



## Erhill, District Attorney

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### MEMORANDUM

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**To:** FILE

**From:** SDDA Glen Banfield

**Date:** 06/29/2015

**Subject:** Barry Allen SPI Crash Investigation

Date and Time: 05/10/2015 @ approximately 9:52 AM

Location: SE. 26<sup>th</sup> Ave. and SE. Powell Blvd.

Investigator: David Enz (PPB)

Victim: Alistair Corkett

Suspect Driver: Barry Allen

On Sunday, May 10<sup>th</sup>, 2015 at approximately 9:52 AM., Barry Allen, DOB 11/22/72, was driving his 1988 Dodge pickup traveling northbound on SE. 26<sup>th</sup> Ave. in the designated left turn lane at the intersection of SE. Powell Blvd and SE. 26<sup>th</sup> Ave. Alistair Corkett, DOB 07/06/91, was riding his bicycle southbound on SE. 26<sup>th</sup> Ave. approaching the intersection at SE. Powell Blvd. Mr. Allen made a left turn onto westbound SE. Powell Blvd. in front of Mr. Corkett. After Mr. Corkett entered the intersection he struck the rear bumper of Mr. Allen's vehicle. The impact severed Mr. Corkett's right leg.

SE. 26<sup>th</sup> Ave. is a north/south roadway in Southeast Portland. The roadway is designated as a bicycle route. The street is lined with mostly residential single and multi-family dwellings. Cleveland High School borders the NE. corner of the intersection of SE. 26<sup>th</sup> Ave. and SE. Powell Blvd. Powell City Park borders the SW corner of the intersection.

There are two travel lanes for SE. 26<sup>th</sup> Ave., one lane for the northbound traffic and one lane for the southbound traffic. The lanes are separated by a solid double yellow line. The north/south bound lanes are bordered by designated bike lanes. The bike lanes are separated from the travel lanes by a solid white line. The north/south bound travel lanes on SE. 26<sup>th</sup> Ave. are separated by a turn lane on both the north and south side of the intersection at SE. 26<sup>th</sup> Ave. and SE. Powell Blvd. SE. 26<sup>th</sup> Ave. has a posted speed of 25 mph at this intersection.

Both the northbound and southbound through lanes of SE. 26<sup>th</sup> Ave. have a designated "Bike Box" located near the intersection of SE. Powell Blvd. The "Bike Boxes" are marked with a solid white line and the words "WAIT HERE" are printed near the white line. The "Bike Boxes" are painted bright green and are located directly behind the pedestrian crosswalk. The bike lanes that border the "Bike Boxes" are also

near the white line. The "Bike Boxes" are painted bright green and are located directly behind the pedestrian crosswalk. The bike lanes that border the "Bike Boxes" are also painted bright green.

SE. Powell Blvd. is a main east/west road in Southeast Portland. There are four lanes of travel for the roadway, two lanes for westbound travel and two lanes for eastbound travel. Both east/west bound lanes are separated by a designated turn lane at the intersection with SE. 26<sup>th</sup> Ave.

Mr. Allen's vehicle is a full size Dodge pickup. The original color is red, however, the entire exterior of the vehicle is covered with yellow/black tape, including side mirrors, antenna, and brake light assemblies. All of the bedrails have a plywood fence surrounding all but the tailgate portion of the bed. The vehicle has an approximate curb weight of 4,000 lbs. with an approximate overall length of 18 feet. The exterior of the vehicle is visibly in poor condition. There is body damage covering all sides of the vehicle.

The rear bumper of the vehicle is a metal, non-chromed bumper. The bumper is slightly wrapped at both corners and appeared to extend outward from the body of the rear quarter panels. The bottom portion of the bumper - on the passenger side - extends approximately 3 inches beyond the body of the vehicle. The top portion of the bumper - on the passenger side - extends approximately 1.72 inches beyond the body.

