

**STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL**

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Attorney General*



**INVESTIGATIVE REPORT
January 7, 2021**

Incident Type: Motor Vehicle Collision
Incident Location: Elmwood Avenue and Bissell Street in Providence
Incident Date: October 18, 2020
Police Department: Providence Police Department
Officers Involved: Kyle Endres and Brad McParlin
Injured Party: Jhamal Gonsalves

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I. SUMMARY OF FINDINGS

One of the most important duties of the Attorney General, as the chief law enforcement officer of the state, is to review interactions between law enforcement officers and the public to ensure that they comply with all applicable laws. This Report on the circumstances leading up to the tragic injury of Jhamal E. Gonsalves in a motor vehicle crash involving the police is intended to provide the public with a comprehensive account of the investigation conducted by this Office and the results of that investigation.

The purpose of this Office's review of the October 18, 2020 crash at Elmwood Avenue and Bissell Street in Providence, during which Mr. Gonsalves sustained severe injuries, was to determine whether Officer Kyle Endres, or any other Providence Police officer, committed a criminal act.

This Office, the Rhode Island State Police, and the Providence Police Department conducted this investigation pursuant to The Attorney General's Protocol for the Review of Incidents Involving the Use of Deadly Force, Excessive Force and Custodial Deaths dated June 17, 2020 ("The Protocol"). The investigation involved a collision reconstruction analysis conducted by Rhode Island State Police experts, the gathering and review of physical evidence, including video footage from police and non-police sources, and interviews of police and civilian witnesses. This evidence is detailed later in this report.

While the Office's analysis is fully explained below, this Office has determined, based principally on the State Police Collision Reconstruction Unit's analysis and physical and video evidence, that Mr. Gonsalves was injured by being struck in the head area by a stop sign, which immediately beforehand had been struck by a Providence Police cruiser driven by Officer Endres. The collision reconstruction analysis and physical and video evidence conclusively established that Officer Endres' vehicle did not make contact with the scooter driven by Mr. Gonsalves.

The collision reconstruction analysis and physical and video evidence also established that, in the five seconds prior to impact with the stop sign up to the moment of impact, Officer Endres' cruiser decelerated from about 35 mph to approximately 18.5 mph, that Officer Endres applied his brakes, that the Anti-Lock Brake System ("ABS") of Officer Endres' cruiser was fully engaged prior to impact, and that just before the crash, Officer Endres was engaged in emergency steering maneuvers. The collision reconstruction analysis and physical and video evidence also established the distances between Officer Endres' cruiser and the scooter driven by Mr. Gonsalves at various intervals leading up to the crash.

Based on the evidence gathered in connection with this investigation, this Office analyzed the actions of Officer Endres in the context of several potential bases for criminal liability. The most readily applicable basis for criminal liability is Driving So As To Endanger, Resulting in Serious Bodily Injury, in violation of R.I. Gen. Laws § 31-27-1.1 ("Driving to Endanger"). Driving to Endanger requires a showing that a defendant's operation of a motor vehicle meets the standard of criminal recklessness, which under Rhode Island law is a very high standard. A showing of negligent driving is not enough. The Rhode Island Supreme Court has left no room for doubt on this point: "the use of the word 'reckless' or 'recklessly' in the penal [that is, criminal] statutes

connotes something more than the negligence necessary to support a civil action for damages, and [] the two words impart a disregard by the accused for the consequences of his act and an indifference to the safety of life and limb.” State v. Lunt, 260 A.2d 149, 151 (R.I. 1969). The Supreme Court has further explained that “the distinguishing factor, which properly classifies the operation of the motor vehicle as reckless, is that the evidence shows that a driver has embarked upon a course of conduct which demonstrates a heedless indifference to the consequences of his action. . . . Mere inadvertence or a pure error in judgment by a driver is not embraced by the criminal sanctions of the reckless driving provisions of the Motor Vehicle Code.” Id. at 151-52 (internal citation omitted) (emphasis supplied).

As described in detail below, this Office has concluded, based principally on the physical and video evidence and the State Police Collision Reconstruction Unit’s analysis, that the manner in which Officer Endres operated his vehicle, taking into account speed, following distance, braking, attempted avoidance maneuvers and other factors, does not meet this high standard of criminal liability. Nor did we find criminal recklessness by any other officer involved. In addition, the evidence does not support a finding that Officer Endres, or any other officer, intentionally caused Mr. Gonsalves harm, as that concept is defined in criminal law.

It is not for this Office to determine whether Officer Endres, any other Providence Police officer, or any other party, including the City of Providence, acted or failed to act in a way that was civilly negligent or otherwise breached a duty of care giving rise to civil liability. Additionally, it is ultimately the responsibility of the Providence Police Department, rather than this Office, to determine whether administrative or internal discipline should be imposed on any officer due to the violation of any Department rule, regulation or order, or whether any officer should be cited for violating the Motor Vehicle Code.

II. SUMMARY OF EVIDENCE REVIEWED

This Office reviewed the following evidence in the course of this investigation:

- (1) Providence Police Reports and Warrants
 - a. State of Rhode Island Uniform Crash Report for a crash at Elmwood Avenue and Bissell Street on October 18, 2020 at 5:50 p.m. involving Jhamal Gonsalves of Portsmouth, RI and Kyle Endres of Providence, RI.
 - b. Providence Police Incident Report dated 10/18/20 by Officer Luis Ferreras
 - c. Supplement by Detective LaBianca dated 10/27/20
 - d. Supplement by Detective Allin dated 10/17/20¹
 - e. Search and seizure warrant for 1999 Yamaha motorcycle sworn to by Officer Jose Deschamps

- (2) Providence Police Witness Statements
 - a. Witness statement of Sergeant Curt Desautels dated 11/13/20
 - b. Witness statement of Officer Brendan McKenna dated 10/18/20
 - c. Witness statement of Officer Brad McParlin dated 10/18/20

¹ The date on the report appears to be a typographical error.

- d. Witness statement of Officer Alex Diaz dated 10/18/20
 - e. Witness statement of Officer Luis Ferreras dated 10/18/20
 - f. Witness statement of Officer Carly Cabral dated 10/18/20
 - g. Witness statement of Officer Yesenia Caba dated 10/17/20²
- (3) Police Officer Interviews³
- a. Recording and Transcript of interview of Officer Kyle Endres by Sergeant Mellor and Sergeant Zienowicz at the Providence Police Department on October 26, 2020. Present for the interview was Attorney Joe Pezza.⁴
 - b. Recording and Transcript of interview of Officer Brad McParlin by Sergeant Zienowicz on October 26, 2020.
 - c. Recording and Transcript of interview of Officer Brendan McKenna
 - d. Recording and Transcript of interview of Detective Mitchell Guerra
 - e. Recording and Transcript of interview of Officer Yesenia Caba
 - f. Recording and Transcript of interview of Officer Carly Cabral
 - g. Recording and Transcript of interview of Officer Alex Diaz
 - h. Recording and Transcript of interview of Officer Luis Ferreras
- (4) Interviews of Civilian Witnesses
- a. Recordings and transcripts of interviews of Civilian Witnesses #2, #4 and #5 conducted by private investigator Ryan Gwaltney on October 25 and 26, 2020.
 - b. Recordings and transcripts of an interview of Civilian Witness #1 by the Providence Police Department on October 19, 2020
 - c. Typed statement of Civilian Witness #1 on October 19, 2020 taken by Sergeant Romano and Sergeant Zienowicz
 - d. Recording and transcript of interview of Civilian Witness #2 by the Rhode Island State Police on October 30, 2020
 - e. Recording and transcript of interview of Civilian Witness #3 by the Rhode Island State Police on November 2, 2020
 - f. Recording and transcript of interview of Civilian Witness #4 by the Rhode Island State Police on October 29, 2020
 - g. Recording and transcript of interview of Civilian Witness #5 by the Rhode Island State Police on October 30, 2020
- (5) Police body-worn camera videos at the scene:
- a. Officer Endres (59 seconds) Officer Endres' body-worn camera also recorded (without volume) the 28 seconds leading up to the crash.
 - b. Officer McKenna (8.9 min.)

² The date on the report appears to be a typographical error. The narrative of the report references October 18, 2020.

³ Other than in the case of Officers McParlin and Endres, all officer interviews took place at the Providence Police Department on October 23, 2020 and were conducted by Sergeants Romano and Zienowicz. A union representative was present for all police interviews.

⁴ Officer Endres, through counsel, waived his rights under Garrity v. New Jersey, 385 U.S. 493 (1967), and agreed to make this interview available to the Attorney General and the Rhode Island State Police for their investigation.

- c. Officer McParlin (3.14 min.)
 - d. Officer Caba (5.17 min.)
 - e. Officer Sepe (5.34 min.)
 - f. Officer Sirignano (3 videos: 3.08 min, 44 seconds, and 40 seconds)
- (6) Police body-worn camera videos at other locations in Providence on October 18, 2020
- (7) Video Footage
- a. Fixed surveillance video from Advanced Telesystems Group Inc. located at 95 Hathaway St. (west end of Bissell Street), Providence, RI
 - b. Fixed surveillance video from porch of [REDACTED] Elmwood Ave., Providence RI
 - c. Cellphone video taken by Civilian Witness #4
 - d. Cellphone video taken by Civilian Witness #6
 - e. Cellphone video taken by unidentified woman at the corner of Spooner St. and Elmwood Ave.
- (8) Rhode Island State Police Collision Reconstruction Report, Case Number 20-298-CRU, by Lieutenant Jeffrey L'heureux and Corporal Adam Kennett, and all attachments and addendums thereto
- (9) Rhode Island State Crime Lab Report by Criminalist Kim Freeland
- (10) Providence Police radio and dispatch communications re motorbikes and ATVs on 10/18/20
- (11) Rhode Island State Police Complaint Calls and Dispatch re motorbikes and ATVs on 10/18/20
- (12) Crash Data Retrieval Report from Officer Endres' cruiser
- (13) Jhamal Gonsalves medical records from Rhode Island Hospital
- (14) Photographs of the crash scene taken by Providence PD (148)
- (15) Photographs of the vehicles involved taken by RISP (758)
- (16) Reconstruction photographs taken by the RISP Forensic Services Unit (78)
- (17) Photographs of the vehicles involved taken by RISP Forensic Services Unit (353)
- (18) Still images from the videos listed in 7(a), (b), and (c) above.
- (19) Providence Police Policies on Vehicular Pursuits (330.02), Traffic Enforcement (350.02) and Vehicular Operations (330.01)
- (20) Officer Discipline Record for Officer Endres

The Rhode Island State Police Collision Reconstruction Report and appendices thereto, the State Crime Lab Report, police and civilian witness statements, transcripts of police and civilian witness interviews, and other Providence Police reports as well as the videos and photographs referenced in this report are available on our website at <http://www.riag.ri.gov/reports/providence.php>.

III. FINDINGS OF FACTS

Based on our review of the evidence gathered and analyzed in the course of this investigation, this Office makes the following findings of fact.

A. Sunday Afternoon in Providence: Hundreds of Motorbikes Riding Through the City

On Sunday, October 18, 2020, large groups of mopeds, dirt bikes, ATVs, scooters and motorcycles (collectively referred to as “motorbikes”) rode throughout Providence, Rhode Island. This type of event, commonly referred to as a “Ride Out,” had taken place in and around Providence on a number of occasions prior to the date of this incident. Witness accounts and police dispatch reports describe “hundreds” of motorbikes riding through the city at excessive rates of speed, driving through red lights, occupying all lanes of travel, riding on sidewalks, “cutting people off,” and engaging in “wheelies,”⁵ “burnouts,”⁶ and other maneuvers. At various points throughout the day, the groups of motorbikes were followed to Roger Williams Park, India Point Park, downtown Providence, Angell Street, Blackstone Boulevard, the South Side of Providence, and other locations in and around Providence.

Providence Police dispatch received over forty (40) calls regarding the dangerous operation of these vehicles from motorists and civilian onlookers. Similar complaints were also called into the Rhode Island State Police. Radio transmissions obtained from the Providence Police Department record police dispatchers in contact with multiple cities responding to large groups of these motorbikes. The State Police and East Providence, Scituate, Johnston, Coventry and Cranston police departments were all involved in monitoring and responding to these calls. According to Providence Police Department records, police responded to three motor vehicle accidents involving motorbikes in Providence prior to the crash involving Officer Endres and Mr. Gonsalves. The Providence Police Department issued seven traffic citations and arrested three individuals for violations ranging from driving unregistered vehicles to reckless driving during the afternoon of October 18, 2020.

There is no question that responding to and dealing with this activity has presented serious challenges to the Providence Police Department and its officers. Many of the bikers are operating vehicles that are not lawfully authorized to be on public roadways, and in many instances are operating in a way that presents a danger to themselves and to others, such as failing to stop at traffic signals and operating in opposite lanes of travel. At the same time, any attempt to stop or

⁵ A “wheelie” is a term used to describe a maneuver where a motorbike is ridden with its front wheel raised off the ground.

⁶ A “burnout” is a term used to describe a maneuver where a motorbike operator spins the wheels through rapid acceleration while keeping the frame of the bike stationary. The maneuver often produces loud noise and smoke.

pull over groups of bikers that may number 100 or more may itself be unsafe if the bikers refuse to voluntarily stop, as most do.

