



Office of the New York State Attorney General Letitia James

Office of Special Investigation

June 4, 2026

Report on the Investigation into the Death of John Bonds

OVERVIEW

New York Executive Law Section 70-b (Section 70-b) directs 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. When OSI does not seek charges against the officer, Section 70-b requires OSI to issue a public report describing its investigation. This is the public report of OSI's investigation of the death of John Bonds, who died on June 2, 2025, after he was struck by a car driven by off-duty Town of Colonie Police Department (CPD) Patrol Officer Jason Tusch on May 27, 2025.

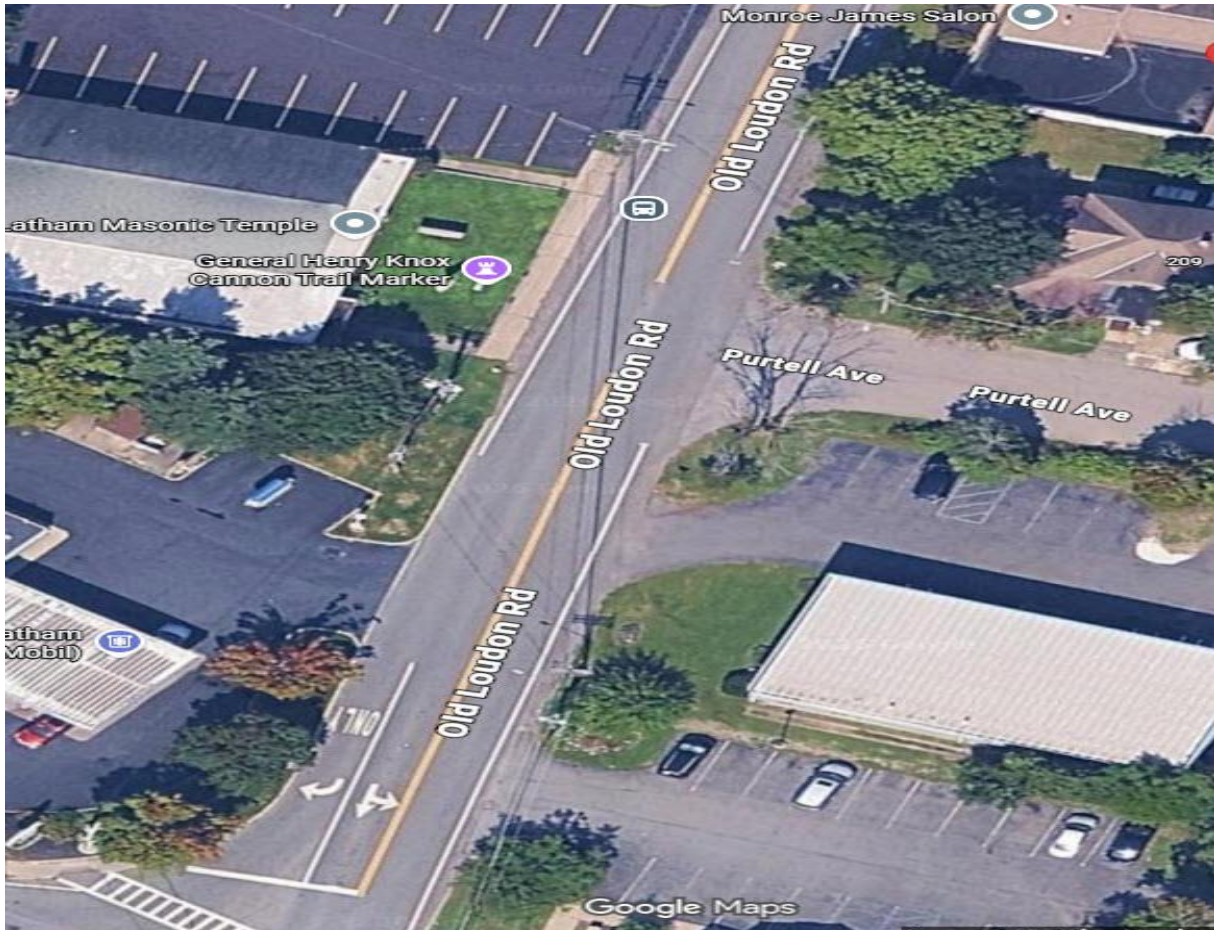
At 10:12 p.m. on May 27, 2025, off-duty CPD Officer Jason Tusch was driving his 2011 Honda Accord south on Old Loudon Road, in the Hamlet of Latham in the Town of Colonie, when he struck John Bonds, who was walking and pushing a cart in the southbound lane of Old Loudon Road. Mr. Bonds died on June 2, 2025, at Albany Medical Center. He was 65 years old.

