

Felony Charges For Owner Of Self-Driving Car Are Problematic

By **Cody Warner** (October 4, 2022)

People v. Kevin George Aziz Riad, a criminal case filed in Los Angeles County Superior Court on May 19, appears to be the first felony prosecution against a driver involved in a fatal collision while using Tesla Inc.'s Autopilot system.[1]

Riad faces felony instead of misdemeanor charges because the prosecution maintains that Riad was grossly negligent — a legal standard that requires conscious indifference to the consequences — when he operated his Tesla.[2] However, the established facts do not appear to prove that Riad was consciously indifferent to the consequences.



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The subtext of the prosecution is that Riad was grossly negligent by carelessly relying on Autopilot — despite no evidence that Riad expected his Tesla to navigate the intersection where the collision occurred. Riad's case is a warning that prosecutors may assert that accidents involving Teslas are caused by drivers who blindly rely on self-driving technology.

On Dec. 29, 2019, Riad was driving a 2016 Tesla Model S on State Route 91 in Los Angeles. When he reached an intersection where Route 91 transitions from a freeway to a highway, his car broadsided a vehicle that was turning off a cross street, killing two of its occupants. A witness told police that Riad drove through a traffic light — which was red — and that cars in the adjacent lanes were stopped at that light.

Prior to the collision, Riad had been driving on Route 91 for 15 minutes using Tesla's Autopilot feature, which at the time consisted of Autosteer and adaptive cruise control. Autosteer is designed to keep the vehicle in the center of the lane, and adaptive cruise control is designed to make the vehicle slow down and speed up as needed to keep pace with traffic.

A Tesla engineer who reviewed the Tesla's diagnostic data testified that torque consistent with a hand holding the steering wheel was consistently detected for nine minutes leading up to the collision. When Riad collided with the other vehicle, he was driving 74 miles per hour — considerably over the posted limit of 45 miles per hour — although he had just crossed into an area with a lower speed limit.

Riad did not apply brakes before impact. Although his vehicle should have engaged automatic emergency braking — which Tesla offered as a software update in 2017, and which would have drastically reduced the collision speed — no such braking occurred.[3] It's unclear whether the automatic emergency braking malfunctioned, or had been disengaged by the vehicle's owner.

At the preliminary hearing, the prosecution argued that Riad saw the other cars stopped at the light, yet did nothing to stop his car, and continued to drive through the intersection. Unless the prosecution believes that Riad had a death wish for himself and others, it

presumably believes that Riad had expected his Tesla's Autopilot system to stop the car at the red light.

The trouble with that theory, though, is that in 2019, Tesla had not yet released its traffic light and stop sign control feature, which enables its vehicles to respond to traffic lights.[4] So, Riad would not have expected his vehicle to stop at a red light. Nor would he have expected his vehicle to navigate an intersection.

Despite the uncertainty about the extent to which Riad may have relied on Autopilot, the prosecution charged Riad with two counts of vehicular manslaughter, under the theory that he was grossly negligent when he operated his vehicle.[5]

Since the prosecution charged Riad with the subdivision of the vehicular manslaughter statute that includes the added element of gross negligence, Riad faces felony charges that carry a minimum sentence of four years in prison.[6] If Riad were charged with the vehicular manslaughter subdivision that does not include the element of gross negligence, he would only face a misdemeanor with a possible jail sentence of no more than a year.

The facts of Riad's case do not support a conclusion of gross negligence. Typically, the law considers a person who runs through a red light while speeding to be negligent, but not grossly negligent. Gross negligence is more than ordinary carelessness, inattention or a mistake in judgment.[7]

Most cases involving gross negligence include drivers who were highly intoxicated, or visibly swerving and cutting through lanes.[8] None of those facts exist with Riad's case. The collision may very possibly have been the result of a momentary lapse of attention, but such a lapse does not constitute gross negligence.[9]

Gross negligence could be established if Riad was carelessly using Autopilot while he was on the freeway, and wasn't properly paying attention when the freeway transitioned to a highway. But there does not appear to be any proof that this happened.

A recent case in California, *People v. Nicholas*, decided by a California state appeals court in 2017, is instructive.[10] Nicholas involved a defendant who was driving while sending a stream of texts for 17 minutes leading up to a collision that killed the occupant of another vehicle.

The court found that the defendant's lengthy chain of texts leading up to the collision demonstrated that she was oblivious to her surroundings, and was therefore grossly negligent. So, if Riad became complacent while Autopilot was engaged, and stopped paying attention to the road, then he may have been grossly negligent.

However, there does not appear to be evidence to support that conclusion. It could be the case that Riad was paying close attention to the road, and had an unfortunate but momentary lapse of attention at the intersection, due to something as simple as a sneeze, for example.

It should not be assumed that Riad was blindly relying on Autopilot, simply because he was driving a Tesla. But it's hard to escape the conclusion that Tesla's recent reputation for moving quickly and breaking things — even at the expense of public safety — has been imputed to Riad.

As more drivers of semi-autonomous vehicles are involved in deadly crashes, we must make sure that our assumptions don't get in the way of the truth.

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[1] <https://www.nbcnews.com/news/us-news/tesla-driver-charged-vehicular-manslaughter-fatal-autopilot-crash-rcna12724>.

[2] See *People v. Bennett*, 54 Cal.3d 1032 (1991).

[3] <https://electrek.co/2017/04/26/tesla-automatic-emergency-braking-autopilot-architecture/>.

[4] <https://electrek.co/2020/04/24/tesla-autopilot-traffic-light-and-stop-sign-control-feature/>.

[5] Cal Penal Code § 192(c)(1).

[6] See Cal Penal Code § 193.

[7] CALCRIM No. 592.

[8] See *Bennett*; *People v. Von Staden*, 195 Cal.App3d 1423 (1987).

[9] See *People v. Nicholas*, 8 Cal.App.5th 1165 (2017).

[10] *Id.*