Faced with these challenges again on October 18, 2020, the Providence Police Department's directive to officers on duty, as had been the case on previous occasions, was to "monitor the group," to "follow" them, and to be on the lookout for criminal behavior. Sergeant Curt Desautels instructed his officers that "safety and caution should be of the utmost importance" when engaging these vehicles. Officer Brad McParlin told the Investigative Team that his supervisor, Sgt. Desautels, directed that he was just to "observe them . . . from a distance" and not to chase them. He was told that if he had an opportunity to pull one of the motorbikes over safely, that he could do so. Officer Brendan McKenna likewise told the Investigative Team that he understood that "under no circumstances was [he] to chase them." Officer Yesenia Caba told the Investigative Team that she and her partner were essentially engaged "in monitoring where they were going," and that hundreds of motorbikes "were everywhere." Civilian witnesses interviewed in connection with this matter also indicated that it appeared to them that the police cruisers were "following" or "escorting" the groups of motorbikes, rather than attempting to stop them. Dispatch recordings also demonstrate that responding officers and Rhode Island State Police troopers were repeatedly instructed to "use caution" when responding to the various locations where the motorbikes were found.

The unpredictable nature of these "Ride Outs" required officers to exercise considerable discretion. For example, when motorbikes were traveling in opposite lanes of traffic, officers following the motorbikes engaged their emergency lights to warn oncoming motorists. Our review of body-worn camera footage from Providence Police officers responding to various locations throughout the city that day confirms that, by and large, officers were simply following the motorbikes. At times they had their emergency lights activated, and at times they did not. The body-worn camera footage we reviewed showed that, when officers did conduct motor vehicle stops, the riders were already at a stop and were either alone or in small groups, and not part of a large group of riders.

B. Police First Encounter Mr. Gonsalves

Each weekend, the Providence Police Department assigns officers to details around the city, including the Broad Street area. The Broad Street Detail is responsible for monitoring criminal and other unlawful activity in the area, including the unsafe operation of motorbikes, which, as noted, has been an ongoing issue in the city, particularly on weekends. On Sunday, October 18, 2020, the second shift of the Broad Street Detail (3 p.m. - 11 p.m.) included Providence Police Officers Kyle Endres, Brad McParlin, Brendan McKenna, Louis Ferraras, Alex Diaz, Yesenia Caba and Carly Cabral, and Detective Mitchell Guerra.

Shortly before 5:50 p.m., the Broad Street Detail was informed that a large group of bikers had formed in the Providence Water Supply Board parking lot off Huntington Avenue. Members of the Broad Street Detail responded to the area and proceeded to follow a large group of approximately 100 motorbikes as they rode southbound on Elmwood Avenue towards Cranston. Elmwood Avenue is a four-lane street with the two southbound lanes separated from the two northbound lanes with a double yellow line. The posted speed limit in this area is 25 mph. The

weather in Providence at the time was partly cloudy, 55 degrees and falling. The following image⁷ depicts Elmwood Avenue in the area of the crash where Mr. Gonsalves was injured:



Google Earth Pro Image from 2018

Officers Caba and Cabral, together in a marked Providence Police cruiser, were among the officers following the large group of motorbikes southbound on Elmwood Avenue. Officer Endres was also following the motorbikes, alone in another marked Providence Police cruiser. Officer Caba told the Investigative Team that she first noticed Mr. Gonsalves while travelling south on Elmwood Avenue behind the group of motorbikes because he circled her police cruiser on his scooter “a couple of times.” While doing so, he “stood next to us [her and Officer Cabral] for a little bit” and was “blowing us kisses” saying “call me.” Officer Caba stated that Mr. Gonsalves “was riding in the opposite lane of travel a couple of times” and believes he may have run through a red light. But, she stated, he was hardly alone, “they were all doing it.” As Mr. Gonsalves, Officer Endres, and Officers Caba and Cabral were travelling southbound approaching the Spooner Street and Elmwood Avenue intersection, Officer Caba saw Mr. Gonsalves, then traveling in front of her, cross over to the parking lane of the northbound side of Elmwood Avenue. Officer Caba thought Mr. Gonsalves was going to pull over. Officer Caba stated that she and Officer Cabral in their cruiser, and Officer Endres in his, followed Mr. Gonsalves to the side of the road, but Mr. Gonsalves did not stop. Rather, according to Officer Caba, he “waved at” and “mocked us” as he circled around their cruisers and again began travelling southbound towards Cranston on Elmwood Avenue. Officer Cabral provided substantially the same account to the Investigative Team. See Caba Tr. at 5-10; Cabral Tr. at 4-5.

A woman passenger in a car located at the intersection of Spooner Street and Elmwood Avenue (one block north of the Bissell Street and Elmwood Avenue intersection) recorded the

⁷ All of the diagrams and photographs used in this Report are excerpted from the Rhode Island State Police Collision Reconstruction Unit Report, Case Number 20-298-CRU.

events described by Officers Caba and Cabral on her cellphone (“[Spooner Street Video](#)”). This recording was subsequently posted on social media but the Investigative Team has not been able to identify and locate this woman. The Spooner Street Video shows that, shortly before 5:50 p.m., there was a large group of motorbikes riding southbound in all lanes of traffic on Elmwood Avenue (in both the northbound and southbound lanes). The large group of bikers was followed by a marked Providence Police cruiser that had its overhead emergency lights activated, but not its siren. As seen in the Spooner Street Video, immediately after that cruiser passes, several additional motorbikes can be observed travelling southbound on Elmwood Avenue, followed by a second Providence Police cruiser. This is also depicted in a cellphone video taken by a civilian onlooker from across the street. ([Civilian Witness #6 Video](#)).

The Spooner Street Video camera then pans north in time to capture Mr. Gonsalves entering the parking lane on the northbound side of Elmwood Avenue, consistent with the accounts of Officers Caba and Cabral. A marked police cruiser, operated by Officer Endres, follows. The emergency overhead lights on Officer Endres’ cruiser are momentarily turned on as the cruiser, following Mr. Gonsalves, crosses over from the southbound to the northbound lanes of travel on Elmwood Avenue, directly in front of the Centro Cristiano De Adoracion church. A second marked cruiser, operated by Officer Cabral, follows suit, as does a white unmarked police car, operated by Detective Guerra. All three police vehicles come to a stop essentially perpendicular to the northbound lanes of travel (i.e. facing east), in an apparent attempt to stop Mr. Gonsalves. The video depicts Mr. Gonsalves evading all three police cars, crossing from the northbound parking and travel lanes back to the southbound travel lanes on Elmwood Avenue, and continuing southbound on Elmwood Avenue, again consistent with the accounts of Officers Caba and Cabral.

Immediately after Mr. Gonsalves crosses the center yellow lines, the Spooner Street Video shows him gesturing with his left hand at the police cruisers. This is also depicted in Civilian Witness #6 Video. Officer Endres turns his cruiser so that it is oriented southbound, and again begins to follow Mr. Gonsalves southbound on Elmwood Avenue. Officer Endres’ cruiser does not have its overhead lights on. Officer Cabral does the same. The Spooner Street Video then depicts Mr. Gonsalves riding down Elmwood Avenue for about one block, followed by Officer Endres’ cruiser some distance behind, and then by Officer Cabral’s cruiser.⁸ The Spooner Street Video then shows Mr. Gonsalves turn right toward Bissell Street, followed by Officer Endres. The brake lights on Officer Endres’ cruiser are visibly activated as Officer Endres turns toward Bissell Street. Officer Cabral is behind Officer Endres, and her cruiser’s brake lights illuminate at about the same time as those on Officer Endres’ cruiser. The woman taking the video can be heard exclaiming at what appears to be the point of the crash. However, from the video, there is no clear view of what transpired at that moment. ([Spooner Street Video](#)).

C. The Crash

As demonstrated by the Spooner Street Video, a very short period of time elapsed – less than ten seconds – from the time Officer Endres began following Mr. Gonsalves the second time, southbound on Elmwood Avenue, until the time of the crash. In order to determine precisely how the crash occurred, this Office relied principally on the following evidence: the Rhode Island State

⁸ Civilian Witness #6 video terminates just after Officer Endres’ cruiser begins following Mr. Gonsalves’ scooter.

Police Collision Reconstruction Unit Report, a cellphone video obtained by Civilian Witness #4 from his vantage point on Elmwood Avenue (Civilian Witness #4 Video), a surveillance video from Advanced Telesystems Group at 95 Hathaway Street which is located at the west end of Bissell Street (Bissell Street Video), surveillance video from the porch of Civilian Witness #4's home on Elmwood Avenue (Elmwood Video), still images from those three videos, police radio transmissions, body-worn camera footage from Officer Endres, and the crash data retrieval report from the airbag control module of Officer Endres' cruiser (colloquially known as "black box data"). This Office also carefully considered the witness statements of multiple civilian witnesses as well as the officers involved. However, given the rapid succession of the events in question and the short timeframe involved, the witness statements of civilian and police witnesses regarding how the crash occurred were relied upon only to the extent corroborated by video or physical evidence.

1. Video Footage of the Crash

The Civilian Witness #4 Video was taken by Civilian Witness #4 on his cellphone from his porch just up the street from the intersection of Elmwood Avenue and Bissell Street. It shows a large group of motorbikes riding southbound on Elmwood Avenue, with some riders doing wheelies and some traveling in the opposite, northbound lane of traffic. A marked Providence Police cruiser follows the large group with its emergency lights activated. As the camera tracks the following police cruiser, another marked Providence Police cruiser, operated by Officer McParlin, exits Bissell Street from a stopped position, turning left (northbound) onto Elmwood Avenue. The cruiser slowly enters the intersection of Bissell Street and Elmwood Avenue. The camera turns away momentarily and then shows Officer McParlin's cruiser accelerate forward as Mr. Gonsalves comes into view. Mr. Gonsalves veers his scooter to his right, away from the rear of Officer McParlin's moving cruiser, and makes a right turn onto the sidewalk of Bissell Street. At that point, the cellphone camera pans north, following Officer McParlin's cruiser, which has crossed the double yellow center lines of Elmwood Avenue and is heading northbound. The sound of a crash can be heard and the camera quickly returns to the intersection of Elmwood Avenue and Bissell Street in time to capture both the scooter and the cruiser operated by Officer Endres come to a stop. Approximately three seconds elapse from the time Mr. Gonsalves first appears in the video, just north of the Elmwood Avenue/Bissell Street intersection, and the collision. ([Civilian #4 Video](#)).

A very similar view is provided by the fixed video system from Civilian Witness #4's porch, the Elmwood Video. Officer McParlin's cruiser is seen moving across Elmwood Avenue just before Mr. Gonsalves appears, followed by Officer Endres. Due to that video camera's orientation, it provides a good view of the vehicles as they come down Elmwood Avenue and turn onto Bissell Street, but does not provide as clear a view of what happens on Bissell Street at the time of the crash. ([Elmwood Avenue Video](#)).

The Bissell Street Video is focused on the intersection of Bissell Street and Elmwood Avenue from the western end of Bissell Street. It also shows the group of motorbikes passing southbound on Elmwood Avenue, followed by a marked Providence Police cruiser (operated by Officer McParlin) which turns right from Elmwood Avenue onto Bissell Street. Officer McParlin's cruiser makes a three-point-turn and returns to the intersection of Elmwood Avenue and Bissell

Street, stopping at the stop sign at the end of Bissell Street. While Officer McParlin is stopped at the Bissell Street stop sign, facing Elmwood Avenue, numerous motorbikes can be seen driving southbound on Elmwood Avenue, followed by a Providence Police cruiser with its emergency lights activated. Immediately thereafter, the video shows Officer McParlin pulling out from Bissell Street onto Elmwood Avenue. The brake lights on Officer McParlin's cruiser come on momentarily as he appears to nearly stop for a fraction of a second before proceeding forward, across the southbound lanes. At this point, Mr. Gonsalves becomes visible, traveling southbound and coming into the Elmwood Avenue/Bissell Street intersection. Officer McParlin's cruiser moves forward into the northbound lanes as Mr. Gonsalves steers his scooter to the right towards Bissell Street. The video shows Mr. Gonsalves mount the curb at Bissell Street, traveling onto the sidewalk and passing between the stop sign at the end of Bissell Street and the building immediately to the south of the Bissell Street sidewalk. Officer Endres' cruiser can be seen following Mr. Gonsalves, mounting the sidewalk, hitting the stop sign, and then stopping. At this point, the view of Mr. Gonsalves is obstructed, until Mr. Gonsalves comes to a stop on the sidewalk. ([Bissell Street Video](#)).

As discussed more fully below, the Rhode Island State Police Collision Reconstruction Unit synched the Civilian Witness #4 and Bissell Street videos to play side by side. Based on the time stamp of these videos, about three seconds transpire from the time Mr. Gonsalves is observed approaching the intersection (5:50:07) and the crash (5:50:10). The videos show that there are about two car-lengths separating Officer Endres' cruiser from Mr. Gonsalves' scooter as they enter the intersection, with that distance closing as Mr. Gonsalves slows to make the turn onto the sidewalk between the stop sign and the building and Officer Endres drives up onto the end of the sidewalk. ([RISP Synchronized Video](#))

2. The State Police Collision Reconstruction Unit Report

On October 19, 2020, one day after the crash, the Attorney General and the Providence Police Department asked the Rhode Island State Police to join the Investigative Team. As in every case where the Attorney General's Protocol is invoked, the State Police were a full participant in the investigation. That participation included utilization of the State Police Collision Reconstruction Unit.

The State Police reviewed all known videos of the incident from fixed cameras, cell phones, and body-worn cameras of police officers. They also reviewed all of the physical evidence, including the cruiser operated by Officer Endres, the scooter operated by Mr. Gonsalves, Mr. Gonsalves' clothing and helmet, the damaged stop sign from Bissell Street, and any markings left on the road, wall and sidewalk in the area of the crash.

The State Police also conducted their own independent testing and analysis. They returned to the scene of the crash and compared marks on the brick wall at 1245 Elmwood Avenue to the damage on Mr. Gonsalves' scooter and the stop sign. They completed forensic examinations of the stop sign and the vehicles involved with sophisticated magnification cameras and specialized measurement techniques. The State Police enlisted the assistance of the Rhode Island State Crime Lab at the University of Rhode Island to conduct a forensic examination of Mr. Gonsalves' helmet and clothing. The available video footage of the crash was broken down, analyzed frame by frame

and then synchronized, whenever possible, with other video footage. Additionally, the State Police calculated time and distance to determine speed and location of the involved vehicles at certain intervals. They also accessed Officer Endres' cruiser's vehicle crash retrieval data system (the "black box").