Since the vehicle was marred by numerous dents, it was difficult to identify specific damage caused by this collision. The passenger side rear brake light appeared to have been covered by the same yellow/black tape that covers the entire vehicle. The tape in that area of the vehicle appeared to be significantly torn away over the area where the red plastic tail light would have been. There was a specific scratch near the rear light assembly which was consistent with the damage observed on Mr. Corkett's bicycle. Additionally, there was a large amount of blood splatter to the rear passenger side quarter panel and bumper.

Mr. Corkett was riding a black Trek "Madone" bicycle. There was a large deep scratch to the right handle bar. Within this scratch, there was red paint consistent with the damage on Mr. Allen's vehicle.

Fred Ribner, DOB 12/15/48, observed the collision and reported that he first observed Mr. Corkett and his riding partner (Anthony Disano) while he was driving his vehicle eastbound on SE. Brooklyn St. approaching SE. 26<sup>th</sup> Ave. Mr. Ribner said that as he got to SE. 26<sup>th</sup> Ave., he saw the two cyclists riding southbound on SE. 26<sup>th</sup> Ave., in the bike lane. Mr. Ribner noted that he thought "they were going pretty fast." Mr. Ribner said that as he approached the light at SE. Powell Blvd. he noticed one of the two cyclists (Mr. Corkett) was still traveling southbound on SE. 26<sup>th</sup> Ave. in the bike lane and was "still going pretty fast." He thought the cyclist may have been going so fast in an attempt to get in front of the vehicle that was in front of him to be in a position to utilize the "Bike Box". Mr. Ribner said he was so focused on Mr. Corkett because he was going fast that he did not see where the second cyclist went. Mr. Ribner reported that Mr. Corkett did not appear to slow down as he approached the intersection and did not move into the "Bike Box". Mr. Ribner said the light for southbound traffic on SE. 26<sup>th</sup> Ave. was a steady green as they approached the intersection. Mr. Ribner was uncertain but believed that the light may have been turning yellow when Mr. Corkett went through the intersection. Mr. Ribner saw Mr. Allen's truck turn in front of Mr. Corkett. Mr. Corkett attempted to swerve around the truck at the last minute, but he hit the back of the truck.

Shawna Fuller, DOB 04/16/68, was in her vehicle with her daughter Cameron Fuller, DOB 04/05/1998, and witnessed the collision. Ms. Fuller reported that she was driving west on SE. Powell Blvd. stopped at the red light facing SE. 26<sup>th</sup> Ave. Ms. Fuller said that she observed Mr. Allen's truck as it entered the intersection and made a left

Fuller, DOB 04/05/1998, and witnessed the collision. Ms. Fuller reported that she was driving west on SE. Powell Blvd. stopped at the red light facing SE. 26<sup>th</sup> Ave. Ms. Fuller said that she observed Mr. Allen's truck as it entered the intersection and made a left turn onto SE. Powell Blvd. westbound. As the truck pulled into the intersection she saw a bicyclist (Mr. Disano) ride past the truck then a second bicyclist (Mr. Corkett) followed. Mr. Corkett hit the right rear panel of the truck. Mr. Corkett was knocked off his bike then slid across the intersection coming to a stop on the south side of the intersection. From her vantage point, Ms. Fuller said she did not see the cyclists prior to the crash and could not estimate their speed.

Cameron said she saw Mr. Allen's truck make a left turn onto SE. Powell Blvd. It appeared to her that the cyclists passed the truck before it made its turn but the truck turned so closely that the left rear bumper of the truck hit Mr. Corkett.

PPB Officer Mark Hudson interviewed Mary Spires-Floyd, DOB 10/11/54, William Floyd, DOB 09/04/51, and their son Rowan Spires-Floyd, DOB 08/08/1990. Mrs. Spires-Floyd reported that she was seated in the front passenger seat of her car, which was stopped at a red light in the number two lane of SE. Powell Blvd. facing westbound. She saw Mr. Allen's car make a left turn onto SE. Powell Blvd. from SE. 26<sup>th</sup> Ave. Out of the corner of her eye she saw a bike go by in front of their car and a leg fall into the road. She did not see which part of the truck hit the cyclist. Mary called 911 then tried to calm Mr. Allen down. She said Mr. Allen was very distraught and she let him use her phone to call his parents.

