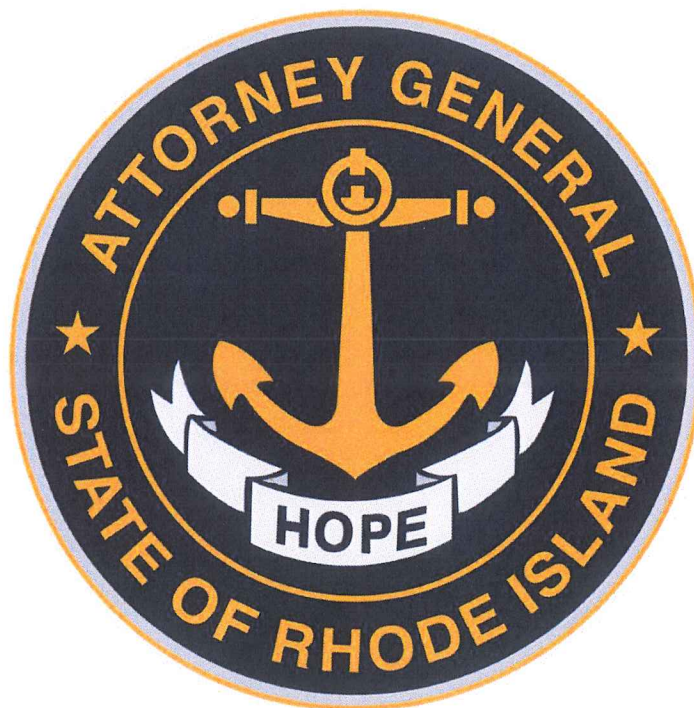


**STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL**

*Peter F. Neronha  
Attorney General*



**INVESTIGATIVE REPORT  
January 26, 2024**

<b>Incident Type:</b>	<b>High Speed Pursuit</b>
<b>Incident Location:</b>	<b>New London Turnpike, West Warwick, R.I.</b>
<b>Incident Date:</b>	<b>June 29, 2023</b>
<b>Police Department:</b>	<b>West Warwick Police Department</b>
<b>Officer Involved:</b>	<b>Officer David Mariano</b>

## **Summary of Findings**

The Attorney General has conducted a full review of the vehicular pursuit of Steven Brown by West Warwick Police Officer David Mariano, which occurred in that town on Thursday, June 29, 2023. This review was conducted pursuant to the Attorney General's Protocol for the Review of Incidents Involving the Use of Deadly Force, Excessive Force, and Custodial Deaths ("The Attorney General Protocol"). Our review established that Mr. Brown was operating his motorcycle at a high rate of speed, estimated at over 90 mph, immediately prior to crashing into a utility pole on the side of New London Turnpike in West Warwick. As a result, he sustained fatal injuries and was pronounced dead at Rhode Island Hospital a short time later. Although this crash followed a short-lived, high-speed pursuit by Officer Mariano, for the reasons set forth below, we conclude that the evidence does not support a finding that Officer Mariano's conduct caused the crash, or that he is criminally liable for it under Rhode Island Law. As part of this review, we considered the applicable law, West Warwick Police Department's policies, and all of the facts and circumstances of the incident.

## **Evidence Reviewed**

We relied on the following investigative materials furnished to us by the West Warwick Police Department and the Rhode Island State Police:

