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## **Report of the State's Attorney for the Judicial District of New Britain Concerning the Arrest Warrant Application for James O'Rourke**

**June 16, 2009**

The Rocky Hill Police Department has submitted an arrest warrant application charging James O'Rourke with the crime of Criminally Negligent Homicide in connection with the tragic death of Carol Sinisgalli. This warrant application has been reviewed by New Britain State's Attorney Scott Murphy. As part of the review, all of the police reports pertaining to this investigation were read and a visit was made to the locations mentioned in the arrest warrant application.

The police investigation into the death of Carol Sinisgalli has determined that on the night of January 21, 2009, Ms. Sinisgalli was a patron at a bar establishment known as Digger McDuff's in Cromwell. Upon arriving at the bar at between 10:30 p.m. and 11 p.m. she ordered a beer but did not drink it. Instead, she walked out of the bar and returned approximately 20 minutes later. Soon after re-entering the bar she engaged in numerous acts of aggressive behavior, including assaulting a wheelchair-bound individual, striking another customer and ripping her own coat and throwing it in the trash. She also approached an individual, Edwin Raffile, who was sitting in his vehicle in the Digger McDuff's parking lot, banged on his car window and demanded that he return her coat. Mr. Raffile did not know Ms. Sinisgalli and did not take her coat. She opened the driver's side door of the Raffile vehicle, accused him of taking her coat and began to strike him with her hands, causing Mr. Raffile to exit his vehicle. She then ran back into the bar. Ms. Sinisgalli was eventually asked to leave the bar and the Cromwell police were called at 11:34 p.m., for the purpose of removing her from the premises.

James O'Rourke had arrived at Digger McDuff's at approximately 11 p.m. after attending a University of Connecticut basketball game in Hartford. Shortly after arriving he saw Ms. Sinisgalli, who he knew from a mutual friend Joseph Cardillo, and said hello to her. About twenty minutes later he observed a disturbance between Ms. Sinisgalli and the wheelchair-bound patron. A few minutes after that disturbance ended, Mr. O'Rourke prepared to leave the bar but was advised to exit through the rear door because Ms. Sinisgalli was out front and was not allowed back in the bar. He told police that he may have heard that the police were coming. Mr. O'Rourke exited through the rear door and walked over to his vehicle, intending to drive home. Mr. O'Rourke told police that he consumed 1 ½ beers that night.

A Cromwell police officer arrived at Digger McDuff's at 11:38 p.m. and learned that Ms. Sinisgalli had already left the premises, getting into the back seat of unknown vehicle. The responding officer seized from the bar for safekeeping several items which Ms. Sinisgalli had left behind, including her shoes, her purse, her cell phone and a zippered hood to a jacket. No one at the bar wished to press criminal charges against Ms. Sinisgalli and Cromwell police therefore closed their case. The police officer did call Ms.

Sinisgalli's residence at 12:17 a.m., leaving a voice message that Cromwell police had possession of her property and that she was not to return to Digger McDuff's. The Cromwell police also observed later that night a vehicle registered to Ms. Sinisgalli in the parking lot of Digger McDuff's.

After exiting the bar, Ms. Sinisgalli ran toward the vehicle being operated in the Digger McDuff's parking lot by James O'Rourke. Mr. O'Rourke told the police that Ms. Sinisgalli, without being invited, opened the rear door of his vehicle, got into the back seat and said she needed a ride to her home in Rocky Hill. Mr. O'Rourke stated to police that he was concerned about her operating a motor vehicle after having too much to drink, so he agreed to drive her home. As Mr. O'Rourke was driving his vehicle northbound he asked her where in Rocky Hill she lived but Ms. Sinisgalli refused to speak to him. Mr. O'Rourke therefore called Mr. Cardillo on his cell phone and learned from him that she lived on the other side of Rocky Hill. Phone records of Mr. O'Rourke show that there were a series of calls made between Mr. O'Rourke's cell phone and Mr. Cardillo's residence that night, the first call being at 11:43 p.m.