Mr. Floyd told Officer Hudson that he was driving his vehicle, which was stopped at the red light in the number two lane of SE. Powell Blvd. eastbound. Mr. Floyd said that he saw Mr. Allen's vehicle enter the intersection to make a left turn westbound onto SE. Powell Blvd. Mr. Floyd said he did not see the impact. He did see Mr. Corkett go down. Mr. Floyd said he went to the bicyclist and applied a tourniquet using a shirt. Mr. Floyd said Mr. Allen said he was sorry and he did not see Mr. Corkett. Mr. Floyd said Mr. Allen did not appear to be intoxicated but seemed like he was freaked out by what happened.

Anthony Disano, DOB 02/26/91, told Officer Enz that he and Mr. Corkett were riding together southbound on SE. 26<sup>th</sup> Ave. Mr. Disano said that he and Mr. Corkett were riding at a conversational pace of approximately 18 mph, with Mr. Corkett following behind him.

Mr. Disano said as they approached the light at SE. Powell Blvd., he noticed the light was a steady green for southbound traffic and looked like it was going to stay that way. Mr. Disano reported that he looked over his left shoulder and saw there was no Traffic. He touched his brakes at the "decision point" just prior to the green "Bike Box". Mr. Disano explained that the "decision point" is a location far enough back from an intersection to decide whether or not it's safe to continue through the intersection or if a problem exists provides enough distance to stop.

Mr. Disano told Enz that he saw a car in the northbound turn lane make a left turn and proceeded westbound onto SE. Powell Blvd. He said the car made the turn as he was "a little back from the intersection like a couple of seconds." Mr. Disano said that he proceeded to the intersection because the car had safely gone through the intersection.

Mr. Disano said he then saw Mr. Allen's truck pull into the intersection in the northbound turn lane. He said he saw into the cab as the driver hesitated, "like he was waiting for us." Mr. Disano thought to himself "ok, we're good", and described he was already crossing the "Bike Box" at this point and Mr. Corkett was right behind him. A second later he saw Mr. Allen start to turn left westbound onto SE. Powell Blvd. and thought "Oh no! He's turning." Mr. Disano slammed on his brakes and started left as the truck started to turn. He said Mr. Corkett came up behind him on his left, "probably

thought "Oh no! He's turning." Mr. Disano slammed on his brakes and started left as the truck started to turn. He said Mr. Corkett came up behind him on his left, "probably trying to avoid hitting me, because I slowed down so fast." Mr. Disano said that Mr. Corkett kept going straight through the intersection. Mr. Disano said he was in full skid when Mr. Corkett passed by him.

Mr. Disano said he just missed hitting the back end of Mr. Allen's truck, However, Mr. Corkett made contact with the rear passenger side of Mr. Allen's truck. Mr. Disano said that he was in front and Mr. Corkett was behind him. He thought Mr. Corkett came around his left to avoid hitting him when he applied his brakes. Mr. Disano described he and Mr. Corkett were wearing mostly white and black clothing.

Mr. Corkett told Officer Enz that he and Mr. Disano were traveling southbound on SE. 26<sup>th</sup> Ave. They were riding in the bike lane and Mr. Disano was in front of him. Mr. Corkett said they were traveling approximately 22 or 23 mph. When they were about 20 or 30 feet from the intersection, he "rolled by" Mr. Disano. As he rolled by Mr. Disano in the bike lane, a vehicle passed him on his left. The vehicle was in the southbound lane proceeding towards the intersection of SE. 26<sup>th</sup> Ave. and SE. Powell Blvd. Mr. Corkett said the southbound traffic on SE. 26<sup>th</sup> Ave. had a green light. As the vehicle passed him at a normal speed, Mr. Corkett said he thought to himself "ok, we're good to go here" and continued into the intersection.

