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## Former Cornish Road Agent Seeks Dismissal of Charge in Fatal Crash



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The defense attorney for Kyle Witty, the former Cornish road agent charged with reckless manslaughter, filed this photo in Hillsborough Superior Court in Nashua, N.H., which depicts the intersection of Route 101A and Continental Boulevard in Merrimack, N.H., on the day of the fatal accident. The defense asserts that the overgrown tree canopy in the eastbound travel way obstructed Witty's view of the upcoming red stop light, causing him to drive through the signal and collide with Elizabeth McQuinn's SUV, killing her, on July 16, 2014.

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Valley News Staff Writer  
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Nashua, n.h. — A lawyer for a former Cornish road agent charged with reckless manslaughter stemming from a fatal traffic accident last year in Merrimack, N.H., has filed two motions to dismiss the case.

In those motions, attorney Richard Guerriero asserts that Kyle Witty's failure to stop at a red traffic light at the intersection of Route 101A and Continental Boulevard by itself doesn't constitute reckless behavior, and alleges the traffic signal wasn't readable from a state-mandated distance.

Meanwhile, Guerriero in a separate motion seeks to admit evidence — should the case proceed to trial — showing that Witty ran the red light that resulted in the death of 60-year-old Elizabeth McQuinn because his view of the traffic signal was blocked by a canopy of trees that were cut down shortly after the July 2014 accident.

"This was an accident and a terrible tragedy," Guerriero wrote in an email on Wednesday. "It was not a crime."

The Keene, N.H.-based attorney filed a total of five motions last week ahead of a hearing set for Tuesday in Nashua's Hillsborough Superior Court.

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Assistant County Attorney David Tencza, the lead prosecutor in the case, said he hasn't responded to the defense's motions, but plans to do so by the end of the week.

Tencza declined to comment on the pending motions, as well as potential responses.

Witty, 44, served as Cornish's road agent from 2011 to 2014. He was driving a private dump truck at the time of the collision.

According to court documents, the state contends that just before 6 a.m. on July 16, 2014, Witty "recklessly" caused McQuinn's death by failing to stop at a red light, causing his dump truck to collide with the driver's side of the woman's SUV.

McQuinn, a Nashua resident, was pronounced dead at the scene.

At the time of the crash, Witty was driving eastbound on Route 101A, also known as Amherst Street, while McQuinn exited the parking lot of a now-closed McDonald's to head west, according to initial police reports.

In October, a Hillsborough County grand jury indicted Witty on the reckless manslaughter count, punishable by 15 to 30 years in New Hampshire State Prison. He currently is free on \$50,000 personal recognizance bail.

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While lawyers prepare for a Nov. 30 trial date, Cornish residents are rallying around Witty, saying he has been wrongly indicted.

"A massive injustice is being inflicted upon a decent, kind and capable person," said former state Sen. Peter Burling, who in August held a gathering at his Cornish home to inform the community about the status of Witty's case and to raise money to defray Witty's legal expenses. Burling, whose wife is former Grafton Superior Court Judge Jean Burling, said the crash that day had "two victims, one who lost her life."

Jean Burling, who co-hosted the fundraiser for Witty, declined to comment for this story.



"When you look a little deeper into the evidence you say, 'Wait a second, how did anybody make the decision that this is appropriate to proceed with (reckless manslaughter)?'" Peter Burling said.

Burling said many Cornish community members have vowed to help Witty in any way they can.

Witty has suffered "substantial" economic hardship, Burling said, adding that Witty lost his commercial

driver's license because of the charge, which resulted in the subsequent loss of his business.

Reached by phone on Wednesday, Witty declined to comment.

Few details about the accident have been released, and the police affidavit in the case wasn't available as a public record in Merrimack District Court earlier this month.

A central element of Witty's defense appears to be the visibility of the traffic light from the right-hand lane he was traveling in that morning on Route 101A.

In addition, Guerriero asserts the elements that comprise a reckless manslaughter charge aren't present in Witty's case.

State statute says a person is reckless if he or she is "aware of and consciously disregards a substantial and unjustifiable risk" that the element of a crime exists or will result from his or her conduct.

"If the judge does not dismiss the case, then we expect the jury to reject the charge," Guerriero said on Wednesday.

According to information contained in four of the defense's recent motions, police investigations following the collision indicate the trees — which sat on the edge of the roadway — "formed a canopy of branches covered in leaves which extended over the right eastbound travel lane of Route 101A, which cuts down on the sight distance of the traffic signals."

The state Department of Transportation division responsible for the maintenance of that part of the roadway removed the trees 15 days after the crash, which, according to the defense, shows that the state acknowledges the conditions impeding visibility should have been dealt with prior to the collision.

A reporter last month confirmed that the trees, which were on the shuttered McDonald's property, have been cut down.

DOT District 5 Engineer Rich Radwanski said the state wasn't aware of the visibility concern until the crash happened, at which point the concern was raised.

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In a telephone interview this week, Radwanski said it was then that DOT officials evaluated the visibility of the traffic light from the lane Witty was traveling in and determined that it “could be enhanced by the removal of a tree.”

“A certain distance away from the signal, (the tree) partially obscured visibility to that part of the signal head in that lane,” Radwanski said, adding that the light wasn’t completely blocked from all distances.

He noted that signal heads governing the other lanes at the intersection would have turned red at the same time the light in Witty’s travel lane did.

In Guerriero’s motion to dismiss the case on the grounds of an improperly placed traffic signal, he cites police calculations that Witty would have been able to first see the stop light when he was 216 feet from the stop bar. He said that the mandate the state follows, which was adopted from the Federal Highway Administration, says the minimum site distance for signal visibility for a 40 mph zone is 390 feet.

“The traffic signal at issue in this case was not ‘in proper position’ and was not ‘sufficiently legible to be seen by an ordinarily observant person,’” Guerriero wrote. “Kyle Witty should not be prosecuted for failing to stop for a red stop signal he could not see.”

In Guerriero’s second motion to dismiss the case, he wrote that the indictment doesn’t identify an act of recklessness other than failing to stop at a red light, and called the indictment an “improper filing of criminal charges.” According to the defense, police reports indicate Witty hit his brakes and tried to stop just prior to the collision.

“As a matter of law, that allegation alone is not sufficient to allege any criminal liability, much less reckless manslaughter,” Guerriero wrote. “Where the only allegation of recklessness is momentary inattention resulting in a traffic violation, there is no basis in the law for criminal liability.”

Without additional information from the state about what constituted Witty’s recklessness, he said, his client can’t be expected to prepare for trial.

“The indictment must be dismissed because the indictment does not allege conduct or circumstances which establish reckless conduct,” Guerriero wrote.

Witty’s defense filed two additional motions in his case last week: one to bar the admission of surveillance video at trial, and another to bar evidence regarding maintenance on Witty’s dump truck.

According to the motion to exclude a video of the crash caught by a nearby business’ surveillance camera, Guerriero wrote that the original file from the surveillance video no longer exists, which could lead to authenticity issues. If a judge denies the defense’s motion to exclude a copy of the video in its entirety, Guerriero asks a judge to omit the time stamps on the video so the state and a jury can’t use them to determine time, distance and speed.

Lastly, Guerriero wrote that a state trooper assigned to inspect Witty’s vehicle after the crash found minor issues with the dump truck, but said none of them contributed to the collision. The truck maintenance is irrelevant, Guerriero wrote, and should be excluded from Witty’s trial.

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