

**LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET**

FELONY X MISDEMEANOR	AGENCY NAME LASD - TRAFFIC SERVICES AGENCY FILE NO. (DR OR URN) 013-07095-2248-470	DA CASE NO. 34210485 DA OFFICE CODE J.S.I.D. #14-0316R	DATE 08/26/2014
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SUSP NO.	SUSPECT				CHARGES			
					CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE) WOOD, ANDREW FRANCIS				PC	192(C)(2)	12/08/2013	B
	DOB 03/24/1976	SEX (MF) M	BOOKING NO.	VIP -- Yes X No				
	Gang Member Name of Gang				Victim Gang Member Name of Gang:			
	Victim Name: MILTON EVERETT OLIN JR.				Victim DOB: 02/23/1948			
2	NAME (LAST, FIRST MIDDLE)							
	DOB	SEX (MF)	BOOKING NO.	VIP -- Yes -- No				
	Gang Member Name of Gang				Victim Gang Member Name of Gang:			
	Victim Name:				Victim DOB:			
3	NAME (LAST, FIRST MIDDLE)							
	DOB	SEX (MF)	BOOKING NO.	VIP -- Yes -- No				
	Gang Member Name of Gang				Victim Gang Member Name of Gang:			
	Victim Name:				Victim DOB:			

Comments
SEE ATTACHED.

COMPLAINT DEPUTY (print) ROSA ALARCON/ap	COMPLAINT DEPUTY (SIGNATURE) 	STATE BAR NO. 198501	REVIEWING DEPUTY (SIGNATURE)
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I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.
 FILING OFFICER (PRINT): SERGEANT JOSPEH JAKL FILING OFFICER (SIGNATURE): mailed 8/27/14 SERIAL #: 265008

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715) A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral DISTRICT ATTORNEY'S REASON CODES M. Probation Violation filed in lieu of N. Referred to City Attorney for Misdemeanor Consideration
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LAST NAME: WOOD

 FIRST NAME: ANDREW

 DA CASE NUMBER: 34210485

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the allegation that Los Angeles County Sheriff's Department (LASD) Deputy Andrew Wood, Serial #444032, committed the crime of vehicular manslaughter in violation of Penal Code section 192(c)(2). For the reasons set forth below, this office declines to initiate criminal proceedings against Deputy Wood.

The following analysis is based on reports prepared by the LASD Traffic Services Detail, submitted to this office for filing consideration by Sergeant Joseph Jakl. Compelled statements were not considered as part of this analysis.

FACTUAL ANALYSIS

On December 8, 2013, at approximately 12:30 p.m., Deputy Andrew Wood responded to a call at Calabasas High School (CHS) involving a fire on the school grounds.¹ The fire department also responded at that time and quickly contained the fire. At 12:46 p.m., Wood announced via radio transmission that he was "Code 4," meaning the response was completed and no other units were needed. He remained at the location with the fire department until 1:03 p.m. when he drove off the school campus and began his route back to his patrol area in Agoura Hills via Mulholland Highway. He stopped at a red traffic signal before making a left hand turn onto Mulholland Highway.²

At 1:04 p.m., Wood was travelling eastbound on Mulholland Highway at approximately 45 miles per hour when he received an MDC inquiry from a patrol deputy assigned to the City of Calabasas, Unit 224T2.³ The message read, "U C4 Bro."⁴ Wood began to enter a response into his MDC and typed, "YES I," but did not complete the message.⁵ At that moment, the roadway curved slightly to the left but Wood continued straight along the same path.⁶ He travelled into the bicycle lane, which was south of his vehicle (to the right), and struck Milton Everett Olin Jr., who was riding eastbound on his bicycle in the bicycle lane.⁷ Olin was thrown from his bicycle and struck the windshield of the patrol

¹ LASD Lost Hills Station incident number LHS13342-0126 was dispatched at 12:28 p.m. by Mobile Digital Computer (MDC) and voiced over the radio by the Sheriff's Communication Center (SCC) as a priority call for service (fire investigation). Due to Calabasas units being tied up on other matters, the call was assigned to Agoura Hills Unit 222 (Deputy Wood).

² Mulholland Highway is an east/west roadway with two vehicular lanes of travel. It is separated by a raised curb center median and has designated bike lanes, as well as a paved shoulder area. The speed limit is 45 miles per hour.

³ Wood's patrol vehicle MDC is a laptop computer that is mounted on a stand in the center console area of the vehicle. The screen sits below the windshield against the dashboard.

⁴ Generally, Calabasas units would have assumed responsibility over the fire call once they had completed the incident that prevented them from originally responding to the call. Calabasas Unit 224T2 was inquiring whether Wood had completed the fire call. Unit 224T2 was investigating a theft at a grocery store and did not hear Wood's radio transmission at 12:46 p.m. indicating he was Code 4.

⁵ His response, "Yes, I," was followed by "[NOKKO]," a sequence of random letters and characters.