1. Rhode Island State Police Investigation Report by Detective Erik A. Mills – 29 pages
2. Rhode Island State Police Incident Report 23RIX1-1416-OF – 3 pages
3. West Warwick Police Department Incident Report 23-1389-OF – 7 pages
4. Rhode Island State Police Collision Reconstruction Report – 40 pages
5. State of Rhode Island Uniform Crash Report – 7 pages
6. Rhode Island EMS Patient Care Report, WFD – 4 pages
7. West Warwick Fire Department Report – 6 pages
8. West Warwick Police Department Call Sheet for 6/29/23 – 3 pages
9. West Warwick Police Department General Order 320.02 – 10 pages
10. Scene Photographs by West Warwick Police – 13
11. West Warwick Police Dispatch Telephone Communications
12. West Warwick Police Radio Transmissions
13. Video Surveillance from Riken Pools on Tiogue Avenue – 1 file
14. Video from Flat Top Park – 1 file
15. Statement of Officer David Mariano, WWPD – 13 pages
16. Statement of Lieutenant Aaron Perkins, WWFD – 8 pages
17. Statement of Lieutenant Eric Moreau, WWFD – 8 pages
18. Statement of Private Michael Booth, WWFD – 8 pages
19. Statement of Private Jesse Mowbray, WWFD – 9 pages
20. Statement of Lieutenant Kyle Boulay, WFD – 6 pages
21. Statement of Private Ryan Dursin, WFD – 7 pages
22. Statement of Joseph Rogowski – 9 pages
23. Statement of Shara Mello – 25 pages
24. Statement of John Botello – 6 pages
25. Statement of Matthew Medeiros – 8 pages
26. Statement of Richard Wiggs – 16 pages
27. Statement of Tiffany Webster – 6 pages
28. Statement of Trisha Newman – 3 pages
29. RI Office of State Medical Examiners – Autopsy Report – 5 pages
30. RI Department of Health Laboratories – Toxicology Report – 4 pages



### Applicable Law

Under Rhode Island law, a “high speed pursuit” is defined as “the active attempt by a police officer in an authorized emergency vehicle to apprehend the occupants of a running motor vehicle at speeds in excess of fifteen miles per hour (15 MPH) over the speed limit.” R.I. Gen. Laws § 31-27-4.2(c). Engaging in a high speed pursuit is limited to the:

attempted apprehension of persons wanted for the commission of felonious and/or misdemeanor acts that threaten, have threatened, or will threaten the health, life, or safety of a person or persons; or . . . [t]he pursuit of a motor vehicle operator who has committed flagrant moving motor vehicle violations which have endangered the lives and safety of others and was operating in a reckless manner before the pursuit was initiated, and is continuing to operate in a manner that recklessly endangers the lives and safety of others, including, but not limited to, driving under the influence of liquor or drugs.

R.I. Gen. Laws 31-27-4.2(b)(1) & (2).

The law places certain responsibilities upon a police officer engaged in such a pursuit, and they are as follows:

- (1) As soon as practical communicate to his or her dispatcher his or her location and direction of travel.
- (2) Provide the reason for the high speed pursuit.
- (3) Communicate the ongoing status of the pursuit at regular intervals including any significant change of circumstances which might affect the decision to either continue or discontinue the pursuit.
- (4) Activate all audio (sirens) and visual (emergency lights) warning devices until the high speed pursuit is terminated.
- (5) Adhere to all the provisions of §§ 31-12-6 through 31-12-9.
- (6) Terminate the high speed pursuit when in his or her judgment the dangers created by the pursuit outweigh the need for immediate apprehension.

R.I. Gen. Laws § 31-27-4.2(d).

In this case, the applicable criminal law to be analyzed is that of Driving so as to Endanger, Resulting in Death, which occurs “[w]hen the death of any person ensues as a proximate result of an injury received by the operation of any vehicle in reckless disregard of the safety of others . . . .” R.I. Gen. Laws § 31-27-1(a). The West Warwick Police Department has promulgated an applicable policy governing vehicular pursuits—that being General Order 320.02, which bears an effective date of March 1, 2020.

## Summary of the Facts

A complete account of the investigation may be found in the Rhode Island State Police Report of Investigation and attachments thereto which will be forwarded to the West Warwick Police under separate cover. We lay out here only the facts most pertinent to our analysis.

### Officer Mariano's Account

Officer David Mariano provided a voluntary statement on June 30, 2023 to State Police Detective Erik Mills, and West Warwick Detective Captain Brian Ketcham and Detective Sergeant Chris Maznicki. Assistant Attorney General John Corrigan was also present. Officer Mariano had been on the West Warwick police force for about six months at the time of the incident. Prior to that, he had served as an officer with the Capitol Police for two years.

