

BENTON COUNTY PROSECUTOR'S OFFICE
SCREENING DECISION



On Cases That Are Elect Not To File

DATE: February 28, 2013

TO: L. COOPER/Kennewick Police Department
CC: EVIDENCE OFFICER: Kennewick Police Department

RE: ELMER LEROY SIMMONS
DOB: 02/16/1928
Your No.: 12-38972

[√] **NO CRIMINAL CHARGES HAVE BEEN FILED BECAUSE:** Kennewick Police Department Officer Lee Cooper concluded that Mr. Simmons was not driving under the influence, was not driving in a reckless manner, and was not driving with disregard for the safety of others. He concluded that this case does not arise to a charge of Vehicular Homicide. I agree with Officer Cooper's conclusions and recommendations concerning this case.

In order to prove the charge of Vehicular Homicide, the State would have to prove beyond a reasonable doubt that Elmer Simmons was driving (a) while under the influence of or affected by intoxicating liquor, (b) in a reckless manner, or (c) with disregard for the safety of others, and that his driving proximately caused the death of David Ratliff.

In this case, Elmer Simmons was driving on Clearwater near the intersection with Union Street. A bus was several vehicles in front of Mr. Simmons. Witnesses described Mr. Simmons moving from the right to the left lanes to go around the bus and the cars slowing behind it, and collided with a vehicle being driven by Jose Hernandez-Salazar in the left lane. Mr. Simmons swerved back to the left, accelerated over the curb and drove into the parking lot adjacent to the northwest corner of the intersection. While driving through the parking lot, Mr. Simmons struck David Ratliff, who was walking through the parking lot. Mr. Ratliff was killed as a result of this collision. Mr. Simmons' truck swerved back onto Clearwater, crossed through several lanes of travel, then again swerved back north and over the curb again. After leaving the roadway a second time, the passenger side rear wheel of Mr. Simmons' truck was sheared off, and his truck then came to a stop.

Mr. Simmons was contacted by police officers during the investigation of the collision. He stated that the accelerator on his truck had stuck, and he had been unable to control it. KPD Cpl Newton and Ofc Bennett interviewed the defendant, and did not find any indication of impairment by alcohol or drugs. Mr. Simmons provided a voluntary blood sample which was negative for the presence of alcohol and drugs. KPD Ofc Lee Cooper found no mechanical defects with Mr. Simmons' truck. Ofc Cooper concluded that Mr. Simmons inadvertently pushed the gas pedal instead of the brake.

AKM _____

After reviewing the evidence and police reports, I agree that there is not sufficient evidence to prove beyond a reasonable doubt that Mr. Simmons committed the crime of Vehicular Homicide. The victim's wife, Connie Ratliff, also stated that she did not wish for felony criminal charges to be filed against Mr. Simmons. For these reasons, I will not file felony charges in this case. The case may be reviewed by the City of Kennewick Attorney's Office to determine the appropriateness of any misdemeanor charges or infractions for this case.

If there is evidence in this ENTF case, it may may **NOT** be released pending a decision by the City of Kennewick Attorney.

OTHER/COMMENTS:

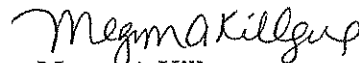
VICTIM: David Ratliff, DOB 8/19/52

V/W – *Please prepare letter for victim.*

Copies sent to:

CPS

Evidence Officer, Kennewick Police Department



Megan A Killgore

(Deputy) Prosecuting Attorney

Main: (509) 735-3591 ■ Fax: (509) 736-3066

IBR CLEARANCE

()ARR/A ()EXC/A

()ARR/I ()EXC/I ()UNF

ADMIN CLEARANCE

() WARRANT

() SUSPENDED

AKM

AN