After initially refusing three times, Officer Tusch agreed to submit to a breath test at 1:05 a.m. and a blood sample at 1:28 a.m., more than three hours after the collision. The breath test result and the toxicology report indicated that Officer Tusch's BAC (blood alcohol content) was .02%; because the number was below .03% BAC, retrograde extrapolation could not be used to estimate his BAC range at the time of the collision.

Having thoroughly investigated the matter and analyzed the law, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt at trial that Officer Tusch committed a crime when he caused Mr. Bonds's death and, therefore, will not seek charges and closes the matter with this report.

FACTS

Old Loudon Road is a two-lane road that runs north and south in the Town of Colonie, a suburb in northern Albany County. This incident occurred in the southbound lane of Old Loudon Road, north of Purtell Avenue. A map of the area is below:



The speed limit on Old Loudon Road where the collision took place is 30 miles per hour.

There were streetlights and other ambient sources of light where the collision took place. Fixed security cameras on Old Loudon Road captured the incident. Additional fixed security camera footage captured Mr. Bonds's movements moments before the incident. A compilation video of the footage can be found here: [incident](#).

OSI obtained and reviewed fixed camera footage, Capital District Transportation Authority (CDTA) bus camera footage, and body-worn camera (BWC) footage from responding officers. OSI reviewed New York State Police (NYSP) reports, witness statements, and NYSP's recorded interview of Officer Tusch. OSI interviewed CPD officers and civilian witnesses to the incident. Officer Tusch refused to be interviewed by OSI.

Collision

According to video footage from fixed security cameras on Old Loudon Road, at 10:10:50 p.m. on May 27, 2025, Mr. Bonds was pushing a shopping cart while walking in the southbound lane of Old Loudon Road when a black SUV drove past him by moving into the northbound

lane; the SUV continued south on Old Loudon Road. Mr. Bonds, who was wearing a white shirt and khaki-colored shorts, continued walking in the southbound lane and moved closer to the double yellow lines.

At 10:11:07 p.m., off-duty CPD Officer Jason Tusch, driving a black Honda Accord, struck Mr. Bonds, who was still walking in the southbound lane. Officer Tusch stopped his car; video footage showed both of his hands were on the steering wheel. Officer Tusch sat in his car and, at 10:11:53 p.m., the driver of a black pickup truck traveling in the northbound lane stopped alongside Officer Tusch's car and rolled down his window. From inside his car, Officer Tusch briefly spoke with the driver, who continued traveling north. Officer Tusch remained in his car until 10:13:22 p.m., when he got out of his car and walked toward Mr. Bonds, who was lying in the road. (Mr. Bonds was outside of the camera's field of view, so the video footage does not show Officer Tusch's actions thereafter.)

Post-Collision Events

According to CPD BWC footage and interviews with OSI, at 10:15:04 p.m., CPD Officer Michael Heir arrived near the intersection of Old Loudon Road and Purtell Avenue; he was the first officer to arrive at the scene. Officer Heir said he saw Officer Tusch and a civilian rendering aid to Mr. Bonds. At 10:16:26 p.m., CPD Officer Stephanie Miller arrived and asked who was driving the black car; Officer Tusch responded that he was the driver of the car that struck Mr. Bonds. Officer Tusch and the civilian continued to render aid to Mr. Bonds until the ambulance arrived at 10:23 p.m. According to ambulance records from the Town of Colonie Emergency Medical Services (EMS), paramedics Jason Berry, Anne Mertens, and Troy Miller assumed Mr. Bonds's care.

According to his BWC footage, CPD Sergeant Conor Anson arrived around 10:26 p.m. and took control of the scene. According to Sgt. Anson, when he learned that Officer Tusch had struck Mr. Bonds, he advised his supervisor, Lieutenant James Herbst, Jr. and instructed Officer Chris VanBlarcom to stand with Officer Tusch away from the scene. Lt. Herbst said that when he arrived at the scene, he directed Officer Tusch to sit in Lt. Herbst's CPD car; Sergeant Janel Lawrence stayed near the car and monitored Officer Tusch. Lt. Herbst said he shut the car door, walked away, but soon returned to his car to ask Officer Tusch whether he had spoken with his wife. Lt. Herbst said that when he opened the car door, he smelled an odor of alcohol coming from inside the car. Lt. Herbst said he informed CPD Deputy Chief Anthony Sidoti that he smelled an odor of alcohol coming from Officer Tusch. Deputy Chief Sidoti said he spoke with CPD Chief of Police James Gerace, who turned the scene and the investigation over to the New York State Police (NYSP).

