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MEMORANDUM

TO: Jack Campbell; Eddie Evans
FROM: Lorena Vollrath-Bueno
RE: Fatal Pedestrian Crash
DATE: April 23, 2020

On January 30, 2020 at 8:26 a.m. there was a crash in the 1000 block of West Tennessee Street. This crash involved one (1) vehicle and one (1) pedestrian, resulting in the death of the pedestrian.

At the time of the crash it was daylight, sunrise was at 7:30 a.m. and the skies were partly cloudy. The crash occurred in the inside eastbound lane of a six (6) lane roadway. The six (6) lane roadway is divided by a median, there is a marked pedestrian crossing where the crash took place. The posted speed limit is 35 mph.

The vehicle involved in the crash was a 2016 Volkswagen Jetta SE four-door sedan. It was inspected post-crash on January 30, 2020 at Lake Jackson Towing. The vehicle had 39,496 miles on it and was a front-wheel drive vehicle. None of the airbags deployed in the crash. The major damage was to the windshield and hood area. The front grill emblem was torn, and the hood was crushed in on the front driver's side, and extended to the center. Debris from the crash was located and there was no indication that evasive action was taken. There was no indication that the brakes were ever applied and based on the evidence at the scene and on the car, the vehicle was moving at or near the speed limit. Based on the witness statements, the defendant's statement as well as the point of impact, the evidence is consistent with the vehicle speed being between 35-40 mph.

The driver of the vehicle was _____, twenty-four (24) years old. Ms. _____'s driving history shows a citation for failure to yield to an emergency vehicle issued on June 20, 2017. On November 25, 2019 her driver's license was suspended for failure to pay that traffic fine out of Levy County. A notice was sent to Ms. _____ on November 4, 2019. That notice was sent to the address listed on her driver's license: 2400 West Tharpe Street, Apt. 503. Ms. _____ moved to 2195 West Tennessee Street, Apt. 9211 in August of 2019. Law enforcement confirmed this with the leasing office. Ms. _____ was uninjured in the crash. _____ was traveling in the inside eastbound lane on West Tennessee Street.

The pedestrian was Natalie Lynn Nickchen, nineteen (19) years old. She lived at 1000 West Brevard Street, Apt. 233. Ms. Nickchen received life threatening injuries at the time of the crash and was transported to the Tallahassee Memorial Hospital by Leon County Emergency Medical Services (LCEMS). She died on January 30, 2020 at 12:37 p.m. An autopsy was conducted on January 31, 2020 at 1:30 p.m. by Dr. Anthony Clark, Assistant Medical Examiner. Ms. Nickchen was hit on her right side and received injuries to her hip, femur, ankle and head and died of "multiple, blunt-force trauma".

_____: Stayed on scene. Said he was traveling eastbound in the outside lane of West Tennessee Street. He was the first person to come to a complete stop at the red light. *He says the light had just turned from yellow to red and it was only seconds that the crash took place afterwards.* He witnessed the VW Jetta run the red light and strike the pedestrian as she entered the crosswalk from the median. He provided a sworn statement.

_____: Stayed on scene. She was traveling westbound in the inside lane of West Tennessee Street. She had a red light and was stopped at the stop bar and saw the pedestrian in the median area of the crosswalk waiting to cross. She said the pedestrian had earbuds in her ears and a phone in her hand. *assumed that the vehicle ran the red light.* She said the pedestrian walked south in the crosswalk and was struck. She said that the pedestrian was “launched” into the air. She said _____ got out of her vehicle and said spontaneously, several times “I didn’t see the light”. She provided a sworn statement.

_____: Stayed on scene. She was traveling eastbound in the center lane of West Tennessee Street. *She had a red light and came to a complete stop at the stop bar. She says that approximately 4-5 seconds after coming to a complete stop she saw the VW Jetta fail to stop, run the red light and strike the pedestrian in the crosswalk.* She provided a sworn statement.

Anonymous Witness: On January 30, 2020 at approximately 11:30 a.m. the Consolidated Dispatch Agency (CDA) contacted law enforcement to tell them there was an unidentified witness at Florida State Police Department (FSUPD) to give a statement. The witness was an Asian female who did not want to be identified. She said she did not witness the crash; she only heard the impact and observed the events after the fact. She did not want to provide a statement and wanted to remain anonymous.