Following this investigation and analysis, the State Police Collision Reconstruction Unit made findings and submitted a report to this Office, which will be released with this Office's report. The Collision Reconstruction Unit's findings and conclusions, taken directly from the report, are set forth below.

On October 18, 2020 at approximately 5:50 p.m., Mr. Gonsalves was travelling south on Elmwood Avenue while operating a black and white Yamaha scooter. He turned west onto the southwest sidewalk of Bissell Street, using the sidewalk ramp. Mr. Gonsalves negotiated the turn, driving between the stop sign and the wall while on the sidewalk.⁹



Google Earth Pro Image from 2019

Officer Endres was travelling the same direction as Mr. Gonsalves on Elmwood Avenue. As he attempted to follow Mr. Gonsalves into the turn, Officer Endres' body-worn camera captures him performing an "emergency steering maneuver." As detailed below, from video footage and the black box data, it is evident that he applied his brakes as he followed Mr. Gonsalves and apparently attempted to also turn right on Bissell Street. The Report concludes that:

"The Yamaha scooter traveled along the side of the brick wall of the building at 1245 Elmwood Avenue. As the Providence Police Cruiser attempted to follow the Yamaha, the operator of the Cruiser performed an emergency braking and steering maneuver, however, the front of the Cruiser struck a vertical stop sign post on the corner. The stop sign and post broke from its mount in the sidewalk and was projected forward and downward towards the brick wall. During this time, the left side of the Yamaha scooter struck the brick wall along the south edge of the sidewalk in a minor

⁹ The State Police measured the width of the sidewalk (curb to wall) as about 8.8 feet and about 6.1 feet from the stop sign to the wall.

sideswipe manner. As the stop sign and post continued downward, the center of the stop sign, in line with its metal post, struck the operator of the Yamaha scooter on the back right-side of his helmet. The contact with the signpost separated the operator from the scooter and both he and the Yamaha fell over onto the sidewalk and came to rest. The Providence Police Cruiser stopped approximately six feet after striking the stop sign and came to rest on the sidewalk of Bissell Street, to the east of the Yamaha scooter and its operator.

After an extensive examination of the scene, the vehicles, the damage profiles, the forensics, and the video footage, the Rhode Island State Police have determined that the Providence Police Cruiser did not strike the rear of the Yamaha scooter or its operator at any point during the crash sequence. The causation of this crash was determined to be the Providence Police Cruiser striking the vertical stop sign post and projecting it downward onto the helmet of the Yamaha scooter operator traveling ahead of it.”

Collision Report Executive Summary at 2-3 (emphasis supplied).

The State Police Collision Reconstruction Unit came to this conclusion, as well as the findings above, utilizing a number of different methods:

(i) Analysis of Civilian Witness #4, Elmwood, and Bissell Street Videos

As part of the Rhode Island State Police collision reconstruction analysis, the Civilian Witness #4 Video and the Bissell Street Video were analyzed by State Police Forensic Services Detective Lieutenant J. Grassel and Detective A. Cybowicz. They were able to break each video up into individual frames, each one representing approximately .033 seconds, and synchronize each video to play side by side in real-time from their different perspectives. Additionally, they also analyzed the fixed surveillance video from Civilian Witness #4’s porch (Elmwood Video) which captured additional footage of the scooter and cruiser ascending the sidewalk before exiting the camera’s view.

What follows is the State Police Collision Reconstruction Unit’s timeline of the two to three seconds leading up to, and including, the collision, as depicted in these videos:¹⁰

[LEFT INTENTIONALLY BLANK]

¹⁰ The timeline and still footage are excerpted from the Rhode Island State Police Collision Reconstruction Report at pp. 59-79.

5:50:08.266 Mr. Gonsalves' scooter is seen driving southbound in the right lane of Elmwood Avenue and entering the intersection of Elmwood Avenue and Bissell Street. The front wheel of the scooter can be seen turning to the right. Officer McParlin's vehicle is observed crossing from the left southbound lane of Elmwood Avenue, across the yellow center lines into the northbound lanes. Officer Endres' cruiser is not yet visible:



Bissell Street Video



Civilian Witness #4 Video

5:50:08.666 Mr. Gonsalves' scooter is in the intersection of Elmwood Avenue and Bissell Street. The front wheel of the scooter can be seen turning to the right, and the rider appears leaning to the right. The scooter's brake light is illuminated. Officer McParlin's cruiser appears to have mostly cleared the southbound lanes of Elmwood Avenue. Officer Endres' cruiser has not yet reached the intersection of Elmwood Avenue and Bissell Street:



Bissell Street video



Civilian Witness #4 Video

5:50:09.433 Less than a second later, Mr. Gonsalves' scooter begins to drive onto the sidewalk along the southwest corner of Elmwood Avenue and Bissell Street. Officer Endres' cruiser is about half-way across the entrance to Bissell Street and can be seen turning to the right while activating the brakes of the vehicle:



Bissell Street Video



Civilian Witness #4 Video



Elmwood Video

5:50:09.800 Less than half a second later, Mr. Gonsalves has driven onto the sidewalk and is passing the stop sign post as he travels west on the sidewalk, between the stop sign and the wall of the adjacent business. Officer Endres is still crossing Bissell Street with the front of his cruiser in front of a red vehicle parked on the south side of Bissell Street. The Elmwood Video depicts the cruiser's and scooter's brake lights on. Civilian Witness #4's video is now focused solely on Officer McParlin's cruiser in the northbound lanes:



Bissell Street Video



Elmwood Video



Civilian #4 Video

5:50:10.033 Less than half a second later, Officer Endres' cruiser is beginning to mount the curb. He has not yet hit the stop sign. (Civilian Witness #4's Video which is still focused only on Officer McParlin's cruiser did not capture this moment):



Bissell Street video



Elmwood Video

5:50:10.166 - 5:50:10.200 At this moment, the Bissell Street Video captured the stop sign first being struck by Officer Endres' cruiser and beginning to move downward. The Civilian Witness #4 Video did not capture this because it had panned to Officer McParlin's cruiser. The view from the Elmwood Video is largely obstructed by foliage. The State Police Reconstruction Unit Report determined that Officer Endres' cruiser struck the stop sign post but had not made contact with the scooter – which is out of the video frame:



Bissell Street Video at 5:50:10.166

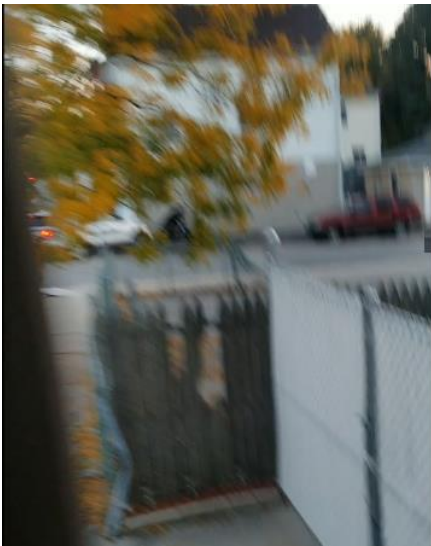


Bissell Street Video at 5:50:10.200

5:50:10.633 At this point, just short of a half second later, the stop sign has been driven over and Officer Endres' cruiser's front passenger tire has just mounted the curbing. The rear brake lights of Officer Endres' cruiser can also be seen in the Civilian Witness #4 Video, which had just panned back to the site of the crash. That video captured the separation between Officer Endres' cruiser and Mr. Gonsalves' scooter:



Bissell Street Camera



Civilian Witness #4 Video



Civilian Witness #4 Video - Magnified

5:50:10.733 A tenth of a second later, the Civilian Witness #4 Video captures the stop sign post in contact with the operator of the scooter. The still shows that Mr. Gonsalves was still upright, though tilting sideways, when the post made contact with him:



Civilian Witness #4 Video - Magnified

5:50:10.933-5:50:11.766 In approximately the next .8 second, Officer Endres' cruiser comes to a complete stop and the scooter and Mr. Gonsalves falls over onto the sidewalk and slide away from the cruiser before stopping. In the Civilian Witness #4 Video, the stop sign face is clearly visible alongside the fallen scooter and Mr. Gonsalves. The following images show the progression to the final resting location of the cruiser and Mr. Gonsalves:



Civilian Witness #4 Video 5:50:10.933- Magnified



Civilian Witness #4 Video - 5:50:11.500



Civilian Witness #4 Video -5:50:11.766 – Magnified

(ii) Forensic Examination of Vehicles and Mr. Gonsalves’ Helmet

The State Police documented all areas of visible damage to the front of Officer Endres’ cruiser and Mr. Gonsalves’ scooter and conducted a forensic examination of that damage. Investigators were working under the premise that “for any contact between two items, an exchange of materials of some sort occurs between them. . . . During this exchange, physical patterns in the forms of fractures, indentations, striations, imprints, markings or deposits will occur.” Collision Reconstruction Report at 37. After documenting the damage on the vehicles, investigators compared damage from the vehicles to other evidence in an attempt to determine its origin. For example, the indentation in the push bar of the cruiser matches the shape of the stop sign post perfectly and, therefore, could be excluded as resulting from an impact with the scooter. Likewise, some of the scrapes on the rear of the scooter were rusted, indicating they happened well before the October 18, 2020 crash, while other damage to the scooter handlebars aligned with the markings on the wall at 1245 Elmwood Avenue. Several other areas of damage

were excluded as having come from contact between the two vehicles through microscopic examination. Investigators compared magnified images of paint transfers on the cruiser and determined that no matching paint existed on the back of Mr. Gonsalves' scooter and thus other areas of damage were excluded.

Second, areas of contact damage or transfer on the cruiser were aligned with the scooter to determine if any of those imperfections could possibly have been caused by contact between the two vehicles. Six areas of damage were observed on the front of the cruiser. Five areas showed no evidence of any transfer that could be associated with the rear of the scooter; only one area of damage to the cruiser lined up with the rear of the scooter, but this imperfection was excluded based upon two factors: (1) the composition of the marking was not consistent with the plastic on the rear mud flap of the scooter, and (2) the lack of corresponding damage from the rear cargo flap of the scooter which would be expected had contact between the two vehicles occurred. Collision Reconstruction Report at 58.

Finally, the Collision Reconstruction Report also concluded Mr. Gonsalves' helmet was struck, not by the periphery of the stop sign, but by the center of the stop sign which had the metal post behind it. It concluded this through the paint transfer between the stop sign and the helmet and markings on the stop sign. (We have been advised by the Rhode Island State Police that the stop sign weighs approximately 42 pounds).

(iii) Collision Re-Enactment

Using Officer Endres' cruiser, the stop sign post, Mr. Gonsalves' scooter and a stand-in scooter operator, investigators recreated the crash in the Providence Police garage. They were attempting to answer the question of whether, notwithstanding the physical and video evidence described above, there was nevertheless any conceivable way that the front of Officer Endres' cruiser could strike both the signpost and the rear of the scooter and still have the stop sign hit Mr. Gonsalves in the back-right side of his head. Using a number of different scenarios spanning the range of possibilities, investigators found that "the cruiser could never get close enough to the rear of the . . . scooter and still have the stop sign make contact with the operator in the alignment that it did." Collision Reconstruction Report at 88.

(iv) Emergency Driving Maneuvers: Vehicle Crash Data Report

The Rhode Island State Police Collision Reconstruction Unit further concluded, based on the vehicle crash data reporting system ("black box"), Officer Endres' body-worn camera footage, and the video footage from the Civilian Witness #4 Video, the Elmwood Video and the Bissell Street Video, described above, that in the seconds leading up to the collision between Officer Endres' cruiser and the stop sign, Officer Endres was engaging in aggressive braking and emergency steering maneuvers.

The black box data, detailed in the State Police Collision Reconstruction Report at pages 89-95 and Appendix C, demonstrates that from 5 seconds to 4.5 seconds prior to the crash, Officer Endres accelerated slightly, eight tenths of a mile per hour, from 35 mph to 35.8 mph, but that from 4.5 seconds before the crash to two seconds before the crash, he decelerated from 35.8 mph

to 27.7 mph. From 2 seconds before the crash to a half a second before the crash, he decelerated from 27.7 to 22.9 mph. At half a second before the crash, the cruiser's anti-lock brake system was engaged and the cruiser decelerated to approximately 18.5 mph at the moment of impact with the stop sign.

The analysis conducted based on the black box data further showed that the cruiser lost about 6-7 mph of forward velocity as a result of impact with the stop sign, resulting in a post-impact speed of about 11-13 mph. The State Police calculated that, at that speed, coupled with the video evidence discussed above, the cruiser traveled approximately 6-7 feet from its impact with the stop sign to its final resting position on Bissell Street.

The body camera footage of Officer Endres and the black box data demonstrate that in the seconds before impact, Officer Endres engaged in emergency steering maneuvers, evidently in an effort to avoid mounting the sidewalk. As set forth in the Collision Reconstruction Report at pages 93-94, from 3.7 seconds to 2.4 seconds prior to impact, Officer Endres began steering the vehicle to the right, reaching a maximum -43.6 degrees. He then steered the vehicle back to the left reaching a maximum of 53.2 degrees. From 1.6 seconds to .9 seconds prior to impact, Officer Endres again rapidly steered back to the right, reaching a maximum of -282.4 degrees. In the last half second or so before impact, Officer Endres again steered the vehicle back to the left reaching an angle of -111.6 degrees. In the fraction of a second prior to impact, the data indicated a rapid steering back to the right, ending at approximately 269.8 degrees (almost a complete turn of the wheel) at the time of impact. According to Lt. L'heureux, "These steering and braking actions are consistent with obstacle avoidance techniques" of trained police officers. Collision Report Addendum, November 23, 2020.

