

TO: Hon. Scott D. McNamara
FR: ADA Stacey L. Scotti
RE: Investigation into the death of Qasir Brown – File # 19994

This investigation was opened as a result of the death of Qasir Brown [DOB: 07/21/11]. Said death occurred on August 2, 2017 as a result of a motor vehicle collision occurring on Boyce Avenue in the City of Utica. The collision was between an SUV, operated by Lawrence Gregory and a bicycle being ridden by Qasir Brown. The collision resulted in the death of Qasir Brown.

This office opened a criminal investigation to determine whether any criminal action was to be pursued in this matter. This memo memorializes the process of the investigation and my conclusions regarding any potential criminal prosecution.

The following materials were reviewed in regard to this investigation:

- Utica Police Department complete New York State Incident Report;
- All photographs taken by any and all members of the Utica Police Department;
- All supporting depositions taken by members of the Utica Police Department;
- Utica Police Department Collision Reconstruction Findings Report;
- Utica Police Department Body Camera Videos;
- Video Surveillance Footage taken from the outside of the residence located on Boyce Avenue;
- Records of the Utica Fire Department;
- Certified medical records of Qasir Brown from St. Elizabeth's Medical Center;
- Certified autopsy report of Qasir Brown from Onondaga County Medical Examiner's Office;
- Forensic report of Anthony Martino of the Northeast Cybersecurity and Forensics Center at Utica College detailing the forensic analysis of the cellular phone possessed by the driver; and
- All relevant provisions of the New York State Vehicle and Traffic Law and New York State Penal Law.

The incident occurred on August 2, 2017. At approximately 17:37, members of the Utica Fire Department were dispatched to Boyce Avenue regarding a collision between a motor vehicle and a juvenile bicyclist. Members of the Utica Police Department were first on scene, specifically Officers Femia and Flo. Upon arrival, Qasir Brown was laying on the front lawn next to the driveway where the incident had occurred. There were family members and civilians surrounding him at this time. Said officers expedited UFD and, together with a member of Qasir's family, began administering CPR to him. Utica Fire Department arrived at approximately 17:41, whereupon Qasir was transported to St. Elizabeth's Medical Center. Throughout the interaction at the scene, civilian bystanders continued to yell and scream at members of law enforcement. Members of the Utica Police Department repeatedly asked them to step back so that they could administer life saving measures to Qasir.

Qasir was transported to St. Elizabeth's Medical Center and arrived there at approximately 17:50. Life-saving measures continued at St. Elizabeth's Medical Center, without success, and Qasir Brown was pronounced deceased at 18:32. On August 3, 2017, a post-mortem examination was performed at the Onondaga County Medical Examiner's Office. The Cause of Death was determined to be blunt force trauma of the head due to a bicycle-SUV collision. Also noted were additional blunt force injuries to the trunk and abrasions to the extremities. The Manner of Death was determined to be Accident.

SURVEILLANCE FOOTAGE

Members of the Utica Police Department secured outdoor video (no audio) surveillance footage from 132 Boyce Avenue. The footage captures activity on Boyce Avenue prior to, during and immediately following the collision on August 2, 2017. The first video segment begins at approximately 17:26:33, and the footage angle shows a woman standing on the porch steps smoking a cigarette. She has

been identified as Quasheeka Brown, Qasir's mother. According to the timestamp on the footage, at approximately 17:28, Qasir Brown is seen getting onto his bicycle (in the yard directly in front of the residence) and riding away down the sidewalk and outside the view of the camera. He is unaccompanied and not wearing a helmet. Ms. Brown is now sitting on the porch at the steps. At approximately 17:32, it can be observed in the footage that there is a second woman on the porch. She exits the porch and is walking around in the front yard. The woman in the yard appears to be engaged in a conversation. This woman has been identified as Pamela West.