On June 29, 2023, at approximately 10:20 p.m., Officer Mariano was manning a fixed traffic post at 1734 Main Street, in the parking lot of a CVS Pharmacy store. At that time, he was seated in his marked Ford Police Interceptor Utility cruiser with windows slightly lowered and heard what sounded like a loud motorcycle engine approaching. He then saw a red sport-style motorcycle driving southbound on Main Street. Officer Mariano saw the motorcycle leave the travel lane, enter the turning lane, pass a sedan, accelerate, and then re-enter the travel lane. This maneuver by the operator of the motorcycle caused the overtaken sedan's driver to brake, and engage the horn. In response, Officer Mariano left his post and proceeded to follow the motorcycle. Officer Mariano estimated that the motorcycle was "probably going around 48 to 50 miles an hour on Main Street . . . when he passed the vehicle." The posted speed limit at that location was 25 mph.

Officer Mariano followed the motorcycle as it traveled south on Main Street. The motorcycle's rear registration plate was bent upward, so Officer Mariano was unable to see the plate number. The motorcycle stopped and then turned left onto New London Turnpike without the operator signaling the turn. At that point, Officer Mariano activated his overhead emergency lights. This was approximately two-tenths of a mile from the CVS, near Adrenaline Rush Motor Sports, which is located at 1823 New London Turnpike. The motorcycle did not come to a stop in response to the emergency lights and continued southbound on New London Turnpike. After following the motorcycle approximately another tenth of a mile south, to the intersection of Claire or Campbell streets and New London Turnpike, the motorcycle began accelerating to a high rate of speed. Officer Mariano estimates that the motorcycle was traveling at approximately "60 or 65 miles per hour" at that time. This prompted Officer Mariano to activate his cruiser's siren. Despite both the emergency lights and siren being active at that point, the motorcycle again accelerated (Officer Mariano stated in his report that the motorcyclist "hit the throttle"), and Officer Mariano witnessed the motorcycle gain a substantial distance from his cruiser. Officer Mariano thereafter saw the motorcycle cross the double yellow lines on New London Turnpike multiple times, and at no time did it yield to his attempts at a motor vehicle stop. There was little to no traffic on the road at that time.

Within approximately another one-tenth of a mile, when he was in the area of the baseball field at Flat Top Park, Officer Mariano checked his cruiser's speedometer in order to relay the situation over the radio to headquarters. He noted his speed was 86 miles per hour. At this juncture, Officer Mariano determined that he should slow down and discontinue his attempt to stop the motorcycle for safety reasons. Officer Mariano stated that he had intended to call in the pursuit at that point; however, he did not do so. He reported that the motorcycle was so far ahead at that point that the taillight appeared to him as a small red dot. After



approximately another two-tenths of a mile, at a location where New London Turnpike curves to the right prior to Scenic Drive, Officer Mariano stated he lost sight of the motorcycle. Before he could deactivate his emergency lights and siren, he stated that he saw sparks in the roadway near the opening to Scenic Drive. On approach to the intersection with Scenic Drive, Officer Mariano saw the taillight of the motorcycle again but reported seeing it quickly go out. He then saw the motorcycle lying in the roadway at the corner of New London Turnpike and Scenic Drive, adjacent to a wooden utility pole at the roadway opening to the Green Ridge Condominium complex. He also saw the operator lying, face down, on the sidewalk.

At about 10:21 p.m., Officer Mariano made a radio transmission to headquarters, reporting the accident and requesting rescue. Officer Mariano pulled over and exited his vehicle to check the condition of the male operator, later identified as Steven Brown (DOB: 11/8/1968). According to Mariano, Brown was breathing and had a pulse, but he was unconscious and bleeding from the head. He was not wearing a helmet.

Officer Mariano estimated that the entire pursuit lasted less than 30 seconds. He estimated that approximately four to six seconds elapsed from the time he saw the sparks to the time he arrived at the scene of the crash. He estimated that he was about a quarter mile away from the motorcycle when he saw the sparks and taillight go out.

#### Rescue Personnel and Medical Examiner

Rescue was immediately notified and reportedly arrived on scene within minutes. Lieutenant Aaron Perkins of the West Warwick Fire Department stated that his engine was the first on scene. He stated that when he arrived on scene, a police officer was attempting to stop the bleeding from the patient's head. He immediately took over and found that the patient was in cardiac arrest (no pulse) and he commenced CPR. This was followed by more advanced lifesaving techniques, but they were never able to obtain a "shockable rhythm." Brown was pronounced dead at 11:02 p.m. at Rhode Island Hospital. According to the Rhode Island Office of State Medical Examiners, Brown's cause of death was determined to be blunt force injuries of the torso, and his manner of death was termed an accident.

