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M E M O R A N D U M

To: File
From: Chuck Sparks, Senior Deputy District Attorney
Date: May 19th, 2010
Subject: Review of fatal bus-pedestrian crash on April 24, 2010

Summary:

On Saturday, April 24th, 2010 at 11:57 pm a Tri Met bus made a left turn and hit five pedestrians in a crosswalk at NW Broadway and Glisan. The pedestrians had the lighted "walk" sign and the right-of-way. Two of the pedestrians died at the scene. One was seriously injured. Two more sustained injuries but were treated at the hospital and released that night. This memo discusses the evidence, apparent causes of this crash, relevant law, investigative conclusions and the grand jury's decision.

The intersection:

NW Broadway at Glisan is a controlled intersection with traffic and pedestrian lights and crosswalks. There are two southbound and one northbound traffic lanes on Broadway. Glisan is one-way westbound with two lanes, and parking spaces lining both sides of the street. The intersection is adequately lighted, with variation in the lighting depending upon location within the intersection. The speed limit on both streets is 25mph.

The five victims:

The five victims are all related by marriage or friendship and had just enjoyed an evening out at a comedy club on NW Sixth, one block east of the crash scene. They left the club after the show ended and walked together westbound on Glisan. They were going to their car, which was parked on Glisan, west of Broadway.

All five were wearing either dark or neutral-colored clothing (eg. jeans, a light tan coat, a gray sweater), but one wore white running shoes. These shoes were visible on the bus video which is discussed below.

The five were relaxed and walking in a leisurely manner while they talked. When they came to Broadway they waited for the “walk” signal before proceeding in a group, with one leading, followed closely by two, and then two more, into the crosswalk. About halfway across Broadway (8 to 12 steps per Officer Kurrnen) the group was hit by the bus coming from their right as it made a left turn from Glisan to go southbound onto Broadway.

The group was positioned as follows: Ryan Hammel was alone in front. Behind him was Robert “Erik” Gittings, with Danielle Sale to his left. Behind Erik and Danielle were Jenee’ Hammel, Ryan’s sister, walking with Jamie Hammel to her left. Jamie Hammel is married to Ryan.

The first victim, Ryan Hammel, was struck by the front of the bus, apparently at or just to the right of the driver’s location. He recalls landing with his back on the windshield, and then being thrown clear to the right. He was treated at Emanuel Hospital and released.

The second and third victims, Danielle Sale and her boyfriend, Eric Gittings, were both knocked down by the front of the bus and went under it. They were found under the right or “passenger” side of the bus, behind the front wheel. Ms. Sale died when she was run over by the right front wheel, while Mr. Gittings was seriously injured although apparently not run over by the wheel. Both were extricated by the Portland Fire Bureau.

Jenee’ Hammel was hit by the left side of the bus as it turned. She was knocked-down and went under the side of the bus at the middle. She was then hit by the left rear dual wheels. Her final position was in front of those wheels, and she died with the wheels pinning her.

Jamie Hammel, who was walking with Jenee, was also hit by the driver’s side of the bus, but was thrown clear. She sustained minor injuries and was treated and released from the hospital.

The collision:

On April 24th the driver, Sandi Day, reported at 3pm and began her shift at 5:36 pm. She prepared the bus and embarked at 5:55pm. She was assigned to route #9, which she is familiar with because she drives it occasionally. Her shift was scheduled to end at 12:31 am. She reports that she drove to work that day as she usually does from her home in Vancouver, Washington. Ms. Day drove about 40% of her shifts at night and was an experienced night-time bus driver.

Until the crash, Ms. Day drove her route uneventfully. She picked-up her last passenger, a 67 year-old man who was going home from work, on SW Sixth Avenue, and drove north to Glisan, where she turned left, heading west. The man was alone with her on the bus. On Glisan at Broadway she dropped him off at his request at a bus stop that was not on her scheduled route, on the NE corner of Broadway and Glisan. To do this, she pulled over to the north curb of Glisan to leave him at the sidewalk. Both the making of an

unscheduled stop for an elderly passenger after 8pm, and leaving the passenger off at the sidewalk, are consistent with Tri Met policy.