Mr. Corkett reported that he saw Mr. Allen's truck sitting in the intersection waiting to turn left and thought Mr. Allen was going to wait for him to go through the intersection. As he got into the intersection Mr. Allen started to turn left, right in front of him, however it appeared that Mr. Allen hesitated, so he thought he could make it through the intersection. Mr. Corkett said the truck continued its turn right in front of him so he "Broke hard and tried to avoid it, but hit the back of the truck."

Mr. Corkett said at first he thought he had successfully avoided the truck, but soon realized that he had lost his leg. He said he looked up and saw his leg on the sidewalk. Mr. Corkett said that's when he "kind of gave up a little and just let people try to help with the tourniquet and pressure."

PPB traffic Officers Collin Sorensen and Ronald Hoesly interviewed Mr. Allen and evaluated him for signs of intoxication. Officer Sorensen has been a traffic officer for 26 years and has investigated over three thousands DUII related cases. Officer Sorensen has also been a Drug Recognition Expert (DRE) since 1995. Officer Hoesly has been a Portland Police Officer for 27 years; he has spent most of his career in the traffic unit. Officer Hoesly has investigated approximately two thousand DUII related cases. Allen told the officers that he had just delivered a load of scrap metal to Baxter and Fleming located on SE. 26<sup>th</sup> Ave. just south of SE. Holgate Blvd. After he left Baxter and Fleming, he travelled northbound on SE. 26<sup>th</sup> Ave. and stopped at a red light in the turn lane to head westbound on SE. Powell Blvd. Mr. Allen said there was a car in front of him and when the light turned green the car that was in front of him made a left turn to go westbound onto SE. Powell Blvd. Mr. Allen waited for a car traveling southbound on SE. 26<sup>th</sup> Ave. to pass by him and then he made a left turn to travel westbound onto SE. Powell Blvd. As he was into his turn he saw a bicycle "going faster than he realized" and tried to turn out of the path of the bicycle but was not able to do so in time. Mr. Allen said after the collision, he stopped his truck and went back to help the bicyclist.

Mr. Allen told Sorensen and Hoesly that he had not consumed any alcohol or drugs. Mr. Allen said he has ADHD and has mental health issues from time to time. Mr. Allen reported using Valerian root, a natural substance that helps him calm down and sleep at night. Sorensen performed several field sobriety tests (FST's) to include the Horizontal Gaze Nystagmus Test (HGN), Finger Count, and the Romberg Internal Clock. Officer Sorensen reports that Mr. Allen passed all the tests. Sorensen reports that he did not detect any signs of intoxication from either alcohol or controlled substances. Officer Hoesly also reports that he did not observe any indicators of impairment. Mr.

Officer Sorensen reports that Mr. Allen passed all the tests. Sorensen reports that he did not detect any signs of intoxication from either alcohol or controlled substances. Officer Hoesly also reports that he did not observe any indicators of impairment. Mr. Allen consented to a blood draw, urine sample and breathe test. An AMR medic collected Mr. Allen's blood and gave it to Sorensen.

Mr. Allen was taken to Southeast Precinct where Sorensen administered the breath test and took a urine sample. The breath test results were .00. The urine sample submitted to the lab indicated the presence of 9-Carboxy-THC, a metabolite of marijuana. Hoesly and Sorensen noted that defendant was very cooperative, extremely distraught and emotional about what had happened.

The evidence shows that Mr. Corkett was riding his bicycle southbound on SE. 26<sup>th</sup> Ave. in the designated bike lane, north of SE. Powell Blvd. and SE. 26<sup>th</sup> Ave. Mr. Allen was driving northbound on SE. 26<sup>th</sup> Ave in the designated left turn lane south of the intersection. Mr. Corkett and Mr. Allen both had the green light at the intersection.

