



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

January 13, 2020

Rick Welsh, Esq.
Via Personal Delivery

Dear Mr. Welsh:

I am writing to you today regarding the investigation and filing decision surrounding the event that occurred on January 25, 2017, which resulted in the tragic death of Mr. Scott Clark.

As you know, I made a commitment to you and your client as the newly elected District Attorney to thoroughly review this case in the pursuit of justice. I, along with my entire prosecution team, have followed through on that commitment.

Over the last two years, we have left no stone unturned and exhausted all possible investigative resources to determine whether someone could be held criminally responsible for the heartbreaking events of that night.

The Orange County District Attorney's Office spent nearly \$60,000 consulting experts in attempts to determine whether there was criminal culpability on the part of either party.

My most experienced vehicular homicide prosecutors – who are some of the premier vehicular homicide prosecutors in the state, if not the nation, reviewed all of the evidence, including witness statements.

The experts were unanimous in their conclusions. Based on all of the available evidence, we are unable to legally and ethically file criminal charges in this case.

This is not a decision that was made lightly, but it is the only decision which I could legally make.

As you know, the case was initially investigated by the Orange County Sheriff's

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Department MART team (Major Accident Reconstruction Team) and subsequently forwarded to the Orange County District Attorney's Office in late 2017 for filing consideration. In August 2017 and again in October 2017 your client spoke with a prosecutor who detailed the nature of the charges and the complications of the case with your client.

On November 1, 2017, after taking into consideration the evidence that was available at the time, a felony complaint was filed against Jamie Mulford. Shortly thereafter, it was communicated to your client that there was a need to hire an accident reconstruction expert to further evaluate the case. The Orange County District Attorney's Office then hired expert Wes Vandiver of Collision Injury Dynamics to conduct a thorough analysis of the available evidence.

On September 20, 2018, at a scheduled pre-trial conference, Mrs. Clark met with the newly assigned prosecutor on the case, Brian Orue, and they spoke about the anticipated expert report. On September 26, 2018, the District Attorney's Office received Wes Vandiver's expert report. At a scheduled pre-trial conference on November 2, 2018, you appeared with your client, and you both spoke to Mr. Orue. He told you the expert report had been delivered and that there was a need to analyze Mr. Vandiver's findings.

On December 11, 2018 your client met with Mr. Orue and OCDA investigators at the District Attorney's office. At this meeting, you were reminded about the complications with the case and informed of the possibility that charges would be dismissed against Ms. Mulford due to the inability to meet the elements necessary to prosecute the case. You were also told that the investigation would continue based on Mr. Vandiver's report.

On December 14, 2018, at a pre-trial conference, Mr. Orue explained to you and your client that the case against Ms. Mulford was going to be dismissed as the evidence didn't support a criminal case against her. Mr. Orue further explained that the dismissal was required based on our ethical obligations as prosecutors. On that same date, you asked that the decision be delayed by four to six weeks so you could review the findings.

On January 9, 2019, a two-hour meeting was held with you, Mr. Orue, and an OCDA investigator wherein they reviewed the reports and discussed with you the expert conclusions and findings of Mr. Vandiver. Based on Mr. Vandiver's independent expert analysis and report it was determined that it was our legal obligation to dismiss charges against Ms. Mulford. You were informed that the office's investigation would continue.

On January 17, 2019, I met personally with you and your client shortly after I took office and was briefed on the facts of the case and its challenges. The prosecution team met with you and discussed the issues with the case, Mr. Vandiver's expert report, and the need to dismiss the case at this time. I committed to you that we would continue investigating the case to seek justice for Mr. Clark, his family, and the community. As

discussed, the following day on January 18, 2019, the case against Ms. Mulford was dismissed. Our investigation continued.

In June of 2019, after numerous meetings with the prosecution team, one of our in-house accident reconstruction experts, OCDA Investigator Mike Hale, was tasked with evaluating the possible paths of travel of the Mercedes. Investigator Hale analyzed the case and he concurred with important findings made by Mr. Vandiver, and he independently established that there were at least two reasonable interpretations of what occurred that night based on the physics and limitations of the Mercedes Benz and evidence from the scene.

Based on these findings and subsequent meetings with the prosecution team, I made the necessary decision to hire another independent expert. The firm I chose was MEA Forensic and its Principal and Senior Engineer David J. King was hired to do the accident reconstruction on the case. At the conclusion of Mr. King's expert work on the case, I personally met with Mr. King and the prosecution team in mid-December to get further clarity on his report and findings. Consistent with Mr. Vandiver and Investigator Hale, Mr. King's findings also led to at least two reasonable interpretations of what occurred that night based on all the evidence and statements gathered from witnesses.

After being briefed by Mr. King I convened a meeting on December 31, 2019, and I once again met with members of the vehicular homicide team. During this meeting we discussed all of the legal and evidentiary issues surrounding the case and whether we had the legal ability to bring charges against either driver. After the legal standard and elements of the possible crimes were discussed and analyzed, it was unanimously determined that we are unable to prove gross negligence against either Ms. Mulford or Ms. Aguilar, which would be required in order to justify criminal charges.

We arrived at this conclusion using the following analysis:

The Judicial Council of California publishes jury instructions (CalCrims) which summarize the law applicable to the charges filed against a defendant. At the close of a criminal case, the judge reads these instructions to a jury and requires jurors to follow the law contained within the instructions. Vehicular manslaughter charges in this instance would require the prosecution to prove gross negligence, which requires "more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when he or she acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk." (CalCrim 592.)

In other words, a person acts with gross negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

Based on the evidence in the case and facts known, the driving demonstrated by either party during the January 25, 2017 incident fails to rise to the level of gross

negligence.

Further, the law says that, “A person facing a sudden and unexpected emergency situation not caused by that person’s own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation, even if it appears later that a different course of action would have been safer.” (CalCrim 590, 591, 592 and 593.)

This is important because a person reacting to a lane change is required to use the same care and judgment that an ordinarily careful person would use in the same situation, even if it appears later that a different course of action would have been safer. Based on the evidence in the case, the driving demonstrated by either party cannot be shown to negate this defense.

Moreover, the issue of a possible road rage incident cannot be confirmed by any admissible evidence. Despite assertions to the contrary there is no independent evidence of a road rage incident taking place when analyzing the technical data recovered from the vehicles, expert analysis, or witness statements.

Lastly, the law says that “...If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence.” (CalCrim 224.)

Here, we have a situation where every expert who reviewed the facts of this case can establish at least two reasonable interpretations of the incident. Thus, the jury would be legally required to find the parties not guilty.

During our assessment of the case between August 2017 and December 2019, it is unequivocally clear based on the totality of available evidence, including witness statements, numerous expert reviews, the burden of proof, and the elements of the crime, that we cannot prove that either Ms. Mulford or Ms. Aguilar are criminally culpable.

Sincerely,



Todd Spitzer
District Attorney

