



INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: September 8, 2003

FROM: DAVID I. GILBERT  
SENIOR TRIAL COUNSEL

RE: POLICE INVOLVED TRAFFIC  
FATALITY CLOSEOUT MEMO  
Case # 62/03/02/24/003

SUBJECT:	OFF. GEORGE VARON
VICTIM(S):	STEPHANIE TUNC (DECEASED) SANDRINE TUNC (INJURED)
INJURIES:	CRUSH AND INTERNAL INJURIES
DATE & TIME:	FEBRUARY 22, 2003 AT APPROX. 12:51 P.M.
LOCATION:	1300 BLOCK OF MIAMI BEACH
WEAPON:	FORD EXPLORER
LEAD:	STEVE NAGEL #367
CASE #:	2003-5881
SAO CASE #:	62/03/02/24/003



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## OVERVIEW

On February 22, 2003, two men on 20th Street in Miami Beach attacked one Walfrido Morales. Initial reports of the incident caused it to be classified as a strong armed robbery. A BOLO (**Be On the L**ookout) was issued for the two men involved. The suspects were seen getting on a bus, but when the bus was stopped it was learned that they may have gotten off and were headed towards the beach. Officers responded to the beach in their police vehicles to try to locate the suspects. Officer George Varon of the Miami Beach Police Department was driving on the sand on Miami Beach while looking for alleged robbery suspects. The vehicle he was driving was a Ford Explorer (SUV) police vehicle. There is an area of the beach at its western edge that has hard pack sand, and is used by police vehicles. Officer Varon started out using this portion of the sand, but he eventually turned southeast onto the softer sand and headed towards a lifeguard tower. He rolled over two French tourists pinning one of them under the SUV when he stopped. One of the women died from internal injuries, the other was seriously injured.

During the course of events, it was learned that the alleged robbery was merely a domestic dispute and it was downgraded from its emergency status.

## SETTING

This incident took place on the sands of Miami Beach at approximately the 1300 block. The Beach runs north and south and is a few hundred feet wide. The western edge of the sand is hard packed, and is used by motor vehicles. The hard pack is not physically separated from the softer sand, but there is a row of widely spaced trash cans at the approximate demarcation point. The hard pack sand is more than fifty feet wide. Near the scene of the accident is a lifeguard stand. The lifeguard stand was about midway between the water's edge and the western edge of the hard pack.

## WITNESSES

(Because of the large number of witness statements, they will be listed alphabetically by last name. I have included all of the civilian witnesses, including those with little or no significant information. Some of the police officers with minimal involvement have been left out of this summary, but their tapes, and a police summary can be found in the file.)

**AGUILAR, CARLOS** – Carlos Aguilar is a forty-nine (49) year old male who lives in Altamonte Springs, Florida. Mr. Aguilar wrote out a version of events on the day of the accident, and was re-interviewed in a recorded telephone conversation. I personally reviewed a tape recording of this telephone interview and all of the other telephone interviews noted below.

Mr. Aguilar arrived at the beach with two friends, Robert Doherty and Rolando Vega. He saw three (3) police vehicle coming from the north and commented to his friends that they must be looking for something. In his opinion, the drivers were driving too fast on the hard pack area. Mr. Aguilar saw the SUV take a “beeline” towards two women who were lying in the sand. He was not able to see

inside the car and could not tell what the driver was doing at the time. However, he could see what appeared to be some “apparatus” up to the driver’s ear and the driver was looking towards the water. He could not remember if the window was up or down, but he could see into the car enough to make those observations.

At the time that the SUV hit the first woman, the car appeared to be traveling at 15-18 miles per hour (MPH). In his opinion, it was not very fast. Mr. Aguilar used his cell phone to call 911 immediately after the accident. He did not pay attention to whether the driver got out of the car, but he believes that he did. He noted that the car was still over the women when he finished his call to 911, and it was after that that the car was moved off of them.

**ALONSO, KRISTINA** – Kristina Alonso is a twenty-five year old female who lives in the Miami area.

Ms. Alonso arrived at the beach about 12:30. She used a parking garage at 11<sup>th</sup> or 12<sup>th</sup> Street. She was accompanied by two friends, whom she is certain did not see the accident, because they were facing away from it at the time that it happened.

There were no police officers on the beach when Ms Alonso first arrived. When she put down her blanket she was directly facing two women who were about fifteen to twenty (15-20) feet away. She was there about five (5) minutes when the police car arrived on the scene. The two women were just lying on the ground, with their feet facing the lifeguard stand. There was no conversation between Ms. Alonso and her friends with the two women.

Ms. Alonso had her head down, because she was putting on suntan lotion. She looked up and the police car was “right there”, and she had no time to react. The witness does not know where the car came from. It appeared the car was moving pretty fast for the sand, but not for the street. She estimated it at 15 MPH, but says she is not good at judging speed. There were no sirens or flashing lights operating on the vehicle. Ms. Alonso is pretty sure that the driver’s window was down.

The police officer stopped the car with a rear tire on top of one of the women’s legs. People started screaming and the officer got out of the car. He looked under the car, said “Oh Shit” and jumped back into the car to move it off of the woman. Ms. Alonso says that he moved the car forward. She heard later that someone said that he also moved the car backward, but she did not see this. She admits to being squeamish and closing her eyes for a period of time because of the gruesome nature of the incident.

A number of police officers responded immediately and so did the lifeguard. The officer went over to the women and tried to help them.

**BEGERT, NICOLE** – Nicole Begert is a twenty-seven (27) year old school teacher from Rochester, New York. She wrote a statement for police on the day of the accident and was re-interviewed in a tape recorded statement taken over the phone.

Nicole Begert arrived at the beach at around eleven o’clock (11:00), and chose a spot closer to the water than the women who would later be hit. The beach was pretty crowded, but it was less crowded in the area where those women were lying. They were lying with their heads towards the north and the women were to the west of them, just about parallel. There was a little gully, but not a

ditch, where the women were. She is not good at distances, but estimates that it was fifty to one hundred (50-100) feet between them and the women, with no one in between.