(v) Time and Distance Calculation

The State Police Collision Reconstruction Unit Report also established Officer Endres' following distance behind Mr. Gonsalves, beginning two and a half seconds before the collision. As the following diagrams demonstrate, two and a half (2.5) seconds prior to the collision of the cruiser with the stop sign, Officer Endres' cruiser was over 32 feet (about two car lengths) behind Mr. Gonsalves. At that point in time, the cruiser was traveling at about 28 mph. That distance narrowed as the two vehicles made the right turn toward Bissell Street and slowed down. (Note that the scooter would slow down more quickly than the cruiser as it is lighter). At one and a half (1.5) seconds before the crash, the State Police estimate that there was a distance of about 18 feet (more than one car length) between the two vehicles. One half (.5) second prior to the crash, there was a distance of about 11 feet between the cruiser (now travelling at about 23 mph) and the scooter (which has slowed even more to climb the sidewalk and begin turning behind the stop sign). At the point of impact with the stop sign, the State Police Collision Reconstruction Unit estimate a distance of about five feet between the cruiser and scooter. Finally, at half a second after impact with the stop sign, the Reconstruction Unit estimates a distance of a little over five feet between Officer Endres' cruiser and the scooter.

The diagrams below, excerpted from pages 97-113 of the Collision Reconstruction Report, depict these calculations:

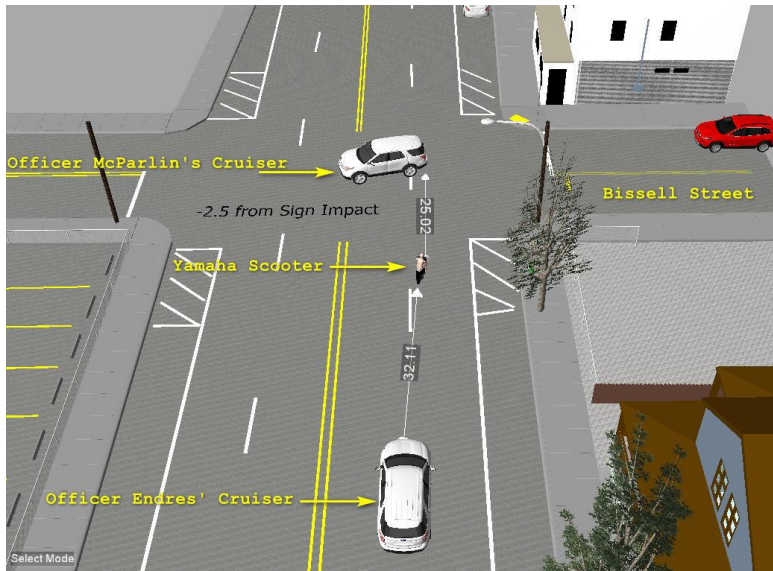


Figure 94

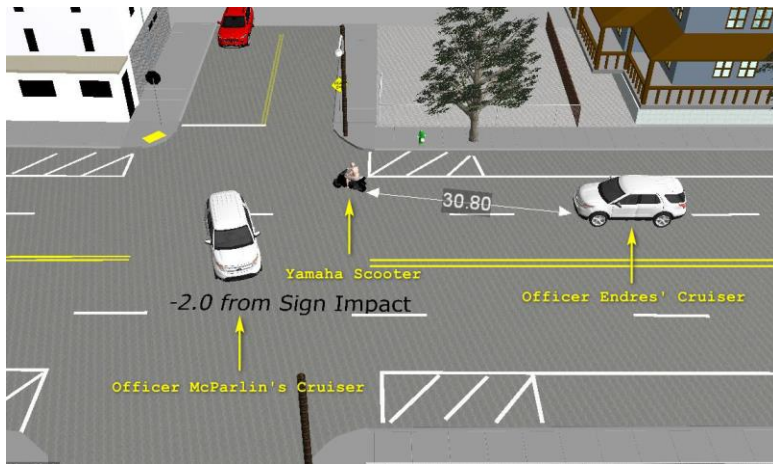


Figure 98

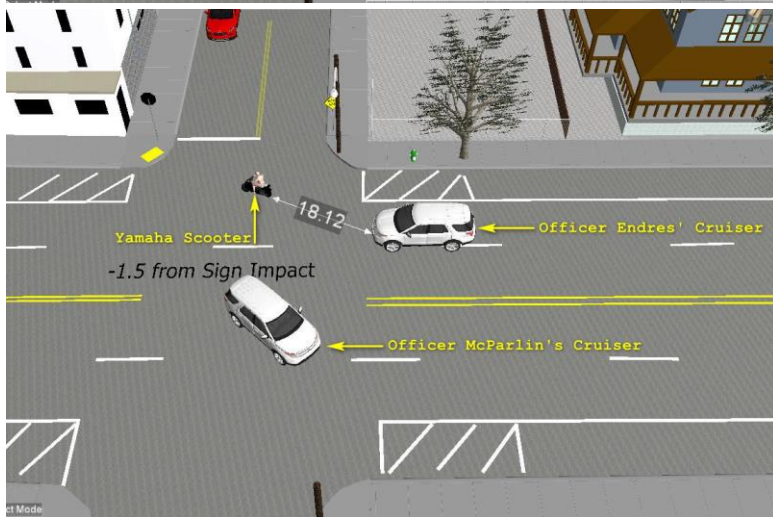


Figure 101

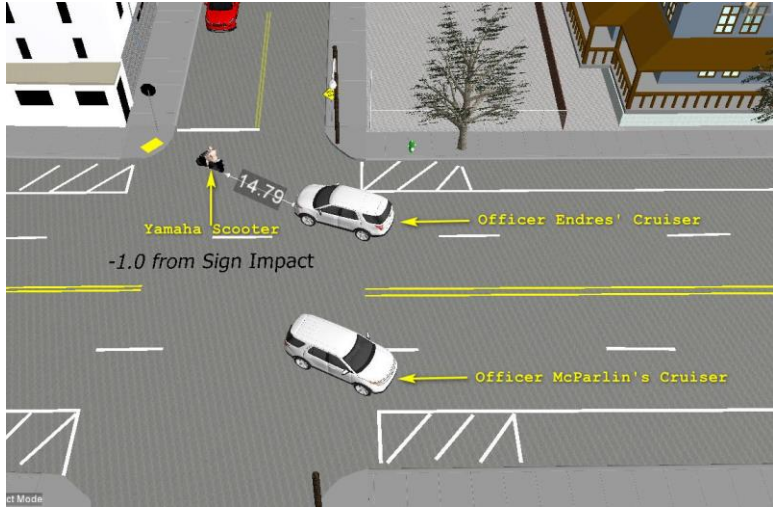


Figure 104

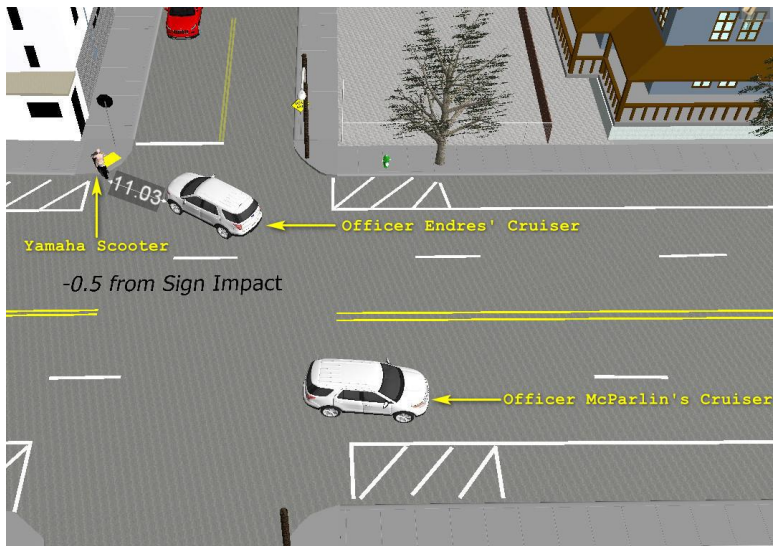


Figure 107

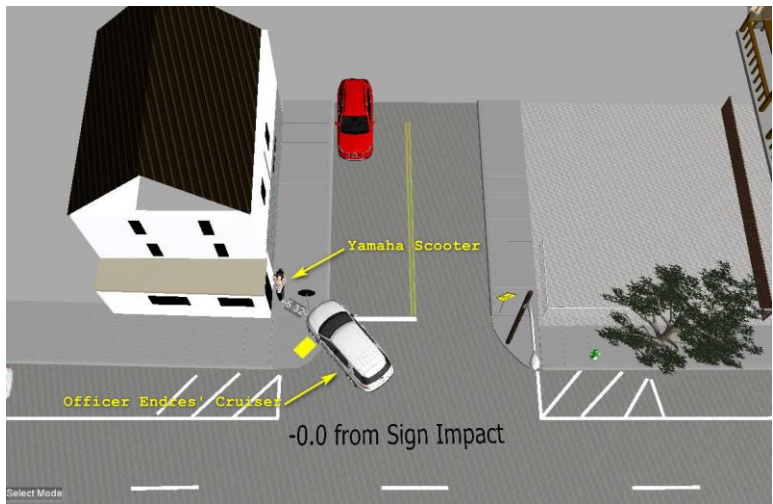


Figure 110 (distance of 5.32 ft.)

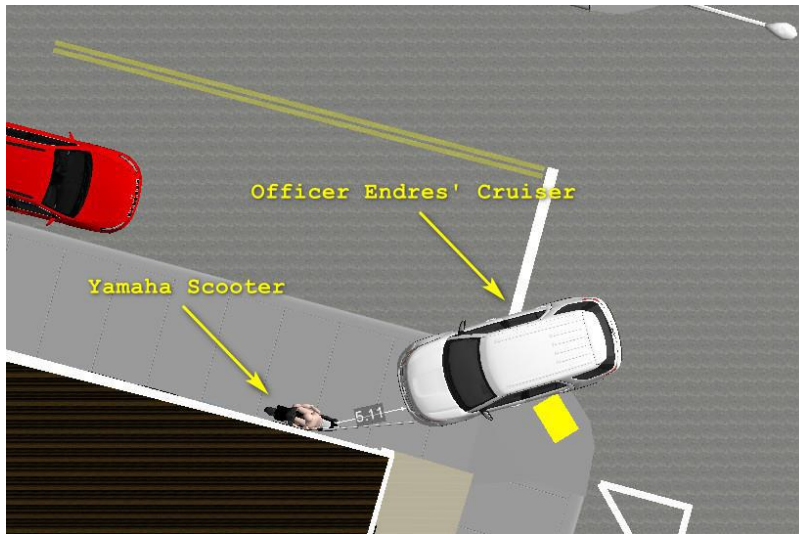


Figure 114: .5 seconds after the crash

3. Witness Accounts

While the video and physical evidence and the forensic analysis conducted by the Rhode Island State Police establish the circumstances of the crash involving Mr. Gonsalves and provide the basis for this Office’s conclusions regarding those circumstances, for completeness, this report will also summarize the statements provided by persons who witnessed some or all of the events involved.

(i) Officer Endres

In response to an order from a supervisor, Officer Endres gave a statement regarding the circumstances of the crash to the Providence Police Department Office of Professional Responsibility Investigators on October 26, 2020, in the presence of his attorney. Ordinarily, this Office, in connection with its criminal investigation, would not have had access to this statement in accordance with Garrity v. New Jersey, 385 U.S. 493 (1967), as it was compelled. However, Officer Endres subsequently waived his Garrity rights and, accordingly, this Office was able to review his statement in connection with this investigation.

According to Officer Endres, his attention was first drawn to Mr. Gonsalves, riding a black and white Yamaha scooter, as Mr. Gonsalves was travelling southbound on Elmwood Avenue. The scooter did not have a license plate, in violation of the Motor Vehicle Code, a fact that was later confirmed by the Investigative Team. According to Officer Endres, Mr. Gonsalves “broke away from the pack by . . . slowing down.” Officer Endres believed that Mr. Gonsalves was doing this intentionally to put some distance between the large group of bikers and the trailing police officers. As Mr. Gonsalves slowed down, he crossed the center of the four-lane road and drove into the oncoming (northbound) lane of travel. Officer Endres stated that he followed him and briefly activated his emergency lights to alert vehicles travelling northbound on Elmwood Avenue. According to Officer Endres, he expected Mr. Gonsalves to enter a nearby parking lot or an area where police could isolate him and issue him a citation for reckless driving. Endres Tr. at 9. Mr. Gonsalves, however, did not pull over but rather circled around Officer Endres’ cruiser and another

cruiser, “looked back at us . . . gave us the middle finger” and continued southbound on Elmwood Avenue. Officer Endres then continued to follow Mr. Gonsalves southbound without activating the emergency overhead lights or the sirens on his cruiser. According to Officer Endres, he was “following,” not “pursuing,” Mr. Gonsalves.¹¹ Endres Tr. at 9-10.