Mr. Allen was stopped in the left turn lane, waiting to make a left turn onto westbound SE. Powell Blvd. As Mr. Allen was stationary in the intersection, Mr. Corkett entered the intersection southbound on SE. 26<sup>th</sup> Ave. shortly after a vehicle traveling southbound on SE. 26<sup>th</sup> Ave. entered the intersection. Mr. Allen turned left to proceed westbound on SE. Powell Blvd. after the vehicle traveling southbound through the intersection cleared his path of travel. Mr. Allen was not aware of Mr. Corkett's presence until he began his turn into the intersection. As Mr. Allen made his left turn, Mr. Corkett attempted to avoid Mr. Allen's vehicle but struck the passenger side rear portion of the vehicle. Mr. Corkett's right leg made contact with the passenger side rear bumper of Allen's vehicle, which severed Mr. Corkett's right leg.

The rear bumper of Mr. Allen's vehicle essentially grabbed or cupped Mr. Corkett's right leg upon impact; combined with the movement of both vehicles in opposite directions applied sufficient force to sever Mr. Corkett's leg.

Based on the physical evidence at the scene, Mr. Corkett traveled approximately 44 feet into the intersection before colliding with Mr. Allen's truck. Based on the evidence at the scene, witness statements, and statements obtained from the involved parties, speed was not a factor in this collision.

On May 26<sup>th</sup> Officer Enz returned to the area of the collision and retraced Mr. Allen's travel route. Officer Enz noted that the traffic flow at the intersection was steady and most likely similar to the conditions which existed on the day and time of the collision. In retracing Mr. Allen's travel route, Officer Enz observed that as he approached the intersection northbound on SE. 26<sup>th</sup> Ave., intending to make a left turn onto westbound SE. Powell Blvd., the north side of the intersection appeared extremely busy and congested with activity. While both the northbound lights were green for northbound traffic, he observed pedestrians on the corners of the intersections waiting to cross as bicyclists, and vehicles entered and exited the intersection. The bicyclists he observed were "only visible for a short amount of time prior to entering the intersection southbound on SE. 26<sup>th</sup> Ave." Vehicular traffic was flowing southbound through the intersection to continue southbound on SE. 26<sup>th</sup> Ave., and also turning onto SE. Powell Blvd. in both directions.

It is clear from the evidence that both Mr. Corkett and Mr. Allen had a green light to enter and proceed through the intersection. However, because Mr. Allen intended to turn left within the intersection he was under a duty to yield the right of way to Mr. Corkett. Therefore Mr. Corkett had the right of way. For purposes of criminal prosecution, the question then becomes whether Mr. Allen's actions in failing to yield the right of way was reckless under the circumstance or done intentionally to cause physical injury to Mr. Corkett.

Under Oregon law a person can commit the crime of assault if they intentionally

physical injury to Mr. Corkett.

Under Oregon law a person can commit the crime of assault if they intentionally, knowingly or recklessly cause physical injury to another person. Reckless vehicular assaults, usually includes, but is not limited to, both intoxication and reckless driving.

Under Oregon law a person acts intentionally or with intent when that person acts with a conscious objective to cause a particular result or to engage in specific conduct. A person acts knowingly or with knowledge, when a person acts with an awareness that the conduct of the person is of a particular nature or that a particular circumstance exists.

A person acts recklessly if that person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

There is insufficient evidence from which a trier of fact could reasonably conclude beyond a reasonable doubt that Mr. Allen intentionally or knowingly caused physical injury to Mr. Corkett. Considering the evidence before us, there are no facts that support the inference that Mr. Allen purposefully drove his car into the intersection with the conscious objective to injure Mr. Corkett; or that he proceeded through the intersection with awareness that driving into the intersection would cause physical injury to Mr. Corkett. To the contrary, the evidence suggests that Mr. Allen believed he could safely travel through the intersection. Additionally, by all account Mr. Allen appeared remorseful and distraught by what occurred. The state cannot prove beyond a reasonable doubt that Mr. Allen intentionally or knowingly caused physical injury to Mr. Corkett.

