

RIVERHEAD NEWS-REVIEW

Featured Story

Judge dismisses felony charge in fatal Flanders crash

by [Joseph Pinciario](#) | 08/31/2015 6:00 PM



A felony charge of criminally negligent homicide was dismissed against a Bayport man who was involved in [a fatal crash on Flanders Road last January](#), despite prosecutors' assertions that the man was texting and driving shortly before his truck crashed into a car driven by a Hampton Bays woman.

Barbara Tocci was killed on Jan. 16, 2014 when a truck driven by Michael Pepe hit her head-on. Mr. Pepe, an employee of PSEG-Long Island, had sent and opened a series of text messages between 7:28 and 7:53 a.m. While a 911 call was received at 7:57 a.m. reporting the accident, State Supreme Court Judge Fernando Camacho ruled in August that not enough evidence had been brought forth to prove exactly what was responsible for what happened in the few minutes in between.

[Newsday first reported the decision](#) Monday afternoon.

"There was no evidence presented that the defendant was texting, reading or talking on his personal cellular phone *at the time* of the accident," the judge decided. "To determine what the defendant was doing in the minute and seconds prior to the crash would require speculation unsupported by factual evidence."

A spokesman for the office of District Attorney Thomas Spota said the D.A. would not appeal the ruling.

Charges of reckless driving and use of a portable electronic device were sustained.

The sister of Ms. Tocci, Flanders resident Susan Tocci, repeatedly used one word to describe her reaction to the news — which she learned of today: "disappointed."

"I'm disappointed altogether," she said. "How could you not find some sort of negligence in this?"

Cell phone records indicate that Mr. Pepe’s personal cell phone — which he originally denied using — was used at the following times on the morning of the crash:

- 7:28 a.m.: opened a text message
- 7:32 a.m.: sent a text message
- 7:33 a.m.: opened a text message
- 7:41 a.m.: sent a text message
- 7:43 a.m.: opened a text message
- 7:44 a.m.: sent a text message
- 7:45 a.m.: opened a text message
- 7:52 a.m.: sent a text message
- 7:53 a.m.: received a text message that was not opened

Mr. Pepe’s attorney, **Steven Epstein** of Garden City, said his client, “was traveling at a safe and lawful speed within the posted speed limit and did not use his cell phone while driving.”

He added in an interview, “This is a terrible tragedy. That’s no question. But this was not the fault of Michael Pepe.”

Susan Tocci — who erected a huge [“Save a life: DO NOT TEXT AND DRIVE”](#) sign on her yard last summer — isn’t convinced.

“He could’ve killed numerous people down Flanders Road,” she said. “My sister just happened to be the one whose life he took.”

Photo Credit: A sign on Route 24 warns drivers of the dangers of texting and driving. (Credit: Carrie Miller, file)