A Path To Justice

Posted At : January 14, 2010 7:34 AM | Posted By : Rick Bernardi
Related Categories: Cyclist fatalities

Rory Tomasello was, by all accounts, a talented, "intensely bright" and creative young man. An aspiring actor and playwright, Tomasello was studying philosophy at De Anza College in Cupertino while he tried to figure out what to do with his life; he had already outgrown the small town confines of Morgan Hill, California, and was considering moving north to San Francisco to finish college.

On October 23, Tomasello's bright future came to a sudden end in a Morgan Hill crosswalk. Tomasello was on his bike, riding north along the West Little Llagas Creek Trail, a walking and biking trail that was dedicated on June 9. At West Edmundson Ave., a 4 lane street divided by a median strip, the trail continues north through a mid-block crosswalk, which connects to the trail on the north side of West Edmundson. Entering the crosswalk, Tomasello rode to the median strip, where he waited for traffic to pass. A driver stopped for him at the crosswalk, and he proceeded to cross. As he was crossing the final lane, a driver approaching in that lane did not stop, and he collided with the left front of her Cadillac SUV.

Tomasello survived the collision, but sustained a serious head injury, and by the time police and EMT's arrived on the scene, he was disoriented. After he was placed in the ambulance, Tomasello lost consciousness. Although he opened his eyes a few times in the ambulance, he never regained consciousness. His skull had been fractured in the collision, and his brain had swelled. Three days later, Tomasello was declared brain dead. He was 22 years old.

In the aftermath of Tomasello's death, confusion reigned, as police attempted to sort out the legalities to determine who might be at fault. After noting that police were still investigating the collision, Police Chief Bruce Cumming cryptically remarked that nobody had been cited at the scene "for both ethical and common sense reasons."

Did he mean that it would be unethical, and in violation of "common sense," to ticket the driver? Or did he mean that it would be unethical to ticket the cyclist? Or, perhaps, did he mean that it would be unethical, and in violation of "common sense" to ticket anybody before an ongoing investigation was complete?

The only thing that was certain was that his meaning was opaque. What was uncertain was who, if anybody, had violated the law. Was Tomasello at fault? Was the driver at fault? Or were they both at fault?

The legal issues revolved around whether Tomasello was legally riding within the crosswalk, and incredibly, whether the driver was legally obligated to

stop for Tomasello. In California, cyclists may legally ride on sidewalks and within crosswalks; while doing so, cyclists have the same rights and duties as pedestrians (but cyclists must yield the right of way to pedestrians). However, California authorizes municipalities to prohibit cyclists from riding on the sidewalk and/or within the crosswalk. Where laws prohibiting cyclists from riding on sidewalks and in crosswalks are in effect, cyclists must dismount and walk their bikes while on the sidewalk or in the crosswalk.

In Morgan Hill, riding within a crosswalk is generally prohibited by the Municipal Code; however, there are two exceptions to this proscription. First, if a cyclist is under the age of thirteen, the cyclist may legally ride within a crosswalk. And second, if the City Traffic Engineer has designated the crosswalk as a "bicycle path," cyclists may ride within the crosswalk.

These exceptions create odd discrepancies within the law. If a cyclist is under the age of 13 and riding within the crosswalk, the cyclist enjoys the full legal protection afforded to pedestrians. Drivers approaching a crosswalk in which an under-thirteen cyclist is riding are directed by law to stop and yield the right of way to the cyclist. However, there is no such direction to drivers regarding over-thirteen cyclists.

To compound problems for the cyclist who chooses to ride across, because the crosswalk is not an intersecting roadway, the cyclist does not enjoy the right of way that would be afforded to a vehicle operator crossing an intersection. Therefore, the over-thirteen cyclist who chooses to ride through a crosswalk where prohibited enjoys neither the legal protections of a pedestrian nor the legal protections of a vehicle operator.

The Municipal Code also distinguishes between over-thirteen cyclists who are riding within a crosswalk that is declared a "bicycle path" by the City Traffic Engineer (they enjoy the protected legal status of pedestrians) and over-thirteen cyclists who are riding within other crosswalks (they do not enjoy the protected legal status of pedestrians).

One might ask how drivers can be expected to make all of these fine distinctions regarding when they're required to stop. In fact, they can't make such fine distinctions, and, as we'll see, they're required to stop regardless of the cyclist's age or legal status. What the Morgan Hill law actually does is shift at least some of the fault for any crosswalk collisions onto the over-thirteen cyclist who is riding within a crosswalk that is not a declared "bicycle path."

Although the crosswalk that Rory Tomasello was riding in is apparently not a declared "bicycle path," it is an extension of the trail across the roadway, connecting the portion of the trail south of the roadway with the portion of the trail north of the roadway. Without the crosswalk, the trail would be two unconnected trails. And in fact, cyclists traveling south are notified by a sign to dismount and walk across the crosswalk. However, there is no corresponding sign notifying cyclists who are traveling north—the direction Rory Tomasello was traveling—to dismount. This fact creates an interesting, and probably uncomfortable legal situation for the City of Morgan Hill. The city created the trail in partnership with the Santa Clara Valley Water District, the Santa Clara Valley Transportation District, CalTrans, and the Bay Area Air

Quality Management District. Although the trail is located on Water District property, the trail is the product of a joint use agreement between the city and the Water District. Although the City apparently chose not to declare the crosswalk connecting two trail sections a "bicycle path," the city neglected to inform northbound cyclists that they were required by law to dismount as they crossed the roadway. Accordingly, both the Water District and the city may face some potential liability for negligence—and in part because the trail is both a recreational trail and an "alternative transportation corridor," California's tort liability immunity laws may not protect these public entities from liability for negligence.

Now, there's one more party in this tragedy. As I noted earlier, California law requires drivers to stop at crosswalks for pedestrians—and because Rory Tomasello was riding across the crosswalk, he did not enjoy the legal status of a pedestrian. So, does this mean that the driver can escape liability for the collision?

No. If Rory Tomasello was riding in the crosswalk in violation of the Municipal Code, the driver might be able to escape a citation for violating Section 21950 of the California Vehicle Code, which requires drivers to yield the right of way to pedestrians in a crosswalk. However, under California common law, the driver is still required to keep a proper lookout, and to exercise due care. Had the driver been meeting those duties, Rory Tomasello would still be alive today. Thus, although the driver might escape a citation through a loophole in the law, she may find it considerably more difficult to escape civil liability for her negligence in meeting her duty to Rory Tomasello.

But justice for Rory Tomasello doesn't end there. On December 28, a warrant was issued for the driver's arrest, and Sandra Arlia turned herself in to San Jose police. She has been charged with vehicular manslaughter without gross negligence, a misdemeanor with a maximum sentence of a year in jail. Arlia is scheduled to be arraigned on January 19.

As we've documented many times over the years, all too often cyclists receive no justice when they are injured or killed. Speaking to this point after reading about the failure of justice in the case of Autumn Grohowski, a prosecutor in Texas wrote:

> *I promise you all that the assistant DA in Autumn's case delayed 6 weeks in filing the charges because he was trying to find a way to make the intoxicated manslaughter charge stick. If he is anything like the prosecutors here in Texas, telling Autumn's family that it wasn't going to work was one of the hardest things he had ever done.*

It's clear that in this case, at least, the Morgan Hill Police Department and the District Attorney's office have done their best to achieve justice for Rory Tomasello, and for that, they deserve the gratitude of Rory Tomasello's family and friends, and of cyclists everywhere.