At approximately 17:33:29, Ms. West returns to the porch. At approximately 17:33:31, a blue SUV travels on Boyce Avenue passing in front of the house where the women were located and pulling into a driveway on Boyce Avenue. The women remained on the porch engaged in conversation. At approximately 17:34:23, a young girl walks down the sidewalk and onto the porch. The women remain on the porch engaged in conversation with each other. At approximately 17:35:35, another civilian approaches the porch and appears to engage in conversation with the women. This woman has been identified as Tyasia Hendricks.

At 17:35:40, the blue SUV can be observed backing slowly down the driveway toward the roadway. At that time, it appears that the vehicle has struck something as it makes an upward and then downward movement. From the angle of the camera, the driveway itself is not visible. Therefore, it is not clear from the footage what had been struck. The vehicle appears to stop and then either roll forward or move forward. There is no indication from the footage that the SUV struck anything else upon the slight movement forward. At the time that this occurs, the women are still in the same positions on and around the porch.

At approximately 17:35:50, the women can be observed exiting the porch and running over to the SUV. They do not exit the porch until after the collision occurs and the SUV has come to final rest. Any action taken with regard to Qasir or the SUV is beyond the area captured by the camera. Rather, the camera, at this point, captures people running to and from the SUV as well as people on the ground next to the SUV. When compared to the UPD body camera footage, it is clear that at this time, someone has pulled Qasir from under the vehicle and is attempting to help

him on the front yard. The time stamp on this camera footage shows arrival of the first UPD officer to be approximately 17:38:54. The second car arrived at approximately 17:39:00.

UTICA POLICE DEPARTMENT – CANVASS AND SUPPORTING DEPOSITIONS

Members of the Utica Police Department canvassed the area for any potential eyewitnesses. In addition, multiple supporting depositions were secured throughout this investigation.

Members of the Utica Police Department canvassed the area for potential eye witnesses. This included going door to door to see if anyone had witnessed the incident.

- Amanda Gregory was interviewed and indicated that her husband, Larry Gregory, was operating the SUV involved in the incident.
- Pamela West was interviewed and indicated that she was sitting on the porch with Qasir’s mother and that when they realized the truck was backing out, that they started yelling to the driver to stop but that it was too late.
 - On August 17, 2017, Ms. West gave a supporting deposition to Inv. M. Washington of the Utica Police Department. In that deposition, she indicated that Qasir had just gotten the bicycle for his birthday and that he was riding on the sidewalk. She stated that Qasir was riding his bike back and forth on the sidewalk. That at the time of the incident, Qasir was riding on the sidewalk, back to his residence, from Steuben Street (riding toward the residence). She stated that the guy operating the Durango was backing out of the driveway and that he backed into Qasir. She stated that the operator of the Durango backed over Qasir a second time and then drove forward and stopped. The occupants exited the Durango. Qasir’s mother pulled him from under the Durango. She further stated that the operator of the Durango exited the vehicle and just stood there and did not say anything.

- Several civilians were interviewed and indicated that they did not observe the incident happen but saw people assisting Qasir after he had been struck.
- Michael Klein
 - Mr. Klein was interviewed on August 2, 2017 during the canvass. He indicated that he was a veteran and had medical experience and was trying to assist administering medical attention to Qasir (prior to EMS and UPD arrival). The entirety of his statement is included on the UPD body cam, which was activated and recording during the area canvass.
- Tyasia Hendricks
 - This witness gave 2 depositions to members of the Utica Police Department.
 - On August 2, 2017, she gave a deposition indicating that she was walking down Boyce Avenue and saw the blue SUV in the driveway of 136 Boyce Avenue. She stated that she stopped because she believed he was backing up, but when he did not move, she continued on to 132 Boyce Avenue. She further stated that when she started walking toward 126 Boyce Avenue, she heard people yelling stop, and she then turned around and saw that the vehicle had backed over Qasir and that Qasir was under the rear passenger tire.
 - On August 16, 2017, she gave a deposition in which she stated that at the time of the incident, that Pam West and Quasheeka were yelling for the man in the blue SUV to stop but that he reversed, went forward and then reversed again.

