



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

MICHAEL O. FREEMAN COUNTY ATTORNEY

October 18, 2013

Assistant Chief Matt Clark
Minneapolis Police Department
300 South 5th Street, Room 130
Minneapolis, MN 55415

Re: In the Matter of the Death of Ivan Romero-Olivares
CCN No. MP-13-143876
LE: 13-23312

Dear Chief Clark:

I am writing to advise you that our office is declining to issue any criminal charges in regard to the death of Ivan Romero-Olivares. The death occurred just after 4:00 p.m. on May 10, 2013, when Mr. Romero-Olivares's motorcycle struck a Minneapolis Police squad car driven by Officer Joshua Young at the intersection of 26th Street and Blaisdell Avenue.

Factual Background

Officer Young was working as a patrol officer in the 3rd Precinct and was driving a marked squad car. Earlier that afternoon, Officer Young responded to a report that two officers had been shot at an address in the 2700 block of Bryant Avenue South. Officer Young provided assistance by blocking off a portion of the route needed for the ambulances to transport the injured officers to HCMC. Officer Young later received a dispatch request to provide bottled water to officers at the scene of the shooting. Officer Young obtained the water and was returning to the scene of the shooting without activation of his squad's emergency equipment.

Shortly before 4:00 p.m., Sgt. Rena Dudgeon aired that she needed additional officers to respond to the shooting scene to provide security. Officer Young then activated the lights and siren of his squad car. Two other officers in the area, Officers Heger and Kocher, also responded to Sgt. Dudgeon's request and activated the emergency equipment of their squad cars. Officer Young drove west on 26th Street; Officer Heger and Officer Kocher were just behind Officer Young's squad car.

26th Street is a one way westbound street. There are three traffic lanes with shoulders on the north and south sides to allow for parallel parking. Blaisdell Avenue South is a one way southbound street. There are two traffic lanes; on the left of the traffic lanes is a shoulder for parallel parking and on the right is a narrow shoulder/bike lane. The intersection is controlled by semaphores.

In response to the activation of the emergency equipment on the three squad cars, traffic on 26th Street had stopped and pulled over to allow access to the squad cars. As Officer Young neared Blaisdell Avenue, the westbound traffic on 26th Street had a red light. Officer Young slowed his squad car and reported that he looked to his right (north) and saw a vehicle in the right lane of Blaisdell Avenue slow and come to a stop. He stated that he also saw cars stopped in the left lane of Blaisdell. As he began to pass a SUV that had pulled into the crosswalk, Officer Young reported that he continued to look north on Blaisdell and did not see any vehicles. Officer Young continued through the intersection. Officer Young was almost completely through the intersection when a motorcycle travelling south on Blaisdell, driven by Ivan Romero-Oliveras, struck the back passenger side of Officer Young's squad car. Mr. Romero-Oliveras died at the scene and a passenger on his motorcycle, Joselin Torrejon-Villamil, was injured.

Investigators interviewed witnesses who were present at the time of the crash.¹ Most of the witnesses were drivers who were westbound on 26th Street. However, one of the witnesses, Shukri Mohamud, was driving south on Blaisdell. Mr. Mohamud reported that he had the green light as he approached the 26th Street intersection, but he pulled over and stopped his car because he heard the police sirens. He reported that while all of the other cars on Blaisdell stopped as well, he saw a motorcycle drive past his car and hit the squad car. Another witness who lived in an apartment building on Blaisdell reported that he heard the police sirens, looked out his window, and saw the motorcycle "going fast" and hit the squad car. The actual crash is also captured on the video from Officer Heger's and Officer Kocher's squads, which shows that car traffic had stopped, but the motorcycle slid into the intersection, striking the back passenger side of Officer Young's squad car.

A crash reconstruction report was prepared by the Minnesota State Patrol.² The report confirmed that the posted speed limit for both 26th Street and Blaisdell Avenue is thirty (30) miles per hour. The investigator determined that the squad car was travelling at a speed under sixteen (16) miles per hour just before the crash and was travelling approximately twenty-four (24) to twenty-six (26) miles per hour near the point of impact. The investigator found no indication that Officer Young saw the motorcycle prior to the impact.

The motorcycle was determined to have been travelling between thirty-two (32) and thirty-four (34) miles per hour at the start of the skid. Evidence indicates that the motorcycle did not achieve maximum braking. The rear tire locked and the driver attempted to steer to the right just prior to entering the intersection. Since the rear tire was locked, the motorcycle lost a significant portion of its stability, which caused the

¹ The passenger on the motorcycle, Joselin Torrejon-Villamil, declined repeated requests for interviews by MPD investigators.

² The report indicates that there was no opticon or semaphore pre-emption system at this intersection; however, at least one witness, Jeff Hoelscher, reports activation of an opticon.

motorcycle to tip onto its right side and "slide out". The investigator reviewed the driver's license of Mr. Romero-Oliveras and determined that Mr. Romero-Oliveras did not have a motorcycle endorsement or permit, which suggests that he may have been an inexperienced motorcyclist.³

The report concluded that the contributing factors to this crash were failure to use due care by Officer Young⁴ and driving over the posted speed limit by Mr. Romero-Oliveras.⁵ Another possible factor was found to be driver inexperience of Mr. Romero-Oliveras.

