



Office of the New York State Attorney General Letitia James

Office of Special Investigation

August 19, 2025

Report on the Investigation into the Death of Teresa Gucciardo

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, as in this case, 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 Teresa Gucciardo, who was struck by a pickup truck driven by an off-duty member of the Nassau County Police Department (NCPD), in Suffolk County, on November 28, 2022, and died on December 22, 2022. (OSI was notified of the incident a year later, on December 18, 2023.)

On November 28, 2022, off-duty NCPD Officer Timothy Vitiello, driving a pickup truck, struck Ms. Gucciardo, a pedestrian, in the parking lot of a shopping center in Commack. Ms. Gucciardo died four weeks later, on December 22, after a series of medical complications. Apparently because the collision was not initially fatal, SCPD did not do a full investigation and did not notify OSI when Ms. Gucciardo died. Nevertheless, after conducting its own investigation, OSI does not find reason to believe that Officer Vitiello was speeding or otherwise driving recklessly, or intoxicated, and for that reason concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Officer Vitiello committed a crime, and closes the matter with the issuance of this report.

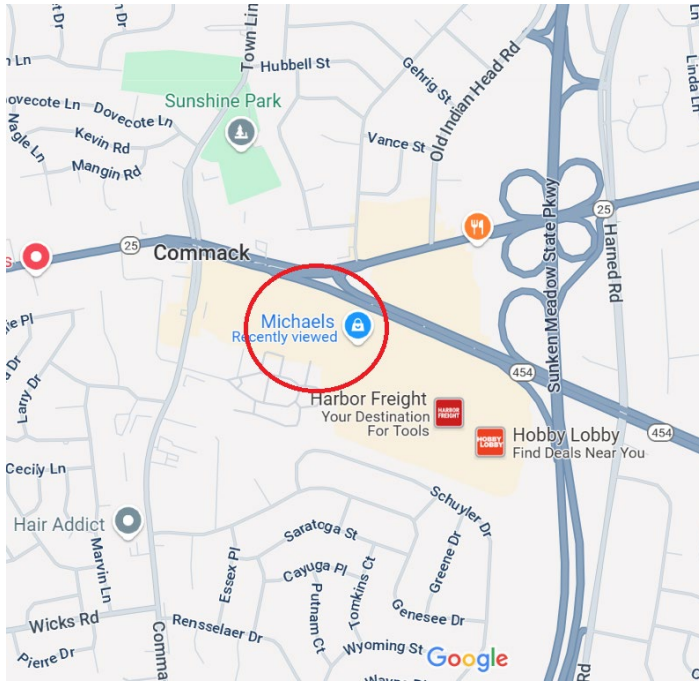
FACTS

911 Calls

Based on audio recordings reviewed by OSI, on November 28, 2022, at 1:54 p.m., Officer Vitiello called 911 and said, "I just hit a pedestrian, I didn't see her. We need an ambulance here. She's breathing still." He told operators he was in front of a Michaels store, in the parking lot, that the pedestrian was about 80 years old, female, not awake, not alert, and responding to a little bit of stimulus. When the operator asked if he was an EMT, Officer Vitiello responded that he was a cop. According to another 911 caller, who did not see the collision but called for an ambulance, police arrived at the scene at 1:57 p.m.

Location

According to Suffolk County Police paperwork, the collision occurred at 50 Veterans Memorial Highway in Commack, in a parking lot in front of a Michaels crafts store.



Google Maps image showing the Michaels store at 50 Veterans Memorial Highway, Commack.



Google Maps image showing the Michaels store and parking lot where the collision occurred.

According to SCPD incident reports, SCPD Detectives James Tobin and Darren Maresca responded to the scene at 3:15 p.m. Detective Tobin told OSI that he watched recorded security video from the Michaels store, which showed that Officer Vitiello drove a red pickup truck, made a left turn from the parking lot, and struck a woman with his front driver's side

bumper. He said the vehicle appeared to slowly roll into Ms. Gucciardo, causing her to fall on the roadway. Detective Tobin told OSI that there was an issue with the DVR system at the location. An Electronic Investigations Unit (EIU) Download Worksheet shows a request was made by Detective Maresca on November 28, 2022 at 3:30 p.m. to download video from the Michaels store. Detective Tobin told OSI that SCPD detectives from EIU attempted to download the video and could not retrieve it. He said the camera system at the location was outdated and the DVR system failed to back up the video, so, ultimately, no video was available of the incident.