#### Civilian Eyewitness Accounts

Several witnesses saw the motorcycle in question immediately prior to Officer Mariano's encounter with it. John Botello and Matthew Medeiros were riding together in a truck, with Mr. Botello driving northbound on Tiogue Avenue and then onto Main Street. On Main Street, Mr. Botello passed Officer Mariano's cruiser and saw it parked in the CVS lot, facing the street and with its parking lights on. As Mr. Botello travelled approximately two-tenths of a mile north from that location on Main Street, he noticed a motorcyclist, with no helmet, operating a sport style motorcycle at a high rate of speed. He recalled commenting to Mr. Medeiros, "My God, he's going really fast for this time of night." Mr. Botello estimated that, when the oncoming motorcycle passed him, it was travelling at least 90 miles per hour. In his professional life, Mr. Botello had been an EMT/paramedic for 30 years, and he thought to himself that if the motorcyclist were to crash, the impact would kill the rider. Mr. Botello continued driving northbound to take Mr. Medeiros home and turned left onto Pulaski Street. After dropping off Mr. Medeiros, he returned to Main Street, turned left and headed south. He then saw two additional police cruisers pass him.

Matthew Medeiros was riding as the passenger in Mr. Botello's truck. He recalled passing Officer Mariano's cruiser parked at the CVS lot. He, too, saw the motorcycle operating



at a high rate of speed. Mr. Medeiros explained “you could hear once he hit that crest of the hill, he really opened up.” Mr. Medeiros has experience with motorcycles. He indicated that he has a motorcycle license and said he owned a motorcycle “all my life.” His speed estimate of the motorcycle was 75 miles per hour or higher.

Richard Wiggs was waiting outside a Domino’s Pizza restaurant in the shopping plaza that is directly across from the CVS Pharmacy where Officer Mariano was posted. He did notice the cruiser in the CVS lot with its parking lights on, and his attention was drawn to a motorcycle that was “really taking off.” Mr. Wiggs described seeing the motorcycle and a small foreign car go by, very close to each other, and at a high rate of speed. It had looked to Mr. Wiggs as if the motorcycle had just overtaken the car. He speculated that the motorcycle and the car were displaying signs of “horsing around” or some kind of road rage. Then he saw Officer Mariano’s cruiser exit the CVS lot at a high rate of speed. Mr. Wiggs then walked to the Main Street end of the shopping plaza. He reported seeing the cruiser turn onto New London Turnpike and, in his telling, go the wrong way through the island at that intersection. It should be noted that video surveillance of the cruiser’s turn onto New London Turnpike shows the vehicle using the correct side of the island for that turn.

Witness Joseph Rogowski was outside his residence at 1842 New London Turnpike, when the motorcycle and cruiser passed. His home is located approximately two-tenths of a mile south of Adrenaline Rush Motorsports and is near the corner of New London Turnpike and Claire Street. Mr. Rogowski first recalled hearing the motorcycle’s loud exhaust. The noise prompted him to look to the road, and he saw the motorcycle go by, heading south towards Coventry. He described the motorcycle as a sporty one. He noted that the motorcyclist appeared to keep looking behind: “he kept turning around to see if the cop was following him or not.” After a couple of seconds, the police cruiser passed the home. He could hear the siren of the police cruiser. Mr. Rogowski estimated the speed of the vehicles to be in the 40 to 50 mile per hour range as they passed.

Immediately adjacent to Mr. Rogowski’s residence, witness Tiffany Webster was in the driveway of her home at 1846 New London Turnpike. The sound of the motorcycle’s approach also caught her attention. Her speed estimate for the motorcycle was 70 miles per hour. She noted that it was a red motorcycle. She believed that she saw two police cruisers in pursuit.

Approximately one-tenth of a mile south of the Rogowski home, Shara Mello resides at 12 Turner Drive. She was sitting behind her house, which has a view of New London Turnpike. She heard the motorcycle go by, and then she could see the police cruiser go by with its emergency lights activated. She said of her observations of the motorcycle that, “instead of . . . you know, pulling over. I just heard him go faster.”