After lying on her back she turned to be on her stomach and noticed the SUV on the sand. Ms. Begert tapped her boyfriend, Robert McMinn, on the shoulder and told him that the women were going to get hit by the SUV. She did not notice the SUV until it was so close to the women that she had only enough time to make that statement. She didn't even have time to scream and then they were hit. Ms Begert saw three (3) other police cars that were up on the hard sand.

The woman closest to the water was hit by the front tire, but rolled away before she was hit again. The front tire and the back tire hit the woman furthest from the water.

Ms. Begert believes that the SUV was traveling "not that fast", maybe seven to ten (7-10) MPH. She observed the police officer looking around for something outside the car. As soon as the officer hit the women, he stopped and got out of the car. He looked at the first woman and then saw that the second woman was still under the car. He got back into the car and moved the car forward to get it off of her.

**DOHERTY, ROBERT** – Robert Doherty is a fifty-four (54) year old attorney from Indiatlantic, Florida. He gave a handwritten statement to the police on the day of the accident. He was re-interviewed in a tape recorded conversation over the telephone.

Mr. Doherty was walking on the beach with two friends, Carlos Aguilar (statement above) and Rolando Vega (statement below). They started at the north end of Ocean Drive and had walked south. He noticed several police cars driving on the hard pack sand at a high rate of speed. None of the cars had emergency lights or sirens activated. Mr. Doherty mentioned to his friends that he thought the police were going to kill someone by driving in that manner.

Mr. Doherty watched as one of the police cars turned onto the softer sand and he saw that the vehicle was headed towards two women on the sand. There were a lot of people on the beach, but not as many in the area near the women. Mr. Doherty thought that the car would slow down. The witness saw that the officer was looking down the beach and not directly towards the front of the vehicle. The witness was on the west side of the car, and remembers that the window on that side (passenger side) was up.

Shortly thereafter the car struck the women lying on the beach. Mr. Doherty estimated the speed of the SUV at the time of impact as twenty-five (25) MPH. But, he adds that he does not want to be held to that estimate because he really does not know. The witness believes that the driver backed up a short distance before stopping the vehicle completely.

Mr. Doherty saw the police officer get out of the car and inspect the scene, which revealed that the car was still on top of one of the victims. A decision was obviously made to get the vehicle off of her, so he got back into the car and drove forward a short distance. The car started to rock backwards and the driver was urged to go further forward to make sure it was clear of the victims.

**EL-JOURDI, RAHIB** – Rahib El-Jourdi is a police officer for the City of Miami Beach Police Officer. He gave a tape recorded statement on February 28, 2003.

Off. El-Jourdi was handling a disturbance call on the 1200 block of Euclid Avenue with Off. Cruz when a robbery call went out. He cleared the disturbance scene and responded to the beach. Off. El-Jourdi entered the beach at about 15<sup>th</sup> Street, and saw several police units north of him. He turned northward and saw Officers Antonio Infante, Cloris Vazquez, and Elbys Camacho. After talking with Off. Camacho, Off. El-Jourdi went south in search of the suspects.

Off. El-Jourdi first observed a police SUV when it was traveling south between 15<sup>th</sup> and 16<sup>th</sup> Streets on the beach. The SUV was behind him, but he was able to see it traveling slowly on the sand in a stop-and-go fashion. Off. El-Jourdi was not able to tell who the driver was at this point in time.

Off. El-Jourdi heard the dispatcher advise that someone had observed the subjects walking between 12<sup>th</sup> and 14<sup>th</sup> Streets. He continued southward. While looking around, Off. El-Jourdi saw two women suddenly sit up, or “lurch” up, from a supine position. He heard screaming and realized that the women had been struck by the SUV. Off. El-Jourdi stopped his car, activated his emergency equipment and exited his vehicle. He approached the women at the same time as Off. Vazquez, and attempted to calm them.

Off El-Jourdi said that he noticed Off. George Varon for the first time at this point. Off. Varon moved his vehicle forward, not because it was resting on the victims, but in order to get them clear of the frame of the car. He remained on the scene to assist in crowd control, keep track of the names of officers on the scene, and assisted in measurements.

**FARQUHAR, ANDREA** – Andrea Farquhar is a twenty-three (23) year old student from Canada. She gave a handwritten statement to the police on the day of the accident. She was re-interviewed in a tape recorded telephone conversation.

Ms Farquhar went to the beach with her mother, but her mother moved to an area of shade some distance away. Ms. Farquhar arrived about an hour before the incident. She was lying closer to the water than the women who were struck, but parallel to them, about 30 feet away. Her feet were to the south, and her head to the north. The two women were in an area somewhat by themselves. There were no other sunbathers in their immediate area.

Ms. Farquhar heard some cars so she sat up. She immediately saw an SUV driving very slowly towards the women on the soft sand. She would estimate the speed at no more than 10 MPH and described it as a crawl, saying that it was in “no way” fast for the beach. After hitting the women, the police officer stopped the car, got out, and looked at what happened. It appeared that one of the tires was still on top of the woman on the right (furthest from the water). The officer got back in the car, and drove it forward off of the woman.

There were other police cars nearby, on the hard packed sand, and they drove up quickly. The driver of the SUV was obviously very distraught. Ms. Farquhar noted that the paramedics appeared to be paying more attention to the woman on the right, and she was removed from the scene first. Police came around asking for witnesses so she wrote out a statement.

**FERNANDEZ, LAURA ANN** – Laura Fernandez is a thirty-eight (38) year old woman who lives in Pembroke Pines, Florida. She wrote out a statement for police and was re-interviewed in a tape recorded conversation.

Ms Fernandez went to the beach after breakfast with her sister and her boyfriend. At one point she went to the water to go swimming. On her way back she saw several police cars on the beach. All, but one, of the police cars were southbound on the hard pack part of the beach. The SUV, one of the southbound vehicles, was on the hard pack and then turned into the soft sand, headed towards a crowd of people and the lifeguard stand. Ms. Fernandez mentioned to her sister that police car was going to hit somebody. She then saw the police car strike the two women. She started screaming that the women had been hit and her sister, who had been facing in another direction, turned around to look.