_____: She was traveling eastbound on West Tennessee Street in the middle lane. Upon approaching the traffic light, she saw it was green but a car in front of her was at a complete stop. It suddenly moved out of her way and she noticed what she thought was a vehicle part on the roadway, she realized it was a person. She immediately stopped and attempted to help the victim (Natalie Nickchen). She placed her jacket on the victim and yelled at an unknown witness “do not touch her”. She noticed that the victim’s phone was on and close to the crosswalk. She saw her backpack and retrieved it to look for her wallet. While looking for the wallet she noticed that the victim still had her headphones on. She only recalls the traffic control signal turning green, not red upon approaching the crosswalk. She provided a sworn statement.

_____: He was interviewed on February 4, 2020 at approximately 3:30 p.m. He witnessed the crash but was unable to stay on scene, so he contacted LEO by phone. He was the second vehicle in the outside, eastbound lane on West Tennessee Street behind a white vehicle (believed to be witness Browning). He said he had a clear view of the pedestrian who was already in the median prior to the light turning red. *He said all vehicles approaching the stop bar slowed to a stop, except the VW Jetta.* He glanced to the left and saw that it wasn’t stopping at it was traveling at what he believed to be a high rate of speed. He said he honked his horn several times to alert the pedestrian. He saw the pedestrian crosswalk signal turn to walk and the pedestrian, without looking toward the eastbound traffic, proceeded into the crosswalk. _____ said the pedestrian took maybe two steps into the crosswalk before being hit by the vehicle. He provided a sworn statement.

Interview of

Observations: Law enforcement saw no signs of impairment. She appeared to be visibly shaken.

Ms. _____ stated she left her home at 8:20 a.m. and was on her way to work. This was her regular route and she was familiar with the roadway. She stated she was traveling in the inside eastbound lane on West Tennessee Street at approximately 40 mph. She said that as she approached the light at the 1000 block of West Tennessee Street, there was a glare, but she could still see the light. *She said that the light was yellow when she passed the stop bar. She said she did not see the pedestrian. She admitted the light might*

have been red, but she believed she had a yellow light when passing the stop bar. Ms. [redacted] denied being distracted, being on any medication or having any illness that would have affected her ability to drive. Her cell phone was in her purse, the radio was on but at a medium volume, she was well rested, had eaten breakfast and was in good emotional shape to drive. She said after the crash she used her phone to call law enforcement. Law enforcement discovered that her driver's license was suspended and when questioned Ms. [redacted] denied having any knowledge of a suspension, stating that she would not be driving if she had been aware. When asked to consent to a review of her phone, Ms. [redacted] agreed. Law enforcement reviewed the call log and text messages and found no evidence that she was on her phone prior or during the time of the crash. Ms. [redacted] also provided consent to search the vehicle as well as a sworn statement.

There were no surveillance cameras in the area that would have captured the crash.

Law enforcement conducted a download of the Airbag Control Module (ACM) of the VW Jetta. No events were recorded as a result of the crash.

Along the median is a five (5) foot metal fence.

Natalie Nickchen was five (5) foot three (3) inches tall.

The distance from the stop bar to the cross walk is 52.3 feet.

If Ms. [redacted] was traveling at a speed of 35 mph it would have taken her 1.01 seconds to travel to the point of impact from the stop bar.

If Ms. [redacted] was traveling at a speed of 40 mph it would have taken her .89 second to travel to the point of impact from the stop bar.

Ms. Nickchen crossed the street from the median in the crosswalk and it took 1.25 seconds to reach the point of impact.

Based on the timing discussed above if Ms. [redacted] had seen Ms. Nickchen when she first stepped into the crosswalk, traveling at 35 M.P.H. (or 51.31 feet per second), it would have taken her 1.01 seconds to reach the point of impact; or if Ms. [redacted] had seen Ms. Nickchen when she first stepped into the crosswalk, traveling at 40 M.P.H. (or 58.64 feet per second), it would have taken her .89 seconds to reach the point of impact.

The Law as it applies to Manslaughter and Vehicular Homicide:

Manslaughter:

Conduct necessary to constitute "culpable negligence" for purposes of the manslaughter statute is conduct of a gross and flagrant character, evincing a reckless disregard of human life or of the safety of persons exposed to its dangerous effects, or entire want of care which would raise presumption of conscious indifference to consequences or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public or reckless indifference to the rights of others which is equivalent to intentional violation of them, but in applying such standard, every case must be determined on the fact and circumstances peculiar to that case. *Filmon v. State*, 336 So.2d 586, 589-90 (Fla. 1976).