This passenger got off and walked west across Broadway with the light. He did not see the crash but was interviewed later and testified at grand jury. He told Officer Kurronen that Ms. Day was polite, seemed alert, did not appear to be distracted, was not using her phone to talk or text, was not doing anything else while driving, and was not listening to music.

After Ms. Day dropped this passenger off, she drove from the curb into the north lane of Glisan and began maneuvering to make her left turn onto Broadway. She had to first wait for two cars in the south lane of Glisan to pull-ahead of her westbound before she could move into the south lane. She never got completely into that lane, which would have been the correct lane from which to make this left turn. Instead, Day made her turn while straddling the two lanes, and thus started the turn at a different angle than had she been in the correct (south or left) lane. According to Kurronen, this deprived her of her best unobstructed view into the crosswalk, which would be gained by looking directly to her left through her side window. Instead, it put her driver's side mirrors and the A pillar of her bus between her and the crosswalk since she was approaching the crosswalk at an angle instead of parallel to it. The pedestrians were approaching her point of entry into the crosswalk just as she turned into it, and the bus appeared on video to swing left into them as they were walking along. The view of the intersection is an important issue since each time she was interviewed Ms. Day said she did not see the victims until they were right in front of her windshield, and this matches the facts of the crash.

Ryan Hammel, Jamie Hammel, and Eric Gittings told investigators that they heard nothing—no noise like engine revving that would warn of a large vehicle— before being hit, and that the first they knew of a problem was when they were struck. This is consistent with the 41-foot bus having its engine at the rear and being relatively quiet, or having the noise just blend-in with the background of city traffic. The fact is that they heard no noise warning them of trouble before they were hit.

Shortly after the crash the bus backed-up a short distance because people on the driver's side were yelling at the driver to back-up, away from Jenee' Hammel, who was in front of the rear wheels on that side. When she did so, people on the opposite side of the bus began yelling at her to pull forward, since Danielle Sale and Erik Gittings were behind the front wheel on that side. The bus then moved forward again. It did not move after that, but the question about what added injury was done by this movement is at least apparent. For purposes of this investigation, it was concluded that this movement did not add significantly to the harm already done.

Officer Kurronen's crash reconstruction analysis and opinions:

As determined by the clock on the bus video, the bus was moving for seven seconds between the moment it started forward after the unscheduled stop on Glisan and impact with the victims. Officer Kurronen measured the distance of the turn and calculated the speed of the bus at 12-14 mph at impact.

Officer Kurronen's investigation will speak for itself, but he found several factors significant in contributing to the crash: the lighting in the area, the generally dark color of the victims' clothing, the angle of the turn, the fact that the turn was an unlawful left turn that crossed two traffic lanes instead of coming from the proper (left or south) lane on Glisan, the blind spot created by the driver-side mirrors and A pillar, the intervening two vehicles westbound on Glisan in the south lane, and a driver's perception-reaction time at night. Kurronen concluded that the victims were walking legally with the right-of-way, and that the driver, Ms. Day, was at fault for this crash. A brief discussion of his conclusions follows:

