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The Commonwealth of Massachusetts

DISTRICT ATTORNEY OF SUFFOLK COUNTY
DANIEL F. CONLEY

December 10, 2009

Commissioner Roderick Fraser
Boston Fire Department
115 Southampton Street
Roxbury, Massachusetts 02118-2791

RE: Investigation into the January 9, 2009, death of Lieutenant Kevin M. Kelley

Dear Commissioner Fraser:

The Suffolk County District Attorney's Office has concluded its investigation into the January 9, 2009, fatal collision involving Boston Fire Department Ladder 26 at 835 Huntington Avenue, which took the life of Lieutenant Kevin M. Kelley.

After a comprehensive and objective examination of all the facts, circumstances, and evidence developed in the course of this 11-month probe, I have determined that criminal charges are not warranted in connection with Lieutenant Kelley's death. The physical evidence establishes that Lieutenant Kelley died as a result of multiple, overlapping factors that included his own heroic efforts to protect the lives of the people he served during his three decades as a Boston firefighter.

As you know, the Suffolk District Attorney's Office has by statute the duty and authority to direct and control all death investigations within the City of Boston. As such, the primary goal of our investigation was to determine whether any person or entity bears criminal responsibility for Lieutenant Kelley's death. Pursuant to the same statute, I designated the Boston Police Department's Homicide Unit to conduct that investigation. Additionally, because of the highly specialized nature of this investigation, my office retained the services of outside, independent experts in collision analysis and reconstruction. At all times, the investigation was directed by senior attorneys from my office who supervise the investigation and prosecution of all motor vehicle-related offenses within Suffolk County.

In making our findings, we reviewed 30 separate interviews with Boston Fire Department and civilian witnesses, more than 400 pages of documentation, and hours of audio and video recordings. Those findings follow.

SUMMARY OF COLLISION

On January 9, 2009, at approximately 2:00 p.m., Ladder 26 was dispatched from 560 Huntington Avenue to assist with a medical call¹ at 63 Parker Hill Avenue in the Mission Hill section of the City of Boston. Ladder 26 is a 110-foot aerial ladder truck with air-powered brakes, a parking brake, and a manually-engaged, gear-driven emergency retarding system that effectively downshifts the engine to decelerate the vehicle rapidly.

On January 9, 2009, Ladder 26 was operated by Firefighter Robert B. O'Neill III with Lieutenant Kevin M. Kelley in the front passenger seat and Firefighters Amos L. Monteiro and David R. Blaides in the rear passenger section. On that date, Firefighter O'Neill was 24 years old and had been a Boston firefighter for about two years. Lieutenant Kelley was 52 years old and had been a Boston firefighter for 30 years.

Upon arrival at 63 Parker Hill Avenue, most of the crew disembarked Ladder 26 and Firefighter O'Neill repositioned the vehicle to prepare for the truck's return to Huntington Avenue. Specifically, Firefighter O'Neill executed a series of turning maneuvers in a nearby parking lot, requiring him to apply the truck's air brakes repeatedly. When the call was cleared at approximately 2:30 p.m., firefighters boarded the truck again, with Lieutenant Kelley taking the front passenger seat.

On exiting the parking lot, Firefighter O'Neill executed a left turn and began the descent of Parker Hill Avenue, a 948-foot stretch of road with a 13% downgrade. As he did so, he applied his foot to the air brake in an effort to slow the 22-ton truck as it travelled downhill. Firefighter O'Neill stated in interviews with Boston Police homicide detectives that he could feel no resistance from the brake as he did so.

In the frantic seconds that followed, Firefighter O'Neill informed Lieutenant Kelley of the situation and began to pump the air brakes repeatedly to no effect. Firefighter O'Neill put the truck in neutral and attempted to apply the parking brake, again without effect. Firefighter O'Neill at this time voiced his intention to slow the now-speeding Ladder 26 by deliberately steering it into a light pole or cars along Parker Hill Avenue.