Witness Trisha Newman was inside the residence of 1899 New London Avenue at the time of the collision. She did not see the collision but heard a crash. She looked out of the window and saw a motorcycle on the ground. At the window, she also saw a police officer pull up to the scene, exit his cruiser and walk over to the bike. When asked to estimate the time lapse between hearing the crash and the officer arriving on scene, Ms. Newman said, “probably about two minutes – if less, than that.”

#### Rhode Island State Police Collision Reconstruction

Members of the Rhode Island State Police Collision Reconstruction Unit performed an analysis of the motorcycle crash. New London Turnpike has two lanes of travel running in a



north-south direction (one in each direction), separated by a double yellow line, and narrow breakdown lanes marked off by solid white lines. Streetlights provide adequate illumination. Weather conditions at the time were clear, warm and without recent precipitation. The speed limit for the area is 25 miles per hour.

The travel of Steven Brown's motorcycle and Officer Mariano's cruiser was captured in two separate videos. One is from Riken Pools, a supply store located at 1 Tiogue Avenue with a view of the area where Main Street and New London Turnpike intersect. According to measurements taken by the State Police, this location is approximately one-half mile north from where the motorcycle crashed. The video shows the motorcycle entering the frame at 10:20:16 p.m. and turning from Main Street onto New London Turnpike at 10:20:19 p.m. Officer Mariano's cruiser then appears, with overhead emergency lights activated, entering the frame at 10:20:20 p.m. and making the same turn at 10:20:22 p.m. While no speed calculations were made from this video, the State Police's Collision Reconstruction Unit believe, based on their training and experience, that neither vehicle was speeding at the time captured in the video.

Another video was captured on an iPhone 13 Pro by Janell Lussier while she was at Flat Top Park on New London Turnpike with a group of people. This park is located approximately 1800 feet south of the previously referenced intersection of Tiogue Avenue, Main Street and New London Turnpike. In the video, Brown's motorcycle passed the Flat Top Park parking lot, and 4.27 seconds later, Officer Mariano's cruiser passed with its emergency lights activated and the siren sounding. The State Police engaged in a time/distance speed analysis of the two vehicles as seen on the video. This process involved an initial validation by live controlled speed tests and the use of forensic video analysis software. Because this camera was part of a handheld smartphone, and not mounted in a fixed location, there may be some variability in determining the distance traveled for purposes of measuring speed. Nevertheless, the result obtained by this process was an estimated speed of 95.2 miles per hour for Brown's motorcycle and 92.1 miles per hour for Officer Mariano's cruiser. The State Police further determined that the cruiser was traveling 4.27 seconds and 575.9 feet behind the motorcycle at this location.

