

The Oregon Defense Attorney

A journal published by the
Oregon Criminal Defense
Lawyers Association

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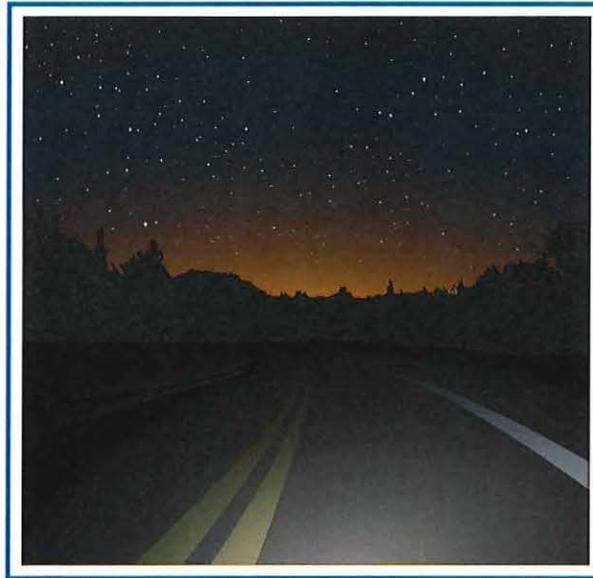
And More

Reese's Pieces

State v. Kimberly A. Malm

Investigate, investigate, investigate

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“QUOTABLE”

The evils of racial prejudice lurk too frequently throughout the administration of criminal justice. They must be condemned whenever they appear.

— *McFarland v. Smith*, 611 F.2d 414, 419 (2d Cir. 1979)



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State v. Kimberly A. Malm

by Susan Elizabeth Reese

Case: *State v. Kimberly A. Malm*

Defense Counsel: Jason Thompson

Investigator: Kristina Mann

Defense Experts: Mike Stupfel and Mike Alex, accident reconstructionists

Court: Marion County Circuit Court

Judge: The Honorable Courtland Guyer

Prosecutors: Deputy District Attorneys Tiffany Underwood and Keir Boettcher

Charges: Manslaughter in the first degree, manslaughter in the second degree, failure to perform the duties of a driver at an injury accident, driving under the influence of intoxicants, reckless driving, vehicular assault of a pedestrian

Date: June 1, 2016

Verdict: All charges dismissed

Kimberly Malm was on her way home from a birthday party just about 12:30 a.m. on May 23, 2015. As she drove her Dodge RAM pickup along the Salem Parkway, she heard a loud noise. She pulled over briefly to investigate, but seeing nothing and concerned about being alone in the dark she returned to her vehicle and continued home.

Shortly afterwards, 36-year-old Travis Lane's body by the roadside attracted the attention of other motorists along the Parkway. By 12:35, the first 911 calls came in to authorities. Meanwhile, at home, Kimberly had noticed significant damage to the front of her truck. Concerned that she might have hit something, she also called emergency dispatch.

The accident scene was one of initial confusion as the various jurisdictions – Oregon state troopers, Marion County deputies and Salem police officers – responded without knowing clearly which agency should control. Responding to Kimberly's 911 call, officers found her at home, cooperative, but anxious and upset. She admitted having had some alcoholic drinks, and she was quickly arrested and charged with manslaughter in the second degree and the additional major traffic offenses.

A 36-year-old single mother of two children, Kimberly managed to post security with her family's help and remained out of custody, continuing her work with the state public utilities commission while the case continued.

“ One sergeant angrily told defense counsel that he refused to cooperate with the DMV hearing process and procedures, because he ‘had a criminal trial to win.’ ”

Initially, the state claimed that Kimberly had veered into the shoulder of the road, hitting Travis and dragging him several feet before his body came to rest. The state accident reconstructionist took note of one shoe in the shoulder and the other several feet away. These factors were used to justify their theory – sent out over teletype notifications even before their accident reconstruction report was completed – that the point of impact had been in the shoulder of the road.

When defense counsel met with the medical examiner, Dr. Karen Gunson, in July of 2015, she explained that the physical evidence on the body suggested the vehicle had been a small car. The combined work from the defense analysts, however, concluded that Mr. Lane had actually been walking *on* the highway, wearing dark clothing, in [Kimberly's] right lane of travel and that no reasonable driver could expect that a pedestrian would be in that location.

Investigating officers were so entrenched in their certainty of Kimberly's guilt that they refused to answer questions during the DMV hearing conducted in her challenge to her license suspension. One sergeant angrily told defense counsel that he refused to cooperate with the DMV hearing process and procedures, because he “had a criminal trial to win.”

Prosecutors, echoing their own frustration at the defense's unwillingness to resolve the case, stacked on additional charges of manslaughter in the first degree and vehicular assault to the litany of crimes alleged against Kimberly in April, 2016, just two months before the trial was set to begin.

Continued on next page

OCDLA Life Member Susan Elizabeth Reese practices law in Newport. She serves on OCDLA's Education Committee.

OCDLA Life Member Jason Thompson practices law in Salem.

Kristina Mann is an investigator based in Monmouth.

Mike Stupfel is an accident reconstructionist based in Salem.

Mike Alex is an accident reconstructionist based in Salem.

One year to the day after the accident, at the request of the defense, the parties met for a review of the physical evidence seized in the case. The evidence included Travis Lane's belongings and things found on or near his body on the night of the accident. Opening his backpack, defense counsel Thompson noticed prominently on the top a note in Travis' handwriting, in the note, Travis wrote that he was bound by "oppressive chains" and was "tired of fighting." To the defense, the note was clearly a suicide message and completely corroborated the facts as they had discovered them: Travis Lane had jumped directly into the path of Kimberly's truck in his effort to "go to a better place." This also explained why his shoes flew in different directions and the pattern of breaks to his legs which had led Dr. Gunson to her opinion that Travis had been hit by a small car.

Faced with a view of the evidence that the vigorous and persistent defense investigation revealed, the state first asked to continue the trial. When the court denied that request, the district attorney then dismissed all the charges against Kimberly. This case illustrates the need to investigate, investigate, and *investigate* even more. You just never know what the next bag will reveal! 



Juvenile Law RESOURCES

Check these out—

- OCDLA [Juvenile Law Listserve](#)
- [House Bill 2320 Webinar \(2015\)](#) — Juvenile Sex Offender Registration Changes
- [Juvenile Law Reader](#) published by Youth, Rights & Justice, Attorneys at Law
- [Youth, Rights & Justice, Attorneys at Law](#)
- Free Webinar—[Representing Children in Juvenile Court](#)
- Juvenile [Dependency Motions](#)
- Juvenile [Delinquency Motions](#)
- [Motions](#) Regarding Juvenile Shackling
- Oregon State Bar [Juvenile Law Section](#)
- Oregon State Bar [Standards of Representation in Criminal and Delinquency Cases](#)
- Oregon State Bar [Standards of Representation in Dependency Cases](#)
- [National Juvenile Defender Center](#)