While there were cars parked along the odd-numbered side of Parker Hill Avenue and no cars parked along the even-numbered side, there were civilian pedestrians walking along both sides of the street. Recognizing the danger to civilian pedestrians and knowing that the runaway fire truck could push parked vehicles and light fixtures into the residences lining Parker Hill Avenue, Lieutenant Kelley instructed Firefighter O'Neill not to do so. On that instruction, Firefighter O'Neill proceeded to guide Ladder 26 into a thick masonry wall between 835 Huntington Avenue and the street.

¹ The initial call was for a person at the Landmark Senior Living Facility, located at 63 Parker Hill Avenue, having difficulty breathing.

Lieutenant Kelly instructed Firefighter O'Neill and his two other firefighter passengers to brace themselves for the impact he knew was coming. In what was likely his final living act, Lieutenant Kelley sounded the truck's air horn, successfully alerting cars and pedestrians that the truck would soon arrive at the intersection of Parker Hill Avenue and Huntington Avenue.

As Ladder 26 travelled through the intersection, it struck two unoccupied cars parked on the north side of Huntington Avenue, lost significant velocity on contact with the masonry wall, and finally crashed into 835 Huntington Avenue, coming to rest partially inside the building.

As a result of the multiple impacts, Lieutenant Kelley sustained grievous blunt force traumatic injuries to his head. Lieutenant Kelley died of those injuries immediately. Firefighter O'Neill and the two other firefighters on board Ladder 26 also sustained injuries that were not life-threatening. Five civilians including four children also sustained injuries that were not life-threatening.

CAUSE OF THE CRASH

It became clear early in our investigation that the direct cause of the fatal crash was the inoperability of the brakes on Ladder 26. In fact, a post-collision, stem-to-stern forensic examination of Ladder 26 indicated that every braking device on the truck was compromised to one degree or another at the time of the crash: braking power was reduced on both front wheels, significantly reduced on the rear right, and nonexistent on the rear left.²

Ladder 26 was purchased by the City of Boston in 1995. Subsequent brake repair and maintenance was handled variously by Boston Fire Department personnel and outside vendors. That repair and maintenance work was substandard, leaving Ladder 26 with reduced braking capability from 1999 forward. Additionally, maintenance of the truck's air supply, air filter, air compressor, and air reservoir tank – all of which are crucial to proper air brake operation – was insufficient and not in keeping with universally-accepted best practices.

As with any large truck, effective use of the air brakes of Ladder 26 depended upon sufficient air pressure stored in the truck's air reservoir tank. Using the air brakes repeatedly in a short period of time has the effect of depleting the air reservoir tank. In the case of Ladder 26, that air reservoir tank had been operating at a reduced capacity for months or years before Firefighter O'Neill ever took the wheel. Nonetheless, the effect of first using the air brakes during the three-point turns while exiting the parking lot and then pumping them rapidly during the truck's downhill acceleration served only to remove any lingering pressure in the truck's brake system. In interviews with Boston Police homicide detectives, Firefighter O'Neill stated repeatedly that he was unaware of the role air pressure played in the truck's air brakes. Additionally, Firefighter O'Neill's

² Forensic examination of Ladder 26 conducted by Brian Chase, Comprehensive Motor Vehicle Services & Consulting; Boston Police Sgt. Det. Kevin Buckley; and the Boston Police Accident Reconstruction Unit.

decision to put the truck in neutral – standard procedure when using the parking brake that also proved to be ineffective – would have prevented the truck’s gear-driven emergency retarding system from downshifting and decelerating the vehicle, if Firefighter O’Neill knew to use it.

Finally, the topography of the scene played a significant role in the collision that took Lieutenant Kelley’s life. There are few places within the City of Boston where a large vehicle can travel unobstructed so far downhill, at such a steep grade, in so straight a trajectory. Even with diminished braking capabilities, Firefighter O’Neill may well have been able to slow Ladder 26 to non-lethal speeds on almost any other street within his firefighting district.