At some point while Mr. O'Rourke was operating his vehicle he made a call to Mr. Cardillo and a portion of the conversation was recorded on Mr. Cardillo's answering machine. On this tape Mr. O'Rourke is heard saying to Ms. Sinisgalli, "Alright, stop it. You want to get out, get out that side. Alright then stop fucking with shit back there". Mr. O'Rourke stated that while driving eastbound on West Street in Rocky Hill, near the Marriot Hotel, Ms. Sinisgalli opened the back door as the vehicle was moving. Mr. O'Rourke stated he was concerned that she was going to jump out so he stopped the vehicle and struggled to close the door. He then continued driving on West Street. At the intersection of West Street and Route 99, he stopped his vehicle and had another cell phone conversation with Mr. Cardillo, learning that Ms. Sinisgalli lived in a condominium off of Dividend Road. Mr. Cardillo then gave him directions to Dividend Road.

Mr. O'Rourke stated he drove Ms. Sinisgalli to Dividend Road, which is in a mixed residential-industrial area, looking for her condominium. After driving approximately a mile on Dividend Road, he turned right into a road in which there were a number of residential buildings. He asked Ms. Sinisgalli if she lived in one of these residences but she continued to be uncooperative. Mr. O'Rourke told the police that he turned back onto Dividend Road and Ms. Sinisgalli lunged between the seats, pulled on the rearview mirror and the heating vents and knocked his glasses off. He stopped his car on Dividend Road, near the intersection with Laurel Street and Ms. Sinisgalli exited the vehicle and ran across the road, climbing over a snow bank. Mr. O'Rourke stated that he composed himself, looking unsuccessfully for his glasses, and then drove home to Cromwell. The temperature at the time was approximately fourteen degrees. Mr. O'Rourke stated that he did not know that Ms. Sinisgalli was barefoot when she left his vehicle and believed that she was close to her home and knew where she was going. In the area where Mr. O'Rourke stated that Ms. Sinisgalli exited his vehicle several residences were visible. Photographs taken of the vehicle of Mr. O'Rourke showed damage to the heating vent.

The investigation further determined that Ms. Sinisgalli, after exiting the O'Rourke vehicle, walked the length of Laurel Street, a dead-end road containing primarily industrial buildings, and entered a driveway leading to the rear of a closed industrial building housing Interstate Batteries of Central Connecticut. She then walked eastward through a field until she reached railroad tracks that ran in a north-south direction. Ms. Sinisgalli crossed the railroad tracks and apparently then fell from a retaining wall, six feet high, into snow, which was on property of a former construction company. Ms. Sinisgalli, heading north, then traveled through a wooded area, parallel to the railroad tracks. She exited the wooded area by crawling under a fence back onto the railroad tracks. She then walked approximately 285 feet in a northerly direction along the railroad tracks, to a spot where her body was found.

The area traveled by Ms. Sinisgalli from the end of Laurel Street to the location where her body was found was primarily snow covered and several depressions in the snow were found which were consistent with her either falling or sitting in the snow. The distance from where Mr. O'Rourke stated Ms. Sinisgalli exited his vehicle to where her body was found is approximately ½ mile.

The body of Ms. Sinisgalli was found at approximately 4:45 p.m. on January 22, 2008, by a cross country skier. He called the police and the Rocky Hill police responded. The State Police Major Crime Squad was subsequently called out to process the scene. The State Police noted that Ms. Sinisgalli was wearing a dark colored sweater, a pair of blue jeans and was barefoot. Her body was found approximately 6 feet from the railroad tracks. The autopsy of the body of Ms. Sinisgalli determined that she died of hypothermia and that the manner of death was accidental. Toxicological testing determined that in her blood was alcohol in a concentration of .08%, cocaine in a concentration of .29 mg/L and a prescription medication, Fluoxetine, an anti-depressant, in a concentration of .13 mg/L.