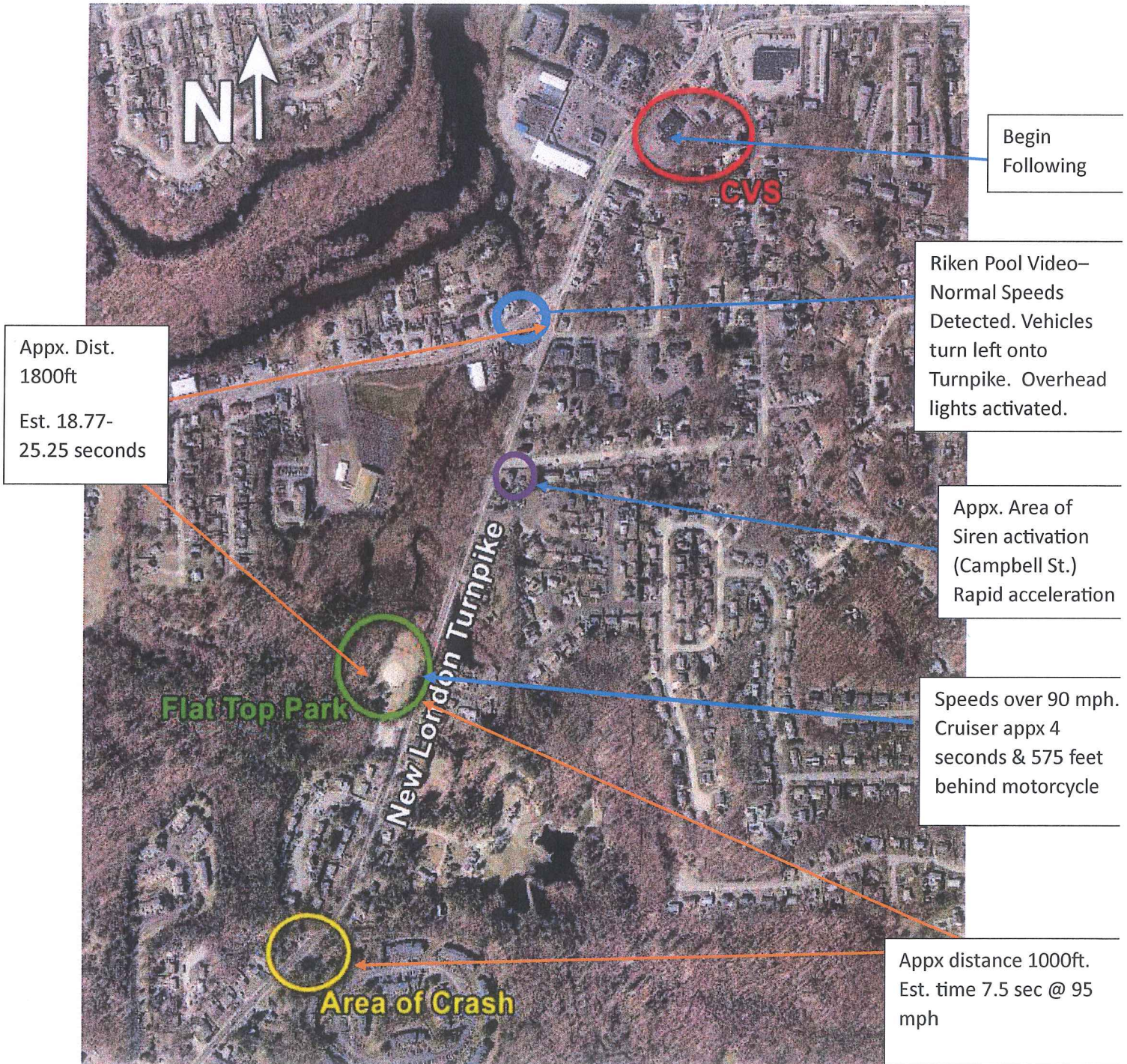
The State Police attempted to calculate the estimated amount of time that Officer Mariano's cruiser was following the motorcycle on New London Turnpike (that is, from the intersection with Tiogue Ave. and Main St. to the site of the crash). Due to data constraints, the State Police had to approach the calculation by way of three possible acceleration scenarios (which are memorialized in the Collision Reconstruction Unit Report bearing case number 23-438-CRU). **The result of their analysis led to the conclusion that Officer Mariano's cruiser was behind the motorcycle for a time period that ranges from 18.77 seconds to 25.25 seconds.**

In reconstructing the collision sequence, the State Police determined that, while the motorcycle was heading southbound on New London Turnpike, it failed to negotiate a slight right-bearing curve, crossed into the northbound lane, left the roadway, struck the raised curbing at the intersection of New London Turnpike and Scenic Drive, and collided head on with a wooden utility pole. The motorcycle sustained heavy damage consistent with that direct collision. The Collision Reconstruction Unit did not observe any "pre-collision tire marks, gouges or scrapes . . . that would have indicated emergency braking or loss of control." There was no evidence of damage that could be caused by a collision with another vehicle. Officer Mariano's cruiser was also inspected with no evidence that he had collided with the motorcycle. Officer Mariano's cruiser parked approximately 30 feet north of the wooden utility pole that Brown's motorcycle struck. There was no evidence of emergency braking by the cruiser. Because the cruiser did not collide with anything, there was no deployment of its airbags (which would have caused the cruiser's



Airbag Control Module to preserve speed and other data). So too, the cruiser did not experience an instantaneous change in velocity that would have caused a non-deployment preservation of data by the Airbag Control Module.