Ms. Fernandez's observation point was one hundred (100) feet or more from the women. The women were lying near a hump in the sand. She speculated that the driver might not have been able to see them if he was not looking down far enough, but straight ahead. There were people lying on the beach in between her position and the women, but she was standing and they did not obstruct her view. Ms. Fernandez was not looking at the driver, and cannot say what direction he was looking in, nor whether or not his window was open. It appeared to her, that the vehicle was traveling at 12-15 MPH at the time of the collision, which she felt was a little fast for the beach. She opined that the driver was trying to pass the other police cars to get somewhere ahead of them.

Ms. Fernandez was not certain, but from what she could remember, the driver stopped at one point and backed up. Then he got out of the car and saw what had happened. The police officer returned to his car and rolled forward. From her position Ms. Fernandez could not tell why this was done, she believes it could have been because the car was still on top of the victims.

**GUILEN-DIAZ, RENALDO** – Arnaldo Guillen-Diaz is a thirty-one (31) year old lifeguard. He gave a sworn tape recorded statement on March 5, 2003.

Mr. Guillen-Diaz was on duty as a lifeguard on the date of the accident. He was stationed alone on tower 14, which is the one closest to the accident, approximately thirty (30) feet away. He did not see the SUV prior to the impact. The only police vehicle he saw was on the hard pack near 17<sup>th</sup> street.

Mr. Guillen-Diaz was monitoring his lifeguard radio and heard a radio transmission about a robbery suspect that was supposed to be heading towards the beach. He exited his tower to look for a possible suspect, but saw no one. He heard another transmission that someone fitting the description of the robbery suspect was moving south. Mr. Guillen-Diaz left the lifeguard tower again and saw the man that he thought they were referring to. He had seen that same man over the last several days and thought that he was probably not the one they were looking for. He continued watching this man, who was toward the southwest, when he heard someone say "Oh, No!" or something like that. He directed his attention to his right, where the sound had come from, and saw an SUV on the sand. He jumped down off of the lifeguard tower and ran to the vehicle. He saw that the left rear tire was on top of a female sunbather. Mr. Guillen-Diaz immediately got on his cell phone and called for help. The car was driven off of the female and he tried to give oxygen to a second female who had been under the car.

**GURROLA, PATRICIA** – Patricia Gurrola is a seventeen (17) year old student from Chicago Illinois. She was interviewed in a tape recorded telephone conversation on March 3, 2003.

Ms. Gurrola was with her mother, Rosalva, and two other women, the Rabiela's. They were about 100 feet away from the accident victims, to the north. Ms. Gurrola heard her mother say that someone was not paying attention. She turned and saw a police SUV driving at about 20 MPH. Ms. Gurrola did not see the driver, and believes the windows on the vehicle were up. After the incident she heard people saying that the driver was on the cell phone or using a radio, but she did not see this herself. Shortly thereafter, she heard that someone had been hit, and she sat up and saw the SUV next to some women. Everyone from her party went over and Mrs. Rabiela comforted one of the victims.

**GURROLA, ROSALVA** – Rosalva Gurrola is a forty-two year old tourist from Chicago, Illinois. She was interviewed in a tape recorded telephone conversation on March 3, 2003.

Mrs. Gurrola, her children, and the Rabielas were north of the victims, and closer to the hard pack sand. She claims not to be good at distances but she thinks they were 20 feet away.

Mrs. Gurrola saw a police vehicle driving very slowly on the sand. She estimated that the speed could not have been more than 5 MPH, and was not "crazy" in the way he was driving. Mrs. Gurrola noticed that the driver was looking around toward the sand; it was more like he was looking for something. When the car stopped, she thought he had found something until someone said that he had hit some women. The whole group went over to the women and saw that the police vehicle had hit two women.

One thing that the witness wanted to stress was that she had heard that people were saying that the officer was on a cell phone at the time and she was certain that he was not using any such equipment; he was just looking around for something.

**HAMILTON, JOHN** – John Hamilton is a forth-three (43) year old restaurant owner from South Hampton, New York. He gave a handwritten statement to the police on the day of the accident and was re-interviewed in a tape recorded telephone conversation.

Mr. Hamilton was on the beach about one hundred (100) yards north of the lifeguard tower. He saw a police Blazer coming south from the north. There were three (3) other police cars behind the SUV. It appeared to Mr. Hamilton, that they were traveling in the middle of the hard pack or just east of it. Seconds later the SUV passed him on the west side of his chair. The driver had his head out of window and he was talking on the radio. Mr. Hamilton noted that the officer had sunglasses on, but they were pulled down, so he could look over the top of them.

Mr. Hamilton saw the SUV swerve hard to the west to avoid to some sunbathers 10 yards from his position, located to his southwest. He termed this a very close call, as he thought that the police vehicle came too close to the sunbathers. Mr. Hamilton started walking south, because he was curious as to what was going on. He felt the driver was driving erratically and estimated the speed at five (5) MPH.

Mr. Hamilton continued southward at edge of the hard pack sand. He observed the same SUV make a sharp turn towards the lifeguard stand. He believes that the SUV driver turned on the flashers on the truck at this time. The driver hesitated and then turned more directly towards lifeguard stand.

Mr. Hamilton believes he was about seventy-five (75) yards away, at this point. He saw the driver get out of truck and look under it. The driver got back into the truck, pulled it up a little, and then he got out of it again. When Mr. Hamilton got closer he able to see two women on the sand. There were people ministering to the two women; the one to the east was refusing oxygen, and the one to the west was motionless. In Mr. Hamilton's opinion, the beach was more crowded than it was on weekdays.

**HANKOFF, LAWRENCE** – Lt. Lawrence Hankoff is a City of Miami Beach Police Officer whose tape recorded statement was taken on March 3, 2003.

Lt. Hankoff did not witness any portion of the accident. He responded to the scene after hearing the radio transmissions Lt. Hankoff's primary responsibilities was to coordinate the scene and make necessary notifications.

