



Office of the Chief of Police
Official Memorandum

DATE: December 12, 2007

TO: Gary O'Connell
City Manager

FROM: Chief Timothy John Longo, Sr.

SUBJECT: Pedestrian Accident- C2007-08028

Per our discussion, I thought it would be helpful to provide council with a brief set of facts regarding a pedestrian who was struck by an on duty Albemarle police officer's vehicle on November 5, 2007, in the 300 block of West Main Street.

The following information was developed during the course of our investigation into this incident. Albemarle County Police Officer Gregory Davis was operating a marked police vehicle which was stopped at the light at 4th Street, NW and West Main Street. The police vehicle was facing southbound on 4th Street, NW. When the signal changed, Officer Davis looked to his right to ensure that eastbound traffic was not entering into the intersection. As the police vehicle proceeded into the intersection making a eastwardly turn into the cross walk area, a pedestrian operated wheelchair entered into the in-car video camera's field of vision from the left and passed directly in front of the police vehicle. Officer Davis immediately applied his brakes, and the front bumper of the police vehicle struck the rear of the wheel chair causing the chair to roll forward several feet before it's occupant, Jerry Mitchell, left the chair and fell to the pavement. Officer Davis and an unidentified citizen assisted Mr. Mitchell back into his chair and rolled him out of the intersection. The police vehicle pulled out of the roadway and it is at that time that I believe the ECC was notified for a police and EMT response.

Medics responded to the scene and Mr. Mitchell was transported immediately to UVA Medical Center. After clearing the accident scene, Officer Grissom responded to UVA ER and awaited the arrival of a county police supervisor in order to gain access to the car's in-car video system. Upon Officer Grissom's review of the tape, he noted that as the police vehicle entered the intersection against the green traffic light, the pedestrian traffic

control device that governed Mr. Mitchell's cross-walk showed a "red hand", which is a universal signal for "Don't Walk".

Officer Grissom also discerned that the sudden nature of the pedestrian coming into the officer's field of vision, prevented him from taking any steps (other than to immediately brake) to avoid striking the pedestrian. It is the combination of these factors that caused Officer Grissom to conclude that Mr. Mitchell did not have the right of way and thus the citation was issued.

There were no witnesses that approached Officer Grissom either at the scene or in the hospital. Further, there was no known indication that Officer Davis was distracted in any way. I specifically asked whether the officer was either on his cell phone or on his computer; both questions were answered with a negative response.

Since then, County Police have provided us with the name of a possible witness that had provided some information to the press. That information has been provided to Sergeant Durette for follow-up.

Sergeant Tito Durette and Officer Steve Grissom have since met with Commonwealth's Attorney Dave Chapman and have asked him to review the charges that have been placed against Mitchell as well as the appropriateness of charges against Officer Davis.

There are two primary statutes that could apply under these circumstances. The first imposes a dual responsibility to both motorists and pedestrians in yielding the right of way when circumstances require. In one instance, the pedestrian is required not to place him or herself into the path of on-coming traffic, and in the other the driver is required to take evasive steps to avoid striking the pedestrian. While one could certainly interpret the facts differently in any one circumstance, the investigating officer in this case concluded that the sudden nature of the event precluded this driver from taking any steps other than to brake. Had the pedestrian obeyed the pedestrian control device and not come into the path of the vehicle, the collision would likely not have occurred.

What makes this case even more of an anomaly is the fact that the code provision cited prompted a question of first impression. The provision cited specifically uses the words "Walk" and "Don't Walk". However, this particular traffic control device governing Mr. Mitchell's movement uses the universal symbols of a "red hand" and "green walking figure". It is the Commonwealth's opinion that rules of statutory construction precludes this code provision from being charged unless the pedestrian device specifically uses those words, as opposed to the universal symbols.

It is Mr. Chapman's opinion that this matter is likely to be resolved in the context of a civil proceeding, as opposed to a criminal prosecution for a violation of the traffic code.

Late last Friday afternoon, another wheelchair bound pedestrian crossed into the path of a dump truck near UVA medical center. The pedestrian came into the path of the truck, which had the right way, having made no effort to activate the pedestrian control device.

When asked why she did not use the pedestrian control device and wait for a clear indication to walk, she responded that she never used the device, has trouble seeing, and typically uses her hearing to discern whether or not it is safe to cross. This case was investigated by the traffic supervisor. His evaluation of the case attributed fault to the pedestrian.

Since then, Sergeant Durette has contacted the Independence Resource Center and has initiated a discussion regarding a safety program to address these issues.

Recently, council has heard citizen questions and comments regarding citizen participation in the police department's complaint process. Immediately following comments made by Downing Smith before council in early November, I asked the City Attorney's office to look into any provision within the Virginia Code that would impact implementation of such a process. I have since met with Deputy City Attorney, Richard Harris, and discussed his efforts thus far. We are actively researching both the law and best practices.

At the appropriate time, Mr. Harris and I will get back to council with the results of our research and our recommendation.