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September 14, 2007

Officer Jason I. Graham
California Highway Patrol
1722 East Main Street
El Cajon, CA 92021-5259

Re: **San Diego Sheriff's Department Deputy Garner Leigh Davis, California
Highway Patrol Report #06-04-0117, DA Special Operations Case #07-052PM**

Dear Officer Graham:

We have reviewed the reports and other materials submitted by your department concerning a fatal traffic accident that occurred at the intersection of Jamacha Boulevard and Ruxton Avenue in the Spring Valley area of San Diego County. The accident occurred when Deputy Garner Leigh Davis' patrol car struck a vehicle being driven by Ms. Mariquita Mesa, who died as a result of the collision. It is the opinion of the undersigned that, after careful consideration of the evidence and the applicable law, that insufficient evidence exists to prove a vehicular manslaughter charge beyond a reasonable doubt.

Factual Summary

Shortly before 4:52 am on April 11, 2006, Deputy Davis volunteered to respond to a "suspicious person" call in the area of La Presa elementary school. When he left the Spring Valley station, he activated his headlights, but did not activate his overhead lights or siren. While en route to the call, he traveled eastbound on Jamacha Boulevard.

This portion of Jamacha Boulevard is a two way, four lane divided roadway that runs in an east / west direction. Ruxton Avenue is a two way, two lane roadway that runs in a north south direction and forms a "T" intersection with Jamacha Boulevard. The Ruxton Avenue portion of the intersection is normally marked by a posted stop sign, a painted white limit line and painted white letters reading "STOP". It should be noted that at the time of the accident, the stop sign and post were missing. As one travels eastbound on Jamacha toward Ruxton, the road declines and curves to the right. The road straightens out west of the Ruxton intersection. The area around the intersection is lighted by three overhead light poles. All three light standards were functioning at the time of the accident. The posted speed limit for traffic on Jamacha Boulevard is 40 miles per hour. The posted speed limit for traffic on Ruxton Avenue is 25 miles per hour.

Davis told investigating officers that as he was traveling eastbound on Jamacha Boulevard toward Ruxton, he noticed the vehicle being driven by Ms. Mesa traveling north on Ruxton toward the intersection. He first noticed her vehicle as he drove through the intersection of Jamacha and Gillespie Drive. He believed that Ms. Mesa's vehicle headlights were activated. He estimated that she was traveling at a normal rate of speed. He estimated his speed in excess of 35 miles per hour. According to the investigative reports, a Global Positioning Satellite device measured Deputy Davis' speed as 67 miles per hour 155 feet west of Ruxton Avenue. He did not maintain constant sight of her vehicle as he proceeded east bound on Jamacha because he was continually visually scanning the area as he drove. He was not talking on his cell phone or the patrol car radio. He was not using the patrol vehicle's Mobile Data Command device.

According to Davis, as he drove toward the Ruxton intersection, Ms. Mesa's vehicle pulled out in front of him and he could not avoid the collision. He estimated that she was traveling at a normal rate of speed. Davis was unsure if Ms. Mesa's vehicle ever came to a stop at the intersection. It appeared to him that her vehicle maintained the same speed as it traveled through the intersection, as if the car never stopped at the stop sign. Davis' patrol car collided with the driver's side of Mesa's vehicle. Ms. Mesa suffered fatal injuries as a result of this collision.

Deputy Daryl Spillman, was also on duty that morning. He was responding to the same call as Davis was. He told officers that he was traveling eastbound on Jamacha Boulevard at approximately 40 miles per hour and was approximately 200 yards behind Davis when the collision occurred. He did not see the collision take place.

James Mesa was a passenger in Ms. Mesa's vehicle. He told investigating officers that she was his grandmother and that he was asleep at the time of the collision. He also told them that they lived together at 517 Thayer Drive and that she was going to give him a ride to work that morning. When he went to bed on the night prior to the collision between 10 and 11 p.m., she was still awake. He woke up around 4:20 a.m. and they left the house at 4:50 a.m. He fell asleep almost immediately because he was so tired. He did note that his grandmother was familiar with the area and that she drove that route every weekday and sometimes on the weekend.

On April 18, 2006, two California Highway Patrol Officers participated in a visibility study in an attempt to determine the view of a driver located at the intersection of Ruxton Avenue. and Jamacha Boulevard as they looked toward the west. They did this to determine what Ms. Mesa's view would have been, assuming that she had stopped at this intersection and looked to her left for on coming traffic. The study revealed that a large portion of a patrol vehicle would be obscured as it traveled westbound on Jamacha Boulevard. Specifically, the study demonstrated that the majority of the patrol vehicle and its headlamps would be obscured in the area of 334 feet to 480 feet west of the area of impact. According to the study, only the roofline was visible in the area due to the topography and a retaining wall.