Lt. Hankoff reported talking to Off. George Varon. Lt. Hankoff stated that he did not remember what Off. Varon said to him. However, Lt. Hankoff stated that based upon his experience and training that Off. Varon did not seem to be impaired. He noted that Off. Varon's eyes were not bloodshot, his speech was not slurred, nor were there any other indicia of impairment. Off. Varon had an appropriate concern for the victims and appeared to be very distraught over the incident.

**INFANTE, ANTONIO** – Antonio Infante is a police officer for the City of Miami Beach Police Department. He filled out an incident report on the date of the accident and was interviewed in a tape recorded conversation on February 27, 2003.

Off. Antonio Infante was conducting a traffic stop at 4<sup>th</sup> Street and either Washington or Euclid Avenue when he heard a "3-29" call go out. (A 29 is a robbery and the "3" designation makes it an emergency.) He responded to the call by driving northbound on Washington Avenue. Off. Infante did this because he was advised that a witness had seen the subject get onto a southbound bus on Washington Avenue near 20<sup>th</sup> Street. The next advisement was that the bus was at Lincoln Road and Washington.

A bus was stopped at that location and Off. Infante met up with Officer Jorge Mercado who also responded to the call. The bus driver and several passengers told them that the subjects had fled from the bus in an eastbound direction, towards the beach. Off. Infante transmitted this information over the radio and suggested that if there were any beach patrol officers available they should start heading in that direction. While still at the bus, a person on roller blades showed up and confirmed that the people the police were looking for had gotten on that bus.

Off. Infante decided to join the pursuit to the beach and took 17<sup>th</sup> Avenue to get there. He got onto the hard pack and saw Off. Cloris Vazquez. He stopped to talk to Off. Vazquez and noticed Off. George Varon's vehicle pass them going toward the south. Off. Infante saw Off. Varon go onto the soft sand moving very slowly. Officer Varon maneuvered around some people who were lying on the sand.

Officer Infante continued to drive southward and he noticed Off. Varon jumping out of his stopped vehicle on the soft sand. Officer Varon looked under his car, and at first, Off. Infante thought that Off. Varon had caught the subjects. Off. Infante sped up a little bit and saw, as he got closer, that there were two injured females on the sand. He immediately got on his radio and called for assistance.

Off. Infante got out of his car and gave whatever assistance he could. He was also involved in identifying potential witnesses and getting preliminary statements from them.

**KANDEL, STACY** – Stacy Kandel is a civilian witness whose tape recorded statement was taken on March 12, 2003.

Ms. Kandel went to the beach with her boyfriend, Joseph Sacher whose statement is outlined below. They set up about forty to fifty (40-50) feet from the lifeguard tower. Ms. Kandel stated that she did not see the initial accident; the sound of sirens and the gathering of a crowd alerted her to the incident. From her blanket she was able to see the driver of the SUV exit his vehicle, walk towards the rear, and bend down. At some point, she is not sure when, the SUV moved forward and down.

Ms. Kandel walked over to the scene and observed one of the victims in a fetal position. She remained on the scene until the victim was removed. Some time later she was approached by a news reporter who asked her if she had seen the incident. She spoke to the reporter, but could not recall the details she had given.

While walking home with Mr. Sacher they were approached by another news reporter. She gave a taped interview. The police asked her about a quote from the interview in which she said, “The officer looked like a crazy guy, or crazy man when he ran to the back of the vehicle and was deciding if he was going to move forward”. She explained that she was just being emotional when she spoke to the media. In fact, she did not think the officer was crazy in a “mental way”. Ms. Kandel said she was using the word crazy to mean frantic. She felt that what she said about the officer being “crazy” was being taken out of context.

**MCMINN, ROBERT** – Robert McMinn was a tourist visiting from Rochester, New York.

Mr. McMinn arrived on the beach at around noon with his girlfriend, Nicole Begert whose statement is listed above. He said that they were in a position that was about fifty (50) feet from the victims and there was no one lying between the two parties. He was lying on the sand talking with his girlfriend, when she said, “Oh my god, he is going to hit those women” Mr. McMinn turned to see a police vehicle traveling slowly. He estimated the speed to be at most fifteen (15) MPH. He was able to see that the driver had turned to go toward the beach house and that he was in a perfect line with the victims. The police officer appeared to be looking towards his right, in the direction of the hard pack sand. Mr. McMinn also reported that the officer was talking on the radio.

Mr. McMinn stated that in his opinion, the higher hard pack sand and the raised mound for the lifeguard stand created a little bit of a gully in the area where the victims were lying. After the incident, he talked to the lifeguard who told them that they were looking for two robbery suspects.

**MERCADO, JORGE** – Jorge Mercado is a police officer with the City of Miami Beach Police Department. He gave a tape recorded statement on February 27, 2003

Off. Mercado was working an off-duty job on the 1700 block of Collins Avenue when he heard a robbery call dispatched over the radio. Shortly thereafter, he was approached by a male and a female who were riding a scooter. They advised him that the two subjects from the robbery were on a Miami-Dade Transit bus, and pointed out the bus to him. Off. Mercado transmitted the information over his

radio and proceeded to follow the bus in his car. He caught up with the bus at 17<sup>th</sup> Street and Collins Avenue. There, the bus driver told him that the subjects had exited the bus and were headed eastbound towards the beach. Off. Mercado returned to his off-duty job and had no further involvement.

**MORALES, WALFRIDO** – Walfrido Morales did not witness the incident. He is the complainant on the original incident that caused the 3-29 call to be issued. He was interviewed in a tape recorded statement on March 4, 2003.

Mr. Morales exited his apartment building on 20<sup>th</sup> Street at approximately 12:20 P.M. on March 22, 2003. He stopped to talk to a woman known to him as Mrs. Prieto. While talking to her he was approached by two men. He described one man as being in his 30's, wearing no tee shirt and blue shorts. Mr. Morales estimated the man's height at six feet with a muscular build and blond hair. The second man was described as being in his 20's wearing no tee shirt and shorts of an unknown color. The second man was approximately 5'6" tall and was more muscular than the first man.

Mr. Morales said that the first man grabbed him by the shirt and threw him to the ground. The first man kicked him while the second man hit him and kicked him. The second man said, "Don't hit on my woman". The two men fled towards Collins Avenue where they turned south. Mr. Morales, who was wearing roller blades, followed after them.