According to BWC footage and the NYSP Investigative Report, NYSP Investigator Kyle Haller instructed Trooper Brandon Calhoun to take Officer Tusch to the NYSP barracks to conduct

standardized field sobriety tests and await the arrival of a drug recognition expert. At 11:54:32 p.m., Trooper Calhoun handcuffed, searched, and placed Officer Tusch in a NYSP patrol vehicle. At 11:57 p.m., Trooper Calhoun read the NYS implied consent law (in New York, any person who operates a motor vehicle is deemed to have consented to a chemical test of their blood or breath to determine the alcohol and/or drug content. The penalties for refusing a chemical test include a mandatory \$500 fine and one-year license revocation) to Officer Tusch and asked him to consent to a chemical test; Officer Tusch refused. Trooper Calhoun advised Officer Tusch of the consequences of not submitting to a chemical test and asked Officer Tusch to consent to a chemical test; he again refused. At 11:59:54 p.m., Trooper Calhoun read Officer Tusch *Miranda* warnings, and Officer Tusch refused to speak with troopers. At 12:01:33 a.m., Officer Tusch was transported to NYSP barracks in Latham (SP Latham), arriving there at 12:10 a.m.

Based on BWC footage and the NYSP Investigative Report, at 12:31:07 a.m., Trooper Calhoun again asked Officer Tusch to consent to a chemical test, and he again refused. Beginning at 12:38:08 a.m., Trooper Calhoun asked Officer Tusch questions prior to administering standardized field sobriety tests (SFSTs). Officer Tusch said that prior to the collision he was coming from home and going to the Mobile gas station for gas. Officer Tusch was not wearing glasses; he told officers that he normally wore glasses and said he was currently not wearing contact lenses. From 12:40:21 a.m. to 12:51:05 a.m., Trooper Calhoun administered three SFSTs, which consisted of the horizontal gaze nystagmus test, walk and turn, and one-leg stand test. Trooper Calhoun indicated that Officer Tusch passed these SFSTs. After the SFSTs, Trooper Calhoun administered a preliminary breath test with an Alco-sensor, which was positive for alcohol. At 12:52:12 a.m., about three hours after the incident, Trooper Calhoun asked Officer Tusch whether he wanted to continue to refuse to consent to a chemical test. Officer Tusch agreed to submit to chemical testing of his breath and blood. At 1:05:45 a.m., Trooper Calhoun administered the breathalyzer test, which indicated his BAC was 0.02%. At 1:07:12 a.m., Trooper Joshua Tusang, a certified drug recognition expert (DRE), asked Officer Tusch to provide an oral fluid sample and a blood sample to determine whether drugs were present in his system; Officer Tusch consented. At 1:08:09 a.m., Trooper Tusang obtained an oral fluid sample from Officer Tusch. At the request of NYSP, a paramedic from Colonie EMS obtained a blood sample from Officer Tusch at 1:28:05 a.m.; NYSP Inv. Haller secured the blood kit as evidence.

Post-Collision Investigation

Officer Tusch Interview

On May 28, 2025, around 1:55 a.m., NYSP Sergeant Michael Altieri interviewed Officer Tusch at SP Latham. The interview was recorded; OSI reviewed the entire video. The relevant portions of the recorded interview are transcribed below:

Tusch: Uh, yeah, I leave my house. Probably... I'm right down the road from where it happened.

NYSP: Yeah.

NYSP: Oh, yeah. Down aways, yup.

Tusch: So, I was just driving, and—

NYSP: Um, so you left your house just for... Where were you heading?

Tusch: I was going to Mobil. The one—

NYSP: The one right there. Okay. Yeah.

Tusch: Um, and then, um...

NYSP: Were you getting gas or just like, a snack or something or?

Tusch: Yeah, just going to get stuff. Um, and, uh, right about where that church is. Right in front of school zone area.

NYSP: White church? Yeah.

Tusch: Yeah.

NYSP: Yup.

Tusch: Um. ... Like, that was, there was nothing really distracting, I didn't have my phone on me or anything like that.

NYSP: Yeah.

Tusch: I just saw, like a flash of a body in front. And then all of a sudden, I knew.

NYSP: What, where were they crossing from, left to right?

Tusch: I couldn't, I couldn't tell.

NYSP: Really just in the middle of the roadway.

Tusch: From my perspective, yes.

NYSP: They're just in the roadway. Okay. They just appeared.

Tusch: Yeah. From, from the, the flash of what I could see, it looked like, um, look like I struck him from behind?