On April 21, 2006, the California Highway Patrol Multidisciplinary Accident Investigation Team (M.A.I.T.) agreed to assist in the investigation of this incident. They concluded that if Deputy Davis was traveling at 40 miles per hour, Ms. Mesa's vehicle would have cleared the intersection and no collision would have occurred. It is important to note,

however, that they made certain factual assumptions necessary for their time-position analysis. They presumed, for the purpose of their analysis, that Ms. Mesa stopped her vehicle in the vicinity of the limit line on Ruxton Avenue before proceeding into the intersection.

Unfortunately, there were no witnesses to confirm the location where Ms. Mesa stopped her vehicle or if she stopped her vehicle at all before proceeding into the intersection. As discussed below, this lack of evidence regarding Ms. Mesa's conduct immediately before the collision as well as the restricted visibility of the patrol vehicle are crucial factors in determining the likelihood of success in a vehicular manslaughter prosecution of Deputy Davis.

Applicable Law and Legal Analysis

Penal Code Section 192(c) defines vehicular manslaughter and divides it into two separate categories, depending upon the level of negligence. Penal Code Section 192 (c)(1) defines vehicular manslaughter committed with gross negligence. "Gross negligence" is defined as such a departure from the conduct of an ordinarily prudent person as to be incompatible with proper regard for human life. (*People v. Schmies*, (1996) 44 Cal.App.4th 38, 46.) Penal Code Section 192(c)(2) defines vehicular manslaughter committed without gross negligence. This level of negligence is commonly referred to as "simple" or "ordinary negligence". Ordinary negligence is failure to use the same caution and care as a reasonable person would have used under the circumstances. (*People v. Thompson*, (2000) 79 Cal.App.4th 40, 53.)

Although a vehicular manslaughter conviction may be obtained if a defendant acted with either gross negligence or ordinary negligence, the evidence before us is insufficient to demonstrate that Deputy Davis acted with the disregard for human life necessary to demonstrate gross negligence. It is certain that he exceeded the posted speed limit, but there is no additional evidence of negligent conduct. According to the statement he provided investigators, he was not talking on his cell phone and was not using his Mobile Data Command device. Moreover, Davis told them that he was visually scanning the area as he traveled eastbound on Jamacha Boulevard.

The question becomes whether Deputy Davis' driving at 67 miles per hour in a 40 mile per hour zone under the circumstances of that evening amounted to simple negligence sufficient to sustain a conviction pursuant to Penal Code Section 192(c)(2). California Criminal Jury Instruction (CALCRIM) 593 provides the elements required to sustain a conviction for vehicular manslaughter committed with simple or ordinary negligence. Specifically, the law would require the People to prove beyond a reasonable doubt that Deputy Davis committed an infraction with ordinary negligence.

Driving at a speed in excess of the posted speed limit is an infraction. (See California Vehicle Code Sections 22351 and 22352.) While the act of speeding is a violation of law, it does not amount to negligence per se. (*Williams v. Cole*, (1960) 181 Cal.App.2d 70, 74.) However, driving in excess of the speed limit, combined with other reckless conduct, has been held to be a violation of the law amounting to negligence sufficient to support a voluntary manslaughter conviction. (*People v. Tracy*, (1962) 199 Cal.App.2d 163.) Thus, the commission of an underlying misdemeanor or infraction is not dispositive of the level of negligence required to sustain a vehicular manslaughter charge. (*People v. Bussel*, (2002) 97 Cal.App.4th Supp. 1, at 8, quoting *People v. Cox*, (2000) 23 Cal.4th 665, 670 ["The inherent or abstract nature of a misdemeanor which underlies an involuntary manslaughter charge is not dispositive"].) The

offense itself must be dangerous under the circumstances of its commission, and the abstract nature of the charge is not dispositive. (*People v. Cox*, supra, 23 Cal.4th at 674.) Therefore, in a vehicular manslaughter prosecution the People would have to prove not only that Deputy Davis was speeding, but that his rate of speed was inherently dangerous given the circumstances during which it took place.

It is true that Deputy Davis violated the prima facie speed law when he was responding to a vehicle burglary call, but it is unclear whether he violated the basic speed law.

Vehicle Code section 22350, the Basic Speed Law, states:

“No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.”

However, the law allows drivers to exceed the prima facie speed law in certain situations.