1. He observes that the area lighting (from street lights and businesses), while adequate, is not uniform, and could be a factor since the eye must continually adjust to the changing light.
2. Kurronen found that the victims' clothing was generally dark or neutral, making them harder to see at night given the lighting. Obviously, this is no fault of theirs, and the driver needed to scan for pedestrians regardless of clothing color, but the dark clothing made them harder to see and was a possible factor in the crash.
3. The unlawful left turn, begun from the north lane of Glisan instead of the south lane, is a significant factor since the driver then had more areas to scan while making the turn (eg. back into the south lane of Glisan as she entered it), leaving her less time to spot pedestrians. It also gave her a different view of the crosswalk than she would have had entering it from the south lane.
4. The two driver's side mirrors created a blind spot for the driver. The upper, rectangular mirror is 18" high and 8.5" wide, and below it is a 5.25" circular mirror. The blind spot created by the upper mirror in particular (which sits at driver's eye-level) is substantial. Together, the mirrors and A-pillar (front corner support pillar) of the bus, created a blind spot that moved with the driver and partially blocked her view into the left turn and the crosswalk. This probably contributed to the driver's failure to see the victims in this case.
5. The intervening traffic (two cars) in the south lane of Glisan proceeded through the intersection westbound at the same time the bus began its move leading to the turn. These two cars moving to the left of the bus briefly screened the southeast corner and start of the crosswalk where the pedestrians were, giving the driver less opportunity to see them moving on the far side of these two cars. This lost observation time, brief though it was, may well have been critical.
6. Finally, Kurronen notes that a typical driver's perception-reaction time at night, which is the time it takes to perceive a threat and start reacting to it, is 2.5 seconds. Thus, he would expect that approximately 2.5 seconds passed from the time the driver first saw the pedestrians until she started emergency braking. To

this must be added the time and distance then needed to actually stop the bus. Kurronen calculates that the bus traveled about 60 feet before it came to a stop. He views this as roughly consistent with what is expected given the speed at the time of 12-14 mph and the distance it takes at this speed to brake to a stop.

7. Officer Kurronen concluded that the driver was entirely at fault in causing this crash.

Bus video:

The video is useful but limited. It does not show much of this crash, but does contain important information. For one, it helped with speed calculations. Also, in it one sees, in the front-view camera, the white shoes of one pedestrian (Ryan Hammel) moving into the crosswalk and then his leg and foot just before contact, but little of the collision itself and apparently nothing of the other victims. In the back-looking reverse-view cameras on the side of the bus (they are trained forward into mirrors that face backward, making the left side appear to be the right and visa-versa) one sees Ryan Hammel after being thrown to the right, and what appears to be Jamie Hammel thrown from the left side of the bus onto the ground.

Eyewitnesses:

As is true with situations where numerous people see part or all of an event, the eyewitnesses vary somewhat in their descriptions of what happened. Generally, the picture from them that emerges is that the bus made the left turn with the green light at a normal or expected (in their view) speed and hit the pedestrians who were crossing at a normal gait with the “walk” sign and within the crosswalk.

The bus driver:

Ms. Day is 48 years old. She has been a Tri Met bus driver since October, 2007. She started part-time at 30 hours per week, then was hired full-time in November, 2008. She has a valid Washington CDL, has been driving all of her adult life, and has no traffic tickets of any kind on her traffic record. She was recognized as a Tri Met “Safe Driver” for two years, from 2008 into 2010. She scored well in all categories including safety of operation on three graded test drives in 2008 while a probationary driver. She’s had two public complaints about her driving over her three years, with one for running a red light and another for cutting a car off in traffic. Since there was no law enforcement investigation, the truth of these complaints is undetermined. According to Tri Met, this is a lower than average number of complaints for someone driving for three years. Overall, her record appears to be one of a safe and careful bus driver.

Ms. Day was fully cooperative with the Portland Police Bureau’s Major Crash Team investigators. She interviewed three times with the officers, including a first interview the night of the crash shortly after it occurred. She voluntarily gave a blood sample to investigators that night. It was tested for alcohol and illegal and prescription controlled substances and was negative. She also gave a urine sample to Tri Met, which was also

negative for intoxicants. She said that she was not taking any prescription medication at the time of the crash, nor was she prescribed any. Intoxication is not a factor in this crash.

Ms. Day told investigators she was not using her cell phone in any manner before the crash. Her last passenger reports no phone or other electronic device in use. Day's phone itself and phone records were checked for both calls and texting and neither occurred. The last call she made before the crash was at about 7:30 pm during a layover. Phone use is ruled-out as a cause.