Mr. Morales had a cell phone with him and used it to call 911. He had difficulty communicating with the operator. While this was going on, a man on a moped came up alongside him and informed Mr. Morales that he had seen the incident and was also following the subjects. Mr. Morales gave the man on the moped his cell phone because of the difficulty in communications he was having. At 18<sup>th</sup> Street, Mr. Morales saw the subjects get on a southbound Miami-Dade Transit bus. He and the man on the moped continued to follow the bus. When the bus reached Lincoln Road it turned right. At the 200 block of Lincoln Road Mr. Morales was able to position himself in front of the bus in order to prevent it from moving forward.

There were several police cars at the intersection and a discussion was held with the bus driver. Mr. Morales looked at the passengers on the bus and could not find the people who had assaulted him. Upon questioning, the bus driver told the police that two men with no tee shirts had left his bus prior to their arrival and had run east on Lincoln Road towards the beach.

Mr. Morales stated that in addition to communications problems with the 911 operator, he also had problems communicating with the first officer who responded to his assault.

**OPPENBORN, HENRY** – Henry Oppenborn is a police officer with the City of Miami Beach Police Department. He gave a tape recorded statement on February 28, 2003.

Off. Henry Oppenborn was the Operations Supervisor of the Beach Patrol for Miami Beach Police Department. He heard an officer come on the radio and gave a brief description for two men as a BOLO. The information concerned a robbery and the descriptions were sketchy; one bald male with another male in black shorts.

A witness had seen a bald male wearing black shorts walking south on the beach. He radioed this information to other units. Off. Oppenborn, who was driving northward in a marked police vehicle on the hard pack sand, turned around at 17<sup>th</sup> Street, in order to start looking for that individual.

He recalled a police ATV, and a few other police vehicles also moving south, before he made the turn around. While in transit he heard another officer transmit that he saw a person fitting the description in the BOLO at 14<sup>th</sup> Street. Officer Oppenborn thinks it may have been the same person he had seen, because there would have been enough time for that person to get from where Oppenborn had seen him to 14<sup>th</sup> Street.

By the time Off. Oppenborn got down to the area of the accident, it had already occurred. The SUV was in a stopped position with the rear of the vehicle still over the two women. When he pulled up, he heard someone tell Off. George Varon to pull the SUV forward. The vehicle was moved about ten (10) feet forward. Off. Oppenborn did not recall anything about the collision having been transmitted over the police radio prior to this sequence of events concluding. He got on his radio and advised that there was a very serious injury on the beach and requested the dispatch of fire/rescue.

**PANTING, MICHELE** – Michele Panting is a nineteen (19) year old student at the University of Miami. She gave a handwritten statement to police on the day of the accident. She was re-interviewed in a tape recorded statement.

Ms. Panting arrived at the beach at noon with her friend, Monica Ready. They set down their blanket to the north of the victims, about five to ten (5-10) yards away. The lifeguard stand was to their left. In her estimation, there were a lot of people on the beach that day.

Ms. Panting did not see the SUV, or feel its presence before the accident. She stated that something made her sit up, but she does not know what it was. When she sat up, she saw that the rear tire of the SUV was on top of the chest of one of the women. The SUV was traveling very very slowly. It looked to her like the woman was trying to push the tire off of her body. Ms. Panting cannot say what the officer was doing before he got out of the car.

**PRIETO, MARIA** – Maria Prieto is not a witness to the accident on the beach. She observed the incident that gave rise to the police call that precipitated the accident. Her statement was given in Spanish and was interpreted for me by an official Court Interpreter.

Ms. Prieto was celebrating her grandson's birthday at a McDonald's Restaurant near her home. While walking home she saw a man, known to her as "Wilfredo", walking on the street. Her grandson called to Wilfredo, who turned around. At the same time two (2) men who were in the street, ran up to Wilfredo and knocked him to the ground. Both men continued to beat him while on the ground. Ms. Prieto stated that she would not be able to identify the two men, because things happened very fast. She believes both were in their 30's, one was tall and one had no shirt on. They were screaming at Wilfredo in English, which she does not understand. A passing couple called out to Mrs. Prieto and suggested that she call the police. When the two men heard this they stopped beating Wilfredo and fled the scene. Ms. Prieto did not call the police.

**RABIELA, NATALIE** – Natalie Rabiela is an eighteen (18) year old airline employee from Chicago, Illinois. She gave a handwritten statement to police on the day of the accident and was re-interviewed in a tape recorded telephone conversation.

Ms. Rabiela was on the beach with her mother, Patricia Rabiela, and the Gurrolas whose statements are outlined above. She did not see the accident, as she was not looking in the direction where it happened.

**RABIELA, PATRICIA** -- Patricia Rabiela is a fifty-seven (47) year old doctor's assistant from Chicago, Illinois.

Mrs. Rabiela arrived at the beach at 9:15 A.M. with her daughter and the Gurrolas. She believes that they were lying about three hundred (300) feet north of the victims. Mrs. Rabiela saw the police SUV before the collision. Mrs. Gurrola alerted her to it by saying "Oh my God he almost hit those people". She looked and saw a police vehicle headed southeast from a position west of a food hut. It appeared the vehicle was headed towards the lifeguard stand. Mrs. Rabiela does not remember if the windows were up or down, and cannot say what the driver was doing inside of the vehicle.

Mrs. Rabiela described the victims as lying with their heads toward the north. There were no beach chairs between her and the victims, but there were others lying on the beach. There were many people on the beach according to Mrs. Rabiela. She was wondering why the car was on the beach when there were so many people. She cannot say how fast he was going, but he was not blasting down the beach. He was going ten (10) MPH at the most.

From a distance Mrs. Rabiela was able to see the SUV stop, and the driver get out of the vehicle. Then he got back in and moved the vehicle. She did not see any other police cars on the beach until she walked over to the scene. She arrived at the same time that the first responding officer arrived on the scene. Mrs. Rabiela comforted surviving victim (Sandrine Tunc) by cradling her head in her lap and talking to her.