NYSP: Well, he was walking like—

Tusch: I don't I can't, I can't say for sure that he was walking like...

NYSP: He's maybe walking diagonal.

Tusch: ...with traffic or something? I can't say that for sure.

NYSP: But he was in the middle of the road or was he on the side of the road?

Tusch: Uh, he was [gestures]

NYSP: In the middle of your...

Tusch: Straight in the middle.

NYSP: The middle of your lane?

Tusch: Yes.

NYSP: Okay. All right. I just didn't know if, like, you know, I saw the windshield because, like, you know, right in the middle. So, I didn't know if, like, maybe he was in the middle of the lane, or he was, like, walking or running or whatever. He was walking or you couldn't tell. You just...

Tusch: I could not tell.

NYSP: And then you got out of the car or what did you do next? Did you—

Tusch: Um...

NYSP: Call 911 or did you?

Tusch: I tried to look like I sat in my car for probably, like, five to 10 seconds. Just kind of absorbing it all, you know?

NYSP: Yeah.

Tusch: Um, and then I looked to see who was oncoming. I opened my door, started waving my arm.

NYSP: Yeah.

Tusch: Without actually getting out of my car.

NYSP: Yeah.

Tusch: Um, and I said, you said, someone, you called... I got the first car that was coming.

NYSP: Opposite.

Tusch: Opposite me. So they would be going northbound?

NYSP: Mhm.

Tusch: The first car stopped. I don't know if they're the ones who called 911.

NYSP: Okay.

Tusch: Um.

NYSP: But you didn't have your phone on you anyway.

Tusch: No, that's why I was trying to get someone else to call 911.

NYSP: Okay. Okay.

Tusch: And then, uh, I believe there was a pickup truck with a taller gentleman who stopped by. Um, I don't, I don't know who actually called 911.

NYSP: Right. Yeah. It's—

Tusch: Um.

NYSP: But you said, hey, can you call 911?

Tusch: Yeah. Yeah. And then I got out. Um, he was laying supine, face up. Um, no [indistinguishable]. Um. ... He was...

NYSP: It was a male or a female?

Tusch: I believe it was a male.

NYSP: Yeah. Yeah.

Tusch: Um, not too far where my vehicle had just stopped.

NYSP: Yeah.

Tusch: Um, and then I think someone was already, like, checking for a pulse and said he had a pulse. So I tried to get him on his side in the recovery position.

NYSP: Yeah.

Tusch: Because I was trying to feel for a pulse in, like, the, uh... the, uh, the radial or whatever. Um, I could feel like a faint one. And then I also checked, like, the femoral, because the pants had come down a little bit.

NYSP: Yeah.

Tusch: Um, I could feel another faint pulse there, so I didn't perform... At one point, I couldn't feel a pulse, so I started performing CPR [cardiopulmonary resuscitation]. But then someone said they could feel a pulse.

NYSP: Okay.

Tusch: And then I double checked. You could feel it. So at that point, I just tried to keep him in the recovery position.

NYSP: Okay.

Tusch: And then, um... One of the Colonie officers came pretty fast, and probably within a minute and a half to two minutes.

NYSP: Yeah, you guys are pretty quick. Every police officer in Colonie...

Tusch: I'm assuming he was over there.

NYSP: Yeah.

Tusch: Probably 2 or 3 cars pulled up.

NYSP: Well, about what time did this happen?

Tusch: Ten...

NYSP: You don't, you don't need to give me the exact time.

Tusch: ...30?

NYSP: Okay. Alright.

Tusch: Maybe 10:20.

NYSP: Alright. And what about alcoholic beverages? Obviously, you had something this morning. Earlier this evening. Um, did they give you your breath test? What your results were?

Tusch: Yeah.

NYSP: What were you drinking anyway?

Tusch: Um.

NYSP: Beer, liquor?

Tusch: Um.. prefer not to say.

NYSP: Okay. That's fine. That's fine. Did you, are you on any, did you have any medication? Prescription medication?

Tusch: No.

NYSP: Smoking marijuana?

Tusch: No.

NYSP: Okay. Alright. Um. No injuries to you. I know I asked you that, but I just want to make sure you're good to go.

Tusch: Yeah, I'm good.

NYSP: Um, so getting back to, um, so you hit them and you don't know if he's walking diagonal or if he was standing there or not. He just appeared or whatever?

Tusch: Yeah, yeah. The only thing I can say is that it seemed, he appeared like he was in the middle of the road.

NYSP: Okay.

Tusch: In the--

NYSP: Did he turn around and look at you at all or?

Tusch: I can't say that for sure.