The driver was wearing yellow-tinted driving glasses which she reports having purchased from her optometrist specifically for the purpose of driving. They have small reading inserts at the bottom so she can read transfers and schedules, and the rest of the lens is simply yellow glass with no prescription. She said she wears them to drive at all times, day or night, has done so for years, and that they assist her greatly with glare and night driving. Tri Met has no known policy governing them. They do forbid sunglasses at night, but these are not sunglasses. Tri Met supervisors were presumably aware of these glasses since Day says she wore them on each shift, day or night. Ms. Day made the glasses available to the grand jury for inspection. Their role in any visibility issue is undetermined and they cannot be cited as a cause.

Ms. Day voluntarily appeared before the Multnomah County Grand Jury and testified under oath. The contents of her testimony are protected by the seal of the grand jury. She was questioned for approximately one hour and fifteen minutes, answering all questions put to her.

Ms. Day has, by all accounts, been distraught and remorseful since the time of the crash.

Tri Met:

Tri Met personnel cooperated fully with this investigation. They provided access to all requested agency records, employees and other evidence, including the bus (which is in Portland Police custody), promptly and without argument. While it had no impact on the outcome, this assisted the progress of the investigation.

Legal analysis

Criminally negligent homicide is defined at ORS 163.145. One commits this crime by causing the death of another "with criminal negligence," which is in turn defined at ORS 161.085(10):

"'Criminal negligence' or 'criminally negligent,' when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of 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 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 crime of “criminally negligent homicide” encompasses more than just cases in which death results from driving. It includes any case in which a defendant causes the death of another by behavior that is “criminally negligent.”

Under Oregon law, this mental state of “criminal negligence” requires more than inadvertence, inattentiveness, or, in driving cases, the added commission of traffic violations. The legislative commentary to the 1971 Criminal Code revision on the (then) new crime of criminally negligent homicide stated that the purpose in defining this crime was to include conduct by a defendant who is unaware of great risk “only because [she] is insensitive to the interests and claims of other persons in society.” (emphasis added). This insensitivity to the safety and well-being of others must then produce a “gross deviation” from the standard of care that a reasonable person would use.

Historically, most vehicular homicides are charged as Manslaughter I or II because they involve intoxicated drivers who also speed, make unsafe passes, run stop signs or red lights, and engage in other aggravated, aggressive driving. Under Oregon case law, Criminally Negligent Homicide cases typically involve this same level of bad driving, but usually without intoxication. Indicted criminally negligent vehicular homicides are fairly rare since the level of bad driving required by this crime is usually accompanied by intoxication, which then elevates the conduct into the “reckless” category, resulting in a charge of manslaughter.

In Oregon, not every fatal vehicle accident can or should result in felony homicide or other criminal charges, even when caused by a driver committing traffic violation(s) and/or being inattentive. The law requires substantially more egregious conduct to charge a driver with a criminally negligent homicide, with its presumptive prison sentence and many other serious consequences. Drivers who are not charged criminally do not, however, escape the law’s punishment; they are held responsible by a civil lawsuit using the standard of ordinary or “civil” negligence. This lesser form of negligence is generally defined as a failure to use “reasonable care” when acting in a given situation. “Reasonable care” is “what a reasonable person of ordinary prudence would, or would not, do in the same or similar circumstances.” Wollston v. Wells, 297 Or 548 (1984).

This case, with the driver being either inattentive or unable to see, possibly both, while engaging in an unlawful left turn, may well involve civil negligence, but the grand jury concluded that it is not chargeable as criminally negligent homicide.

The grand jury’s decision:

The Multnomah County grand jury received evidence and testimony from 33 witnesses, either directly or by report, during sixteen hours spread-out over five days. They spent

additional time reviewing the evidence after all testimony was received. After doing so, their vote was not to charge the driver.

In view of the evidence in this case, and the grand jury's decision, I have conferred with the Portland Police Bureau Traffic Division on their issuance of appropriate traffic violation citations to Ms. Day. They informed me of what they intend to do and I agree with it.

For all details of the investigation, the reader is referred to the reports of the Portland Police Bureau's Major Crash Team.