Applicable Law

Authority of Emergency Vehicles Responding to Calls. Minn. Stat. §169.03, subd. 2 provides as follows:

The driver of any authorized emergency vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety, but may proceed cautiously past such red or stop sign or signal after sounding siren and displaying red lights....

Right of Way to Emergency Vehicles. Minn. Stat. §169.20, subd. 5 (a) provides that when an emergency vehicle is approaching with its lights and siren activated:

(T)he driver of each other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection, and shall stop and remain in this position until the authorized emergency vehicle has passed.....

Subdivision 5 (d) of this statute provides that this subdivision does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the highway. Subdivision 1 (d) of this statute provides that a driver of any vehicle traveling in excess of the speed limit forfeits any right-of-way which the driver might otherwise have.

³ The MPD investigation determined that Mr. Romero-Oliveras did not have a valid driver's license of any kind.

⁴ The State Patrol report bases this finding on its conclusion that Officer Young failed to verify that there were no approaching vehicles before continuing through the intersection against the red light. However, as noted above, Officer Young slowed, checked multiple times for vehicles, and only then proceeded cautiously through the intersection. In any event, whether or not his conduct constituted "failure to use due care", Officer Young's actions do not rise to the level of "gross negligence" or "reckless" or "careless" driving, as discussed below.

⁵ In addition to exceeding the speed limit, Mr. Romero-Oliveras failed to yield to an emergency vehicle as required by law.

Criminal vehicular operation resulting in death. Minn. Stat. §609.21, subd. 1 (1) provides that a person is guilty of criminal vehicular homicide if the person causes the death of another as a result of operating a motor vehicle in a grossly negligent manner.

Legal Analysis

A charge of criminal vehicular operation requires proof of gross negligence pursuant to Minn. Stat. § 609.21, subd. 1(1). The Minnesota Supreme Court has defined "gross negligence" as "substantially and appreciably higher in magnitude than ordinary negligence. *State v. Al-Naseer*, 690 N.W. 2d 744, 752 (Minn. 2005). "It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others." *Al-Naseer*, 690 N.W. 2d at 752.

Viewed in the light of the Supreme Court's definition, Officer Young's conduct falls far short of "gross negligence." Officer Young's report regarding the events was fully corroborated by other witnesses, as well as the video and physical evidence, in the case. The evidence indicates that Officer Young, as well as two other officers, were appropriately responding to a very serious call with lights and sirens activated well in advance of the intersection, as permitted by Minn. Stat. §169.03, subd. 2. Officer Young slowed as he approached the red light and proceeded cautiously. Officer Young reported that he checked for traffic coming south on Blaisdell and saw that vehicles on this street had pulled over and stopped, as required by Minn. Stat. §169.20, subd. 5. Officer Young reported that he did not see any oncoming traffic and proceeded into the intersection, as permitted by Minn. Stat. § 169.03, subd. 2 (permitting emergency vehicle to proceed through intersection with caution). However, the motorcycle driven by Mr. Romero-Oliveras was travelling in excess of the speed limit and did not yield to the squad car, as required by Minn. Stat. §169.20, subd. 5. The motorcycle struck the back of the squad car just as the squad was nearly through the intersection. Under these circumstances, there is insufficient evidence to demonstrate that Officer Young engaged in conduct that constituted "great negligence, or the absence of slight diligence, or the want of even scant care." *Al-Naseer*, 690 N.W. 2d at 752.

At the request of the Minneapolis City Attorney, I have also reviewed this case for possible misdemeanor charges of reckless or careless driving under Minn. Stat. §169.13. Reckless driving requires proof of a "willful or a wanton disregard for the safety of persons or property." Minn. Stat. § 169.13, subd. 1(a). Careless driving requires evidence of operating a motor vehicle, "carelessly, or heedlessly in disregard of the rights of others, or in a manner that endangers...others." Minn. Stat. §169.13, subd. 2. As discussed above, there is insufficient evidence that Officer Young acted in violation of either of these provisions. Moreover, the legislature has specifically provided that "this section [§169.13] does not apply to "an authorized emergency vehicle, when responding

Assistant Chief Matt Clark
October 18, 2013
Page 5

to an emergency call." Minn. Stat. § 169.13, subd. 3(b)(1). Because Officer Young was properly responding to an emergency call at the time of the collision the legislature has determined that no charge of reckless or careless driving may be brought under Minn. Stat. § 169.13, subs. 1 and 2.

Please feel free to contact me if you have any questions or if you wish to discuss this matter further.

Sincerely,

A handwritten signature in cursive script that reads "Marlene Senechal". The signature is written in black ink and is positioned above the typed name.

MARLENE E. SENECHAL
Managing Attorney
Adult Prosecution Division
Telephone: (612) 348-7927
FAX: (612) 348-3061