NYSP: Okay.

Tusch: I can't recall.

NYSP: Yeah. It's just weird that it's just like, he's just there, you know what I'm saying?

Tusch: Yeah. Um, if I just think, from wherever he was, because I think he was in the southbound lane...

NYSP: Okay.

Tusch: I don't think he was anywhere, like...

NYSP: He wasn't in the northbound lane.

Tusch: Lateral, more lateral than that.

NYSP: Yeah. So you, you, you strike--

Tusch: I stopped right away.

NYSP: You stop right away. Do you back your car up?

Tusch: No, I actually, I shut my car off.

NYSP: Okay.

Tusch: And then I turned it back on.

NYSP: You roll your windows down, or did you--

Tusch: No, I opened the door and started waving people. I don't, I don't believe I moved the car at all from once I felt, once I reacted to the impact, I don't think I moved the car at all.

NYSP: Were you in shock at all?

Tusch: Oh, yeah, a little bit.

NYSP: Okay. When you were, when you're in your, um, you're in your car for what, like, a minute or so you said?

Tusch: Probably just 10 seconds.

NYSP: 10 seconds.

Tusch: Then you just start...

NYSP: Okay. And then there was a few people you said that stopped or whatever. Like oncoming traffic lanes.

Tusch: Yeah, maybe like 2 or 3 cars.

NYSP: Yeah.

Tusch: ...ended up stopping.

NYSP: And then they started doing the life saving and you got out and did all that stuff?

Tusch: Yeah.

NYSP: Alright, cool. Um, I'm trying to think. Is there anything I'm missing that we're going to find out later on or anything like that?

Tusch: I don't, I don't think so.

NYSP: That's like, could be relevant, maybe not relevant, but maybe not relevant to you right now but we will find out.

Tusch: I mean, you're going to, you're going to be able to tell right away but I'm 99.9% sure I did not have my phone on me.

NYSP: Okay.

Tusch: Um, because I would have used that to call my wife.

NYSP: Yeah. Who did you call your wife from? The, the, Colonie PD—

Tusch: Another officer's phone.

CPD Personnel Interviews

On October 15 and October 16, 2025, OSI interviewed 16 CPD officers who responded to the incident scene. In the interviews, CPD officers said that upon their arrival, Officer Tusch was rendering aid to Mr. Bonds and stated that he drove the car that struck Mr. Bonds. Lt. Herbst said he smelled an odor of alcohol coming from the CPD car that Officer Tusch was placed in to keep him away from the active scene. Lt. Herbst said he informed CPD Deputy Chief Sidoti of this information. Deputy Chief Sidoti said he advised CPD Chief of Police Gerace, who said he was contacting NYSP to assume control of the case. While at the scene, CPD officers interviewed civilian witnesses and began to process the scene for evidence. CPD officers said they did not generate any notes or reports detailing their actions or observations.

Civilian Witness (CW) Interviews

CW1

On July 10, 2025, OSI interviewed CW1. (OSI does not identify civilian witnesses.) CW1 said he was coming from a fitness center in the area, driving a silver pickup truck, when he saw the incident. CW1 said he is an emergency medical services provider, got out of his pickup and assisted Officer Tusch with rendering aid to Mr. Bonds. Upon arrival of EMS personnel, CW1 stopped rendering aid to Mr. Bonds. According to CW1, he did not observe any signs of impairment from Officer Tusch, whom he knew from the fitness center.

CW2 and CW3

On August 19, 2025, OSI interviewed CW2 and CW3.

CW2 said that on May 27, 2025, he drove a light green pickup truck north on Old Loudon Road when he saw the crash. CW2 said Officer Tusch was still in his car and asked him to call 911. CW2 said he did not initially see Mr. Bonds in the road because the area was very dark. CW2 said he stopped his truck and assisted Officer Tusch with CPR; he said Mr. Bonds had a faint pulse and blood coming out of his mouth. CW2 said he and Officer Tusch continued to perform CPR on Mr. Bonds until EMS arrived and assumed care. CW2 said CPD officers arrived moments later and started blocking off the street. CW2 did not smell alcohol emanating from Officer Tusch nor did he notice Officer Tusch display any signs of impairment.

