MEMO

To: Mr. Plaintiff Attorney, Esq.

From: Yolanda Evans, Paralegal

Subject: Personal Injury
Plaintiff v. Defendant

Date: February 7, 2017

QUESTIONS PRESENTED:

ISSUES:

I. Pursuant to California Vehicle Code § 21950 was Mr. Defendant negligent when he failed to stop at the pedestrian crosswalk on date of accident?

Possibly: California Vehicle Code § 21950 very clearly states that: (a) The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.

(c) The driver of a vehicle approaching a pedestrian within any marked or unmarked crosswalk shall exercise all due care and shall reduce the speed of the vehicle or take any other action relating to the operation of the vehicle as necessary to safeguard the safety of the pedestrian.

(d) Subdivision (b) does not relieve a driver of a vehicle from the duty of exercising due care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.

II. Based on the statement given by Officer during his deposition, was Ms. Plaintiff contributory negligent pursuant to California Vehicle California Code § 21955 and therefore held partially liable for her injuries?

Possibly not: California Vehicle California Code § 21955 explicitly states that "Between adjacent intersections controlled by traffic control signal devices or by police officers, pedestrians shall not cross the roadway at any place except in a crosswalk." Based on Officer 's statement, such violator would be cited for violating the code. Ms. Plaintiff was not cited for this violation on the day of the accident.

RULINGS:

Spillers v. Silver (1945) 69 Cal. App. 2d 231 [158 P.2d 617],

> the plaintiff pedestrian was traversing a street within a marked crosswalk when she was struck and injured by the defendant's car as the latter made a left turn from behind her; she testified she looked straight ahead as she crossed, and the court assumed she did not look to either side or behind her. Affirming a judgment for the plaintiff, the court rejected a contention that the plaintiff's failure to look in the direction from which the defendant's **[1 Cal. 3d 465]** car was approaching rendered her guilty of contributory negligence. [3] In language particularly appropriate here, the court observed it was a matter of common experience that "a pedestrian, in crossing the street at an intersection, must of necessity, in order to proceed safely, give more attention to traffic which is in his path or approaching him from the right or the left than to that which may be approaching diagonally from the rear. It is the duty of motorists who are making turns at intersections to have this fact in mind and when they approach pedestrians diagonally from the rear, to assume a large measure of responsibility to avoid striking them." (Id at p. 235.)

Schmitt v. Henderson, 462 P.2d 30 (Cal. 1969)

> "While the point of impact was variously estimated to be between 6 and 22 feet from the northwest curb, it was undisputed that plaintiff was within the lines of the pedestrian crosswalk when he was struck.
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> The case is controlled by *Gray* v. *Brinkerhoff* (1953) 41 Cal. 2d 180 [258 P.2d 834], and *Novak* v. *Dewar* (1961) 55 Cal. 2d 749 [13 Cal. Rptr. 101, 361 P.2d 709]. In each of those cases, as here, the plaintiff pedestrian attempted to cross a street at an intersection, within a marked crosswalk and with the green light in her favor; the defendant driver struck the plaintiff with his car as he made a left turn across her path; and the defendant testified he did not see the plaintiff until the moment of, or immediately before, impact. In each the jury returned a verdict for the defendant, but we reversed the ensuing judgment. We recognized that negligence and contributory

> negligence ordinarily present questions of mixed fact and law "and may be determined as a matter of law only if reasonable men following the law can draw but one conclusion from the evidence presented" (*Gray,* at p. 183 of 41 Cal.2d; *Novak,* at p. 752 of 55 Cal.2d); on the record before us, we concluded in each case that as a matter of law the defendant was guilty of negligence and the evidence was insufficient to support a finding that plaintiff was contributorily negligent.

ANALYSIS:

I. Mr. Defendant's deposition:

Mr. Defendant may be experiencing early Alzheimer's which could be affecting his ability to remember the details of the accident. He admits to hitting Ms. Plaintiff with his vehicle, but doesn't recall whether the impact occurred outside or inside the crosswalk. He also admitted that he didn't see Ms. Plaintiff before the impact occurred.

(page 35, lines10-17)
"Did you see her running in the street running across the street?"
"No, she was not running across the street. When I came up there, that's when it happened, caught right up in there."
"Did you see her walking across the street before your car hit her?".
"No, I don't think she was."

Mr. Defendant stated that he is taking medication at least twice a day, but didn't state what for. Additionally, since the time of the accident in 2014, at some point thereafter he discontinued driving his vehicle.

II. Officer 's deposition:

Officer statements were inclusive to assume contributory negligence by the Plaintiff. For example, when asked *"When you spoke to Ms. Plaintiff, where did you speak to her? Where was she at the time that you spoke to her?"* (page 21 lines 13-14) Officer *responded "I didn't notate that."* (page 21, line 19).

Officer remembered taking a statement from Ms. Plaintiff, but didn't notate where the statement was taken. His failure to adequately note whether Ms. Plaintiff was still lying in the street outside the crosswalk as he alleges or within the crosswalk as Ms. Plaintiff states are very key facts in this matter.

Finally, Officer did not issue Ms. Plaintiff a citation pursuant to Vehicle Code § 21955 as he stated in his deposition that would've occurred in the situation of a violator of code 21955, *"My opinion is that the pedestrian should be crossing the roadway at the crosswalk. That's why we issue tickets for 21955. Also 21954-A states, you should not cross the roadway outside of a crosswalk. Both of those statutes were written for the exact reason to -- so we don't have situations where pedestrians are hit and injured and sometimes fatally injured. So ..."* (page 41, lines 4-11). However, Officer failed to acknowledge 21954(b) of this code that states "the provisions of this section shall not relieve the driver of a vehicle from the duty to exercise the duty of care for the safety of any pedestrian upon a roadway."

CONCLUSION:

In this situation, the burden of proof that Ms. Plaintiff was contributorily negligent is on the defense to prove. Officer did not issue the Plaintiff a ticket citing for violating Vehicle Code Section § 21955 as he indicated is normal protocol. The fact that he stated that Ms. Plaintiff admitted that she was not within the crosswalk is hearsay and disputable. Ms. Plaintiff does not admit to making such statement to Officer. Officer did not interview any witnesses that could corroborate this statement which also leaves this matter questionable.

Further, Officer 's measurements on point of impact is an assumption that he made. He stated that he did not note where he took Ms. Plaintiff's statement which would be relevant to proving if she was indeed outside or inside of the crosswalk. When asked, "Did you -- well, let's see. You said that the area of impact -- I'm looking at page 5

again --was 24 feet north of the south curb line of Manchester. How did you make that termination?" (Page 21, Lines 23-25 and page 22, line 1-2) Officer responded, "By pace." (page 22, line 3). " I take a step and I know that my pace is three feet." (page 23, lines 1-2). Using his feet to determine the distance from the curb line, I'm sure, is not an acceptable measurement tool that would be found in the traffic manual.

> *Schmitt v. Henderson*, 462 P.2d 30 (Cal. 1969) "While the point of impact was variously estimated to be between 6 and 22 feet from the northwest curb, it was undisputed that plaintiff was within the lines of the pedestrian crosswalk when he was struck."