According to Officer Endres, after Mr. Gonsalves looked back at the police and made the hand gesture, “he immediately looks back forward . . . and that was the time he started to lose control.” Whether or not Mr. Gonsalves started to “lose control” is not readily apparent from the video footage described above. As the scooter continued down Elmwood Avenue, Officer Endres followed him towards the intersection with Bissell Street. Officer Endres estimated that he was about a car-length behind Mr. Gonsalves. This estimate is consistent with the video evidence and the time-distance measurements of the collision reconstruction analysis discussed above. Officer Endres stated that he saw a cruiser pulling out of Bissell Street but his attention was “also focused on the moped. . . . I see the moped go to the right and I follow him to avoid the police car and to . . . follow the moped.”¹² “It was just a split-second decision,” Officer Endres said, “and I wasn’t aware of my orientation with the intersection.” Officer Endres stated that, “most of the time when you follow somebody in a car . . . usually when they turn, it’s to turn down the opening of a street. So, I just assumed . . . I’m at a safe spot to turn. But clearly [Mr. Gonsalves] was going for the sidewalk and by the time I turned, I realized that and hit the brakes right away.” Endres Tr. at 13-15. Officer Endres stated that he hit the stop sign and he saw the stop sign hit the wall. Officer Endres stated that he did not hit the scooter and that he did not see the stop sign hit Mr. Gonsalves. Endres Tr. at 15. When the cruiser came to a stop, Officer Endres activated his body-worn camera,¹³ approached Mr. Gonsalves, and pulled him away from the scooter.

¹¹ A “pursuit” is defined by Providence Police Department policies as “an active attempt by an officer in an authorized emergency vehicle to stop a moving motor vehicle through the activation of emergency lights and siren, and the driver of that vehicle fails to stop and engages in evasive actions.” Pursuit Policy, 330.02, at 2. Whether Officer Endres’ manner of following Mr. Gonsalves falls under and complies with the Pursuit Policy is a matter for the Providence Police Department to consider. But while the distinction might be pertinent to a disciplinary proceeding to evaluate compliance with department policies, it is not pertinent to our analysis here. That is because we evaluated Officer Endres’ manner of driving under the reckless driving standards set forth by the Rhode Island Supreme Court, without regard to any allowances accorded emergency vehicles that are engaged in an authorized pursuit under Rhode Island law, as discussed in Section V(A)(2), below.

¹² Officer Endres and other law enforcement and civilian witnesses refer to the vehicle operated by Mr. Gonsalves as a moped. The vehicle, however, is more aptly described as a scooter since it does not have pedals that assist in operation and can reach higher speeds as it has a more powerful engine. This report refers to the vehicle as a “scooter” except where “moped” is used in a direct quote from a witness.

¹³ The Axon body-worn cameras worn by the Providence Police Officers continuously record on a thirty-second loop, without audio, unless they are activated by the officer. Once activated, the camera preserves the last 30 seconds of video footage (without audio) and continues to record audio and video until the officer de-activates it. Officer Endres activated his body-worn camera upon exiting his cruiser, immediately after the collision with the stop sign. Thus, his body-worn camera footage captures the 28 seconds (more or less) leading up to the crash, albeit without audio.

(ii) Other Officers at the Scene

Officers Caba and Cabral were in the marked Providence Police cruiser directly behind Officer Endres when the crash happened. Officer Caba, who was in the front passenger seat, stated in her interview that at the intersection of Bissell Street and Elmwood Avenue, she observed Mr. Gonsalves take an “abrupt right turn on Bissell Street and mount a curb . . . and [come] to an apparent stop.” Officer Caba stated that she did not notice Officer McParlin’s cruiser pull out of Bissell Street before seeing Mr. Gonsalves turn. She assumed he took that turn because he was “trying to get away... or maybe he didn’t want to keep going straight.” Officer Caba saw the scooter avoid hitting the stop sign on the corner and did not observe the scooter hit the building wall on the side of Bissell Street. Although Officer Caba did not see Officer Endres’ cruiser hit the stop sign, she assumed it did because the sign fell immediately after the cruiser stopped. She stated she did not see Officer Endres’ cruiser hit Mr. Gonsalves’ scooter. Caba Tr. at 10-16.

Officer Cabral stated that she observed the scooter climb the curb after taking a sharp turn onto Bissell Street. She also did not see Officer McParlin pull out into the intersection. She believed that the operator was struggling to maintain control of the bike after mounting the sidewalk. She witnessed the stop sign fall but did not observe Officer Endres’ cruiser hit the stop sign. She also did not see Mr. Gonsalves hit the wall or get hit by Officer Endres’ cruiser. Cabral Tr. at 6-12.

Officers Ferraras and Diaz were in the marked Providence Police cruiser that followed the large group of motorbikes riding southbound on Elmwood Avenue with its emergency lights on, ahead of Mr. Gonsalves. Their cruiser crossed the Elmwood Avenue/Bissell Street intersection just before Officer McParlin pulled out onto Elmwood Avenue. As they passed through the intersection, Officer Ferraras, who was riding in the front passenger seat, saw Mr. Gonsalves’ scooter make a hard-right turn onto Bissell Street in his side view mirror. He asked the driver, Officer Diaz, to stop the cruiser. Officer Ferraras believed that the rider was “making that hard right at too late of a time and at that velocity, I anticipated he was gonna come into collision with that corner business.” Officer Ferraras did not see the actual crash from his vantage point. Ferraras Tr. at 5-6. Officer Diaz heard a “little screech of tire” and pulled over to the side of road. He also stated that he did not see the crash.¹⁴ Diaz Tr. at 10-11.

(iii) Civilian Witness Accounts

Civilian Witness #1

Civilian Witness #1 was interviewed by Sergeants Elizabeth Romano and Paul Zienowicz of the Providence Police Department Office of Professional Responsibility the day after the crash. She is the owner of a restaurant on Elmwood Avenue.

At approximately 5:45 p.m., she was exiting the parking lot of the restaurant and trying to take a left onto Elmwood Avenue to head southbound towards Cranston. She was unable to do so

¹⁴ Officers McParlin and McKenna stated that they both heard the crash but neither saw it. Likewise, Detective Guerra stated he heard the crash but did not see it occur.

due to the number of motorbikes that were taking up all lanes of travel on Elmwood Avenue. As the bulk of the vehicles passed by her position, she observed a police car crossing Elmwood Avenue from Bissell Street (Officer McParlin's cruiser). She stated that the police car appeared to be blocking the southbound side of Elmwood Avenue in what she believed to be an attempt to get the driver of a black scooter to stop. As explained below at pages 35-40, the video evidence is not consistent with this conclusion.

Civilian Witness #1 saw the scooter driver then swerve right onto Bissell Street to avoid the police car. This witness noticed two police cars behind the scooter. According to Civilian Witness #1, one of them accelerated and then struck the stop sign. The sign then fell on top of Mr. Gonsalves. Civilian Witness #1 Tr. at 2. The black box data does indicate that Officer Endres sped up for a fraction of a second, by 8 tenths of a mile per hour, about five (5) seconds prior to the crash. However, as described at pages 22-23 above, after that very slight acceleration, the black box and video evidence establishes that in the 4.5 seconds prior to the crash, the cruiser slowed down significantly, from 35.8 mph to about 18.5 mph at the point of impact with the stop sign, and that Officer Endres was braking during this period of time.

Civilian Witness #1 heard a "bang" and saw the sign fall onto the driver of the scooter. She did not see the police cruiser hit the scooter. Civilian Witness #1 Tr. at 4-5.

Civilian Witnesses #2 and #3

Civilian Witness #2 was interviewed by Corporal Adam Kennett and Sergeant Heather Palumbo of the Rhode Island State Police on October 30, 2020 at the Lincoln Woods Barracks.¹⁵

On October 18, 2020 at approximately 5:30 p.m., Civilian Witness #2 said she was in a car with her boyfriend, Civilian Witness #3 on the southbound side of Elmwood Avenue in Providence near the intersection with Bissell Street. She saw a large group of motorcycles, ATVs and dirt bikes drive by her location. She stated that two police vehicles followed the group without lights or sirens activated. Civilian Witness #2 Tr. at 4-8. The video evidence described at pages 7-8 above shows that the first cruiser following the large group of motorbikes did, in fact, have its emergency lights activated.

After the group passed, there was a gap before a lone rider on "a moped" travelled down Elmwood Avenue. Civilian Witness #2 told Cpl. Kennett that she and Civilian Witness #3 later learned that this rider was Mr. Gonsalves and that they knew Mr. Gonsalves prior to this incident, as Civilian Witness #3 used to ride with Mr. Gonsalves.¹⁶ Civilian Witness #2 Tr. at 28. Mr. Gonsalves was followed by police cruisers without their emergency lights and sirens on.

¹⁵ State Police investigators also received a recorded interview of Civilian Witness #2 conducted by Ryan Gwaltney on October 26, 2020. Mr. Gwaltney is an investigator for the attorney representing members of the Gonsalves family. During the interview with Mr. Gwaltney, Civilian Witness #2 marked her location where she viewed these events on a map of the area. This map was also obtained by police investigators.

¹⁶ Civilian Witness #2 initially told investigator Gwaltney that she did not know Mr. Gonsalves. Civilian Witness #2, Gwaltney Tr. at 9, 11.

Civilian Witness #2 stated that she saw a police cruiser coming out of Bissell Street to “basically cut the moped off” forcing “the moped” to turn to the right in order to avoid hitting the cruiser. Civilian Witness #2 estimated that Mr. Gonsalves was approximately seven to ten feet away from the crossing cruiser. Civilian Witness #2 Tr. at 9-10. As demonstrated by the State Police Collision Reconstruction Report at 98-99, 2.5 seconds prior to the collision, Officer McParlin’s cruiser was across the left southbound lane of Elmwood Avenue, just as Mr. Gonsalves was heading down that lane. At that point, the State Police estimate a distance of about 24 feet between them. According to Civilian Witness #2, as the scooter continued forward, it made a wide turn heading right onto the sidewalk, travelling slowly. It appeared to her that the scooter intended to mount the sidewalk because “if he went on the curb, the cop would stop following him or something.” Civilian Witness #2 Tr. at 29. According to this witness, Mr. Gonsalves maintained control of his scooter as he went up on the sidewalk.

In her interview with Mr. Gwaltney, Civilian Witness #2 stated that she did not see the police cruiser hit the scooter because she “turned the other way....” Civilian Witness #2, Gwaltney Tr. at 9. She did, however, hear a loud crashing sound and she thought “the cop car had probably hit the moped....” She stated that she saw Mr. Gonsalves go over the scooter’s handlebars. Likewise, in her interview with the State Police, Civilian Witness #2 stated that she assumed that the cruiser hit the back of the scooter because of the way Mr. Gonsalves’ body was projected forward, but she did not actually see the impact. Civilian Witness #2 Tr. at 16-18. She stated that the stop sign at the intersection of Bissell Street and Elmwood Avenue “fell down” on the scooter rider after he was already on the ground. *Id.* Civilian Witness #2’s account of the collision is contradicted by the video and collision reconstruction evidence set forth above.

Civilian Witness #2 estimated the speed of the scooter as approximately twenty miles per hour. She estimated the speed of the police cruiser trailing him to be between twenty-five and thirty-five miles per hour. Her estimate of Officer Endres’ speed is consistent with the black box data described above; however, it does not account for the deceleration by both Mr. Gonsalves and Officer Endres. Civilian Witness #2 also heard tires screeching prior to the collision, which she attributed to the police cruiser applying its brakes.

Civilian Witness #3 was interviewed by Corporal Adam Kennett of the Rhode Island State Police and Sergeant Elizabeth Romano of the Providence Police Office of Professional Responsibility on November 2, 2020 at the Lincoln Woods Barracks. His account was very similar to the account provided by Civilian Witness #2. On October 18, 2020 at approximately 5:30 p.m., Civilian Witness #3 was in a car with Civilian Witness #2 on the southbound side of Elmwood Avenue in Providence, near the intersection with Bissell Street. He saw a large group of dirt bikes, mopeds and ATVs followed by a smaller group. That smaller group was followed by two or three Providence Police cruisers also travelling southbound. According to Civilian Witness #3, most of the motorbikes were travelling on the correct side of the road with only a “couple guys hitting wheelies.” Civilian Witness #3 Tr. at 3-5.

Civilian Witness #3 pulled over to the side of Elmwood Avenue into the parking lane approximately a block before Bissell Street. That is when he noticed “Jhamal” (whom he said he knew previously) on a black and white scooter in the left southbound lane heading towards the intersection with Bissell Street. He saw a police cruiser pull out of Bissell Street onto Elmwood

Avenue “trying to roadblock the street.” Mr. Gonsalves then veered to the right to avoid the cruiser and turned right onto Bissell Street. Civilian Witness #3 did not see the collision, but he heard a tire screech, a boom, and saw Mr. Gonsalves “fly a bit” off the moped and hit the brick building. Civilian Witness #3 Tr. at 8-10, 19. Civilian Witness #3 estimated that Officer Endres’ cruiser was about 10 feet behind Mr. Gonsalves as they were approaching Bissell Street. Civilian Witness #3 Tr. at 17.

Civilian Witness #3 believes he heard the cruiser hit the moped and then hit the stop sign, but did not see the impact of the cruiser either with the moped or with the stop sign. He stated that he saw the sign come down on Mr. Gonsalves, hitting him in the back or the back of his head, “as he was starting to fall.” Civilian Witness #3 stated that Mr. Gonsalves hit the wall after he was hit by the sign. Civilian Witness #3 Tr. at 19-22; 36-37.

Civilian Witness #3 knows Mr. Gonsalves as a very skilled rider, “semi-pro,” and has seen him motocross racing and doing tricks on his motorbike. Civilian Witness #3 Tr. at 24-25, 28-29. This witness was not clear about whether Mr. Gonsalves could have successfully proceeded down Elmwood Avenue around Officer McParlin’s cruiser. First, he said that he did not think Mr. Gonsalves had enough room to do so, but later he stated that he could have, and then he said Mr. Gonsalves’ best option was to turn onto Bissell Street as he did. Civilian Witness #3 Tr. at 25-26, 29-30.

Civilian Witnesses #4 and #5

Civilian Witnesses #4 and #5 were interviewed by Corporal Adam Kennett and Sergeant Heather Palumbo of the Rhode Island State Police on October 29 and 30, 2020, respectively, at the Lincoln Woods Barracks.¹⁷

On October 18, 2020 at approximately 5:30 p.m., Civilian Witness #4 was on the porch of his home on Elmwood Avenue with his wife, Civilian Witness #5. Using his cellphone, he started to record a group of approximately two hundred motorbikes, by his estimate, travelling towards Cranston on Elmwood Avenue. The vehicles were travelling on both sides of the road and riders were doing stunts on their bikes.

