

Baltimore employer of smothered worker should be held criminally accountable



State officials are investigating the death of Kyle Hancock in the trench collapse in the 2000 block of Sinclair Lane.

By **Rena Steinzor**

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On June 5, a 19-year-old construction worker named Kyle Hancock was smothered to death when a deep trench where he was working collapsed. R.F. Warder Inc., the construction company that hired Hancock to help fix a leaking sewage pipe, and the bosses it employed are responsible for his death, plain and simple. Their failure to shore the trench to prevent a collapse was grossly negligent, readily foreseeable, eminently preventable and, therefore, criminal.

The scene of the incident was gruesome. To recover Hancock's body, emergency responders from the Baltimore Fire Department first shored the trench to protect themselves and then worked painstakingly until 1:30 a.m., digging with hand shovels 20 feet down. Before they began the rescue effort, they had to order two other workers out of the hole. We can assume from this fact that Hancock was not an isolated employee who acted recklessly. Rather, had the company provided even rudimentary safety training to its employees, supervisors would have known better than to allow more men to risk their lives after Hancock was buried alive.

In fact, trench collapses have been well-known hazards since Roman times. Regulations written by the Occupational Safety and Health Administration (OSHA) have made it illegal to dig a trench deeper than five feet without precautions like shoring.

Maryland regulators say they are investigating the fatal incident. But they have a dismal track record. Case in point: The Maryland Occupational Safety and Health division (MOSH) investigated a similar incident in Prince George's County last summer and settled with the employer for \$2,200. That kind of penalty is not even a slap on the wrist and does nothing to deter future malfeasance, serious injuries and deaths.

Stopping this kind of gross negligence requires far more severe punishment. The best way to achieve justice in this case and to deter other companies in the construction industry from endangering lives while pinching pennies is to prosecute those responsible. Baltimore City State's Attorney Marilyn Mosby should consider assigning her staff to open an investigation into Hancock's death sooner rather than later, while evidence is still accessible and witnesses' recollections still fresh.

If she does, she will find she is in good company. Manhattan District Attorney Cyrus Vance Jr. has successfully prosecuted a similar case and organized a task force involving regulators and prosecutors across New York City to collaborate on such cases.

One of the biggest obstacles in pursuing manslaughter cases against employers is their concern that they will have difficulty proving attorneys will argue that the specific defendant just did not realize that trench shoring was a good idea, Such claims can be rebutted not just by the long-standing regulation regarding such conduct but by the

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testimony of industry safety experts who could attest to widespread understanding of this rudimentary safety measure throughout the industry. Willful blindness to what an employer must do to protect workers is a form of *mens rea* widely recognized by courts across the country, as is the principle that ignorance of the law is no defense.

In New York City, worker safety advocates have organized on behalf of workers killed on the job, holding candlelight vigils and marching in protest to spur prosecutions. The gradual growth of the movement to bring employers to justice is reminiscent of the organizing done by Mothers Against Drunk Driving. It took years of work before such prosecutions reached the mainstream of criminal violations. Now, they are of immense social value in preventing death on the road.

No one should have to worry that they will die at work because their employer ignores obvious, well-known hazards that could be prevented. It's past time to hold employers criminally accountable when they cut corners and endanger workers' lives.

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