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No Felony Criminal Charges Will Be Brought in Fatal Traffic Crash

Michael C. Carr, Jackson County's State's Attorney, announced today that no felony criminal charges will be filed against a Herrin resident in the fatal traffic accident which killed two individuals at the intersection of Illinois Route 13 and Reed Station Road on December 5th, 2015.

Background

On December 5th, 2015, at approximately 8:25 p.m., two Carbondale residents, Gavin Flynn and Ryan Reed, were struck by a west bound vehicle driven by Timothy O'Boyle, while walking south across the passing lane just past the intersection of Illinois Route 13 and Reed Station Road.

At the scene, Carbondale police officers spoke with the driver of the vehicle, Mr. O'Boyle. He stated that he was on his way to Carbondale to pick up a pizza he had ordered. He stated that he was looking down at his speedometer and looked up as the accident occurred. He stated that at the time of the accident, he was unsure if he had struck a person or a deer. Mr. O'Boyle was also unable to determine from what direction the two had entered the roadway.

While officers spoke with Mr. O'Boyle, they did not observe any signs of intoxication or impairment. The officers could not detect any odor of an alcoholic beverage coming from him, nor were his eyes bloodshot or watery. Mr. O'Boyle did state that he was prescribed medications,

but denied that he had taken any before driving. He agreed to cooperate with the officers and to provide a blood and urine sample. He was then transported to the Carbondale Memorial Hospital for testing.

Mr. O'Boyle voluntarily provided a blood and urine sample that was sent to the Illinois State Police Crime Lab for testing. He also provided investigators with a written consent to search his phone which revealed that he placed a phone call to a pizza restaurant at 8:16 p.m. that lasted one minute and 21 seconds. He also sent a text message at 8:16 p.m. Mr. O'Boyle stated that he placed both the phone call and text while at a car wash in Carterville, Illinois. When asked if he was looking at his phone at the time of the accident, Mr. O'Boyle told officers that he was not. His statements are consistent with phone records obtained by investigators which indicate that he placed a phone call and text at 8:16 p.m. from a car wash in Carterville.

Investigators learned that there was a witness facing eastbound in the left-hand turn lane, waiting to turn north on Reed Station Road. The witness observed Mr. O'Boyle's car go west, through the intersection, in the left lane. The headlights on Mr. O'Boyle's car were fully illuminated. The stop light was on yellow when Mr. O'Boyle traveled through the intersection. This fact was verified by video from a nearby business.

The pedestrians were not struck in the intersection, but a short distance west of the intersection. Both pedestrians were wearing dark clothing, and neither increased his pace in the face of an oncoming car. Given that the point of impact was in the left lane, the pedestrians, who were walking south across Route 13, started crossing Route 13 against the green light for oncoming vehicles.

The sun set on December 5th, 2015, at approximately 4:38 p.m. The road conditions were clear with no ice or rain, but it was dark. There are two light poles that were illuminated on the

night of the accident, and there was additional lighting from the nearby businesses. However, the eastside of the intersection where the pedestrians were crossing was darker. There were no crosswalks for pedestrians or pedestrian crossing signs.

On the 5th of December, investigators reconstructed the accident, reviewed video footage of the accident, and spoke with multiple witnesses about the events that led up to the accident.

The investigation concluded that:

- 1) Mr. Reed and Mr. Flynn were almost struck at 8:22 p.m., several minutes before this accident, by a different driver, as they walked across Route 13, near the same intersection, going northbound.
- 2) Mr. Reed and Mr. Flynn were wearing dark clothing at the time of the accident.
- 3) Mr. O'Boyle was traveling westbound in the left hand lane at a speed of approximately 65.6 m.p.h. when the accident occurred.
- 4) The westbound traffic light at the intersection was yellow when Mr. O'Boyle entered the intersection.
- 5) If Mr. O'Boyle would have been traveling the posted speed limit, 45 m.p.h, the victims would have cleared the roadway before the accident. ¹
- 6) The cause of the accident was a combination of Mr. Flynn and Mr. Reed crossing the roadway against the traffic signals and the speeding by Mr. O'Boyle.

¹ Based upon an algebraic formula involving speed, time and distance, the accident reconstruction report opines that if Mr. O'Boyle had been going the speed limit, the accident would not have happened. However, this statement has little bearing on the legal issues relating to Reckless Homicide since these same time, distance and speed calculations also support a conclusion that had the pedestrian's been running, rather than walking, or had they altered their pace or even stopped before reaching the passing lane, there would not have been an accident either. These conclusions are of little legal or logical value in determining "reckless" conduct in the Reckless Homicide context since they fail to take into consideration what each person knew or should have known about the risks involved in their actions or how they responded to those known risks.

On January 29, 2016, the Illinois State Police issued a laboratory report stating that Mr. O'Boyle did not have any drugs present in his blood but did have the following drugs present in his urine: Hydrocodone, Dihydrocodeine, Gabapentin, Cyclobenzaprine; and Fluconazole.