DRIVER INTERVIEW/ASSESSMENT

The driver of the SUV remained on the scene. He was identified as Larry K. Gregory, Jr., with a residence of 136 Boyce Avenue, Utica. He gave a written deposition to Inv. Vincent Parrotta of the Utica Police Department. In that

statement, he indicated that he had returned to his home after shopping at the North Utica Price Chopper with his wife and children. Upon returning home, he needed to drop his son off at the home of Susan Rahausser, located at Moore Street in Utica. At that time, he re-entered his 2002 Dodge Durango, with his son, Cody, in the rear seat, passenger side. Mr. Gregory indicated that he started to back out of the driveway and was looking right and left as he did so. He indicated that as he got closer to the street, he felt his truck rock back and then moved forward. He exited the truck and looked underneath and saw a kid's bicycle and a little boy in front of the rear passenger side tire. He then observed someone pull the child out from under the vehicle and onto the lawn of 134 Boyce Avenue. He then stated that he waited next to his truck until the police arrived. His son ran into the house to get his wife. His son, Cody, was also later interviewed by members of the Utica Police Department. Larry Gregory signed a search waiver for both his truck and his cell phone.

Lawrence Gregory met with Inv. Aaron Donaldson at the Utica Police Department. Inv. Donaldson is a New York State Drug Recognition Expert. He was assigned to interview and assess Mr. Gregory to make a determination whether there was any drug or alcohol involvement which would have contributed to this collision. Inv. Donaldson first responded to the scene on Boyce Avenue and was then re-directed to the Utica Police Department to meet with Mr. Gregory. Inv. Donaldson made the following observations during his evaluation of Lawrence Gregory:

- While speaking with him, he did not detect an odor of an alcoholic beverage coming from either Gregory's mouth or person.
- Mr. Gregory's motor skills were good.
- Mr. Gregory consented to submitting to Standardized Field Sobriety Testing:
 - Mr. Gregory passed all three (3) of the SFST;
 - Mr. Gregory passed the Modified Rhomberg Balance Test;
 - Mr. Gregory passed the Finger to Nose Test; and

- Mr. Gregory submitted to the Alco-sensor breath screen test and received a negative reading for the presence of alcohol.
- Inv. Donaldson did not observe any signs of intoxication or impairment; neither clinical signs nor psychophysical indications.

COLLISION RECONSTRUCTION REPORT
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Members of the Utica Police Department, assisted by members of the New York State Police conducted a collision reconstruction investigation and completed a reconstruction report. Evidence that was reviewed included:

- Collision scene examination and measurements;
- Collision scene evidence, including examination for scuff marks and observations of the vehicles at final resting position;
- Measurements of the scene using a Leica P20 3D scanner;
- Vehicle examinations;
- Skid testing;
- Conclusions regarding the collision phases;
- Inspection of SUV for potential Crash Data Retrieval; and
- Possible mathematical findings.

At the conclusion of the reconstruction investigation, the following conclusions were reached:

- Speed was ruled out as a factor in the collision. There were no pre-impact or post-impact evidence to allow for speed estimates.
- Crash Data Retrieval was not available due to the year of the manufacture of the SUV.
- That the braking system of the SUV was adequate at the time of the collision and would have passed New York State Inspection.
- There was no malfunctioning of the SUV indicated.

The Collision Reconstruction report made the following findings regarding the contributing factors of this collision:

- Primary contributing factor was determined to be that the bicycle was being operating on the sidewalk. This was in violation of NYS VTL §1234.
- Secondary contributing factor was determined to be the perception of the driver. Specifically, that if the driver had been looking over his left shoulder while backing out of the driveway, that he would have had an adequate field of view to observe the bicyclist.
- Tertiary contributing factor was determined to be that the rider of the bicycle was not wearing a helmet. This was in violation of NYS VTL §1238.