The State Police findings can be summarized in the following image:





The motorcycle in question was a 2002 model year Honda 954RR, red in color. At the time of this incident, it bore a New Hampshire motorcycle registration plate, but the vehicle was unregistered.

Brown's recent history shows seven significant traffic infractions from 2017 into to June of 2023 involving the operation of a motorcycle. They include an arrest for reckless driving and operating his motorcycle with a suspended license on June 12, 2023; operating his motorcycle at 100 miles per hour and driving with a suspended license on July 31, 2019; operating a motorcycle at 96 miles per hour, laned roadway violation, and turn signal required on March 10, 2018; a laned roadway violation on a motorcycle on March 5, 2018; speeding while operating a motorcycle on March 1, 2018; operating at 58 miles per hour in a 25 mile per hour zone on September 27, 2017; and a laned roadway violation while operating a motorcycle on September 15, 2017. At the time of this incident, Brown's license to drive was suspended. He has been arrested 38 times since reaching the age of adulthood in 1987.

### Legal Analysis

Analyzing the above facts in light of Rhode Island law pertaining to Driving so as to Endanger with Death Resulting, we conclude that Officer Mariano's operation of his cruiser did not rise to the level of recklessness in this context and that his vehicular operation was not a proximate cause of the injuries or death of Steven Brown. His actions were not criminal and were within the parameters of the law governing police pursuits.

There is no question that Officer Mariano was driving an authorized emergency vehicle under R.I. Gen. Laws § 31-12-6 and in the pursuit of an alleged violator of the law at the time. His use of the cruiser's overhead emergency lights and siren entitled him to use special statutory privileges pursuant to R.I. Gen. Laws § 31-12-8, including exceeding the prima facie speed limits in accordance with R.I. Gen. Laws § 31-12-7. Overall, Officer Mariano exercised due regard for safety in the operation of his cruiser under R.I. Gen. Laws § 31-12-9, and he did not run afoul of that statute's reckless disregard for safety provision. *See Seide v. State*, 875 A.2d 1259 (R.I. 2005).

Based on Officer Mariano's observation of the motorcycle's operation on Main Street, there was plainly sufficient grounds for a traffic stop. Specifically, before initiating his pursuit, Officer Mariano observed the motorcycle: passing a vehicle with an abrupt and unsafe movement from the center lane back into the travel lane, in violation of R.I. Gen. Laws § 31-15-11; and travelling at speeds that significantly exceeded the posted speed limit, in violation of R.I. Gen. Laws § 31-14-2. *See State v. Bjerke*, 697 A.2d 1069 (R.I. 1997) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.") (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). As his pursuit of Mr. Brown progressed, Officer Mariano also observed him operating at extremely excessive speeds – ranging from 50 mph to over 90 mph in a 25 mph zone. Officer Mariano also observed that the operator failed to signal as he turned onto New London Turnpike, in violation of R.I. Gen. Laws § 31-16-5; crossed the yellow line several times, and that he continued to operate at excessive speeds – clearly in an attempt to elude the police. As such, Mr. Brown "has committed flagrant moving motor vehicle violations which have endangered the lives and safety of others and was operating in a reckless manner" both before the pursuit was initiated and while it was underway. R.I. Gen. Laws 31-27-4.2(b)(1) & (2).

Officer Mariano's observations regarding the reckless manner in which Mr. Brown operated his motorcycle were corroborated by the civilian eyewitness accounts recounted above



as well as by the Flat Top Park cellphone video footage which recorded Mr. Brown speeding down the road at approximately 95 mph.

Based on Officer Mariano's account, eyewitness reports, and the State Police Collision Reconstruction Unit's analysis, it appears that the high speed pursuit was initiated at some point after the turn onto New London Turnpike. By both Officer Mariano's estimate, and the State Police Collision Reconstruction Unit's estimate, this pursuit was of extremely limited duration and distance – likely less than 30 seconds and about two-tenths of a mile. The State Police estimated that it lasted between 18-25 seconds from the turn onto New London Turnpike to Flat Top Park. Officer Mariano asserts that he disengaged from the pursuit after passing the park, and, as explained further below, we find this account credible and consistent with other evidence.