Running a stop sign at an intersection, coupled with evidence of intoxication is not sufficient to constitute culpable negligence. *Filmon*, 336 So.2d at 590.

Driver of a pickup who failed to keep proper lookout and ran through a stop sign coupled with evidence of drinking (defendant admitted to drinking and a doctor said he appeared to be intoxicated) was not sufficient to prove manslaughter. *Peel v. State*, 291 So.2d 226, 227-28 (Fla. 1st DCA 1974).

Vehicular Homicide:

“ ‘Vehicular Homicide’ is the killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause death of, or great bodily harm to another.” F.S. 782.071 (2019). “The degree of culpability required for vehicular homicide is less than necessary to prove manslaughter, but more than a mere failure to use ordinary care.” *Damoah v. State*, 189 So.3d 316, 320 (4th DCA 2016) (citing *Stracar v. State*, 126 So.3d 379, 381 (Fla. 4th DCA 2013). Vehicular homicide cannot be proven without also proving the elements of reckless driving. *Id.* (citing *Santisteban v. State*, 72 So.3d 187, 195 (4th DCA 2011).

To determine whether the defendant was driving recklessly, the main inquiry is whether the defendant knowingly drove the vehicle in such a manner and under such conditions as was likely to cause death or great bodily harm. *Santisteban*, 72 So.3d at 195.

Testimony that driver was seen operating his vehicle in reckless, aggressive manner, weaving in and out of traffic, driving at or near speed limit, disregarding yellow traffic signal, and accelerating through red light before he struck and killed bicyclist supported conviction for vehicular homicide by reckless driving. *Moye v. State*, 571 So.2d 113 (Fla. 4th DCA 1990).

Driving at 60 mph on a residential road of which the speed limit was 45 and the car had unsafe equipment (shallow tire treads, missing a lug nut and window tinting that was too dark) and the defendant failed to reduce speed for a yellow light and then ran a red light that had been red for five seconds was found to be reckless. *Lewek v. State*, 702 So.2d 527, 531 (Fla. 4th DCA 1997).

Sufficient evidence existed that defendant's conduct while driving his motor vehicle was reckless, as required to support conviction for vehicular homicide; there was evidence that the speed limit was 50 mph and that defendant's speed was 69 mph at the time of impact, that roads were wet from rain earlier in the day, and that immediately before accident, defendant swerved through traffic, rapidly approached traffic light while looking down without braking, and ran a red light that had been red for nine seconds before impact. *Opsincs v. State*, 185 So.3d 654, 655-57 (Fla. 4th DCA 2016).

Evidence was insufficient to sustain a conviction of Vehicular Homicide when the defendant failed to stop at an intersection, traveled forty-seven feet and hit a pedestrian pushing a baby stroller approximately six feet from the curb, killing her. *State v. Del Rio*, 854 So.2d 692, 694 (Fla 2nd DCA 2003).

Evidence insufficient to support conviction for vehicular homicide where defendant drove her vehicle into the opposing lane of traffic, did not attempt to brake the vehicle or avoid the crash, and tested positive for multiple substances, including alcohol, marijuana, oxycodone, and Xanax. *Stracar v. State*, 126 So.3d 379 (Fla. 4th DCA 2013).

Held that the defendant did not operate his vehicle in a reckless manner where defendant stopped in the middle of the road, then pulled into the intersection and attempted to make a left-hand turn from the center lane in response to his passengers warning him of an approaching truck. *Berube v. State*, 6 So.3d 624 (Fla. 5th DCA 2008).

Held no reckless driving where defendant, while under the influence of strong medication, swerved across lanes of traffic and off the road into a yard. *State v. May*, 670 So.2d 1002 (Fla. 2d DCA 1996).

Evidence was insufficient to establish reckless driving where defendant, though speeding around 15 to 20 mph in excess of the posted speed limit, had control of his vehicle and slowed as he approached the intersection. *Miller v. State*, 636 So.2d 144 (Fla. 1st DCA 1994).

Evidence was insufficient to establish reckless driving where juvenile had consumed alcohol, was speeding, and drove off the road from overcorrecting his turn. *W.E.B. v. State*, 553 So.2d 323 (Fla. 1st DCA 1989).