NORTHEAST CYBERSECURITY AND FORENSICS CENTER REPORT
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NCFC Director, Anthony Martino, conducted a forensic analysis on the cellular phone secured from Lawrence Gregory on August 2, 2017. This analysis was conducted utilizing forensically sound techniques which have been accepted in the industry of forensic analysis. Martino conducted an analysis of the data recovered from the cellular phone, examining its data for any signs of usage at or around the time of the collision, including, call logs, chats, SMS and MMS messages as well as web history. The examination centered around the time frame of 5:37 PM. The forensic examination yielded no positive results for activity on the cellular phone at the time of the collision. The last user initiated activity on the device, prior to the collision, occurred at 5:30 PM, approximately seven (7) minutes prior to the collision. Therefore, use of the cellular device was ruled out as a contributing factor to the collision.

POTENTIAL RELEVANT NYS VTL AND PL SECTIONS

NYS VEHICLE AND TRAFFIC LAW:

Unsafe Backing VTL §1211(a) and (b)

- (a): The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.
- (b): The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway.
- The NYS VTL § 152 defines “Traffic” as, “Pedestrians, ridden or herded animals, vehicles, bicycles and other conveyances either singly or together while using any highway for purposes of travel.
- The NYS VTL § 118 defines “Highway” as, “The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.”
- Therefore, this statute does not apply to a motorist backing out of his driveway into the public highway.
- Furthermore, the bicycle in the instant case was not being operated on the roadway or public highway, rather on the sidewalk.
- The unsafe backing statute would not be chargeable in this instance, as the evidence presented does not satisfy the elements required for that traffic offense.

Failure to Yield Right of Way VTL § 1143

- The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.
- VTL § 140 defines “Roadway” as, “That portion of a highway improved, designed, marked, or ordinarily used for vehicular travel, exclusive of the shoulder or slope.”

- This section of the VTL does not apply in the instant case as the bicycle in question was not on the roadway, as defined by NYS VTL, but rather on the sidewalk.

Riding on roadways, shoulders, bicycle, or in-line skate lanes and bicycle or in-line skate paths VTL § 1234

- (a) Upon all roadways, any bicycle or in-line skate shall be driven either on a usable bicycle or in-line skate lane or, if a usable bicycle or in-line skate lane has not been provided, near the right-hand curb or edge of the roadway or upon a usable right-hand shoulder in such a manner as to prevent undue interference with the flow of traffic except when preparing for a left turn or when reasonably necessary to avoid conditions that would make it unsafe to continue along near the right-hand curb or edge.
- This is the requirement that bicycles be propelled on the roadway. However, in the instant case, the bicycle was being operated upon the sidewalk.
- According to the Utica Police Department Collision reconstruction report, this was determined to be the **primary contributing factor** to the collision between the vehicle and the bicycle.

Requirement for bicycle helmets VTL § 1238

- 5(b) – No person, one or more years of age and less than fourteen years of age, shall operate a bicycle unless such passenger is wearing a helmet meeting standards established by the commissioner.
- Qasir Brown would fit under the requirement of this section as his date of birth was 07/21/11.
- As is noted throughout the investigation, statements and reports, as well as the body cam videos of members of the Utica Police Department, and the surveillance video obtained by the Utica Police Department, Qasir Brown was not wearing any protective headgear.

- According to the Utica Police Department Collision reconstruction report, this was determined to be a **tertiary contributing factor** to the collision between the vehicle and the bicycle and the corresponding fatal injuries sustained.

NYS PENAL LAW:

Multiple sections of the New York State Penal Law were examined for possible application to the facts in the instant case:

Vehicular Manslaughter: Penal Law § 125.12, 125.13 or 125.14:

- None of these sections as apply, as they all have the element that the operator be impaired by alcohol or drugs or intoxicated. As detailed above, Inv. A. Donaldson, a certified Drug Recognition Expert, formed the opinion that Mr. Gregory was not under the influence of drugs or alcohol at the time of the collision.

Manslaughter in the Second Degree PL § 125.15(1):

- This section of law reads: “A person is guilty of manslaughter in the second degree when he recklessly causes the death of another person.
 - Recklessly is defined in the Penal Law (§15.05(3)) as follows:
 - A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. 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. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

- Throughout the course of the investigation and review of all evidence and materials, it is my opinion that there is no evidence to substantiate the element that the operator acted recklessly, as is defined above.
 - In the instant case, there has been no evidence presented or discovered that would indicate that Mr. Gregory was aware of the presence of Qasir on the sidewalk and disregarded that risk. The evidence presented does not support the elements required by this section of the penal law.