Potential Charges Considered:

The following charges have been considered relating to this accident:

- 1) Reckless Homicide
- 2) Aggravated Driving Under the Influence of Drugs; and
- 3) Speeding

Reckless Homicide

Under Illinois law, Reckless Homicide is a Class 3 Felony. If convicted of this charge, the sentence includes up to two (2) to five (5) years in the Illinois Department of Corrections or thirty (30) months of probation. In order to prove Reckless Homicide, the State is required to prove beyond a reasonable doubt the following elements:

- 1) That the defendant caused the death of both Gavin Flynn and Ryan Reed by driving a motor vehicle; and
- 2) That the defendant drove the motor vehicle recklessly; and
- 3) That the defendant drove the motor vehicle in a manner likely to cause death or great bodily harm.

In reviewing the facts presented to this office and applying them to the applicable law, it is the opinion of this office that the charge of Reckless Homicide cannot be sustained. Our Supreme Court has indicated that speeding alone is not the same as driving recklessly for purposes of a reckless homicide prosecution, holding that there must be more than speeding to support a reckless homicide conviction. Illinois courts require that a driver must "consciously

disregard” a “substantial and unjustifiable risk” that circumstances exist or that a result will follow, and such disregard constitutes “a gross deviation from the standard of care” which a reasonable person would exercise in the situation. This requirement is intended to differentiate between general risks assumed anytime a car is driven in excess of a posted speed limit and those substantial and unjustifiable risks which are known or reasonably should have been known by Mr. O’Boyle to exist.

Collisions between motor vehicles and pedestrians are likely to result in catastrophic personal injuries for pedestrians. For this reason, speeding in areas where a driver can see pedestrians or in areas where the driver knows or has reason to know that pedestrians may be crossing, could constitute a gross deviation from the standard of care which a reasonable driver would exercise. Consciously ignoring the latter risks could amount to a gross departure from reasonableness and, if death results, could constitute reckless homicide.

In this case, an Accident Reconstructionist has determined that the speed of Mr. O’Boyle’s car at the time of the accident was 65.6 m.p.h. The posted speed just before and through the intersection was 45 m.p.h. The intersection in question is usually busy with motor vehicle traffic from Illinois Route 13, a busy rural highway, and Reed Station Road, a local road which is sporadically busy with vehicular traffic from local residents living off of Reed Station Road and traffic from businesses located near the intersection. But, there is seldom foot traffic at or near the intersection during the day or at night. In fact, there is no sidewalk, no crosswalk nor any pedestrian warning signs near the intersection.

Under these specific circumstances, Mr. O’Boyle’s speed did not constitute the “recklessness” required for a Reckless Homicide prosecution. This is not a case where Mr. O’Boyle saw people walking across the highway, or where he reasonably should have expected

pedestrian traffic to be present. This is not a case where he was speeding through a busy residential area where pedestrians were likely to be present or in an area where pedestrians were known to cross. This is not a case of being unable to stop or maneuver around a pedestrian because Mr. O'Boyle was going too fast. This is a case where Mr. O'Boyle did not see the pedestrians who were wearing dark clothing and were walking on a rural highway where motorists would not reasonably be expecting to encounter pedestrian traffic.

A witness told police that both individuals were moving "somewhat slowly" as they crossed the roadway, and that she could tell they were not moving fast enough to avoid being hit. Moments before this accident, Mr. Flynn and Mr. Reed were involved in another incident which almost resulted in them being hit by a different motorist as they crossed near the same intersection in the east bound lanes of Route 13, walking north toward the Shell gas station. Both were wearing the same dark clothing. In that incident, another motorist failed to see them until the last minute and had to swerve her vehicle into the adjoining lane to avoid hitting both individuals who were crossing the road, without altering their pace, in her lane. In that case as well, the motorist's car was fully illuminated.

The circumstances suggest that they should have been aware of the risks, if for no other reason than their previous close call, that a motorist may not be able to see them. They should have been aware before stepping onto the highway that the traffic signal did not require oncoming traffic to stop. And, they should have been able to see the oncoming headlights. They should have known and appreciated the dangers that their pace, their dark clothing and the timing of their attempt to cross would entail. And, motorists traveling through such an intersection are not unreasonable in believing that pedestrians, who may have occasions to cross this type of highway at night, would take precautions to do so only when it was safe.

Finally, Mr. O'Boyle told the police officer that he was looking at his speedometer when the accident occurred. When driving at night, a driver's focus is necessarily narrowed to the road ahead so as to avoid being blinded by oncoming lights and distractions. This focus may often be interrupted for legitimate reasons, like checking the speedometer or the rearview mirror, and these interruptions, no matter how short, can result in not being able to observe objects, people or animals approaching until the last minute. Here, Mr. O'Boyle said he was looking at his speedometer when the accident occurred. Mr. O'Boyle's action of diverting his eyes to his speedometer, like looking at rear view mirrors and looking at traffic entering the roadway, is a necessary part of operating a motor vehicle. While these actions may divert a driver's attention from the road ahead, they do not constitute a gross deviation from how reasonable people operate their vehicles.