⁶ There are no signs or signals on the roadway indicating that a curve is ahead.

⁷ The road is straight prior to the point of impact. At the point of impact, there is a slight curve to the left. The eastbound bicycle path follows this curve in the roadway. The roadway then curves slightly to the right after the point of the collision.

vehicle before falling onto the roadway.⁸ Olin suffered fatal injuries as a result of this collision.⁹

Witnesses

Andrew McCown was the driver of a vehicle that was travelling eastbound on Mulholland Highway approximately 60 feet behind Wood's patrol vehicle when the collision occurred. He indicated that he did not see Olin until he "flew into the air" after being struck by the patrol vehicle. He did not see the patrol vehicle swerve or the brake lights activate until after the collision occurred. McCown is an emergency medical technician and stopped to render aid to Olin. Olin had no pulse and had a severe injury to his head.

Ashely McCown was the passenger in that vehicle. She stated that she noticed Olin in the bicycle lane prior to the collision.

Wood's Statements

Wood made a statement at the scene immediately following the collision. He was visibly upset and was observed walking in circles around the patrol vehicle. He stated that he did not see Olin in the bicycle lane prior to the collision. He said Olin swerved into his lane of travel from the bicycle lane. Wood swerved to the right to avoid hitting Olin. Olin swerved to the right and Wood struck him.

On December 16, 2013, Wood was interviewed by Sergeant Joseph Jakl and stated that he did not recall seeing Olin prior to the collision, nor did he recall what he was doing in the patrol vehicle just prior to the collision. He volunteered access to his personal cellular phone and stated that he sent a text message to his wife while stopped at the traffic signal at CHS, waiting to make a left turn onto Mulholland Highway.¹⁰

Wood also provided a written statement at that time in which he wrote:

"I was travelling eastbound on Mulholland Highway after leaving a 'fire' call at Calabasas High School. I was making my way back to my patrol area (Agoura Hills). It appeared the bicyclist entered my lane of travel from the bike lane, to my right. He appeared to have driven in the path of my patrol vehicle."

⁸ The force of Olin's body striking the windshield broke the plane of the windshield and jarred the MDC screen.

⁹ Olin was wearing a black and red bicycle helmet, black bicycle pants and a black jacket. He was wearing a lime green shirt under his jacket, which would not have been visible until after he slid on the roadway following the collision. He was riding a silver Cervelo Model R3 20 speed bicycle.

¹⁰ GPS records indicate that Wood was stopped at the red traffic signal at 1:04:02.

Cell Phone Records

Wood's cell phone records from Verizon Wireless indicate that the last call that was made prior to the collision was at 12:16 p.m.¹¹ The text message data indicates that between 12:51 and 1:01 p.m., Wood sent or received nine text messages to and from his wife's cell phone number. The last text message sent from Wood's cell phone prior to the collision was at 1:04 p.m. That text message was sent to Wood's wife's cell phone number as well. The next text message was an incoming text from the same number at 1:08 p.m., which was approximately three minutes after the collision.

Timeline of Events and Speed

The following timeline of the patrol vehicle's speed and the events surrounding the collision was established utilizing a combination of audio recordings of radio transmissions for the LASD Malibu/Lost Hills Station area, as well as MDC Global Positioning System (GPS) data for Wood's patrol unit:¹²

12:26 p.m.	Unit 222 (Wood) was dispatched to CHS.
12:46	Wood advised over dispatch "Code -4 re: 904I" (fire investigation).
12:42-1:03:22	Speed was 0 MPH (Wood was at CHS).
1:03:32-1:03:52	Speed was 3-13 MPH (Wood was leaving campus).
1:04:02	Speed was 0 MPH (Wood was stopped at red light).
1:04:12	Speed was 19 MPH, traveling east.
1:04:22	Speed was 41 MPH, traveling east.
1:04:33	Speed was 44 MPH, traveling east.
1:04:40	Unit 224T2 sent a message to Wood, "U C4 BRO." ¹³
1:04:43	Speed was 44 MPH, traveling northeast.
1:04:53	Speed was 40 MPH, traveling northeast.
1:05:03	Speed was 48 MPH, traveling northeast.
1:05	<i>Collision occurred.</i> ¹⁴
1:05:13	Speed was 8 MPH, traveling northeast.
1:05:23	Speed was 0 MPH.

¹¹ Verizon Wireless does not record seconds.

¹² The MDC GPS records data in 10 second intervals. Radio transmission recordings do not include seconds.

¹³ The MDC did not record the time of Wood's partial response since it was never sent. His response, "Yes, I," followed by "[NOKKO," remained on the MDC screen after the collision.

¹⁴ The time of collision was determined based on the change in the vehicle's speed from 48 MPH to 8 MPH and the subsequent radio transmissions that Wood sent at 1:05p.m. Since the GPS records in 10 second intervals, the time of collision was determined to be somewhere between 1:05:03 and 1:05:13. The exact second and speed at the moment of impact is unknown. The vehicle's event data recorder, which would have recorded the exact time and speed at the time of collision, did not activate due to the fact that the airbags did not deploy and the change in velocity did not meet the minimum threshold for automatic activation of the system.

