



Michael D. Schrunk, District Attorney

1021 SW Fourth Avenue, Room 600
Portland, OR 97204-1193
Phone: 503-988-3162 Fax: 503-988-3643
www.mcda.us

MEMORANDUM

To: Death Investigation, DA 2130372
From: Chuck Sparks, Senior Deputy District Attorney
Date: 1/2/08
Subject: Memorandum declining prosecution for criminal homicide.

Legal background:

Under Oregon law, unintentional vehicular homicide usually includes both intoxication and willfully reckless driving. In some cases, other dangerous behaviors such as fleeing the scene or eluding the police also occur. It is possible, though rare, for a person to engage in negligent driving so clearly criminal, yet not involving willful recklessness or intoxication, that charging for the felony crime of criminally negligent homicide is appropriate. "Criminal negligence" is more than mere civil negligence (the standard when money alone is in issue); it is a significantly higher level of misconduct with a much higher burden of proof. It is unusual to have negligent driving rise to such a high level that it becomes "criminal negligence," with a felony conviction and prison sentence then being appropriate. In the present case, the facts do not suggest that such conduct occurred.

Facts:

At 1:30 pm on Thursday, October 11, 2007, Timothy Wiles drove his Rinker Co. cement truck northbound on SW 14th to the intersection at W. Burnside, stopping in the right lane for a red light. SW 14th is a one-way street with three motor vehicle lanes, a bicycle lane to the right of the vehicle lanes, and a parking lane to the right of all of them. Wiles' lane allowed travel straight across Burnside northbound, or a right-turn onto Burnside, eastbound. Wiles, the sole occupant of the truck, was en route to his third delivery of the day.

Wiles told investigators that as he was stopped and waiting for the light he was monitoring the crossing traffic. He said he was checking his mirrors, and that he also checked the cross walk before starting into his turn. According to Wiles, nobody was in the bicycle lane when he approached the intersection and stopped at the light. Wiles estimates he was waiting there "for a long minute" to turn right onto Burnside and proceed, and at least one other witness (Adams) reports the same wait for the light. As Wiles waited for the light Tracey Sparling rode her bicycle in the bike lane alongside Wiles' truck, apparently stopping in the bicycle lane near the front of the truck. The witness with the best view, Phil Biehl, was directly to the north of them across Burnside (facing south toward Ms. Sparling and Mr. Wiles). He told PPB Traffic

Investigator Peter Kurronen that Ms. Sparling was "somewhere near the front (right) tire" of Wiles' truck.

Once the light turned green, Wiles drove his truck forward into a right turn onto Burnside. As he did so, Ms. Sparling apparently moved forward a short distance (Biehl said "maybe a couple of feet") and was run-over by the right front wheel of Wiles' truck. She was then run-over by one or both sets of rear wheels. Ms. Sparling died at the scene.

Witness Robert Watson, who was spare-changing cars on the west side of SW 14th, saw Wiles' truck stopped at the light and Ms. Sparling ride up alongside him in the bike lane. When the light turned green, Watson saw the traffic start to move, then heard a metallic noise and Ms. Sparling yell "Hey!" He next saw the truck run over Ms. Sparling.

Witness Michael Doomey was in the passenger seat of a car traveling westbound on W. Burnside when he saw the collision about half a block away. Mr. Doomey first saw the truck in mid-turn; the collision had already begun. He said that Ms. Sparling was under the truck's rear wheels when he first saw it. Mr. Doomey said "the truck was making a normal turn, very slow, about 4 to 5 miles per hour." Mr. did not know if the truck's turn signal was on.

None of the eyewitnesses to the collision could say certainly whether the truck's right turn signal was activated during the turn. Watson did not recall seeing the blinker on; the others simply could not say. Witness Brian Pool, himself a CDL holder and truck driver, did not see the collision but heard yelling and braking while in a nearby restaurant. He went outside and saw the truck with its four-way hazard lights on. He then saw Wiles exit his truck. Wiles excitedly told him several times "I had my hazards on," then re-entered his truck. The flashers then went off and the right-turn signal came on. When asked by Officer Kurronen, Wiles said he must have turned the hazards on automatically when he stopped. He states that he had his right-turn signal on during the turn.