Proximate Causation:

Proximate causation, or a causal connection between the defendant's reckless driving and the victim's death, is an essential element of vehicular homicide. *Reaves v. State*, 979 So.2d 1066, 1068 (Fla. 1st DCA 2008)(citing *Armenia v. State*, 479 So.2d 260, 262 (Fla. 5th DCA 1985)).

Defendant, who was charged with, vehicular homicide, was not entitled to jury instruction on jaywalking, even though evidence tended to show that decedent was jaywalking and that the jaywalking was significant factor in the accident; such instruction concerning decedent's negligence would have been required only if jury could have reasonably concluded that decedent's conduct was the sole proximate cause of the accident, a conclusion not warranted, given facts that defendant had been drinking, smoking marijuana and driving without his glasses. *Everett v. State*, 435 So.2d 955, 957 (Fla. 1st DCA 1983)(Pedestrian was hit on West Tennessee Street).

Conclusion:

Ms. [redacted] was driving a 2016 VW Jetta that was functioning properly. It was approximately 8:30 in the morning, the sun rose at 7:30 a.m. Ms. [redacted]'s view was not obstructed, she was not on her phone texting or talking. She was listening to music but not loudly. This area of West Tennessee Street was her regular route of travel and she was familiar with. It was not raining, nor had it been raining, and the streets were dry. This was a main thoroughfare with six (6) lanes separated by a median. The median has a crosswalk for pedestrians to cross. The speed limit is 35 mph. Ms. [redacted] estimates that she was driving approximately 40 mph. Law enforcement could not calculate her speed but eyewitness testimony, Ms. [redacted]'s statement and the point of impact supports the estimate of 35-40 mph. Ms. [redacted] was also unaware that her driver's license had been suspended. Her suspension was for failure to pay fines and was non-criminal. According to Ms. [redacted] the light was yellow when she passed the stop bar. Every witness other than one indicated they thought the light was red when Ms. [redacted] passed the stop bar.

Ms. Nickchen was walking to class. In order to be standing in the median of the crosswalk at the time the light turned green she would either have had to have remained standing in the median through a complete traffic light cycle or have crossed three (3) lanes while the crosswalk light was red. She had headphones on and her phone up in her line of sight. She possibly did not hear the honking of witness [redacted] nor did she look at oncoming traffic before crossing the road. Tragically, it appears she took two steps before being hit. It would have taken Ms. [redacted] between .89 – 1.01 seconds to travel to the point of impact. Ms. Nickchen stood 5 foot 3 inches tall. The metal fence in the median is 5 feet tall. It is possible that the fence obstructed Ms. [redacted]'s view of Ms. Nickchen.

If you apply the facts of this case to the analogous case law, Ms. [redacted] committed the non-criminal violation of running a red light. That alone is insufficient to find culpable negligence or reckless driving. The facts before us are either that the light was yellow when she passed the stop bar, red for a few

seconds or red for four (4) - five (5) seconds before she arrived at the pedestrian crosswalk. Speed was not an issue, the road was not wet, it was not dark outside, she was not distracted or on her phone, she was not driving in an unsafe manner (weaving in and out of traffic, swerving around other cars), she was not intoxicated, her vehicle was in good working order, she was familiar with the roadway and she most likely could not have seen Ms. Nickchen where she was standing.

Based on the facts and the case law it is my opinion that there is insufficient evidence to find culpable negligence on behalf of Ms. [redacted] sufficient to support a charge of Manslaughter. It is also my opinion that there is insufficient evidence to find reckless driving on the part of Ms. [redacted] in order to support Vehicular Homicide. Running a red light in and of itself does not create the recklessness as contemplated by the statute. Further Ms. [redacted] cannot be charged with Driving While License Suspended Causing Death of or Serious Bodily Injury to Another Human Being as her suspension was not for an enumerated reason under s. 316.655, s. 322.26(8), s. 322.27(2), or s. 322.28(2) or (4) of the Florida Statutes.

Violations of Law:

Vehicle violations: F.S. 316.075(1)(c)1, Failure to Stop at a Steady Red Light; F.S. 322.34(1), Unknowingly Driving While License Suspended¹; and F.S. 322.192(2), Failure to Change Address.

¹ Pursuant to F.S. 322.34 an unknowing violation is non-criminal. In this case the Department would have sent notice to Ms. [redacted] prior address. The presumption of Notice is only available for suspensions that are based on something other than financial obligations or failure to pay a fine.

“The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation, or suspension or revocation equivalent status; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department’s records for any case *except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.*” (emphasis added).