**READY, MONICA** – Monica Ready is a nineteen (19) year old resident of Coral Gables, Florida. She gave a handwritten statement to police on the day of the accident and was re-interviewed in a tape recorded statement.

Ms. Ready went to the beach with her friend, Michelle Panting whose statement is outlined above. They put down their blanket about eight (8) feet away from the victims. They were lying with their heads to the north, and Ms. Ready was closer to the water than her friend. As Ms. Ready lay there, talking to her friend she was able to see police cars passing by in the background.

From her position Ms. Ready was able to see that the driver was looking over his shoulder, at something behind him. In her opinion the SUV was moving faster than a roll, but it was not as much as twenty (20) MPH. Ms. Ready had noticed a topless bather in the area and it appeared to her that the police officer was looking in that direction.

Ms. Ready looked back at her friend, and when she looked towards the SUV again she saw it hit the two women. She saw the police officer stop the vehicle, get out, say "Oh, my God", and get back into the SUV to move it forward.

**RICE, PATRICIA** – Patricia Rice is a police officer with the City of Miami Beach Police Department. She gave a tape recorded statement on February 27, 2003.

Officer Rice responded to the area of Lincoln Road and Washington Avenue in response to a robbery call. The call was dispatched as a “3-29” meaning it was an emergency. She also heard radio transmissions about two suspects who fled the scene on a Miami-Dade bus, southbound on Washington Avenue. Upon arrival at Lincoln & Washington, Off. Rice met Walfredo Morales and talked with him about what had happened. In this conversation she learned that Mr. Morales had not been robbed, it was a case of simple battery. Off. Rice transmitted this information to the dispatchers and changed the “3-29” to a “32”, or simple battery. Walfredo Morales told Off. Rice that he did not want to pursue the case.

**SACHER, JOSEPH** – Joseph Sacher is a civilian witness whose tape recorded statement was taken on March 3, 2003.

Mr. Sacher went to the beach with his girlfriend, Stacy Kandel, whose statement is outlined above. He said that he was about seventy-five feet away from the victims. He heard a commotion near the lifeguard stand and saw two women under a police vehicle. Mr. Sacher saw a police officer walking around in apparent distress, and then kneel over the victims. The police officer got back into his vehicle and moved the vehicle forward approximately three (3) feet. Mr. Sacher noticed that the vehicle lowered considerably when it moved forward, so it appeared that it came down off of something. Mr. Sacher never walked up to the immediate scene, but Ms. Kandel did.

Several hours after the incident Mr. Sacher spoke to a television reporter. Mr. Sacher assured the detectives that neither he nor Ms. Kandel saw the accident prior to noticing the vehicle on top of the victims.

**TUNC, SANDRINE** – Sandrine Tunc is one of the victims in this accident. She is a twenty-six (26) year old hairdresser from France. Ms. Tunc gave a tape recorded statement to police. The tape was in English and did not require translation. I also spoke to Ms. Tunc in the presence of her civil lawyers who confirmed that the statement taken by the police was accurate and complete.

Ms. Tunc and her sister, Stephanie Tunc, walked to the beach by way of Ocean Drive. They walked out to the water and then decided to lie down by the lifeguard stand. They chose that place because there was an open spot there, and the lifeguard stand provided a little bit of cover from the wind. There were some orange traffic-type cones surrounding the lifeguard stand and the sisters set up outside the cones. The beach was crowded and there were other sunbathers in their general area.

When they lay down, their heads were to the north, and their feet to the south. Ms. Tunc’s sister put on the earphones for a personal CD player and closed her eyes. Ms. Tunc also closed her eyes, but stated that she did not fall asleep, because she cannot sleep on the beach. The next thing she knew there was a heavy “shock” on her body. There were no sounds that warned her about what was about to happen. The pain was centered in her chest and stomach. Ms. Tunc opened her eyes and was able to see the underneath part of a car. There were people screaming all around her. She saw the

driver look down at her, and heard him say “Oh, shit!” Ms. Tunc was also able to see that her sister was pinned under the rear tire of the vehicle. The car drove backwards on top of her and her sister again.

Prior to the incident Ms. Tunc did not see any police vehicles on the sand. Neither she nor her sister had any alcoholic beverages before going to the beach.

**VAZQUEZ, CLORIS** – Cloris Vazquez is a police officer for the City of Miami Beach Police Department.

Off. Vazquez heard a BOLO go out for a robbery. The information transmitted said that the suspects were headed east, toward the beach. He had just finished a hit-and-run accident investigation when the call came in. He was at 10<sup>th</sup> Street and Pennsylvania Avenue. Off. Vazquez proceeded towards the beach, arriving at about 17<sup>th</sup> Street. There were two other police units using the same access to the beach, and they were in front of him. Off. Vazquez does not remember who they were, but they were in regular patrol cars, not SUV’s.

Off. Vazquez went southward on the beach because one of the other police vehicles had gone north. He drove on the hard pack sand because his vehicle did not have four-wheel drive capability. Off Vazquez stopped at 15<sup>th</sup> Street, with the intention of turning around to go north. While doing so, he was passed by Off. Varon, who was traveling southbound in an SUV. Off. Varon was just beginning to move from the hard pack to the soft pack sand, at this point. Off. Vazquez was moving very slowly, and can say that Varon was traveling faster, but cannot estimate the speed.

Off. Vazquez continued southbound, and saw Off. Varon, off to his left side, just as he was rolling over the two sunbathers. There was insufficient time to warn Varon of the impending accident, despite the fact that it appeared that Varon was moving very slowly. Off. Vazquez was still on the hard pack when he made these observations. According to Off. Vazquez, the beach was not very crowded at the location of the accident. During this period of time Off. Vazquez did not hear the original call changed from a robbery to a less serious call.

Off. Vazquez left his vehicle and started running towards Off. Varon. While he was running, he saw Varon get out of his vehicle, and then return to it quickly. Off. Varon’s vehicle moved forward a few feet. When Off. Vazquez reached the SUV, he saw that the rear bumper was still hovering over one of the women. He told Off. Varon to move the car forward some more, and he and a lifeguard lifted the bumper, so that the car would not dip onto the women as it moved.