There was a security camera located at the end of Laurel Street and an examination of the video tape showed that at 12:28 a.m., on January 22, 2009, lights that appeared to be brake lights were seen backing up to the eastern most building on Laurel Street, dimming for 22 seconds, and then proceeding westbound out of view of the camera. Despite extensive efforts to enhance the video, the source of the lights could not be determined. Mr. O'Rourke has denied driving or being on Laurel Street that night. The police also observed a second set of footprints at the end of Laurel Street, near where the footprints of Ms. Sinisgalli began. These footprints traveled in a more northerly direction than Ms. Sinisgalli's for 50 feet and then returned to Laurel Street. There was no detail within these prints that allowed for casting. Who made these footprints and when they were made is unknown.

Mr. O'Rourke, through his attorney, contacted the Rocky Hill police on January 23, 2009, to report that he had given a ride to a woman from Digger McDuff's to the area of Dividend Road. Subsequently, Mr. O'Rourke met with the Rocky Hill police on three occasions, provided a written sworn statement of his actions on the night of January 22, 2009, turned over his cell phone records for January 21, 2009, and permitted the police to inspect and photograph his vehicle.

It is noteworthy that the police investigation did not uncover any evidence that Mr. O'Rourke provided Ms. Sinisgalli with the intoxicants found in her blood or was present when she consumed them. There is no evidence that Ms. Sinisgalli was forced to either enter or exit Mr. O'Rourke's vehicle. There is also no evidence that Mr. O'Rourke was aware of the route taken by Ms. Sinisgalli after she exited his vehicle. The autopsy and a forensic examination conducted by the Connecticut Forensic Laboratory detected no evidence of recent sexual activity by Ms. Sinisgalli or that she had been physically or sexually assaulted. As previously mentioned, Mr. O'Rourke gave to the police his version of the night's events. While one can discount what Mr. O'Rourke told the police, it is not permissible to conclude that the opposite of what he said is true, absent independent evidence. *State v. Alfonso*, 195 Conn. 624, 634 (1985). Such independent evidence was not uncovered through the police investigation.

The crime of Criminally Negligent Homicide, Section 53a-58 of the Connecticut General Statutes, is committed when a person, with criminal negligence, causes the death of another person. An essential element of this crime, which must be proved by the State beyond a reasonable doubt, is that the defendant acted with criminal negligence. Criminal negligence means that the defendant failed to perceive a substantial and unjustifiable risk that such result would occur and that this failure was a gross deviation from the standard of care that a reasonable person would observe in the situation. *Connecticut General Statutes*, 53a-3(14). A gross deviation is a great or substantial deviation, not just a slight or moderate deviation. *Criminal Jury Instructions*, Section 2.3-5 (Revised to December 1, 2007).

In determining whether Mr. O'Rourke acted with criminal negligence, the initial question that must be addressed is whether Mr. O'Rourke owed to Ms. Sinisgalli a legal obligation to protect her from hurting herself. If he did not have a legal duty to protect her, then he could not have breached that duty. Generally, one has no legal duty to aid another in peril, even when aid can be provided without inconvenience. There are exceptions to this general rule, including where one voluntarily has assumed the care of another. *I W. LaFave*, Substantive Criminal Law (2003) Section 6.2(a)(4), p. 440. No Connecticut case has been found that states that a person assumes a duty to protect an intoxicated person by agreeing to drive that person home. The imposition of such a duty, with the potential of criminal liability, would have the effect of discouraging people from giving a ride home to an intoxicated person. Such a rule would run counter to the social policy of encouraging designated drivers. Courts in other states have refused to impose on people who give a ride to an intoxicated individual the duty to protect them from their own acts, citing the concern that such a rule would discourage designated drivers. *Stephenson v. Ledbetter*, 596 N.E.2d 1369 (Ind. 1992), *Collins v. Thomas*, 938 A.2d 1208 (Vt. 2007), *Cardello v. Robinson* 903 So.2d 613 (La. 2005), *Downs v. Bush*, 263 S.W.3d 812 (Tenn. 2008). The Connecticut Supreme Court has also shown a reluctance to impose on an individual a legal duty to protect a non-relative sufficient to trigger criminal prosecution. *State v. Miranda*, 274 Conn. 727 (2005). Given the particular facts of this case, including that Mr. O'Rourke and Ms. Sinisgalli were at most casual acquaintances, that Ms. Sinisgalli voluntarily entered and exited the vehicle, that there was no monetary consideration involved and that Mr. O'Rourke had not supplied the intoxicants or was