Civilian Witness #4’s attention was drawn to the last vehicle in the group, a scooter, which he estimated to be travelling at about twenty to twenty-five miles per hour. Following the scooter was a police cruiser. Another cruiser pulled out of Bissell Street onto Elmwood Avenue after the large group of motorbikes passed and it “almost seemed like he tried cutting the kid on the moped off.” The scooter swerved out of the way of the cruiser and took a right onto the sidewalk on Bissell Street. In Civilian Witness #4’s opinion, the scooter was forced to turn to the right to avoid hitting the cruiser crossing Elmwood Avenue from Bissell Street. Civilian Witness #4 told Investigators

¹⁷ State Police investigators also received a recorded interview of the witnesses conducted by Ryan Gwaltney on October 25, 2020. Mr. Gwaltney is an investigator for the attorney representing members of the Gonsalves family. During the interviews with Mr. Gwaltney, Civilian #4 marked the location where he viewed these events on a map of the area. This map was also obtained by the Investigative Team.

that neither the cruiser following the scooter nor the one pulling out of Bissell Street had its emergency lights on. Civilian #4 Tr. at 4-9.

When interviewed by Mr. Gwaltney, Civilian Witness #4 stated that the police cruiser followed the scooter onto the sidewalk and hit the scooter. He did not see who hit the stop sign but when it fell, he saw it hit the scooter rider on the head. During his interview with Corporal Kennett, he stated that “it all happened so quick[ly]” and from his point of view behind the crash, it “looked like” the cruiser hit the scooter and the sign at the same time. Civilian Witness #4 Tr. at 22-23. As demonstrated by his own cellphone video (the Civilian Witness #4 Video), in the moment prior to impact, Civilian Witness #4 was focused on Officer McParlin’s cruiser, which was heading north on Elmwood Avenue, and he had quickly panned back to the crash a fraction of a second after Officer Endres struck the stop sign.

Civilian Witness #5 was outside with her husband, Civilian Witness #4, watching the motorbikes passing by her front porch. The vehicles were doing “wheelies” and travelling towards Cranston in all four lanes of traffic. To her left, near the intersection of Elmwood Avenue and Spooner Street, she saw a man on a scooter surrounded by three police cruisers who were trying to “box him in.” The driver of the scooter (Mr. Gonsalves) managed to elude the cruisers and drove away on Elmwood Avenue heading towards Cranston. Civilian Witness #5 Tr. at 7-9. This account is consistent with the accounts of Officers Caba and Cabral and the Spooner Street Video, described at pages 7-8 above.

According to Civilian Witness #5, a police cruiser then followed the scooter and they were both travelling at about 20, 25 to 30 miles per hour. As the scooter and the cruiser approached the intersection of Elmwood Avenue and Bissell Street, another cruiser emerged from Bissell Street with its emergency lights on. The video evidence shows that Officer McParlin’s cruiser did not actually have its emergency lights on at the time.

Civilian Witness #5 thought the officer crossing Elmwood Avenue was “trying to block him [the scooter rider] in.” The scooter purposely turned to his right up a ramp onto the Bissell Street sidewalk to avoid the cruiser crossing Elmwood Avenue. Civilian Witness #5 Tr. at 9-11. She believed the scooter rider may have had enough room to continue travelling southbound on Elmwood Avenue if he had stayed to the right. Civilian Witness #5 Tr. at 29-30.

According to Civilian Witness #5, the police cruiser was attempting to maintain its distance behind the scooter as it was following him. Civilian Witness #5 Tr. at 20-22. The cruiser followed the scooter onto the sidewalk and lost control, hitting the back of the scooter with the push bumper. The cruiser hit the stop sign, dislodged it from the ground and the red portion of the sign hit the scooter rider on his head while he was on the sidewalk. From her perspective, Civilian Witness #5 believed that the cruiser hit the scooter at the same time it hit the stop sign. Civilian Witness #5 Tr. at 16-19. As previously stated, that is contradicted by the video and forensic evidence.

Civilian Witness #5 stated that she does not think the police officer hit the scooter intentionally. Civilian Witness #5 Tr. at 21.

D. Aftermath of the Crash

The immediate aftermath of the crash was captured by several police body-worn cameras, as well as the Civilian Witness #4 Video. Immediately after impact, Officer Endres can be seen exiting his cruiser and running towards Mr. Gonsalves, who is lying on the sidewalk. Officer Endres' and Caba's body cameras shows Officer Endres pulling Mr. Gonsalves by the arm away from the scooter and the stop sign which are on top of him. According to Officer Endres, Mr. Gonsalves was breathing but unconscious.

Almost immediately, Officers Caba, Cabral, McKenna, McParlin, Ferraras and Diaz and Detective Guerra also arrived at the scene. Officer Endres' body camera depicts Officers Ferraras and Cabral moving the scooter off of Mr. Gonsalves and standing it upright. Officer Caba can be heard calling for rescue. Officer McKenna stated that he saw Mr. Gonsalves on the ground motionless but breathing.

Officer Ferraras exited his cruiser and ran to the intersection where he saw Mr. Gonsalves' shoelace keeping his foot on the pedal of the still running scooter. He told the Investigative Team that he removed Mr. Gonsalves' foot from the bike and stood it upright. Officer Ferraras did not notice any damage to Officer Endres' cruiser but noticed the fallen stop sign and some damage to the scooter which looked like it had "side-swiped something."

It took approximately six to seven minutes for rescue personnel to arrive. From the body camera footage, during that time, Providence Police officers can be seen crouching next to Mr. Gonsalves and supporting his head and his back, so that he can remain lying on his side. Mr. Gonsalves' breathing appears labored and he is otherwise nonresponsive. The body camera video of Officer McKenna depicts conversation about removing Mr. Gonsalves' helmet in order to facilitate his breathing, but officers were cautioned not to move Mr. Gonsalves' head as he might have suffered a head injury. Officers can be heard asking rescue to "step it up." Conversation on the police body-worn cameras included remarks that someone hit a stop sign and that Mr. Gonsalves was struck by the stop sign.

E. Officer Endres' Radio Transmission: "Box This Guy In"

In the course of this investigation, this Office reviewed police radio transmissions made immediately prior to and after the collision. The only radio transmission that is pertinent to the collision was made by Officer Endres as he was following Mr. Gonsalves down Elmwood Avenue, seconds before the crash, in which he stated: "Box this guy in." There is no response or acknowledgement of this transmission from any other officer in the radio calls provided to this Office. This Office considered what impact, if any, this transmission had on the collision. Relatedly, we also considered what role Officer McParlin's driving, specifically entering the intersection of Bissell Street and Elmwood Avenue, played in the crash.

As described above, the civilian witnesses all indicated to the police that it appeared to them that Officer McParlin pulled out in front of Mr. Gonsalves in an apparent attempt to "cut him off" or "box him in." The civilian witnesses indicated that they believed Mr. Gonsalves turned right onto Bissell Street in order to avoid hitting Officer McParlin's cruiser. Civilian Witness #5,

however, also indicated that she believed Mr. Gonsalves may have had enough room to travel down Elmwood Avenue behind Officer McParlin's cruiser. The civilian witnesses also indicated that it appeared to them that Mr. Gonsalves intentionally directed his scooter onto the Bissell Street sidewalk.

This Office carefully considered the accounts of the civilian and police witnesses on this point, and compared those accounts with each other, the video evidence, the time and distance calculations conducted by the Rhode Island State Police Collision Reconstruction Unit, and the expert opinion of that Unit. Based on this review, we can conclude that, regardless of what Officer Endres said or intended, there was in fact no "boxing in" of Mr. Gonsalves at the Elmwood Avenue/Bissell Street intersection. Such "boxing in" would have required the cooperation of other officers, specifically Officer McParlin, and the video evidence makes plain that such cooperation did not occur.

Immediately after Officer Endres followed Mr. Gonsalves back into the southbound lanes on Elmwood Avenue, his body camera video shows him reaching for his radio. Providence Police dispatch received a call from Officer Endres on Channel 3 at 5:50:05 p.m. in which he said, "box this guy in." The State Police concluded, based on Officer Endres' body camera footage, and the available video evidence, that Officer Endres made this transmission before the intersection of Elmwood Avenue and Bissell Street, when he was over 175 feet north of the stop sign post on the corner of Elmwood Avenue and Bissell Street, and about 4-6 seconds before the crash. See State Police Supp. Report dated 11/23/20 at 3, 4.

The Providence Police Office of Professional Responsibility questioned Officer Endres about this transmission. Officer Endres stated that he believed that Mr. Gonsalves was "losing control of his moped" as he drove down Elmwood Avenue. Officer Endres stated that "when people lose control of a motor vehicle, the, the next step they make is stopping . . . and then once [Mr. Gonsalves] stops, we would pull up near him . . . show our presence and show that his options are limited . . . and hopefully safely get him to hop off the moped. . . ." Officer Endres said he was not trying to pull Mr. Gonsalves over or "box him in" while the vehicle was "operational" because he knew that is "something we don't do." According to Officer Endres, his intent was to block the scooter only if Mr. Gonsalves was already stopped and, therefore, he did not activate his emergency lights or siren to effectuate a stop. Endres Tr. at 11-12.

Officer Endres also stated that, immediately after making this transmission, he saw an "officer pull out . . . of Bissell Street, but my attention is also focused on, uh, the moped. I'm following him. Um, I look up, see the police car. I see the moped go to the right and I follow him, um, to avoid the police car and to, to follow the moped." Endres Tr. at 13.

"Boxing in" is prohibited by Providence Police Department Pursuit Policy 330.02. The policy provides: "Officers may not engage in vehicular intervention, boxing-in, rolling roadblocks, stationary roadblocks, or the use of tire deflation devices in order to prevent a pursuit." Pursuit Policy at 3. It further provides that: "In the course of a pursuit, tactics such as the use of vehicular intervention/forcible stopping, boxing in, rolling roadblocks, parallel pursuits, or driving alongside the pursued vehicle while it is in motion, are prohibited." Pursuit Policies at 12.

Whether or not Officer Endres' radio transmission alone, or his intentions, to the extent they can be conclusively determined, violated this policy and should be subject to internal discipline by the Providence Police Department is a matter for the Department to determine.

For the purposes of our analysis of potential criminal liability, however, we need not determine whether Officer Endres violated Department policy, or whether his explanation for his radio transmission should be credited or not. This is because, as described below, the video evidence and the State Police Collision Reconstruction Unit analysis establishes that the radio transmission played no role in the crash that led to Mr. Gonsalves' injuries.

First, Officers McParlin, McKenna, Caba and Cabral all deny hearing this transmission, and there is some independent evidence that supports this.¹⁸ Second, even if we were to set aside those denials, based on the video evidence, on its face and as analyzed by the State Police, there is no evidence that Officer McParlin operated his vehicle in a manner consistent with boxing someone in.

Officer McParlin stated that when his cruiser was stopped at the intersection of Bissell Street and Elmwood Avenue, he observed a large group of motorbikes pass in front of him, travelling towards Cranston. He observed a police cruiser follow those vehicles and it was his belief that the group of motorbikes had gone by. Officer McParlin stated that he looked to the left (north, towards Providence), and did not see anyone coming towards him. He stated that he then slowly entered the intersection while looking to the right to make sure no one was travelling northbound on Elmwood Avenue. He looked to his left again, and it was only then that he noticed a lone scooter (Mr. Gonsalves) coming toward him "at a high rate of speed." Officer McParlin stated that he slowed down, believing that the operator of the scooter was going to pass in front of him. However, once Officer McParlin "observed the operator of the moped begin turning . . . toward the rear of my vehicle, I then accelerated forward going inbound on Elmwood Avenue to avoid the moped coming to collision with the rear of my marked police cruiser." Officer McParlin then heard a loud crash but he did not observe any portion of the crash. See McParlin Statement; McParlin Tr. at 8. Officer McKenna provided substantially the same account. Officer McKenna stated that it was not his nor his partner's intention to block Mr. Gonsalves. See McKenna Statement; McKenna Tr. at 7-8.

The Bissell Street Video, Elmwood Video, and the Civilian Witness #4 Video confirm the account provided by Officers McParlin and McKenna. It is clear from those videos that Officer McParlin waited for a large group of motorbikes to clear the intersection, and then waited until Officer Diaz's cruiser passed (emergency lights on, following the large group of motorbikes) before slowly entering the intersection. Based on the time stamps in these videos, when compared with Officer Endres' body-worn camera footage, the State Police Collision Reconstruction Unit determined that Officer McParlin began to pull out of Bissell Street eastbound onto Elmwood Avenue at about 5:50:04.6, prior to Officer Endres' transmission. This is also consistent with the

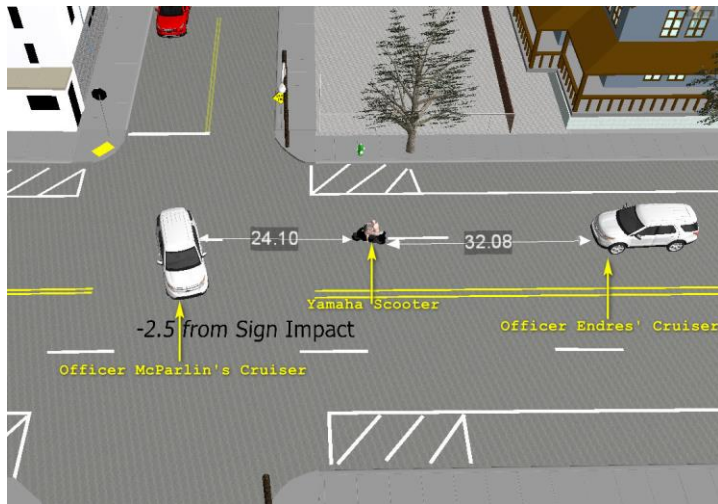
¹⁸ Based on other radio transmissions made immediately before and after, it appears that those officers were transmitting primarily over Channel 1, while Officer Endres was transmitting over Channel 3; however, that cannot be conclusively determined. It is not possible to determine what channel the officers were listening to at the time. None of the officers can be heard acknowledging this transmission on the radio.

time recorded by Providence Police dispatch for this call which was 5:50:05.¹⁹ The two videos demonstrate that Officer McParlin entered the intersection slowly, briefly braking in the right lane of the southbound side, but that Officer McParlin's cruiser kept moving towards the northbound lanes as Mr. Gonsalves approached the intersection.