CW3 said that at 9:45 p.m., he drove his car south on Old Loudon Road when he saw Mr. Bonds walking very slowly pushing a cart between Overidge Road and Belle Avenue in the driving lane. CW3 said he had to cross the double yellow lines to avoid striking Mr. Bonds due to the road being poorly lit and his car having tinted windows. CW3 said Mr. Bonds was not wearing reflective clothing. According to CW3, at about 10:00 p.m., he saw Mr. Bonds walking on Old Loudon Road near Austin Avenue and Marlyn Drive, wearing the same clothing. CW3 said he again drove around Mr. Bonds to avoid hitting him. CW3 said that at about 10:10 p.m., he was at the Mobil gas station when he heard a man say that someone was hit; moments later he heard sirens and saw CPD pull onto the street. According to CW3, he went to the scene and saw multiple people performing CPR on Mr. Bonds, one of whom indicated that he drove the car that struck Mr. Bonds. CW3 said he had no direct interaction with Officer Tusch.

Forensic Evidence

According to the NYSP Investigative Report and breath test records, Officer Tusch submitted to a breath test at SP Latham at 1:05 a.m., which showed his BAC was 0.02%.

On July 5, 2025, the NYSP Forensic Investigation Center issued a report outlining the results of the oral fluid and blood samples that troopers obtained from Officer Tusch on May 28,

2025. According to the Toxicology Report, testing of the oral fluid and blood samples did not detect any of the thirty-one common drug compounds. However, the blood sample detected the presence of ethanol (alcohol), with a result of 0.02% blood alcohol content.

Medical Examiner

On June 3, 2025, Dr. Bernard Ng performed the autopsy at Ellis Hospital in Schenectady. Dr. Ng determined the cause of Mr. Bonds's death was global anoxic encephalopathy associated with atlanto-occipital dislocation (brain death due to separation of skull from the spine), cervical fracture, and multiple rib fractures resulting from car/pedestrian collision. He deemed the manner of death to be accident. The autopsy report said toxicology testing was not conducted "due to prolonged hospitalization following admission."

Collision Reconstruction Report

On January 20, 2026, NYSP Trooper Michael J. Slayton of the Troop G Collision Reconstruction Unit (CRU) published a report with his investigative findings relating to the collision between Officer Tusch and Mr. Bonds. Trooper Slayton determined that Officer Tusch's car was traveling south on Old Loudon Road and struck Mr. Bonds while he was walking south in the southbound travel lane "with his back to traffic, wearing non-reflective clothing, between two streetlights." Trooper Slayton said he calculated the car's speed to be 34 mph at time of impact; the posted speed limit was 30 mph.



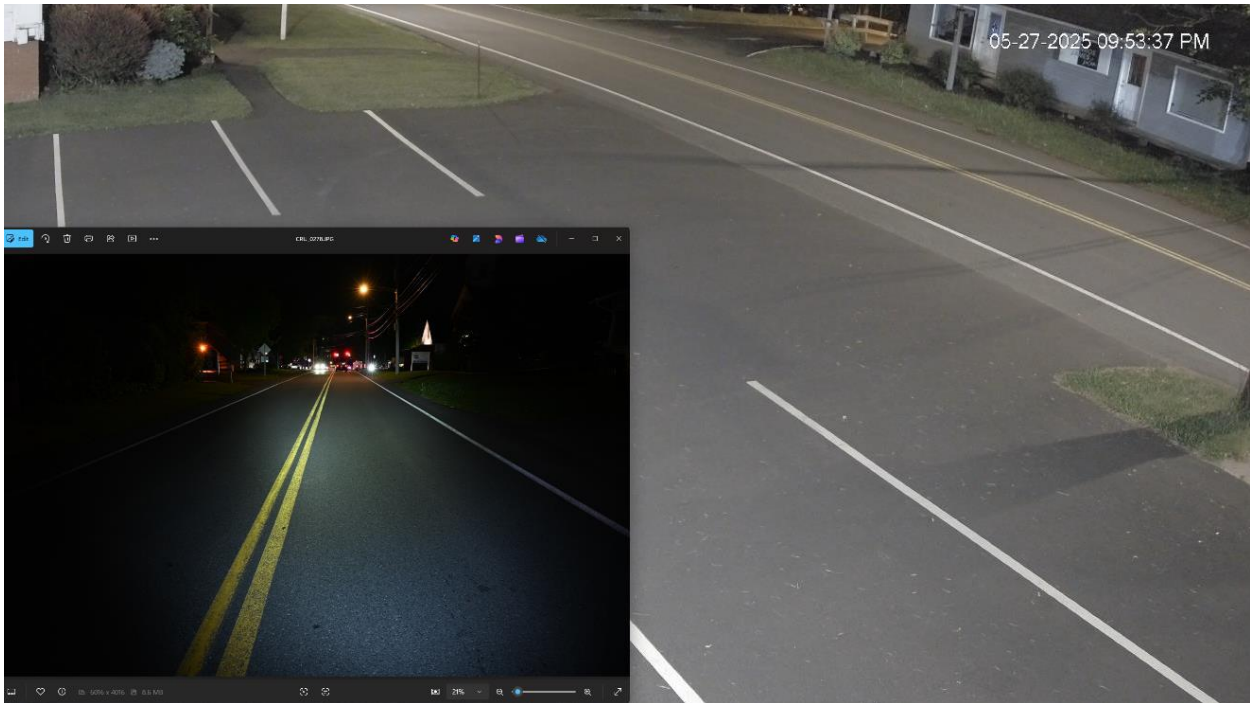
A diagram of the incident scene taken from the collision reconstruction report.

