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## **Prosecution Declined Memo**

**From:** Bradley C. Berry

**To:** Detective Michelle Formway, McMinnville Police Department

**Cc:**

**RE:** Brandon Cain Paholio

Incident No.: 13002532

**Charge(s):** N/A

Detective Formway:

I have reviewed your report in the above referenced matter, met with you and other investigating officers several times, reviewed the video surveillance available, and as you know, met with the Agcaoili family and their attorney. As this is a complicated case, and having public interest, I will take some time to discuss the facts and the related law.

Let me begin with identifying the various parties involved in this incident. I will, for the purposes of this memo, refer to the group containing Leonard "Lonnie" Cain, Brandon Hubbell and Beau Herber as the "suspect group." Related to this group is Brandon Paholio, who I will refer to by his nickname of "Bam" to avoid confusion with Brandon Hubbell.

I will refer to the other group of men as the "victim group" consisting of the deceased Andrew Agcaoili, Adrian Ulloa, Eric Christensen and Daniel Garcia.

Prior to this incident the victim group had been drinking throughout the day. It began at a barbeque, followed by the group going to the China House. They then took a taxi to the Blue Moon. After drinking there, they walked to the Cabana Club and arrived there sometime after midnight.

At the Cabana Club they drank and, at least Andrew, danced. Also at the Cabana were Lonnie, Ashley and Amanda. Beau and Brandon were at the Cabana, but remained outside. From the video and the witness statements, there was no interaction between Andrew and Lonnie inside the Cabana. Around 0215, both groups are outside of the Cabana and Andrew sees Lonnie and yells something to the effect that "there's the guy who pushed me!" The 'pushing' incident referred to had occurred some weeks before and did not occur that evening.

The video and witness statements are clear that Andrew, Adrian and the other two engage in a verbal altercation with Lonnie. It is from a distance and there does not appear to be any close contact between the two arguing groups. The victim group



moves west out of the video and returns a few times appearing to continue to verbally engage. The suspect group is not visible in the video.

It is not clear of the exact order of things but Brandon text messages Bam that Lonnie, Bam's brother, might "fight some people" and suggesting that Bam come to them. Bam responds with "Tell him to go home..."

Ashley and Amanda get the victim group to leave and they do so heading westbound on Third Street. By the time listed on the Cabana video, they had left by 0223. Andrew is next seen in the video from Union Block. He appears agitated and continues to look to the east. He is seen to walk in the street, looking back to the east, and eventually crosses from the area of Union Block toward Key Bank. He is with the others, including the two women. Some altercation occurs with another individual, but it is not clear what that was about or who, of the victim group, actually engaged him verbally. This unidentified person gets into a vehicle and leaves.

At 0224 (by the text message stamp, and again it is difficult to tell the exact order of things as all of the video time stamps are slightly different, as is the phone time stamp) Brandon sends a text to Bam stating "come hurry. Please." It is likely that this text was sent when all of the parties were still in the vicinity of the Cabana, but again, it is impossible to tell. At that same time Bam calls Brandon.

From this point on, unless stated otherwise, the timing I refer to comes from the US Bank video (for consistency). The time stamps on the two video systems (US and Union Block) are 2 minutes and 30 seconds apart.

Ashley and Amanda are seen walking in the street and at 0227:26, get into their vehicle and leave. Just prior to that, the victim group is seen heading westbound out of the video, past Key Bank and on the south side of Third Street.

At 0226:32, Brandon's Honda Civic, which had been parked east of the Cabana on Third Street (facing west), is seen to pass Union Block and turn south on Davis. It travels without stopping, thus there is nothing to indicate that the two groups engaged in any conversation at that point. At 0228:18, by the phone stamp, Brandon texts to Bam; "Leaving finally." It would appear that this text was sent prior to them crossing in front of the Union Block and likely as they were leaving the Cabana.

At 0229, by the phone stamp, Bam calls Brandon, and the witnesses are clear that Bam tells them that he is at the Old Oak (on Davis, just north of Union Block) and wanting to know where the suspect group is. The video shows Bam's vehicle turning from Third Street, north onto Davis, at 0229:41.

Statements from the suspect group are consistent that after turning south on Davis they turned east onto Second Street, north onto Evans, west onto Fourth and south onto Davis. They parked at about the Shutterbug and met up with Bam.

At 0229:55 Andrew is seen to cross diagonally from the Key Bank to Union Block. He is in the street and by his arm movement appears agitated. Witnesses hear yelling that is likely Andrew but we cannot be sure. He is followed by the remainder of the victim group. None of the parties from either group indicate that there was any verbal interaction at this point, but from what follows it appears that both groups were, or became, aware of the other's presence. There is no witness statement that would indicate that the two groups planned to meet but given the text messages and the two groups being at the same place at the same time, it cannot be ruled out.

At 0231:38-41 the suspect group, now including Bam, is seen to walk southbound on Davis toward Third Street. At 0231:55, the victim group is seen heading westbound in front of Union Block and at 0232:01, Adrian rounds the corner followed immediately by Andrew. Dan does not come around the corner, and Eric stops at the corner.



Beau and Brandon, by the video and by witness statements, do not engage with anyone at this point.