As seen in the videos and the video stills obtained by the State Police, it is apparent why onlookers perceived the cruiser as "cutting off" the scooter. Officer McParlin's cruiser does cross the southbound lanes of Elmwood Avenue just as Mr. Gonsalves approached the intersection. Based on the State Police Collision Reconstruction Unit analysis, at 5:50:07.6 p.m. (two and a half seconds prior to Endres' cruiser's impact with the stop sign), Mr. Gonsalves' scooter is in the left southbound lane of Elmwood Avenue, about 24 feet north of Officer McParlin's cruiser. A half second later, Officer McParlin's cruiser is clearing the left southbound lane on Elmwood Avenue, and Mr. Gonsalves' scooter is moving into the right lane of travel. A half second after that, Officer McParlin's cruiser is crossing the yellow lines into the northbound lanes, just as Mr. Gonsalves is veering right towards Bissell Street, about half-way down the intersection.

The following diagrams and still images from the State Police Collision Reconstruction Report at 98-105, demonstrate this progression of events:

Time 05:50:07.666



¹⁹ It is not possible to conclusively synch the time recorded by the Providence Police Dispatch records and the time on the Bissell Street Video and the Civilian Witness #4 Video.

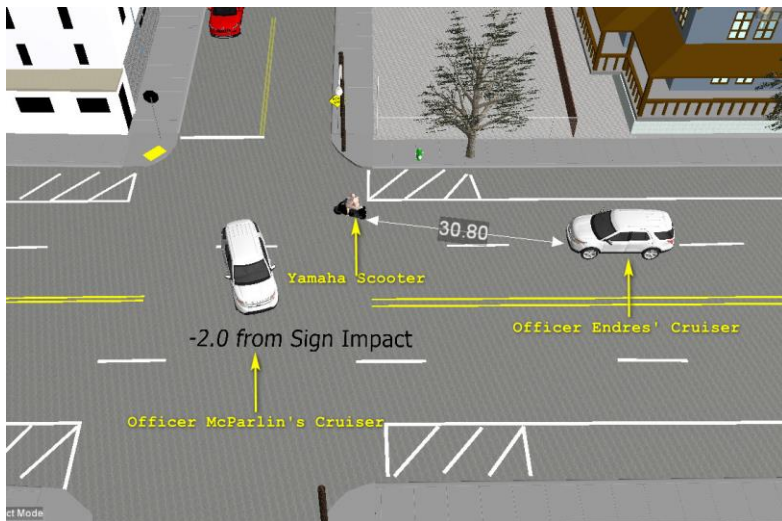


Bissell Street Video /Civilian Witness #4 Video



Elmwood Video

Time 5:50:08.166



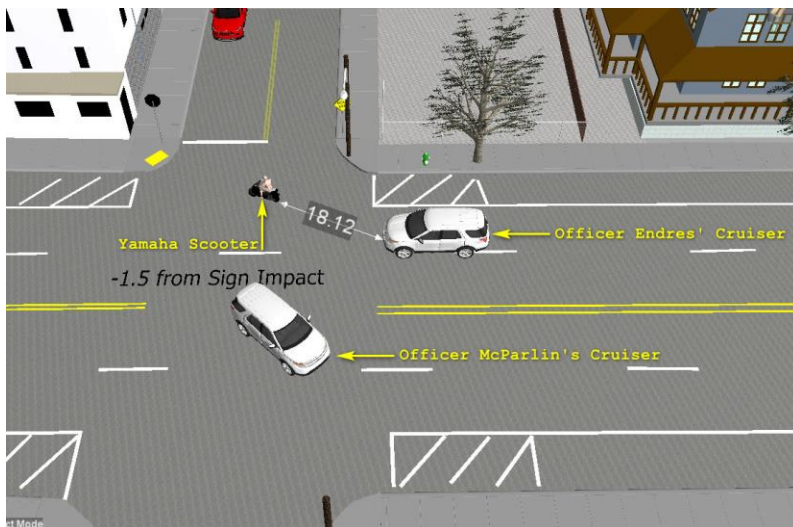


Bissell Street Video /Civilian Witness #4 Video



Elmwood Video

TIME 05:50:08.666





Bissell Street Video /Civilian Witness #4 Video



Elmwood Video

In sum, the video evidence and State Police collision reconstruction analysis demonstrate that Officer McParlin drove out of Mr. Gonsalves' way as Mr. Gonsalves headed into the Elmwood Avenue/Bissell Street intersection. In doing so, Officer McParlin cleared a path of travel down the right side of Elmwood Avenue. In State Police Lieutenant Jeffrey L'heureux's expert opinion, Officer McParlin's actions, moving out of the way of Mr. Gonsalves as he was driving down Elmwood Avenue, are not consistent with an officer attempting to "box in" someone.

Given the extremely short timeframe within which these events unfolded, it is impossible to determine what Mr. Gonsalves perceived as he approached the intersection, and whether he had sufficient time to react and alter his direction of travel as Officer McParlin advanced his cruiser out of Mr. Gonsalves' direction of travel. The civilian witnesses offered different opinions about that; however, none were in Mr. Gonsalves' shoes. What is clear, however, is that Officer McParlin's actions are not consistent with attempting to "box someone in" and there is no evidence

to suggest that they were coordinated with Officer Endres (who would have also likely collided with Officer McParlin's cruiser had he not moved his cruiser).

IV. MR. GONSALVES' INJURIES

Mr. Gonsalves was transported to Rhode Island Hospital with severe head trauma. He remained in intensive care for weeks following the crash. As of the writing of this report, there are some indications that Mr. Gonsalves may be slowly emerging from a coma and regaining consciousness. Nevertheless, there is no question that the injuries he sustained on October 18, 2020 are extremely severe.

A portion of Mr. Gonsalves' medical records were obtained from Rhode Island Hospital under the Confidentiality of Health Care Communications Information Act §5-37.3-1, et seq. Those records and conversations with Mr. Gonsalves' family members document and clearly establish that Mr. Gonsalves suffered serious bodily injury as that term is defined by Rhode Island law.

V. LEGAL ANALYSIS

A. Driving So As To Endanger

As the conduct involved here concerned the operation of a motor vehicle, the most readily applicable statute is Driving so as to Endanger, Resulting in Serious Bodily Injury, in violation of R.I. Gen. Laws § 31-27-1.1. That statute reads as follows:

(a) When the serious bodily injury of any person ensues as a proximate result of the operation of any vehicle in reckless disregard of the safety of others, including violations of § 31-27-22, the person so operating the vehicle shall be guilty of "driving so as to endanger, resulting in serious bodily injury."

(b) "Serious bodily injury" means physical injury that creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Any person charged with a violation of this section shall upon conviction be imprisoned for not more than five (5) years and have his or her license to operate a motor vehicle suspended for no more than three (3) years.

1. Criminal Recklessness as Defined by the Rhode Island Supreme Court

In a series of cases beginning with State v. Lunt, 260 A.2d 149, 151 (R.I. 1969), the Rhode Island Supreme Court has held that a criminal conviction under the reckless driving statute requires "evidence [that] shows that a driver has embarked on a course of conduct which demonstrates a heedless indifference to the consequences of his actions." The Court elaborated as follows, "we believe that the use of the word 'reckless' or 'recklessly' connotes something more than the negligence necessary to support a civil action for damages, and that the two words impart a disregard by the accused for the consequences of his act and an indifference to the safety of life and limb." Id. (emphasis supplied).

The facts of Lunt are quite similar to the facts here. In Lunt, the defendant drove his car on Ocean Road in Narragansett in the early morning hours. “The automobile failed to negotiate a slight curve and struck a tree. This collision caused the death of a woman passenger [in defendant’s vehicle].” Id. at 150. In overturning the defendant’s conviction for reckless driving, death resulting, the Court held that “[m]ere inadvertence or a pure error in judgment by a driver is not embraced by the criminal sanctions of the reckless driving provisions of the Motor Vehicle Code.” Id. at 151-52 (emphasis supplied). The court made clear that the commission of a mere traffic infraction is not sufficient to establish recklessness. Likewise, violation of some statutory prohibition or rule of the road, like driving in excess of the speed limit, “does not in and of itself” satisfy the threshold for recklessness. Id. at 152. Rather, recklessness must be related to “time, place, persons, and surrounding circumstances and be measured by them. Excessive speed under some circumstances may amount to mere negligence and under other circumstances it may constitute willful or wanton disregard for the safety of others.” Id.

In State v. Arnold, 404 A.2d 490 (R.I. 1979), the Supreme Court again elaborated on the difference between negligence “which would support a tort award” and recklessness required to sustain a criminal conviction. Id. at 492. In that case, the defendant was a professional truck driver, operating a tractor-trailer with a gross weight of approximately 32,000 pounds on Route 95 during adverse weather conditions. As the driver headed towards the Coventry interchange, he saw “a big puddle” and a “heavy cloud of fog.” The driver “could not see what awaited him on the roadway on the other side of the fog.” Id. at 491. The evidence in Arnold established that the defendant decelerated to about 35 mph, within the posted speed limit, as he approached the fog bank. When the defendant emerged from the fog bank, he saw another vehicle motionless in front of him. The defendant could not avoid the vehicle in time; he struck it, thereby causing the death of a 14-year-old girl. The defendant waived a jury. The trial judge found the defendant guilty of reckless driving, death resulting, stating that the defendant “‘was going too fast under all the circumstances’ and that ‘he should have started to take the proper action long before he did.’” Id. at 492. The defendant appealed his conviction to the Rhode Island Supreme Court. Id.

The Rhode Island Supreme Court vacated the defendant’s conviction, holding that the trial judge had used the wrong legal standard for reckless driving. The Supreme Court held that the trial judge should have used the recklessness standard set forth in Lunt and emphasized again that criminal recklessness requires “something more than the negligence which would support a [civil] tort award.” Id. “The crucial element in [criminal] reckless driving offenses, we said, is evidence which shows that the ‘driver has embarked upon a course of conduct which demonstrates a heedless indifference to the consequences of his action.’” Id. (internal citations omitted). The Court found that while the defendant’s conduct supported a negligence claim – perhaps he should have decreased his speed even more given the surrounding circumstances – the evidence fell “far short of establishing recklessness.” Id. (emphasis supplied) (citing Maloney v. Commissioner of Motor Vehicles, 330 A.2d 101 (1974) (holding that failure of an experienced truck driver, operating an overloaded truck under icy weather conditions, to descend ramp at speed lower than 35 mph might be negligent, but not reckless).

In arriving at this conclusion, the Supreme Court set forth the type of evidence that would be required for a showing of “heedless indifference to life and limb.” Such evidence could include

intoxication, excessive speed, or defective equipment. The Court again pointed to the significant difference between civil negligence and criminal recklessness:

Mere error in judgment by a driver is not sufficient. . . . A responsible operator of a motor vehicle should be aware that its operation offers a potential source of harm to many, including one's fellow motorist or pedestrian who is trying to cross the highway. One who incorrectly judges the manner in which to reduce the potential to the least probable level is negligent; one who ignores the responsibility altogether can be called reckless.

Id. (emphasis supplied).

By contrast, in State v. Watkins, 448 A.2d 1260 (R.I. 1982), the Supreme Court found that the evidence was sufficient to sustain a reckless driving, death resulting conviction. In that case, the defendant's vehicle struck a six-year-old boy on the Bradford Bridge on Route 91 and killed him. The evidence showed that the defendant was operating his vehicle: (1) at a high rate of speed – at least thirty mph over the posted speed limit; (2) had crossed over into the opposite lane of travel in a no-passing zone; (3) had a clear view of the children and other pedestrians in the area; and (4) had failed to brake until the moment of impact. The Court found that the driver “embarked upon a course of conduct which demonstrates a heedless indifference to the consequences of his action.” Id. at 1267 (citing State v. Dionne, 442 A.2d 876, 883 (R.I. 1982), State v. Lunt, 260 A.2d at 151-52, and State v. Arnold, 404 A.2d at 492).

Both in Watkins, and in the subsequent case of State v. Bettencourt, 723 A.2d 1101 (R.I. 1999) the Supreme Court elaborated on the connection between speed and criminal recklessness. In Bettencourt, where the driver of a pick-up truck struck motorists stranded in the breakdown lane, the court found that “the central issue was not how fast the defendant was travelling, but whether at the time of the incident, he was traveling at a speed greater than the circumstances warranted.” Id. at 1111 (affirming reckless driving death resulting conviction where defendant was travelling at least 8-25 mph over the speed limit but the surrounding traffic had slowed and moved over to avoid the stranded motorists while the defendant had not).