According to his report, Trooper Slayton concluded that the damage to Officer Tusch's car was consistent with a pedestrian striking the hood and his head striking the windshield. Upon review of Officer Tusch's car, Trooper Slayton determined that the vehicle's Airbag Control Module (also known as the car's "black box"), which provides collision and vehicle performance data up to 60 seconds before the collision, was not supported by the current Bosch Crash Data software utilized by NYSP; therefore, no data could be recovered from the system. NYSP conducted a search of Officer Tusch's car and no cell phone was recovered.



A photograph, from CRU report, of Officer Tusch's car showing damage to the hood and windshield. Video footage showed the headlights were on when the collision occurred.

According to the CRU report, Trooper Slayton reviewed the video security footage from a camera on Old Loudon Road that captured the incident. Trooper Slayton compared the lighting conditions in the security footage with the actual lighting at the scene and determined that the actual lighting was darker. In the CRU report, Trooper Slayton said his review of the video security footage showed a dark-colored SUV come into view, traveling in the southbound lane; the operator saw Mr. Bonds, who was in the middle of the lane, and moved into the northbound lane to pass him. Mr. Bonds continued walking in the southbound lane. Trooper Slayton determined that 17 seconds later, Mr. Bonds was in a "less illuminated area" between two streetlights, when he was struck by Officer Tusch. The CRU report stated that the impact occurred when Mr. Bonds was in the "darkest area of that portion of the roadway." In his report, Trooper Slayton said the lack of illumination made it "more difficult for drivers to perceive and react to an unexpected hazard in the roadway, especially with little to no conspicuity from the pedestrian." Trooper Slayton noted that Mr. Bonds did not have any reflective clothing, which is confirmed by scene photos and officers' BWC footage.



A comparison picture taken from the CRU report; the picture on the bottom left was taken at the scene and depicts the actual lighting. The background is a screenshot of the scene taken from the video security footage recovered on Old Loudon Road.

LEGAL ANALYSIS

Criminally Negligent Homicide

Under Penal Law Section 125.10, “a person is guilty of criminally negligent homicide when, with criminal negligence, he or she causes the death of another person.” A person acts with criminal negligence, pursuant to Penal Law Section 15.05(4), “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. The risk must be 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.”

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. In *People v Boutin* (75 NY2d 692, 696 [1990]), the Court of Appeals interpreted the statutory definition of criminal negligence and made clear that the mere “failure to perceive a substantial and unjustifiable risk” is insufficient to establish culpability. Instead, “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.” Therefore, unless a defendant

has engaged in blameworthy conduct creating or contributing to the substantial and unjustifiable risk of death, there will be no criminal culpability (*Id.*). Stated differently, “‘nonperception’ of a risk, even if death results, is not enough,” to establish criminal negligence (*Id.*).

To charge Officer Tusch with Criminally Negligent Homicide, OSI would need to prove that his conduct was so serious and so blameworthy that it created a substantial and unjustifiable risk of death and, further, that he failed to perceive that risk. OSI cannot meet that burden here as the evidence showed that, just prior to the collision, Officer Tusch was driving his car in the proper lane of travel (south in a southbound lane) and was traveling close to the posted speed limit (34 mph in a 30-mph zone). There is no evidence that Officer Tusch was holding or otherwise using a cell phone when the collision occurred; video footage showed both his hands were on the steering wheel. In the absence of risk-creating conduct, OSI cannot prove that he acted with criminal negligence.

Vehicular Manslaughter in the Second Degree

Under Penal Law Section (PL) 125.12(1), a person is guilty of Vehicular Manslaughter in the Second Degree when they operate a motor vehicle in violation of subdivisions two or three of Section 1192 of the Vehicle and Traffic Law (VTL) and, as a result of their intoxication by the use of alcohol, operate such motor vehicle in a manner that causes the death of another person. Therefore, to prosecute Officer Tusch for Vehicular Manslaughter in the Second Degree, OSI must first prove that he committed the offense of Driving While Intoxicated under either VTL Section 1192(2) or Section 1192(3).