1:05 "10-33" announced by Wood over dispatch radio.¹⁵
1:05 Wood requested paramedics and advised over dispatch, "I struck a motorcyclist near Calabasas High School. Glass in my eyes."¹⁶

LEGAL ANALYSIS

Elements of Vehicular Manslaughter

To prove the crime of vehicular manslaughter with ordinary negligence, California Criminal Jury Instruction (CALCRIM) No. 593 requires the People to establish that:

1. Deputy Wood drove a vehicle;
2. While driving that vehicle, Deputy Wood committed an infraction or an otherwise lawful act that might cause death; and
3. Deputy Wood committed the infraction or otherwise lawful act that might cause death with ordinary negligence.

CALCRIM No. 593 defines ordinary negligence as the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else. It further provides that "a person is negligent if he does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation."

Vehicle Code section 21658(a) provides that "a vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until such movement can be made with reasonable safety."

Vehicle Code section 22107 provides that "no person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal...in the event any other vehicle may be affected by the movement."

Vehicle Code Section 23123.5, California's anti-texting law, provides in part as follows:

- (a) A person shall not drive a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication.¹⁷
- (b) As used in this section "write, send, or read a text-based communication" means using an electronic wireless communications device to manually communicate with any person using a text-based communication, including, but

¹⁵ 10-33 is a request for emergency clearance of radio traffic so that an urgent announcement may be made.

¹⁶ Wood later clarified that he struck a bicyclist.

¹⁷ The LASD MDC is an "electronic wireless communications device" within the meaning of VC23123.5. It is a laptop computer that can access Departmental information technology resources from the field via wireless cellular broadband and Wi-Fi networks.

not limited to, communications referred to as a text message, instant message, or electronic mail.

(e) This section does not apply to an emergency services professional using an electronic wireless communications device while operating an authorized emergency vehicle, as defined in Section 165, in the course and scope of his or her duties.¹⁸

The evidence examined in this investigation shows that this tragic collision occurred as a result of Deputy Wood crossing into the bicycle lane in violation of Vehicle Code sections 21658(a) and 22107. However, to establish the crime of vehicular manslaughter, the People would be required to prove that Wood's encroachment into the bicycle lane, under the circumstances, was negligent.

Wood entered the bicycle lane as a result of inattention caused by typing into his MDC. He was responding to a deputy who was inquiring whether the fire investigation had been completed. Since Wood was acting within the course and scope of his duties when he began to type his response, under Vehicle Code section 23123.5, he acted lawfully. Although the MDC inquiry and response were not of an emergent nature, the law does not limit officers from using an electronic wireless communications device in the performance of their duties to situations involving emergencies. Moreover, it is reasonable that Wood would have felt that an immediate response was necessary in order to prevent the Calabasas deputy from responding unnecessarily to CHS.

In addition, while the GPS records show that Wood was travelling three MPH over the speed limit prior to the collision, it is unknown what his exact speed was at the time of impact. Moreover, there is no evidence that he was engaged in any other activities, such as using his personal cell phone, at the time of the collision. On the contrary, the evidence indicates that prior to the collision, Wood's personal cell phone was only in use while his patrol vehicle was not in motion. His statement indicating that he sent his last text message while stopped at the red traffic signal waiting to make a left turn onto Mulholland Highway, which was more than one minute prior to the collision, is consistent with the GPS and cell phone records. Wood's entry of "Yes I..." followed by "[\NOKKO" is also consistent with him utilizing his MDC at the time of the collision as opposed to texting or calling on his personal cell phone.

Furthermore, the fact that Wood did not apply his brakes or swerve to avoid the collision indicates that he did not see or notice Olin until the moment of impact. It is significant to note that the driver in the vehicle directly behind Wood's patrol vehicle, Andrew McCown, also failed to see Olin in the bicycle lane prior to the collision. Wood briefly took his eyes away from the road precisely when the narrow roadway curved slightly to the left without prior warning, causing him to inadvertently travel straight into the bike lane, immediately striking Olin.

¹⁸ Vehicle Section 165 states that an authorized emergency vehicle is any publicly owned vehicle operated by any state or local agency, department or district employing peace officers, for use by those officers in the performance of their duties.

Unlike a civil case where the standard of proof is “by a preponderance of the evidence,” the People would be required to prove Wood was criminally negligent beyond a reasonable doubt. Based on all of these circumstances, the People cannot prove beyond a reasonable doubt that Wood’s momentary distraction in the performance of his duties constituted a failure to use reasonable care to prevent reasonably foreseeable harm as required under the statute.

CONCLUSION

For the reasons stated above, we find insufficient evidence to prove that Deputy Andrew Wood committed the crime of vehicular manslaughter. As such, we decline to initiate criminal proceedings against him. We are closing our file and will take no further action in this matter.