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Oct. 19, 2009

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Statement about the Sergio Gonzalez Case

The Harris County District Attorney's Office strives to do the right thing. This is not always easy, politic or popular.

With respect to the case of Sergio Gonzalez, we dismissed the criminally negligent homicide charge against him last week.

After the plea was entered, senior prosecutors raised questions about the outcome of the case and the evidence supporting the plea. A thorough review of the file revealed there is evidence that Mr. Gonzalez was speeding and that the driver of the other vehicle, Leon Roberson, failed to yield the right of way at a stop sign.

The District Attorney's Office is mandated to apply the law as the legislature intended. To do that, we must consider the definitions in the Penal Code as written. The civil standard of negligence applies when a person fails to exercise ordinary care. Most traffic accidents occur because a driver fails to exercise ordinary care.

For conduct to be considered criminal, it must be so egregious that it is a gross deviation from the standard of care an ordinary person would use. Each case must be examined on its own facts. If an accident is the result of someone's failure to exercise ordinary care, the victims or their relatives can seek a remedy in civil court. If the accident occurs because a person's conduct exceeds that civil definition, the driver will be charged with a criminal offense.

This office has concluded that Mr. Gonzalez's actions did not rise to the level of a criminal offense.

The Gonzalez case is not the only case undergoing such a review. A small number of cases, including some involving auto fatalities, are being analyzed. As for similar future investigations, experienced prosecutors will review requests to file charges in such cases.

The prosecutors in the District Attorney's Office are very conscientious about their oaths to see that justice is done. The duty created by that oath does not cease when a plea is taken. We are deeply saddened by the loss of Mr. and Mrs. Roberson.

No one should interpret the outcome of this case as a softening of this office's commitment to seek punishment of those who commit crimes and leave victims in their wakes. Seeking to address wrongs perpetrated on victims and punish lawbreakers remains this office's highest priority.

In the attachment, you will find descriptions of the different standards for negligence that are used in criminal and civil cases in Texas.

(end)

"Civil Negligence" Defined – must be proven by preponderance of evidence in civil cases

"As we have long held, "the term 'negligence' means the doing of that which a **person of ordinary prudence would not have done** under the same or similar circumstances, or the failure to do that which a person of ordinary prudence would have done under the same or similar circumstances."

20801, Inc. v. Parker, 249 S.W.3d 392, 398 (Texas Supreme Court, March 28, 2008) (citing *Great Atl. & Pac. Tea Co. v. Evans*, 142 Tex. 1, 175 S.W.2d 249, 250-51 (1943)).

"Criminal Negligence" Defined – must be proven beyond a reasonable doubt in criminal cases

"A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a **substantial and unjustifiable risk** that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a **gross deviation from the standard of care that an ordinary person would exercise** under all the circumstances as viewed from the actor's standpoint."

TEXAS PENAL CODE § 6.03(d).