present with Ms. Sinisgalli when she consumed them, he did not assume a duty to protect Ms. Sinisgalli by agreeing to drive her home.

The arrest warrant affidavit alleges that Mr. O'Rourke acted with criminal negligence by failing to call the Rocky Hill police after Ms. Sinisgalli exited his vehicle. Mr. O'Rourke claimed that he did not call the police because he believed that she was near her home and knew where she was going. Whether his conclusion was reasonable, given the totality of the circumstances then known to him, is questionable. However, because Mr. O'Rourke did not have a legal obligation to protect Ms. Sinisgalli, his failure to call the police cannot be the basis for a finding of criminal negligence.

A second element that must be proved, beyond a reasonable doubt, to prosecute a person for Criminally Negligent Homicide is that the defendant's criminal negligence was the proximate cause of the death of another person. *State v. White*, 204 Conn. 410, 426 (1987). Proximate cause has been defined as a predominating cause, a substantial factor from which the death followed as a natural, direct and immediate consequence. It is a cause without which the death would not have occurred. The resulting death must be a foreseeable and natural result of the defendant's conduct. *Connecticut Criminal Jury Instructions*, Section 2.6-1 (Revised to December 1, 2007).

The known actions of Mr. O'Rourke do not establish that he was the proximate cause of Ms. Sinisgalli's death. Ms. Sinisgalli made a voluntary decision to exit the O'Rourke vehicle. She then walked a route that, given the conditions present, including that it was nighttime, snow covered and cold, would have been hazardous for an able-bodied person, properly dressed, to safely traverse. For Ms. Sinisgalli, given her impaired condition, it was reckless to take that course. In choosing this path Ms. Sinisgalli went from a relatively populated area to an isolated area, where it would be unlikely that she would be found in a timely manner. It was this series of decisions made by Ms. Sinisgalli that led to her tragic death.

Equally importantly, the element of proximate cause requires the State to prove that the death would not have occurred but for the criminally negligent acts of the defendant. *State v. Kwaak*, 21 Conn. 138, 146 (1990). In this case, given the route that Ms. Sinisgalli took and her condition, it is uncertain whether the police, even if they had been contacted by Mr. O'Rourke, would have been able to locate her. It would require speculation to conclude that the Rocky Hill police would have been able to rescue Ms. Sinisgalli. In fact, it is just as likely that if the police department had been contacted, Ms. Sinisgalli would not have been found in sufficient time to save her, given her location, the weather conditions and her attire. Therefore, the State cannot establish that the failure of Mr. O'Rourke to call the police caused her death.

After a complete review of the police affidavit, the investigative reports and the relevant law it the conclusion of State's Attorney Murphy that there is insufficient evidence to charge James O'Rourke with the crime of Criminally Negligent Homicide. The arrest warrant application is therefore denied. The responsibility of a prosecutor in reviewing an arrest warrant is limited to determining whether there is sufficient evidence to charge an

individual with a criminal offense, not whether the acts of that individual were prudent. Therefore no finding is made on this subject.

A thorough investigation of this matter was conducted by the Rocky Hill Police Department, which was ably assisted by the Connecticut State Police, the Office of the Chief Medical Examiner and the Connecticut Forensic Laboratory. It is the general practice of the New Britain State's Attorney's Office, when an arrest warrant is denied, to decline any public comment to protect the privacy rights of the people involved and the presumption of innocence afforded to all. However, because of the publicity previously generated and the extensive public interest, this report has been generated.