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LONG ISLAND

Judge dismisses criminally negligent homicide charge against PSEG worker in fatal crash

August 31, 2015 10:35 PM By ANDREW SMITH

A Suffolk judge has dismissed a charge of criminally negligent homicide against a PSEG truck driver who crashed head-on into another motorist last year, killing her.

Suffolk prosecutors said Michael Pepe was criminally negligent because they say he was texting while driving, but State Supreme Court Justice Fernando Camacho said the evidence presented to a grand jury didn't support that charge.

Pepe was driving south on Flanders Road in Hampton Bays on Jan. 16, 2014, when his truck crossed over a double-yellow line and collided with a car driven by Barbara Ann Tocci, 47, of Hampton Bays, killing her. A witness said the truck seemed to be avoiding "conspicuous potholes" in its lane, Camacho wrote.

Pepe's attorney, **Steven Epstein** of Garden City, said an accident reconstruction showed that hitting a large pothole actually redirected the truck's path into the opposite lane.

An examination of Pepe's phones showed he last sent a text message at 7:52 a.m. and received a text at 7:53 a.m., but did not open it. The crash happened at 7:57 a.m., "approximately five minutes after the evidence shows the defendant last handled his phone," Camacho wrote last week.

That's too great a time gap to sustain the criminally negligent homicide charge, Camacho ruled. The maximum sentence for the charge is 2 1/3 to 7 years in prison.

"The focus must be on the defendant's conduct, and not the results, no matter how tragic," Camacho wrote. "Here, the defendant was traveling within the posted speed limit on a road that he was aware contained potholes and he was not intoxicated or impaired by alcohol or drugs. There was no evidence presented that the defendant was texting, reading or talking on his personal cellular phone at the time of the accident."

Epstein said Pepe is relieved by the ruling and confident he can prove he's not guilty of the remaining charges. "This decision starts to right the ship," **Epstein** said. "The grand jury indicted him for something he didn't do." Camacho let stand the remaining charges of reckless driving, a misdemeanor, and use of a portable electronic device while driving, a traffic infraction.

Epstein said Pepe was driving at 53 mph, under the 55-mph speed limit, so his driving couldn't be reckless. A spokesman for the Suffolk district attorney's office said prosecutors are reviewing the decision and declined to comment further.