Mr. Badke's actions to dangerous speeding” (emphasis in original).

Like *Badke* and *Perry*, the evidence does not establish that Dep. Super’s speeding was “dangerous speeding.” Dep. Super was traveling 7 to 14 mph above the posted speed limit of 35 mph when the collision took place, but the evidence does not show any other culpable conduct. Dep. Super was driving in the correct lane and was not impaired or distracted. She was speeding but was not going excessively fast, and she braked prior to the collision and swerved to avoid Mr. Domfeh.

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

## **Recommendations**

**OAG recommends that DCSO breath test its members as quickly as practicable following a motor vehicle collision that causes a death or serious physical injury.**

In New York State, slightly more than 30% of fatal car crashes are alcohol related.<sup>7</sup> Civilian drivers are often breath tested on scene by law enforcement shortly after a collision to determine if they were driving impaired or intoxicated by alcohol, even if they do not

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<sup>7</sup> <https://troopers.ny.gov/impaired-driving>

necessarily exhibit signs of impairment or intoxication. This same standard should be applied to police officers involved in car accidents, most especially when it is a collision resulting in a fatality.

Here, Dep. Super took a portable breath test three hours after the collision. The human body metabolizes alcohol at an average rate of 0.015g/100mL/hour, which means the average person's blood alcohol level falls by 0.015 per hour. Accordingly, a breath test administered three hours after a person stopped driving reduces the test's probative value concerning the driver's level of intoxication, or lack thereof. Moreover, under New York law, a number of issues may arise when there is a protracted delay before a driver is given the more accurate chemical breath test.<sup>8</sup>

OAG recognizes that Dep. Super did not show any signs of intoxication, such as bloodshot eyes, slurred speech, or an unsteady gait, which are indicators for immediate testing. OAG also recognizes that the three-hour delay is explained by DCSO's decision to turn over the investigation to the NYSP and avoid any appearance of partiality. However, the portable breath test is time sensitive, and should be given as soon as a member of law enforcement qualified to administer the test is on scene. This practice produces more accurate results and assures the public that law enforcement receives no special treatment in an investigation into one of its members.

Dated: September 21, 2023

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<sup>8</sup> See VTL Section 1194; e.g. *People v Odum*, 31 NY3d 344 (2018).