Officer Vitiello's Statements

SCPD incident reports state that Officer Vitiello told detectives he didn't see Ms. Gucciardo, heard a thud as he was turning, stopped his truck, got out and saw her on the ground, and immediately called 911.

Officer Vitiello asked to speak with his union and declined to provide a written statement to SCPD after the collision.

Officer Vitiello declined an interview with OSI through his PBA Attorney, Seth Greenberg of Greenberg Burzichelli Greenberg, P.C.

Officer Vitiello's Personnel File

OSI reviewed Officer Vitiello's personnel file. He was a member of NCPD since 2008 and had no founded allegations of excessive use of force and no disciplinary record.

Collision Reconstruction

SCPD did not attempt a collision reconstruction of any kind. Detective Tobin, who said he watched the video of the collision as described above, told OSI that SCPD did not attempt a collision reconstruction because, when he watched the video of the collision, he did not observe any speeding or reckless driving. SCPD concluded a collision reconstruction was not necessary.

Scene Photos



SCPD Crime Scene photos: upper photos show Officer Vitello's red pickup truck and surrounding area at the collision scene; lower photos show Officer Vitello's red pickup truck and blood on the ground at the collision scene.

Officer Vitiello's Truck

Officer Vitiello was driving a red 2009 Dodge pickup truck. SCPD paperwork shows the truck was impounded after the collision; SCPD searched it, photographed it, and safety-inspected it. According to SCPD paperwork, SCPD found no drugs or alcohol inside the truck. SCPD's Motor Vehicle Examination Report said that the truck's brakes, lights, tires, and other systems were checked and found to be in proper working order. The vehicle passed safety inspection on December 6, 2022 and was released to Officer Vitiello on December 12, 2022.

OSI reviewed SCPD's photos of the pickup truck (above and below) and did not see indications of damage to the front or front driver's side, the areas that were reportedly involved in the impact with Ms. Gucciardo.



SCPD Crime Scene photos show the front and front driver's side of Officer Vitiello's truck.

Event Data Recorder (EDR)

SCPD did not collect EDR data from the pickup. Detective Tobin, who said he watched the video of the collision as described above, told OSI that SCPD did not download the pickup's EDR because the collision did not cause any damage to the vehicle and did not set off the airbags, which would have triggered the EDR to preserve the data it had recorded.

Sobriety Tests

No sobriety tests of any kind were conducted by SCPD. Detective Tobin told OSI that patrol officers and a patrol supervisor were the first on scene. He said they determined a field sobriety test was not warranted because Officer Vitiello did not appear to be under the influence of drugs or alcohol; he said they observed that his speech was clear and coherent, that he was steady on his feet, and that he did not show signs of intoxication. Detective Tobin said SCPD determined there was no reasonable cause to believe that a crime had been committed. He said Ms. Gucciardo was still alive after the collision, so it was not deemed a fatal collision until a later date.

Phone Activity

SCPD did not collect a phone from Officer Vitiello. Detective Tobin told OSI that SCPD determined there was no reasonable cause to believe that a crime had been committed so SCPD did not take Officer Vitiello's phone or subpoena any phone records.

Medical Treatment

Medical records show that Commack Volunteer Ambulance Corps Emergency Medical Technicians (EMTs) arrived at Michaels via ambulance at 2:03 p.m. Their records indicated that Ms. Gucciardo was lying under the pickup truck when EMTs arrived, initially responded to loud verbal stimuli, but was confused and had slurred speech. Ambulance notes indicated that Ms. Gucciardo had an injury to her head (hematoma to the right rear of her head), altered mental status, and an open left ankle fracture. In the ambulance, Ms. Gucciardo became unresponsive, had abnormal breathing, and was intubated for airway protection.

