

Prosecution of Crimes Involving Cyclist Victims

Marie McLaughlin

Assistant Deputy In Charge

San Mateo County Deputy District Attorney's Office

Types of Law

1. Civil

2. Criminal

- Police Officers
- District Attorneys
- Defense attorneys
- Judges
- Juries

Roles in the Criminal Justice System

1. Police Officers collect evidence
2. District Attorneys prosecute cases
3. Defense Attorneys ensure rights protected
4. Judges make evidentiary rulings & determine punishment
5. Juries apply facts to the law to reach verdict

Life of a Criminal Case

1. Crime occurs
2. Police respond
 - Investigation to Determine:
 - Did a crime occur?
 - What is the crime?
 - Who committed the crime?
 - Methods of Investigation:
 - Interview witnesses
 - Examine evidence
 - Collect physical evidence
 - At end of Investigation:
 - Write a report
 - Sergeant signs off
 - Report sent to District attorney

District Attorney's Office

- Review the Case
- File Charges
- Prosecute in Court

***Police Agencies Do **NOT** Work for
the DA's Office***

District Attorney's Office

- Standard of Review:
 - Look at **ALL** evidence
 - Has a crime been committed?
 - Possible Defenses?
 - Can we meet our burden of proof?

District Attorney's Office

Burden or Proof =
Beyond a Reasonable Doubt

Beyond Reasonable Doubt Is **NOT** Beyond:

- All doubt
- Any possible doubt
- Imaginary doubt
- All Conflicts/Inconsistencies in the evidence
- All questions

District Attorney's Office

DA alone has the Burden of Proving

- Defendant is presumed innocent
 - » Defendant does not have to prove anything!
- All jurors must agree
- Highest burden of proof
- Ethical Obligation

District Attorney's Office

Question is not just:

“Did he/she do it?”

Question is:

“Do we have enough evidence to prove it beyond a reasonable doubt at trial to 12 jurors unanimously?”

District Attorney's Office

This Process Takes Time!!

- Hundreds of cases
- Media Evidence
 - Hours of Bodycam footage
 - Video Surveillance
- Follow-up Requests
- Roundtable discussions

The Charges

Possible Charges:

1. **Vehicle Code 21760(a): Three Feet for Safety**
2. Vehicle Code 23103: Reckless Driving
3. Penal Code 245(a)(1): Assault with a Deadly Weapon

VC 23103: Reckless Driving

1. The defendant drove a vehicle on a highway
2. The defendant intentionally drove with wanton disregard for the safety of persons or property

VC 23103: Reckless Driving

Wanton Disregard:

- Driver is aware that his/her actions present a substantial and unjustifiable risk of harm

AND

- Driver intentionally ignores that risk

PC 245(a)(1): Assault with a Deadly Weapon

1. The driver did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;
2. The driver did that act willfully;
3. When the driver acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone; AND
4. When the driver acted, he had the present ability to apply force with a deadly weapon

PC 245(a)(1): Assault with a Deadly Weapon

1. The driver did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;
2. The driver did that act willfully;
3. When the driver acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone; AND
4. When the driver acted, he had the present ability to apply force with a deadly weapon

PC 245(a)(1): Assault with a Deadly Weapon

1. The driver did **an act** with a deadly weapon that by its nature would directly and probably result in the **application of force** to a person;
2. The driver did **that act** willfully;
3. When the driver acted, he/she was aware of facts that would lead a reasonable person to realize **that the act** by its nature would directly and probably result in the **application of force** to someone; AND
4. When the driver acted, he/she had the present ability to **apply force** with a deadly weapon

PC 245(a)(1): Assault with a Deadly Weapon

- ❖ Act = Driving in a manner which would apply force
- ❖ Application of Force
 - Touch in a Harmful / Offensive Manner
- ❖ No Touching or Injury Required
 - *IF* there is touching ...
 - Slightest touch is enough
 - Can be indirect with an object
 - Any injuries can be considered

PC 245(a)(1): Assault with a Deadly Weapon

1. The driver did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;

2. The driver did that act willfully;

3. When the driver acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone; AND

4. When the driver acted, he had the present ability to apply force with a deadly weapon

PC 245(a)(1): Assault with a Deadly Weapon

❖ Willfully

- Willingly or On Purpose

Not required that driver intend to harm cyclist BUT driver must have done act likely to apply force on purpose AND understood the nature of the act

PC 245(a)(1): Assault with a Deadly Weapon

Examples:

1. Fire a gun towards a person, above their head
 - Dangerous Weapon
 - Act likely to result in harmful/offensive touching
 - Reasonable person with same facts would know this
 - Fired the gun on purpose, even if didn't intend to hit person

PC 245(a)(1): Assault with a Deadly Weapon

Examples:

2. Swing a baseball bat while unaware person behind me
 - Dangerous Weapon
 - Act likely to result in harmful/offensive touching
 - Reasonable person would NOT know this
 - I did not willfully act to apply force to person behind me

EVIDENCE

Types of Evidence

- Physical Evidence
- Witness Statements
- Photos
- Video Recordings/Surveillance
- Business Records
- Phones: texts, social media, emails

Rules of Evidence

- Not all evidence is admissible in court
 - Must be relevant
 - Must be authenticated
 - Chain of custody must be provable
 - Collection must not violate constitutional rights

Rules of Evidence

- Constitutional Rights
 - Evidence collected in violation of constitutional rights is **NOT** admissible
 - Prosecutor **MUST** provide evidence to defense
 - Nothing is “between you and me!”

TESTIFYING

Testifying

- 6th Amendment Right to Confront Witnesses
 - You will be asked to testify at a jury trial

Testifying – How Do You Know?

- Receive a subpoena
 - Date
 - Time
 - Location
 - Contact Information

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,
vs.
RIGOBERTO CASTRO,
Defendant(s).

No. 17-NT-002305-1
SUBPOENA - CRIMINAL
FOR (Jury Trial)
PD NO. SS172289

The People of the State of California send Greetings to:

Officer [REDACTED]
Broadmoor Police Department
388 88Th Avenue
Daly City, CA 94014

Comment: Please contact the undersigned upon receipt of subpoena. Do not park at 2-hour parking Meters. 10 hour parking meters available on Bradford Street, 2 blocks south of Middlefield Road. Any citations issued will be your responsibility.

YOU ARE COMMANDED to appear in the above-named SUPERIOR COURT at 400 COUNTY CENTER, REDWOOD CITY, CALIFORNIA, on November 15, 2018, at 8:30 AM as a witness in the above criminal action, and

REQUESTED to appear at the San Mateo County District Attorney's Office, at 400 County Center, 5 Floor, Redwood City, California, 45 minutes before the above scheduled appearance.

PLEASE BRING THIS SUBPOENA WITH YOU.

GIVEN under my hand this August 14, 2018
STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY

Marie C. McLaughlin
By _____
Marie C. McLaughlin, Deputy District Attorney

MCM/mcm

NOTE: For information relating to your appearance as a witness, please contact Deputy Marie C. McLaughlin of the San Mateo County District Attorney's office. Telephone: (650) 363-4096 Email: MCMcLaughlin@smcgov.org

Marie McLaughlin

650-363-4078

mmclaughlin@smcgov.org