Bam and Lonnie have moved out of the video to the south, on Davis. Adrian, as he rounds the corner, removes his jacket. Witness statements indicate that Lonnie removes his jacket. Both Adrian and Andrew are seen in the US Bank video, now north of Lonnie and Bam and turning to the south to face them.

At 0232:33 Adrian and Andrew are seen in the US Bank video moving to face toward the south. Adrian turns his hat around. From witness statements he is verbally engaged with Lonnie and from the video can be seen to face toward Lonnie's direction. Andrew turns toward the south and begins to raise his arms in what looks to be an offensive posture (but it is not clear), or at least defensive as if something is about to happen. At 0232:35, he is struck a single time by Bam and Andrew drops to the ground. Bam's momentum carries him over Andrew and to the ground. He is seen to catch himself with his hands and he immediately stands and moves toward where Adrian and Lonnie are fighting (off video).

Eric, at 0232:43, comes into the video to attend to Andrew who is unconscious on the street. About 12 seconds later, Lonnie comes into the scene and consistent with the witness statements, confronts Eric and shoves him. The suspect group then moves to the north and at 0233:23, Brandon's vehicle can be seen leaving. Adrian, standing in the street, attempts to kick it.

Andrew was struck once, and as he collapsed to the ground, the back of his head struck the pavement. The resulting brain injury was the cause of death.

Witness statements were obtained from all of the involved parties. Statements from Adrian, Eric and Dan are at best, inconsistent with the video evidence. Adrian, based on the totality of the witness statements, clearly minimizes his involvement in the verbal altercation and his continued escalation of the conflict and attempt to get Lonnie to fight. Lonnie declined to be interviewed.

Bam was interviewed. His statement is fairly consistent with the video evidence and other witness statements, but inconsistent with some of the information obtained. He states, as did Beau, that as Andrew turned toward him, Bam said something to the effect of 'you don't want to do this' or 'stay out of it.' Bam indicates that Andrew swung at him, but that is not corroborated by the video. Bam stated that he believed that Andrew was going to join Adrian in fighting Lonnie. From the video, both Andrew and Adrian are side by side as they turn toward the south, facing Bam and Lonnie. Adrian does not appear to notice Andrew being struck as he, Adrian, moves to fight with Lonnie.

Bam states that Andrew moved toward him aggressively when he was warned to keep out of the fight. The video is unclear beyond the fact that Andrew clearly turned toward Bam and raised his arms consistent with a fighting position. He did not retreat or move in a direction away from the altercation. In fact, as pointed out above, he entered the area of the other two men, crossed paths with them much like a fighter circling, and turned toward them.

This case poses some very difficult factual and legal issues. First, the defenses of "defense of self", "defense of another", and "mutual combat" would be raised. When such a defense is raised, the State has the burden of disproving the defense beyond a reasonable doubt. In other words, the State would have the obligation of proving, beyond a reasonable doubt, that when Bam punched Andrew that he was *not* doing so to protect himself or his brother. Additionally, the State would have to prove that Andrew did not engage in the combat voluntarily, mutually, with Bam.



The defense would be able to present several facts, corroborated by the video evidence that would support the cited defenses. First, the original altercation at the Cabana was started by Andrew. The verbal altercation between Lonnie and Andrew, as well as Lonnie and Adrian, was precipitated by Andrew. The video evidence shows Andrew to continue to be agitated, turning and yelling to the east, once the victim group got to the Union Block area. The victim group left to the east, but returned after the suspect group had come onto Davis.

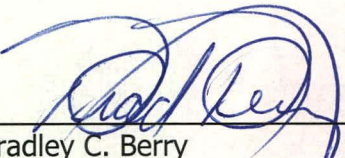
Andrew and Adrian clearly come around the corner from Third Street onto Davis, passing Lonnie and Bam (Andrew and Adrian are moving north as Lonnie and Bam are moving south, and they have to have crossed paths and then turn toward one another), and then turn to engage them. Although it does not appear that Andrew threw a punch, a person about to be fought with does not need to wait to be struck to defend himself if he reasonably believes he is about to be harmed. They have the right to stop the reasonably perceived threat.

This case has been thoroughly investigated. I have personally reviewed all of the evidence, reports and videos, including a frame by frame examination of the video evidence. Additionally, I asked several of my Deputy District Attorneys to review the facts of the case along with the video (still frames).

This is an extremely difficult case with absolutely tragic consequences. The job of this office is to hold people accountable for such conduct, but we must do so within the confines of the law. There is no question that the punch delivered by Bam caused this death, but as we are unable to disprove the evident defenses, we are not in a position to prosecute.

I feel compelled to directly address a couple of things as this case, via social media and otherwise, has created a lot of rumor and significant misinformation. First, as you can see, Andrew was not "jumped" by a group of men, allegedly as many as 4-6. He was not beaten while he was on the ground, and clearly was struck a single time by one person. In fact, there was very little external injury on Andrew (a black eye). There was no argument inside of the Cabana Club between Lonnie and Andrew on this night. Please let me reiterate that this is a tragic case but the end decision must be based on the facts and the law. Hopefully as more factual information becomes available, the interested community will have a better understanding of what actually occurred.

No further investigation is warranted at this time. As you are aware, the Agcaoili family has hired an attorney to look at this on their behalf. I would recommend retaining all evidence at this point.



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Bradley C. Berry  
Yamhill County District Attorney  
August 12, 2013