Off. Vazquez assisted in getting identification from the victims, rendering aid, and assisted in keeping order. Off. Varon made no statements in Off. Vazquez’s presence.

**VARON, GEORGE** – Off. George Varon did not give a voluntary statement to police investigators.

**VEGA, ROLANDO** – Rolando Vega is a resident of San Jose, Costa Rica. He was interviewed by telephone in a tape recorded conversation on February 27, 2003.

Mr. Vega had gone to the beach with two friends, Carlos Aguilar and “Bob” (Robert Doherty) whose statements are outlined above.

Mr. Vega stated that he and his friends were walking south on the hard pack sand when they were passed on their left by a marked police vehicle, a Ford SUV. In Mr. Vega’s opinion the vehicle was traveling slowly. Mr. Vega could not say what the driver of the SUV was doing as he passed them. The SUV headed toward the lifeguard stand and appeared to be traveling at fifteen to twenty (15-20) kilometers per hour (KPH). Mr. Vega did not follow the SUV and, therefore, he did not see the collision with the victims. He looked in that direction after he heard screams. By that time he was able to see the rear wheels of the SUV as they went over the victim.

Mr. Vega saw a blonde male giving the driver orders as to whether to go forward or backward. He said the SUV went in reverse and then went forward.

### **TRANSMISSION TAPES**

I listened to the transmission tapes provided by the City of Miami Beach Police Department. They indicate that the first person that called 911 had difficulty communicating with the dispatcher. The caller told the dispatcher that two men had “jumped” the victim. The dispatcher interpreted this as a robbery and police units are advised of the flight of robbery suspects. The call was assigned a “3” (emergency) status. For the next several minutes there are numerous dispatches concerning the incident consistent with the suspects having fled towards Collins Avenue, and then getting on a bus. Eventually police units are advised that the suspects have fled eastbound towards the beach. The description of the suspects, although limited in detail, is repeated numerous times at the request of different officers.

The transmissions are all given a time stamp. Officer Steven Nagel assisted me in understanding the communications system employed by the City of Miami Beach Police Department. Not all of the transmissions were on the main channel; some of them were car-to-car (C to C). Other police units cannot hear car-to-car communications. In addition, the city is broken up into main zones, and communications with the dispatcher by a police unit in one zone cannot be heard by police units monitoring the other zone. Some of the pertinent transmissions are as follows:

12:28:58: The 911 call from the victim. He advised the dispatcher that he had been hit by some people. The dispatcher expressed difficulty in understanding the victim. He asked that someone be put on the phone who spoke English. Another person took the phone and told the dispatcher that the victim had been “jumped” and gave a description of the subjects. While on the phone, the caller advised that they had gotten on a bus and gave the direction of travel. When asked if anything was taken, the man said that he did not know.

12:31:52: The dispatcher issued a description of the subjects accompanied by a beep tone indicating an emergency.

- 12:32:49: One of the responding units refers to the call as a 3-29.
- 12:33:12: The dispatcher called for additional units to clear up so that they could respond.
- 12:40:26: (C to C) Off. Rice gave out a follow up description of the suspects. When asked what was taken, she said, "Nothing was taken". The officer she was talking with said, "So it was just an attempt then".
- 12:41:59: Officer Rice told the dispatcher that the call was not going to be a "29", that I was going to "...more of a 32" (simple assault).
- 12:42:26: (C to C) A supervisor asked Off. Rice what had happened in light of the fact that the case was not going to be a 29. Off. Rice told him that the victim had advised her that the victim was talking to a lady when suspects approached him and told the victim that he should not talk to the suspect's lady. Off. Rice repeated that nothing was taken during the incident.
- 12:47:28: An officer inquired if there was anything additional on the description of the subjects on the beach.
- 12:47:48: The dispatcher repeated the available description of the subjects.
- 12:49:17: One of the police units told the dispatcher that a beach patrol unit had advised him that someone matching the description of one of the subjects had been seen on the beach at 13<sup>th</sup> Street and said person was traveling south.
- 12:49:45: Off. Rice told the dispatcher that the victim "no longer wishes to pursue it".
- 12:51:47: Off. Vazquez called for fire rescue to respond to the beach.
- 12:51:52: Off. Varon reported the accident and calls for fire rescue.

The most salient feature about the downgrading of the call is that it is never, that I could find, announced by the dispatcher to all the police units. The statements by Officer Rice are low key in nature, and not in the manner of an urgent message. There are a couple of communications between officers looking for the suspects, that come after these advisements by Off. Rice.

## PHYSICAL EVIDENCE

There is very little physical evidence available in this case. The sandy surface upon which this accident happened is not conducive to maintaining physical evidence. Photographs taken by the police department do not show any furrowing of the tires, which would indicate a rapid stop, from a fast speed, but the care and treatment of the victims could have wiped out any such evidence, if it ever existed. There are what appear to be tire tracks leading up to the area where the victims were lying, but they are indistinct, and there are numerous apparent footprints masking them.

The injuries to the victims were almost entirely internal. There are external scrapes, contusions, and abrasions, but there was virtually no external bleeding. I spoke to Dr. Bruce Hyma, Chief Medical Examiner, who conducted the autopsy upon Stephanie Tunc. I asked him if there was any physical evidence on the body that would enable him to render an opinion as to whether or not the body was rolled over more than once. I asked this question in order to resolve the conflicting statements that the SUV moved once or twice after stopping on the body (once forward or; once backward and then once forward). Dr. Hyma told me that the wound pattern did not allow him to render an opinion that would help resolve that issue.

## CONCLUSION

It is the opinion of the undersigned that Officer George Varon cannot be charged with any felony charges or civil infractions. My reasoning is as follows:

In order to charge Officer Varon with a felony the standard of driving misconduct would have to rise to the level of recklessness. Recklessness would allow charges of Vehicular Homicide (Fla. Stat. 782.071) for the death of Stephanie Tunc and Reckless Driving Causing Serious Bodily Injury [Fla. Stat. 316.192(3)(c)(2)] for the injury to Sandrine Tunc.