Recognizing the steep gradient down which he was travelling and realizing that he could not stop Ladder 26 using the air brakes or emergency brake, Firefighter O’Neill was prepared to use drastic measures to slow the truck by colliding with stationary vehicles and/or light poles. These measures may well have stopped Ladder 26. Lieutenant Kelley, however, specifically instructed Firefighter O’Neill not to do so because of the grave threat to civilian life.

LEGAL ANALYSIS

The role of the Suffolk County District Attorney’s Office in this investigation was to determine whether any person or entity bears criminal responsibility for Lieutenant Kelley’s death. Toward that end, we considered two potential offenses: manslaughter and motor vehicle homicide by negligent operation. As always, we additionally considered our burden of proof beyond a reasonable doubt when bringing any criminal charge.

In reviewing the medical, mechanical, documentary, and forensic evidence of the January 9, 2009, crash, we found no single act or pattern of actions by any person or persons that led solely and directly to Lieutenant Kelley’s death. Rather, it was an aggregate confluence of several contributing factors. Human error, insufficient driver training, the substandard in-house and outside maintenance of Ladder 26, the topography of Parker Hill Avenue, and Lieutenant Kelley’s self-sacrificing determination to protect civilian lives all combined on that fateful day to send a massive piece of firefighting machinery hurtling toward a tragedy that is still felt almost a year later.

While each of these factors played a role in Lieutenant Kelley’s fatal injuries, none rose to the level of willful, wanton, and reckless conduct – the standard we must apply to charge manslaughter in this case.

Likewise, the elements necessary to charge motor vehicle homicide by negligent operation were not present in Firefighter O’Neill’s actions at the wheel of Ladder 26 on January 9, 2009. Proving that offense would require proving, beyond a reasonable doubt, that Firefighter O’Neill knew or should have known that executing multiple three-point turns at the top of Parker Hill Avenue, followed by pumping the brakes to slow the

truck's descent, would deplete the air reservoir tank that powered his brakes. It would require proving, beyond a reasonable doubt, that he knew or should have known that putting the truck in neutral prevented the use of the truck's gear-driven emergency retarding system. Based on Firefighter O'Neill's extensive statements to Boston Police homicide detectives, it is clear he did not know these facts. Based on his training and experience – which included limited classroom instruction and no driver training in the proper use of air brakes in downhill and emergency circumstances – it would be unreasonable for us to conclude that he should have known those facts.

Finally, it would require proving, beyond a reasonable doubt, that it was Firefighter O'Neill's actions, and not the history of poor maintenance on the truck's air supply and braking systems, that caused the air brakes to fail.

In point of fact, Firefighter O'Neill was not aware that his desperate efforts to slow Ladder 26 during its accelerating descent down Parker Hill Avenue could have had the opposite effect. The evidence suggests that Firefighter O'Neill did what any civilian driver would do upon realizing his brakes were out: he frantically tried to engage them by stepping on them repeatedly.

At all times, Firefighter O'Neill acted in good faith and did not knowingly or intentionally operate the truck in an unsafe manner. Toxicology testing on Firefighter O'Neill and Lieutenant Kelley proved conclusively that neither man was impaired by alcohol or any drug. Finally, it is clear from Firefighter O'Neill's instinct to turn Ladder 26 toward stationary vehicles and light poles that he was prepared to take extraordinary measures to stop the vehicle well before it reached the foot of the hill.

CONCLUSION

Based upon the findings presented here, I have concluded that criminal charges are not warranted in this case. I am hopeful, however, that the Boston Fire Department will take this opportunity to ensure that its training and maintenance practices – two of many factors in the crash of Ladder 26 – are revised to avoid another tragic and devastating loss like the one the City of Boston and, much more, the family of Lieutenant Kevin M. Kelley suffered on January 9, 2009.

Sincerely,

Daniel F. Conley
Suffolk County District Attorney