Under VTL Section 1192(2), a person commits the offense of Driving While Intoxicated when they operate a motor vehicle while having .08 of one per centum or more by weight of alcohol in such person’s blood as shown by a chemical analysis of their blood, breath, urine, or saliva. Under VTL Section 1192(3), a person commits the offense of Driving While Intoxicated when they operate a motor vehicle while in an intoxicated condition.

Though witness statements and toxicology reports showed that Officer Tusch had alcohol in his system when the collision occurred, there is insufficient evidence to establish that he was intoxicated or had a BAC above 0.08%. Based upon officers’ observations that an odor of alcohol emanated from Officer Tusch, the NYSP took him to the barracks for an evidentiary breath test. Officer Tusch refused to submit to a breath test three times prior to consenting nearly three hours later. According to the breath test, his BAC was 0.02% at 1:05 a.m. (The collision occurred at 10:11 p.m.) Officer Tusch provided a blood sample at 1:28 a.m., more than three hours after the collision; the toxicology report of the blood said his BAC was 0.02%.

Recognizing that an individual's BAC decreases over time as alcohol is metabolized and eliminated, OSI consulted a forensic toxicologist to determine whether they could estimate Officer Tusch's BAC at the time of the collision through retrograde (reverse) extrapolation; the expert said they could not. The expert provided OSI with the "Guidelines for Performing Alcohol Calculations in Forensic Toxicology," which is published by the Organization of Scientific Area Committees (OSAC) for Forensic Sciences. The Guidelines state "extrapolation *shall not* be performed" on alcohol concentrations below 0.030 g/dL (0.03% BAC) because the alcohol elimination rate may not be linear (emphasis added). Since the toxicology report from Officer Tusch's blood sample showed a BAC of 0.02%, retrograde extrapolation could not be used to estimate his BAC range at the time of the collision. Consequently, OSI cannot prove beyond a reasonable doubt that his BAC was at least 0.08% when he struck Mr. Bonds.

Further, the OSAC Guidelines caution that "it is not possible to calculate the exact alcohol concentration at an earlier point in time." The Guidelines therefore say retrograde extrapolation "*shall* be performed using a range of elimination rates," with a minimal range of 0.010 – 0.025 g/dL/hour (0.01% to 0.025% per hour) (emphasis added). Officer Tusch provided a blood sample three hours after the incident, and the toxicology report from the blood kit said his BAC was 0.02%. Based upon the minimal elimination rate set forth in the Guidelines (0.01% per hour), even if retrograde extrapolation could be appropriately utilized in this case, the evidence would show that Officer Tusch's BAC could have been as low as 0.05% when the incident occurred. Consequently, even if the toxicology report from the blood sample provided an appropriate basis to conduct retrograde extrapolation, the evidence would show that he was not intoxicated, as VTL Section 1195(2)(a) states, "Evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood *shall be prima facie evidence that the ability of such person to operate a motor vehicle was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition*" (emphasis added). In this case, there is insufficient evidence to overcome the prima-facie presumption found in VTL Section 1195(2)(a).

Based on the evidence, OSI concludes that it cannot prove beyond a reasonable doubt that Officer Tusch was intoxicated when the collision occurred. In *People v. Ardila* (85 NY2d 846 [1995]), the Court of Appeals said a person is in an intoxicated condition when they have consumed alcohol to the point that they are incapable, to a substantial extent, of employing the physical and mental abilities which they are expected to possess in order to operate a vehicle as a reasonable and prudent driver. OSI cannot meet that burden in this case, as Officer Tusch was driving in his lane of travel when the collision occurred and was driving close to the posted speed limit. Though Officer Tusch had an odor of alcohol, civilian witnesses and police officers who interacted with him at the scene said they did not observe any signs of impairment. Additionally, Trooper Calhoun had Officer Tusch complete three standardized field sobriety tests (SFSTs) at SP Latham, and the NYSP Investigative Report said, "SFSTs were

not indicative of impairment.” Consequently, OSI cannot charge him with Driving While Intoxicated under VTL Section 1192(3).

Since there is insufficient evidence to prove beyond a reasonable doubt that Officer Tusch was intoxicated or had a BAC of at least 0.08% at the time of the incident, he cannot be charged with Vehicular Manslaughter in the Second Degree, even though Mr. Bonds died because of the collision.

For these reasons, OSI concludes that a prosecutor at trial would not be able to prove beyond a reasonable doubt that Officer Tusch committed a crime when he caused Mr. Bonds’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: June 4, 2026