California Vehicle Code Section 22351(b) provides:

The speed of any vehicle upon a highway in excess of the prima facie speed limits in Section 22352 or established as authorized in this code is prima facie unlawful **unless** the defendant establishes by competent evidence that the speed in excess of said limits *did not constitute a violation of the Basic Speed Law at the time, place, and under the conditions then existing.*” (emphasis added)

Section 22351(b)’s justification of speeding over the prima facie speed requires one to consider circumstantial evidence to assess if the speeding was negligent. *Wilding v. Norton*, (1957) 156 Cal.App.2d 374, expanded upon the elements of the Basic Speed Law:

“The so-called Basic Speed Law is primarily a regulation of the conduct of the operators of vehicles. They are bound to know the conditions which dictate the speeds at which they can drive with a reasonable degree of safety. They know, or should know, their cars and their own ability to handle them, and especially their ability to come to a stop at different speeds and under different conditions of the surface of the highway. They have a constant duty to observe traffic conditions and cannot plead ignorance as to what speed, under the existing observable conditions, would be reasonable and prudent.” (*Ibid.* at 443-444.)

Violating the basic speed law is a question of fact, rather than law. (*Leighton v. Dodge*, (1965) 236 Cal.App.2d 54, 57.) To prove a defendant committed a violation, the People must prove that: (1) the defendant drove a vehicle on a highway, and (2) the defendant drove faster than a reasonable person would have driven considering the weather, visibility, traffic, and conditions of the highway, or at a speed that endangered the safety of other people or property. (See CALCRIM 595.) Satisfying the elements of CALCRIM 595, establishes the level of negligence sufficient to show the act of speeding was inherently dangerous.

Considering the factors listed above, we cannot say beyond a reasonable doubt that Deputy Davis’ traveling at that rate of speed was inherently dangerous. He was clearly traveling in excess of the posted speed limit, but we must consider that he was responding to a felony burglary call, and that this incident took place during the early morning hours during sparse traffic conditions. Additionally, we must consider weather conditions were

favorable and that vehicles commonly travel at speeds greater than the posted speed limit on major thoroughfares.¹

Even if we were to assume that Deputy Davis' violated the basic speed law, we are of the opinion that it would be unlikely that a jury would convict him of vehicular manslaughter. To prove beyond a reasonable doubt that Deputy Davis' negligence caused Ms. Mesa's death, we would have to prove that his conduct was the legal and proximate cause of her death. In other words, the People would have to prove beyond a reasonable doubt that there were no superseding, intervening causes that led to her death.

As stated above, we have no witnesses or physical evidence that can demonstrate Ms. Mesa's conduct at the intersection prior to pulling out in front of Deputy Davis' vehicle. We would be unable to prove to the jury that Ms. Mesa exercised due caution prior to entering the intersection. We cannot prove that she stopped at the intersection. We cannot prove that she looked to her left prior to turning into oncoming traffic. This inability to show the jury her conduct at the intersection immediately prior to the accident combined with Deputy Davis' statements describing her vehicle entering the intersection as if she had never stopped, would raise a reasonable doubt in the mind of the jury that Deputy Davis' negligence was the legal causation of her death.

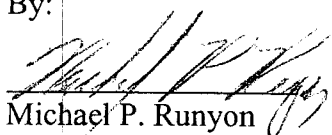
Conclusion

After reviewing the facts and circumstances surrounding this tragic accident, it is our conclusion that there is no reasonable expectation that a prosecution for vehicular manslaughter, or any related offense, would be successful. It is the opinion of the undersigned that we could not prove beyond a reasonable doubt that Deputy Davis' actions constituted a failure to use reasonable care to prevent reasonably foreseeable harm to another, given the time the accident occurred, the speeds at which vehicles travel on Jamacha Boulevard, and the lack of evidence surrounding the entry of Ms. Mesa's vehicle into the intersection. Accordingly, we will not pursue the matter further.

Sincerely,

BONNIE M. DUMANIS
District Attorney

By:


Michael P. Runyon
Deputy District Attorney
Special Operations Division

Cc: Sheriff William B. Kolender

¹ It should be noted that District Attorney Bonnie Dumanis, Chief Deputy Julie Korsmeyer, Division Chief Richard Monroy, Deputy District Attorney Michael P. Runyon and District Attorney Investigator Vincent Giaime have all visited the scene of the accident in order to determine both Deputy Davis' and Ms. Mesa's vantage points and the general speed at which vehicles travel at that portion of Jamacha Boulevard, despite the posted speed limit.