In determining whether Mr. Allen acted recklessly, several factors must be considered. First, from the evidence we are able to determine that Mr. Allen was stopped at a red light, waiting behind a car before making his turn. When the light turned green, the car in front of Mr. Allen proceeded through the intersection without incident. Mr. Allen then waited for a car traveling southbound on SE. 26<sup>th</sup> Ave. to pass by him and then he made a left turn to travel westbound onto SE. Powell Blvd. When Mr. Allen began his turn into the intersection he believed he could safely proceed through the intersection. As Mr. Allen proceeded through the intersection he saw Mr. Corkett and was unable to clear the intersection in time to avoid the collision.

Under Oregon law, Mr. Corkett clearly had the legal right to enter and proceed through the intersection and Mr. Allen was under a legal duty to yield the right of way to Mr. Corkett unless he could safely complete his turn without immediate hazard to other road users. Additionally, Mr. Corkett was travelling within the speed limit for this particular stretch of roadway. According to Mr. Corkett and Mr. Disano they were traveling between 18 – 23 mph. The posted speed limit for this stretch of roadway is 25 mph. Neither Mr. Corkett's nor Mr. Allen's speed was a factor in this collision.

Finally, Officer Sorensen, an experienced DRE, and Officer Hoesly, an experienced traffic officer, evaluated Mr. Allen for signs of impairment and did not observe any signs of intoxication from alcohol or controlled substances. Mr. Allen's BAC was .00. By all accounts Mr. Allen was cooperative and distraught over what happened. Moreover, there was no indication that Mr. Allen was driving erratically or recklessly before the collision.

Applying the evidence to the standard of recklessness the state cannot prove beyond a reasonable doubt that Mr. Allen recklessly caused serious physical injury to Mr. Corkett. In order to find Mr. Allen guilty of recklessly causing serious physical injury to Mr. Corkett; the state will have to prove that Mr. Allen was aware of and

beyond a reasonable doubt that Mr. Allen recklessly caused serious physical injury to Mr. Corkett. In order to find Mr. Allen guilty of recklessly causing serious physical injury to Mr. Corkett; the state will have to prove that Mr. Allen was aware of and consciously disregarded a substantial and unjustifiable risk of causing such injury to Mr. Corkett by proceeding through the intersection. If the state can prove that Mr. Allen was aware of and consciously disregarded that risk, the state will then have to prove that the risk is of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

We cannot know with any certainty when Mr. Allen became aware of Mr. Corkett's presence. According to Mr. Allen, he became aware of Mr. Corkett after he started his turn into the intersection. At that point it was too late to avoid the collision. As noted, the intersection in question is a very busy and congested intersection. Officer Enz traveled the same route as Mr. Allen at the same time of day and noted that the roadway traffic and conditions was most likely very similar to when the collision occurred. Officer Enz particularly observed that bicyclists were only visible for a short period of time prior to entering the intersection.

Under the circumstances it is reasonable for a trier of fact to believe that Mr. Allen did not become aware of an impending collision with Mr. Corkett until after he had already started his turn. At the point he became aware of an impending collision, Mr. Allen said he tried to turn out of the path of Mr. Corkett but was unable to. Under the standard of recklessness the state would have to prove that at the time Mr. Allen became aware of a substantial risk of a collision, he disregarded that risk and engaged in the risky behavior. Here, the evidence suggests that when Mr. Allen became aware of the possible impact/risk of a collision, he attempted to avoid the risk.

If a trier of fact reasonably believes that Mr. Allen attempted to avoid the risk; the state cannot then prove beyond a reasonable doubt that Mr. Allen in fact disregarded the risk, recklessly causing serious physical injury to Mr. Corkett. The record is devoid of evidence to contradict Mr. Allen's statements of perception. Moreover, Officer Enz' observations of the roadway conditions in the intersection tend to support a reasonable inference that Mr. Allen did not become aware of Mr. Corkett until it was too late to avoid the collision.

Although Mr. Allen may have been negligent or even careless in failing to yield the right of way to Mr. Corkett, his conduct under the present circumstances is not the type of conduct that rises to the level of criminal conduct. This tragic event is not chargeable as a felony assault. Accordingly this case is declined for criminal prosecution.