Wiles told Officer Kurronen that he checked his mirrors before starting into his turn, and that he checks his mirrors regularly as a routine safety measure while driving. He said he did not see Ms. Sparling at any time before the collision.

Wiles estimated his speed during the incident at 2 mph and said he did not gain enough speed to shift gears. He stopped when Mr. Biehl yelled at him to stop. Photographs of the scene show the truck stopped eastbound on Burnside most of the way through its turn. Ms. Sparling was lying in the crosswalk that runs east-west across SW 14th, indicating she was probably hit in or near the crosswalk, which lies across the bike lane she was using.

The truck has a front axle with steering wheels, and two rear axles. It has two additional drop-down axles, forward of the two rear ones, which were not in use. Wiles said there were then 3.5 yards of concrete in the truck and that it weighed 40,000 pounds.

The truck has three mirrors on its right side, the side Ms. Sparling was on. The first is a round, convex mirror mounted on a bracket on front of the truck, with the mirror off to the right side of the nose almost flush with the grille and facing the rear of the truck. According to Officer Kurronen, who got into the driver's seat and checked, the nose mirror allows the driver a view

from approximately the rear half of the right front tire backward along the side of the truck. The second and third mirrors are mounted on the same bracket on the passenger door; one is rectangular and the other, below it, is round and convex. They allow a view from the door backward along the side of the truck.

Officer Kurronen measured the dimensions of the truck. The leading edge of the hood sits 72 inches from the ground. The hood is 64 inches long and rises as it approaches the windshield to a height of 80 inches. Kurronen had another person use a tape measure to hold his hand 5 feet 3 inches off the ground (Ms. Sparling's height) and move it along the truck. It was not visible anywhere along the hood. Ms. Sparling may have sat higher or lower than this on her bike, but the demonstration illustrates a visibility issue with the truck and a person of shorter stature.

The truck had a video camera recording system in place but not working at the time. The unit was removed after the collision and sent to an engineering lab for analysis. The engineer who checked the unit could not determine a cause for its failure to record, but wrote in his report that the "probable cause" was "a connector that was not seated."

Wiles has a valid CDL and a clean record with no traffic citations. He was appropriately distraught after the collision. There was no evidence of intoxication of any kind. Wiles cooperated fully with investigators, giving blood for a toxicology check.

Wiles' blood was analyzed by two laboratories. The Oregon State Police Forensic Lab found no alcohol present. Legacy Metrolab found an appropriate concentration of a prescribed anti-depressant Wiles has been taking for three years, but no other medication or controlled substance. The pharmacologist at Legacy felt the level of anti-depressant medication present would not affect Wiles so long as he was on his prescribed dose and had been so for awhile to be certain it did not negatively impact him. Wiles' physician wrote a letter to Kurronen explaining that clinical studies of this medication have shown no significant impairment from its use, and that Wiles had been stabilized on this prescribed dose for some time and experienced no problems affecting his ability to drive. Wiles also reported that his medication had no impact on his driving ability.

Conclusion:

Wiles arrived at the intersection before Ms. Sparling and came to a stop, waiting to turn right. Wiles did not see Ms. Sparling as she approached his stopped truck, nor did he see her as he went into his turn. Ms. Sparling stopped in the bike lane near Wiles' right front wheel, and was, due to her location and diminutive stature, not visible to Wiles; she was, through no fault of her own, in the driver's blind spot.

Once the light changed, both Mr. Wiles and Ms. Sparling moved forward. Ms. Sparling's position and movement near the front of the truck put her in front of the truck's right front wheel as it entered its turn.

Mr. Wiles reports using his mirrors to check the side of the truck while waiting to turn and before starting his turn. It is unclear whether he had his turn signal on before his turn. Mr. Wiles claims he did. It is possible he did not. It is also possible that he did, but activated his hazards

when he stopped in response to Biehl's shout, and switched back to the turn signal when he realized what he had done.

The relevant standard is criminal negligence. Criminal negligence is the failure to be aware of "a substantial and unjustifiable risk that the result will occur or the circumstance exists," with the risk being "of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." The evidence must prove beyond a reasonable doubt that Mr. Wiles acted with criminal negligence for the state to prosecute. After reviewing all witness statements, the scene evidence, and the toxicology reports I conclude that Wiles' failure to perceive Ms. Sparling prior to his turn was not sufficient to charge him with criminally negligent homicide.