According to Officer Mariano, when he realized how fast he was going – by his account 86 mph – he decided to slow down, “follow from a distance” and radio in the situation. He estimated it took him about 6-7 additional seconds to arrive at the crash site from the time he observed “sparks” and the taillight go out. There is limited evidence from which we can corroborate Officer Mariano's account, as there was no body worn camera<sup>1</sup>, vehicle dash camera<sup>2</sup> or other video footage of the crash, nor are there radio transmissions or vehicle crash system data available. However, several factors point to the credibility of Officer Mariano's account<sup>3</sup>: (1) his self-reported speed was very close to the speed estimated by the State Police; (2) his recollection of the duration of the pursuit was fairly close to the State Police's estimate; (3) the State Police did not observe any skid marks on the road that would be consistent with sudden or emergency braking by either vehicle; and (4) there was no evidence of contact between the vehicles. In fact, the cruiser was parked some 30 feet north of the location of the collision. Additionally, an eyewitness to the crash recounted that she observed the police officer roll up to the crash some time after it happened. While the eyewitness's estimate of “two minutes” was far longer than it actually took the officer to get there, this description suggests that there was some distance between the motorcycle and Officer Mariano's cruiser at the time of the crash.

Officer Mariano's entire pursuit of Mr. Brown was under a minute, with the high-speed portion of the pursuit lasting mere seconds. In that short period of time, the officer observed Mr. Brown commit several traffic infractions and operate his motorcycle in a reckless manner that threatened the health, life or safety of the operator and the public at large. Whether or not these facts would be sufficient to justify a true high-speed pursuit, the brief duration of this pursuit suggests that Officer Mariano almost immediately realized that the risk was not warranted. This is not a situation where the pursuit lasted several minutes or longer, in high-traffic areas, or during peak traffic time. It ended almost as soon as it began.

Finally, we pause briefly to address the fact that Officer Mariano did not notify dispatch or his supervisor that he initiated a high speed pursuit or terminated it, as provided for by R.I. Gen. Laws § 31-27-4.2(d) and West Warwick General Order 320.02 (IV)(B). Officer Mariano activated both his overhead lights and sirens as required by law. He also terminated the pursuit seconds after he initiated it. The lack of notification, while concerning, is likely due to the exceedingly brief duration of the pursuit, as noted above. Further, the law provides that

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<sup>1</sup> At the time of the incident, West Warwick had not yet equipped its front line officers with body worn cameras.

<sup>2</sup> West Warwick police cruisers are not equipped with dash cameras.

<sup>3</sup> We also note that Officer Mariano agreed to a voluntary interview the day after the crash and completed a detailed report of the incident.



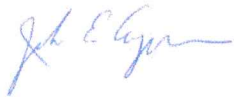
notification be made "as soon as practical." In light of the brief duration over which this entire event transpired, Officer Mariano's explanation that he arrived at the collision site before he had the opportunity to radio in the details of the pursuit appears reasonable. In any event, whether Officer Mariano's conduct here conformed to West Warwick's policies and regulations is a matter for that Department to determine, and not this Office.

### Conclusion

In sum, the evidence does not support a finding that Officer Mariano's operation of his cruiser was reckless. Further, there is no evidence that Officer Mariano's operation of his cruiser was the proximate cause of the injuries and death of Mr. Brown. Indeed, on these facts, the crash and Mr. Brown's death were the result of his own decision to operate his motorcycle at an extreme speed in an effort to get away from Officer Mariano's cruiser. Accordingly, the officer did not violate R.I. Gen. Laws § 31-27-1. *See State v. Dionne*, 442 A.2d 876 (R.I. 1982); *State v. Northup*, 486 A.2d 589 (R.I. 1985); and *State v. Benoit*, 650 A.2d 1230 (R.I. 1994). Additionally, Mr. Brown was never "seized" within the meaning of the Fourth Amendment. Therefore, he was never in custody. *See Brower v. County of Inyo*, 489 U.S. 593 (1989). And there is no evidence of an intent to injure Mr. Brown by Officer Mariano within the meaning of the Fourteenth Amendment's concept of substantive due process. *See County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

Accordingly, we conclude that there is no further need to review this incident, and the matter is therefore closed.

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ATTORNEY GENERAL



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Assistant Attorney General



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Adi Goldstein  
Deputy Attorney General