One of the most important issues that needs to be resolved in order to determine whether or not Officer Varon was being reckless, is the issue of his speed at the time of the accident. As stated above, there is little physical evidence in the sand upon which to reconstruct the collision. However, the fact that the rear wheel of the SUV came to rest upon the body of Stephanie Tunc is sufficient to establish that Off. Varon was traveling at a very slow speed.

I reach this conclusion because there is a mathematical formula that allows you to turn speed into the number of feet traveled in one second. That formula is Speed (in MPH) multiplied by 1.46 equals the number of feet a car will travel in one second. The wheelbase of the Ford Explorer is 9-1/2 feet (nine and one half feet). There is no reason to believe that Off. Varon saw the victims before impact. Therefore it appears that he reacted to his front wheel hitting Stephanie Tunc, and was able to bring his vehicle to a stop within 9-1/2 feet. If we assume an instantaneous reaction time and stopping distance the speed at impact would have been 6.5 (six and one half) MPH, using the formula above. If we factor in a reasonable reaction time (one second) and a short stopping distance (one or two feet) the speed of the SUV is below 5 MPH.

In addition, I spoke to Dr. Hyma about hypothetical situations that could have lead to Stephanie Tunc's death that included higher speeds. I used ten (10) MPH as a starting point for our discussion. Using the formula above, a car traveling ten MPH would travel approximately fifteen (15) feet in one

second, and would require a longer stopping distance. (In addition it would necessarily indicate that Off. Varon saw the women before he struck them. Yet, no one reported that he turned his wheel in order to try to avoid them.) By the time the rear wheel of the SUV reached the body of Stephanie Tunc, it would have stopped rotating. When it struck the body, Dr. Hyma opined that one of two things would have happened; one, the tire would have dragged across the body or, two, the tire would have pushed the body through the sand. The injuries to Stephanie Tunc fit neither of those patterns. The injuries, in Dr. Hyma's opinion, were crushing injuries consistent with a rolling tire. In my opinion this confirms the slow speed analysis above.

Most of the witnesses who saw Off. Varon as he was driving indicate that he appeared to be looking into the distance, either ahead of or to the right of his vehicle. This is completely consistent with a police officer searching for suspects in what was believed to be a felony crime. There is no doubt that a police officer looking for suspects must also be aware of his surroundings and be careful to avoid injury to persons or property. However, the failure to do so is an act of omission and not an act of recklessness. This is especially true when traveling at very slow speeds.

The seminal case on recklessness in vehicular homicide cases is McCreary v State, 371 So.2d 1024 (Fla. 1979). In it, the Supreme Court held the degree of negligence necessary to prove recklessness falls short of culpable negligence (Manslaughter), but is greater than the mere failure to use ordinary care. In State v. May, 670 So. 2d 1002(2<sup>nd</sup> DCA Fla. 1996) the Court held that misconduct that leads to a finding of recklessness must demonstrate a willful or wanton disregard for safety. This standard was applied in State v Esposito, 642 So.2d 25 (4<sup>th</sup> DCA Fla. 1994) where a trolley bus driver struck and killed a pedestrian in a crosswalk. The pedestrian was walking slowly with a four pronged cane. Passengers on the bus saw the pedestrian and stated that the driver should have seen the pedestrian and had ample opportunity to stop. The defendant's conviction for vehicular homicide was overturned with the court saying:

Accepting the evidence in the light most favorable to the state, the facts and circumstances in this case support no more than a finding of simple inattentiveness (ordinary negligence) and are **woefully insufficient** to state a prima facie case of reckless driving (willful and wanton driving behavior)... He was in control of the trolley and was driving at less than the posted speed limit. Albeit a tragedy, the evidence introduced at trial merely demonstrated the elderly driver's negligence in failing to observe a pedestrian in the roadway. At 27 (*emphasis added*)

In my opinion, Officer Varon's extremely slow speed is a clear indication that he was cognizant of the hazards of driving on the beach. Therefore under the law of Florida his actions cannot be deemed reckless or in wanton disregard of safety. To paraphrase the court in Esposito, *supra*, albeit a tragedy, the evidence merely demonstrates Officer George Varon's negligence in failing to observe the sunbathers on the beach.

Another issue that needs to be discussed, is the fact that there are radio transmissions prior to the accident that indicate that the seriousness of the crime had been reduced from a robbery to a simple assault. I could not locate anywhere in the transmission a statement by the dispatcher, or any other officer, that the crime under investigation had been downgraded and was no longer an emergency. It is apparent from the number of transmission between individual officers and the dispatcher the police units on the street thought that the crime was still a serious felony. Although this lack of communication is regrettable, there are two reasons why I believe that this fact does not change the ultimate decision. This could be explained by the fact that some of the transmissions were car-to-car, and others could have been

lost in the quantity of communications, some of which involved other cases. The change in the nature of the crime does not change the nature and quality of Off. Varon's driving. It makes it no better, and no worse. The reason for his being on the beach changes, but that is not a factor in determining if his driving was reckless or not.

In most cases of this type, I would recommend that Officer Varon be charged with careless driving. However, in this case I cannot. Florida Statute 316.1925 (Careless Driving) is directed toward persons "...operating a vehicle upon streets and highways..." The beach is neither a street nor a highway. Therefore the state careless driving statute is inapplicable. I, and others, have searched the state statutes and can find no statute that would allow a criminal charge or a civil infraction for careless driving on the beach. As a result, I have also researched the Codes of the City of Miami Beach and Miami-Dade County. Miami Beach has an ordinance (§44-2.1) that prohibits vehicles from driving on the beach; however, it exempts police vehicles from that restriction. Another Code section (§25-70) is entitled "Personal injury—Inflicted through negligence". A reading of that section shows that it makes it unlawful to cause injury through culpable negligence or reckless disregard for safety, and would, therefore be inapplicable for the reasons stated above. The Miami-Dade County Code has a Careless Driving ordinance (Sec. 30-212) but, like the state statute, it is directed towards vehicles on the streets and highways.

Prepared by:

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Assistant State Attorney