The dangers of crossing a highway like Route 13, at night, against a traffic light, beyond an intersection, while wearing dark clothing, in front of a fully illuminated oncoming car are obvious. Failure on the part of the pedestrians to look out, to take steps to be seen and to avoid being hit contributed significantly to this accident. Even if the evidence ultimately shows that Mr. O'Boyle was speeding, and there is a presumption that he is innocent until such time as a jury determines that issue beyond a reasonable doubt, the facts and circumstances here do not support that his speed was "reckless" as contemplated under the Reckless Homicide statute. Therefore, I am declining prosecution of this matter as a Reckless Homicide.

Aggravated Driving Under the Influence of Drugs where Death Results

Aggravated Driving Under the Influence (DUI) of drugs (where death results) is a Class 2 Felony. If convicted, the sentence could be from three (3) to fourteen (14) years in the Illinois Department of Corrections, and only in extraordinary circumstances would probation be

possible. In order to prove this Aggravated DUI, the State is required to prove beyond a reasonable doubt the following elements:

- 1) That the defendant drove a motor vehicle; and
- 2) That at the time the defendant drove, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and
- 3) That the defendant in so driving a vehicle was involved in an accident; and
- 4) That the motor vehicle accident in which the defendant was involved in resulted in death to another person; and
- 5) That the defendant's driving a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was the proximate cause of the death of another person.

On the night of the accident, Mr. O'Boyle indicated to the officers that he had been prescribed medications, but claimed that he had not taken them before driving. He consented to a blood test at the hospital immediately after the accident and the results of the test support his statement.

Hospital tests taken immediately following the accident indicate that Mr. O'Boyle did not have any drugs or alcohol in his blood. The tests indicate that he had some drugs (those listed above) in his urine. Under Illinois law, the prosecution for Aggravated DUI of Drugs can occur either by proving that the drugs impaired Mr. O'Boyle's performance or by showing that *unlawful* drugs, as defined by statute, were present in either the blood or urine of Mr. O'Boyle. Drugs taken in compliance with valid prescriptions are not deemed unlawful under this statute.

Police reports indicate that Mr. O'Boyle did not show any signs of impairment on the night of the accident. The officers indicated that Mr. O'Boyle did not have any smell of an alcoholic beverage, slurred speech, or bloodshot or watery eyes. The reports also do not indicate that Mr. O'Boyle was stumbling, walking erratically, or that he appeared impaired in any other way. Further, the test results from the crime lab confirm that Mr. O'Boyle was not impaired at the time of the accident.

In determining whether someone was impaired at the time of the offense, experts look for the presence of drugs or alcohol in the blood, not the urine. The reasoning for this is that if drugs or alcohol are present in the blood, the driver may have been impaired while driving. The presence of drugs or alcohol in the urine can establish that a person has used the drugs or alcohol, but it does not establish that a driver was impaired while driving. Regardless, the legislature has determined that unlawful drugs, those taken without a prescription, no matter when they were taken, are illegal and warrant prosecutions in driving cases which result in fatalities. In essence, this Illinois provision allows for the prosecution of unimpaired drivers, when any amount of drug, substance, or compound in the [driver's] breath, blood, or urine resulting from the *unlawful use or consumption* of...a controlled substance listed in the Illinois Controlled Substances Act would support a prosecution. Records obtained pursuant to a subpoena support Mr. O'Boyle's statement that his use of the substances found in his urine was lawful and that he had not used them before driving.

Speeding 15-20 m.p.h.

It should be noted that the posted speed limit just before and at the intersection of Route 13 and Reed Station Road is 45 m.p.h. The speed limit is increased to 55 m.p.h. just past the

intersection. Speeding 15-20 m.p.h over the speed limit is a petty offense. If convicted of this charge, the sentence could be a term of probation for six (6) months and a fine of up to \$1,000.

Mr. O'Boyle will be prosecuted for speeding which is the charge which applies for the alleged conduct. *The speeding charge is merely a charge. Under the law, the defendant is presumed innocent of that charge unless and until a jury finds him guilty beyond a reasonable doubt.*

Conclusion

There are some who would advocate that anyone speeding and involved in an accident is reckless. However, that is not the law. If it was, every speeder involved in a fatal accident would be subject to a Reckless Homicide charge. The criminal law punishes people for intentional and reckless conduct, not for unforeseen and unlikely circumstances which result in tragedy.

Unfortunately, the facts of this case do not explain why two young adults crossed a dangerous highway at night, wearing dark clothing, against the light, in the path of an oncoming, fully illuminated car and did not alter their pace to avoid being hit. The circumstances also show that Mr. O'Boyle was speeding, but his speeding did not, in this case, constitute the "recklessness" required for a Reckless Homicide charge.

This is a tragedy for the community and for those personally involved. All drivers on Route 13 would do well to consider what happened here. Intersections on Route 13 pose special risks, and experts with the Department of Transportation have determined that a reduced speed when approaching those intersections will best allow all of us to travel safely in these areas. When accidents like this occur, the results are tragic and leave families and communities with unanswered questions and unthinkable grief. We should all remember the tragic result of this case and reduce our speed in these areas.

I offer my thoughts and prayers for the families and friends of Gavin Flynn and Ryan Reed and for Mr. O'Boyle and his family.

MICHAEL C. CARR
Jackson County State's Attorney