Records show that Ms. Gucciardo arrived at South Shore University Hospital's Emergency Room at 2:35 p.m. She was admitted to the Surgical Intensive Care Unit (SICU), intubated, and diagnosed with an open left ankle fracture, posterior scalp laceration, and traumatic brain injury (head/brain hemorrhage and acute infarct in the right cerebral hemisphere). Ms. Gucciardo's left ankle fracture required surgery, but that surgery was deferred due to the head injury, which had caused bleeding and buildup of cerebrospinal fluid in the brain, causing pressure and potential brain damage, and which required an external drain. Staples and sutures were used to close the laceration to Ms. Gucciardo's right posterior scalp. Records noted that her maxillofacial structures were stable, and that there was no cervical spine fracture. She was placed on full ventilation support.

Records show that Ms. Gucciardo became stable and was downgraded from SICU to the main floor on November 30, 2022. On December 1, 2022, she had the surgery to fix the open fracture of her left ankle. On December 3, 2022, Ms. Gucciardo was re-intubated and upgraded back to SICU due to increasing lethargy and increased brain hemorrhage in CT imaging. On December 8, 2022, records show that Ms. Gucciardo underwent a second surgery on her ankle because the prior surgery had failed and the ankle was again dislocated. On December 9, 2022, she was extubated successfully, but remained on ventilation support.

On December 15, 2022, records show that Ms. Gucciardo's respiratory status worsened. She was diagnosed with acute respiratory failure; her oxygen requirement had reached the limits of support short of intubation and tracheostomy. Records show that Ms. Gucciardo's daughter expressed concern that her breathing appeared labored; she felt her mother was suffering. After discussion with the doctors, she signed a do not resuscitate order (DNR). On December 18, 2022, records show that patient care shifted to comfort measures only, noting that Ms. Gucciardo was hemodynamically unstable for transfer to hospice. On December 22, 2022, at 8:24 p.m., Dr. Mariam Melkumian pronounced Ms. Gucciardo dead after she became unresponsive and pulseless, and ceased breathing.

Autopsy

Dr. Paul Mellen, of the Suffolk County Office of the Medical Examiner, conducted an autopsy of Ms. Gucciardo and determined the cause of death to be complications of multiple injuries, with arteriosclerotic cardiovascular disease as a contributor. He deemed the manner of death to be accident (pedestrian stuck by pickup truck). Only an external examination was performed.

LEGAL ANALYSIS

Under Penal Law Section (PL) 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 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.”

Although there is an absence of full evidence in this case, in large part due to SCPD’s failure to conduct a full investigation at the time of the occurrence and its failure to notify OSI at the time of Ms. Gucciardo’s death, it is nevertheless the case that the evidence that does exist does not indicate speeding or reckless driving on the part of Officer Vitiello. Officer Vitiello called 911 right away, remained on scene, and made statements to 911 and to a responding officer about what happened. An SCPD detective said he viewed the collision on a recorded security video, and did not observe any speeding or reckless driving. And Ms. Gucciardo, although injured, was seemingly not struck with sufficient force to cause her to be thrown clear of the pickup.

As a result, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt that Officer Vitiello committed a crime when he caused Ms. Gucciardo’s death. Therefore, OSI will not seek criminal charges against Officer Vitiello and closes the matter with the issuance of this report.

RECOMMENDATION

The Suffolk County Police Department should administer Portable Breath Tests to police officers involved in collisions consistently and in close proximity to the collision time.

OSI has investigated a number of police-involved fatal vehicular collisions in the State of New York. An essential component of vehicular investigation is the determination of possible alcohol impairment. The SCPD has the capability of quickly and efficiently testing drivers for alcohol impairment by using Portable Breath Tests (PBTs) which are reliable and convenient. Because alcohol metabolizes from the body over time, the PBT should be administered soon after a collision to determine the blood alcohol content of the driver close in time to the moment of the crash. No PBT was administered in this case after the collision, despite the fact that investigating officers responded to the collision immediately. OSI therefore recommends that the SCPD administer PBTs in law enforcement related collisions consistently and reliably soon after the time of collision.

Dated: August 19, 2025