Manslaughter in the First Degree: Penal Law Section 125.20(1):

- This section of law reads: “A person is guilty of manslaughter in the first degree when with intent to cause serious physical injury to another person, he causes the death of such person or of a third person.”
 - Intentionally is defined by the Penal Law (§15.05(1)) as follows:
 - A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.
 - Throughout the course of the investigation and review of all evidence and materials (including his actions before, during and after the incident), it is my opinion that there is no evidence to substantiate the element that the operator acted intentionally, as is defined above.
 - There has been no evidence presented or discovered that would show any indication that Mr. Gregory intended any harm to Qasir or that he acted intentionally.

Criminally Negligent Homicide PL § 125.10:

- This section of law reads: “A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person.”
 - Criminal Negligence is defined by the Penal Law (§ 15.05(4)) as follows:

- A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
 - Throughout the course of the investigation and review of all evidence and materials, it is my opinion that there is no evidence to substantiate the element that the operator acted with criminal negligence as is defined above.
 - In the instant case, the operator claims to have looked both left and right while backing up his vehicle. The collision reconstruction report concludes that if he had been looking over his left shoulder, that he should have had an adequate range of view to see Qasir. There is no indication that Mr. Gregory was speeding out of the driveway, as was evidenced in the surveillance video. Furthermore, any use of a cellular device has been ruled out. The human error involved in not perceiving Qasir on the sidewalk, does not rise to the level of gross deviation of the standard of care that a reasonable person would observe in the situation, as is required by the statute.

Endangering the Welfare of a Child PL § 260.10(1):

- This section of law reads: “A person is guilty of endangering the welfare of a child when he or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health.:
 - Knowingly is defined by the Penal Law (§ 15.05(2)) as follows:
 - A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.”

- The facts that lead to any consideration of this charge would be the fact that Qasir Brown, date of birth 07/21/11, was permitted to ride his bicycle on the sidewalk without a helmet and without a parent or guardian accompanying him. A review of the surveillance video, indicates that Qasir rode away unaccompanied on his bicycle for a period of 7 ½ minutes. Upon his riding his bicycle back toward his house, he was still unaccompanied by any adults. Furthermore, it appears from the surveillance video that any adults connected with Qasir remained on the porch and surrounding area until after the collision had occurred.
- Upon consideration of this charge, it would be a miscarriage of justice to charge anyone under this section of the Penal Law. Prosecutors are tasked with the notion of prosecutorial discretion. In this matter, it is clear that the family of Qasir Brown has paid the ultimate price regarding this incident – the tragic loss of a young child. It would not further the interests of justice to charge anyone under this section.

CONCLUSIONS

Based upon a review of all the evidence and all potential sections of both the New York State Penal Law and Vehicle and Traffic Law, as detailed above, it is my opinion that there are no relevant sections of law chargeable against Lawrence Gregory which would be supported by the evidence in this case. It is clear that there was human error by Mr. Gregory which resulted in him not perceiving or observing Qasir on the sidewalk as he was backing out of the driveway. Although he indicates in his statement that he was looking both left and right while backing up, the collision report indicated that had Mr. Gregory been looking over his left shoulder, he should have had an adequate field of view to observe Qasir. Additional factors that were present include the fact that Qasir was riding the bicycle on the sidewalk, without a helmet and while lacking adequate adult supervision. All of these factors contributed in some portion to the collision.

This incident involved a series of non-criminal factors which compounded into a terrible tragedy which resulted in Qasir Brown losing his life. The tragic loss itself, however, does not mandate criminal action. As detailed above, the actions of all involved do not satisfy the elements required for the imposition of any charges.

Respectfully submitted,

Stacey L. Scotti
Assistant District Attorney