In Rhode Island Supreme Court criminal reckless driving cases where convictions have been upheld, something more than miscalculation, error of judgment, or a motor vehicle infraction has been present. See, e.g., State v. Harrington, 689 A.2d 399 (R.I. 1997) (recklessness found based upon evidence of intoxication, driving at excessive speed, failure to apply brakes, and crossing into breakdown lane where joggers were clearly visible); In re David P., 697 A.2d 1099 (R.I. 1997) (recklessness found where defendant was driving over 50 mph in a 35 mph zone, through busy intersection, and ran a yellow-light); State v. Boss, 490 A.2d 34, 35 (R.I. 1985) (defendant was reckless where, driving at a “high rate of speed” with a blood alcohol level of .20, he weaved and swerved between lanes, before slamming on his brakes and spinning out of control, striking a motorcyclist); State v. Northup, 486 A.2d 589 (R.I. 1985) (defendant was reckless when she saw the victims in the breakdown lane, failed to move her car over, hit them, kept going, and there was evidence that she was operating under the influence of alcohol); State v. Dionne, 442 A.2d 876, 880 (R.I. 1982) (defendant passed several cars at a high rate of speed (about 50-60 mph in a 35 mph zone), crossed into the opposite lane of travel to pass another car, and when crossing

back, hit a bicyclist causing her death). What these cases have in common is evidence that the driver was far more than merely negligent or not careful, but rather embarked on a “course of conduct which demonstrates a heedless indifference to the consequence of his action.” Lunt, 260 A.2d at 151.

2. Analysis

Applying Rhode Island’s driving to endanger law to the facts of this case, we conclude that Officer Endres’ operation of his cruiser does not meet the high standard of criminal recklessness.

As an initial matter, it bears noting that we analyzed Officer Endres’ conduct without regard to the privileges afforded to police officers as operators of emergency vehicles. Under the law, the driver of an authorized emergency vehicle, such as Officer Endres, may exercise certain privileges when responding to an emergency or when in the pursuit of an alleged violator of the law. These privileges include exceeding the speed limit and disregarding other motor vehicle laws. See R.I.G.L. §§ 31-12-6 – 31-12-7. Normally, the exercise of such privileges necessitates the use of a warning signal to be given by the emergency vehicle. See R.I.G.L. § 31-12-8. Officer Endres did not claim to be responding to an emergency, nor did he claim to be in pursuit of an alleged violator of the law. He did not have his cruiser’s overhead emergency lights and sirens activated when following Mr. Gonsalves. In any event, even operators of emergency vehicles are not relieved of “the duty to drive with due regard for the safety of all persons,” nor are they protected “from the consequences of the driver’s reckless disregard for the safety of others.” R.I. Gen. Laws § 31-12-9. Accordingly, whether Officer Endres was operating an “authorized emergency vehicle” or simply a vehicle, was not pertinent to our analysis of criminal recklessness in this case.

Rather, we must determine whether Officer Endres, or any other officer, operated their police cruisers in violation of criminal law. To do that, we must evaluate his driving in relation to the “time, place, persons, and surrounding circumstances” facing him at that time. Lunt, 260 A.2d at 152.

The video footage, State Police Collision Reconstruction Unit Report, and the witness accounts of the events leading up to crash, among other evidence, portray a chain of events that unfolded very, very quickly, against a chaotic background. Minutes before the collision, Officer Endres and the other officers involved were following a large group of motorbikes down Elmwood Avenue. Mr. Gonsalves broke away from the large group and crossed over into the opposite (northbound) lanes of travel on Elmwood Avenue, which prompted Officer Endres, followed by other officers, to follow him and attempt to stop him. Mr. Gonsalves evaded the cruisers of Officers Endres and Cabral and returned to the southbound lanes. Officer Endres had to re-orient his cruiser, and begin following Mr. Gonsalves from essentially a stopped position, causing him to briefly accelerate to about 35 mph. The Spooner Street video demonstrates that Officer Endres was following Mr. Gonsalves at a distance as they proceeded down the block from the Spooner Street intersection to the Bissell Street intersection. Before reaching the Elmwood Avenue/Bissell Street intersection, about 2.5 seconds prior to the crash, the Collision Reconstruction Report and the video footage show Officer Endres about two car-lengths behind Mr. Gonsalves. At that point in time, Officer Endres had slowed to about 28 mph according to his cruiser’s black box data.

The circumstances abruptly changed when Officer McParlin's cruiser entered the intersection of Elmwood Avenue and Bissell Street mere seconds into this sequence of events. The appearance of Officer McParlin's cruiser in the intersection was immediately followed by Mr. Gonsalves beginning his abrupt turn to the right onto Bissell Street. The video evidence demonstrates that Officer Endres attempted to follow Mr. Gonsalves' path. Mr. Gonsalves headed up onto the sidewalk, traveling between the stop sign and the adjacent building. As he did so, the scooter's speed slowed significantly, thereby closing the distance between Officer Endres' cruiser and the scooter. This path of travel was evidently not expected by Officer Endres. The physical and video evidence demonstrate that Officer Endres applied emergency steering maneuvers and braking. In the seconds prior to impact with the stop sign, Officer Endres was engaged in maximum braking, as evidenced by the engagement of the Anti-Lock Braking system in the half second prior to impact. Officer Endres admitted in his statement that he assumed that Mr. Gonsalves would remain on the road as he turned into Bissell Street. He stated that he realized too late that he misjudged his orientation vis a vis Bissell Street by following Mr. Gonsalves, who was heading for the sidewalk.

The Rhode Island Supreme Court has given us the guideposts by which to evaluate Officer Endres' conduct here. Based on the comparatively low and decreasing speeds involved, the following distance between the vehicles, the unexpected path of travel taken by Mr. Gonsalves, the extremely short timeframe within which Officer Endres had to react, the emergency steering maneuvers and the fact that Officer Endres was braking, and ultimately aggressively braking, as he approached Bissell Street, we conclude that Officer Endres' conduct does not meet the standard of criminal recklessness.

It is not enough for this Office to determine that Officer Endres failed to operate his vehicle in a manner that "reduce[d] the potential [of harm] to the least probable level," i.e., negligently. Rather, we must find, based on the evidence, that he was criminally reckless, i.e., he "ignored the responsibility altogether." Arnold, 404 A.2d at 492. Officer Endres' speeds in the seconds prior to the crash briefly exceeded the posted speed limit only marginally, and are not, alone, sufficient to meet a criminal recklessness standard. State v. Lunt, 160 A.2d at 152 ("The fact that an operator of a motor vehicle has violated some statutory prohibition or rule of the road does not in and of itself warrant the bringing of a charge of recklessness either under § 31-27-1 or § 31-27-4. That an accused drove in excess of the speed limit does not necessarily establish a violation of the statutory crime reckless driving.") Were that not the case, then every collision involving driving over the speed limit by any margin could become a criminal case, and that is not the law. Officer Endres' misjudgment of his vehicle's orientation vis a vis the street is also the type of "error in judgment" that may or may not give rise to civil liability. However, it is not evidence of a "course of conduct that demonstrates heedless indifference to the consequences" such that results in criminal liability. Lunt, 260 A.2d at 151.

Likewise, the evidence here does not support a finding of criminal recklessness on the part of Officer McParlin. As described above, the video and physical evidence established that Officer McParlin entered the intersection of Elmwood Avenue and Bissell Street immediately after a large group of motorbikes, followed closely by a marked cruiser, passed in front of him. He stated, and there is no evidence to contradict this statement, that initially he did not see Mr. Gonsalves trailing the large group of motorbikes southbound on Elmwood Avenue but still north of Bissell Street (to

Officer McParlin's left) when he entered the intersection. He also stated that he did not hear the radio transmission of Officer Endres stating "box this guy in" prior to entering the intersection and, therefore, took no action to box anyone in. The video evidence and collision reconstruction analysis confirm this assertion, establishing that Officer Endres' transmission occurred after Officer McParlin entered the intersection. The video footage also confirms Officer McParlin's account that when he saw Mr. Gonsalves approach, and it became clear that he might strike the rear of his cruiser, Officer McParlin quickly drove forward to get out of the way. Officer McParlin's conduct also falls "far short" of the type of conduct that the Supreme Court would consider "reckless" to sustain a criminal charge of driving to endanger.

B. Assault with a Dangerous Weapon

Because the evidence does not support a finding of recklessness, it also stands to reason that it would not support a charge requiring proof of intentional conduct. We found no evidence to support a charge of assault with a dangerous weapon in violation of R.I. Gen. Laws § 11-5-2. The terms "assault" and "battery" have been given special meaning in our law. "An assault is an unlawful attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness. . . . A '[b]attery refers to an act that was intended to cause, and does cause, an offensive contact with or unconsented touching of or trauma upon the body of another, thereby generally resulting in the consummation of the assault.'" State v. McLaughlin, 621 A.2d 170, 177 (R.I. 1993) (internal citations omitted). Because we have already determined that Officer Endres' actions did not rise to the level of criminal recklessness, it follows that the same facts could not give rise to criminal liability for felony assault. That would require a finding of malice or wantonness on the part of Officer Endres for which there is no evidence.

Whatever Officer Endres' intentions with respect to his desire to stop Mr. Gonsalves and issue him a citation, the evidence establishes that: (1) he did not force Mr. Gonsalves off the road; and (2) he did not strike Mr. Gonsalves with the cruiser. There is no evidence, and certainly no evidence that would establish beyond a reasonable doubt, that Officer Endres intended to strike Mr. Gonsalves or the stop sign. Officer Endres was not trailing within a few feet of Mr. Gonsalves' scooter as they entered the intersection, and there is no evidence that Officer Endres took any action that forced Mr. Gonsalves to take the path he did between the stop sign and the building. While we cannot determine why Mr. Gonsalves chose that path with any certainty, it appeared to the civilian witnesses that he did so either to avoid Officer McParlin's cruiser or in an attempt to elude the police.²⁰ In any event, the physical evidence established that Officer Endres had taken steps to *avoid* hitting Mr. Gonsalves, including emergency steering and braking, as soon as he realized that his cruiser was heading to the sidewalk instead of the street. Thus, there is no evidence of the criminal intent necessary to support an assault charge.

²⁰ As already discussed above, there is also no evidence to support a finding that Officer McParlin deliberately placed his cruiser in Mr. Gonsalves' path. In fact, the evidence shows that Officer McParlin moved his cruiser to avoid a collision with Mr. Gonsalves.

VI. RECOMMENDATIONS TO THE PROVIDENCE POLICE DEPARTMENT

Based on our review of the facts of this case, we recommend that the Providence Police Department evaluate whether disciplinary action, retraining, or any other action may be warranted to address the conduct of Officer Endres, Officer McParlin, or any other Providence Police officer, on October 18, 2020 based on non-criminal violations of the motor vehicle code or Department policies.²¹

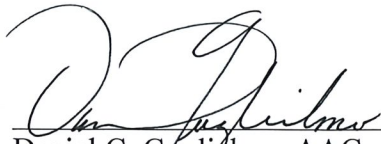
These “Ride Out” events present unique public safety challenges to cities across the country. It is clear, based on the dispatch calls, police and civilian witness statements, and the body-worn camera footage that we reviewed, that officers understood that they were not authorized to “chase” the motorbikes and that they had to exercise caution in following or monitoring these vehicles. Nevertheless, these events are fraught with danger for the riders, other motorists, pedestrians, and the police. We recognize that the City of Providence has grappled with this issue for several years. This Office remains ready to work with law enforcement to determine what, if any, additional measures may be taken in response to these occurrences.

VII. CONCLUSION

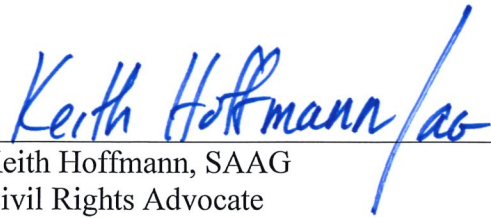
The events which transpired at the intersection of Elmwood Avenue and Bissell Street shortly before 6:00 p.m. on October 18, 2020 had enormously tragic consequences. Mr. Gonsalves sustained severe injuries, leaving him in a coma for nearly two months. His prognosis at the time of this report remains uncertain.

Notwithstanding this extraordinarily difficult situation, for the reasons set forth above, neither Officer Endres’ conduct, nor the conduct of any other officer we examined, supports a finding of the criminal recklessness necessary to sustain a violation of the criminal motor vehicle laws. When it comes to driving offenses, the criminal bar is high. As the Supreme Court noted in Lunt and Arnold, one’s driving can be civilly negligent and form the basis of a civil action for damages and yet still fall “far short” of what is required to establish criminal recklessness.

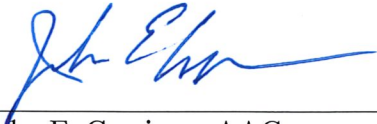
²¹ At our request, the Providence Police Department shared with us Office of Professional Responsibility records pertaining to Officer Endres. We did not find those records to contain information relevant to our assessment of this case or our findings.



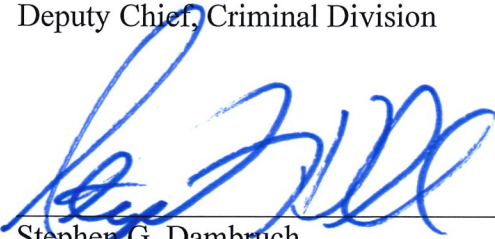
Daniel C. Guglielmo, AAG
Chief, Civil Rights Prosecution Unit



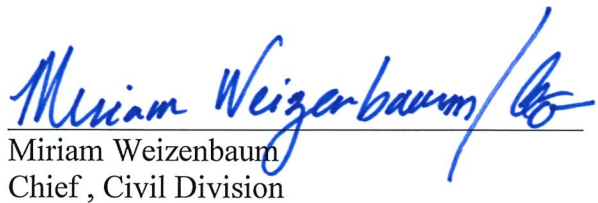
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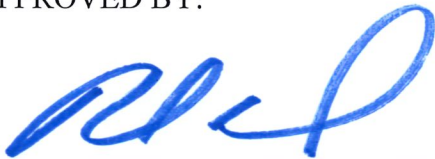


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