

# Driver cleared in bicycle death case

By CURT HILLS  
Staff Writer

PUNTA GORDA — Joseph McElwee has been cleared in a simple traffic violation case tied to a death.

It took just over an hour to try McElwee, 32, on a charge of failure to yield that was issued after the bicycling death of 14-year-old Ashley Gamez.

"KHH: found def didn't commit offense. 3:05 p.m." was scribbled on the final sheet of court minutes, signifying County Judge Kenton Haymans' innocent finding.

Gamez was killed on the evening of Sept. 29 while bicycling home from work. Punta Gorda police originally listed McElwee as a witness.

Investigators would later claim they found paint from Gamez's bike on the bumper of McElwee's vehicle. His vehicle also had damage to the grill and undercarriage, they stated.

There was never sufficient evidence to consider vehicular homicide or leaving the scene of

a fatal accident, investigators stated.

Police only issued a traffic citation to McElwee, who lives in Port Charlotte. They also said Gamez was traveling against traffic flow on Taylor Road with no lights on her bicycle.

McElwee, with his attorney Robert Segur, appeared Monday before Haymans to challenge the ticket.

Attorney Russell Kirshy, representing the city of Punta Gorda, wasn't able to get a statement McElwee made shortly after the crash admitted as evidence.

"Obviously, every time you have something that cannot be introduced, you feel it hurts your case a little," Kirshy said Tuesday.

However, Kirshy believed his witnesses, admissible statements and investigation photographs presented a strong case.

Haymans disagreed, in a pro-

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ceeding in which Kirshy was forced to prove his case beyond a reasonable doubt.

Neither McElwee nor Segur could be reached for comment Tuesday.

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