

Evidence

On October 17, 2006, Sean Casey signed a plea agreement with the State Attorney's Office, under the circumstances already mentioned that convicted him of DUI manslaughter, Vehicular Homicide, Leaving the Scene of an Accident, and Failure to Appear. However, strictly following Florida Statutes on each of these offenses, the facts surrounding his case do not warrant charging Mr. Casey let alone convicting him of any of them.

Florida Statute §316.193 stipulates, "Any person who operates a vehicle ...with a blood alcohol level of .08; and who, by reason of such operation, causes or contributes to causing...the death of any human being...commits DUI manslaughter." The State **must** prove that the driver's blood alcohol content was .08 or greater at the time of the accident, or the driver exhibited signs of being too impaired to drive.

In *Sizensky v. State*, the Appellate Court ruled:

"Evidence was insufficient to establish DUI manslaughter...[D]efendant's blood alcohol level...two hours after accident was .13%, but because defendant had ingested alcohol so close to accident, expert could not say that his blood alcohol at time of accident was .10%...We, therefore, reverse and vacate conviction for DUI manslaughter."¹⁵⁴

Assuming Sean Casey was driving the vehicle, can the State prove he was "drunk" at the time of the accident? The accident happened at 10:13 a.m. The police drew Mr. Casey's blood at 4:00 p.m. and 4:20 p.m., which tested at .17% and .16%, respectively. This is a full 6 hours since the accident! Sean could have consumed alcohol **after** the

¹⁵⁴ *Sizensky v. State*, App. 2 Dist., 588 So. 2d 287 (Fla. 1990)
Note: .10% was legal limit at time of ruling.

accident. Police never investigated this possibility.¹⁵⁵ As in *Sizensky*, it is impossible to know here what Sean Casey's blood alcohol level was at the time of the accident, again, if he was even in the accident.

According to the State Attorney's Office, if Mr. Casey's presumed level of alcohol was calculated backwards, it would have been around .30% at the time of the accident.¹⁵⁶ The problem with this is that at that high level of alcohol, the individual would have experienced "inertia, inability to walk or stand, vomiting, incontinence, staggering, approaching loss of motor skills, slurred speech, and impaired consciousness."¹⁵⁷ In other words, he would have been one step away from a coma or death! If this were the case it begs the question whether Sean could have even been driving a car passing through such communities as Bal Harbor and Surfside with high traffic congestion and many roadside obstacles without getting into a collision with another vehicle, driving off the roadway or crashing into the median or a tree. Remember, experts have testified that Mr. Casey could most definitely have been a passenger in the vehicle.¹⁵⁸

¹⁵⁵ Defense: "Did you happen to find a liquor cabinet?"

Hundevadt: "I have a recollection that we may have, that there was something in the living room area."

Defense: "Did you make any effort to determine whether he had been drinking immediately before the time you arrived at 1000 West?"

Hundevadt: "No."

Defense: "Did you ask any of your fellow officers?"

Hundevadt: "No, because at that point we were going down—no, sir."

Defense: "When you subsequently returned to the apartment you did make a specific investigation for physical evidence of recent drinking...?"

Hundevadt: "I don't believe I did, sir."

[Hr'g. Tr. 59:2-23, Oct. 10, 2001, **Exhibit 1**]

¹⁵⁶ Prosecutor: "The blood alcohol read as a .17 and .16...Retrograde would show that at the time of the crash at 10:13 in the morning it was a .29."

[Hr'g. Tr. 17:3-6, Oct. 17, 2006, **Exhibit 35B**]

¹⁵⁷ See **Exhibit 59**

¹⁵⁸ A: "...He could have been anywhere in the vehicle, if he was in the vehicle..."

However, there is a major problem with the State's theory that even puts into doubt the validity of the blood results. Defense counsel unfortunately never conducted independent testing to determine if, in fact, the blood was even Sean Casey's. The police located Mr. Casey at his apartment at 10:51 a.m., only 45 minutes after the accident, and he exhibited absolutely no symptoms of being intoxicated, "drunk," or even impaired.¹⁵⁹ In the end, the State Attorney's Office contradicts itself by taking the position that Sean Casey was "wasted" at 10:13 a.m. and completely "sober" at 10:51 a.m., fully able to cooperate with police, participate in questioning, and sign away his constitutional rights, even though at 4:00 p.m. he still was twice the legal limit! It is clear the prosecution has no idea what Mr. Casey's blood alcohol content was at the time of

Q: "Do you have any opinion as to how many occupants were in...Mr. Casey's car?"

A: "No, I don't."

Q: "Looking at the physical evidence, were you able to form any opinions as to how many people were in that vehicle at the time...?"

A: "No."

[Buchanan Dep. 19:1-2, 38:12-14, 21-24, Nov. 18, 2003, **Exhibit 36**]

¹⁵⁹ Defense: "You have probably done many interrogations...in the course of your going on your 21st year with the Miami Beach Police Department, correct?"

Hundevadt: "Many."

Defense: "You are aware that for someone to give a proper and lawful statement the person must be in his right senses, correct?"

Hundevadt: "Correct."

Defense: "Did you consider Mr. Casey to be drunk?"

Hundevadt: "No, sir."

[Hr'g. Tr. 60:16-25, Oct. 10, 2001, **Exhibit 1**]

Prosecutor: "Did the defendant seem to you to understand what was going on in that room?"

Silvagni: "Yes. He was very lucid, spoke very clearly."

[Hr'g. Tr. 86:15-17, Oct. 10, 2001, **Exhibit 1**]

Q: "He wasn't slurring his speech or any of that sort of thing?"

A: "No."

Q: "Did he at any time say to you he felt he was going to be sick or throw up or any of that kind of thing?"

A: "No, he did not."

[Hensen Dep. 24:14-19, Mar. 2, 2004, **Exhibit 8**]

Q: "How about at the apartment when he answered the door...?"

A: "He did not appear to be wobbly or have a problem standing."

[Hensen Dep. 25:1-10, Mar. 2, 2004, **Exhibit 8**]

the accident. Either he was too “drunk” to have been able to cooperate with police and sign away his constitutional rights or he was “sober” and should not have been charged with this offense. As in *Sizensky*, the State cannot prove the fundamental element of DUI manslaughter.

A second element that is key to a DUI manslaughter conviction is known as “proximate cause” or “causation.”¹⁶⁰ It is not enough that the defendant was involved in an accident that resulted in death. The defendant must have **caused** the accident and death. In *Magaw v. State*, 537 So. 2d 564 (Fla. 1989), the Court held that causation is a required element of the State’s proof. Thus, in order to obtain a conviction, the Court held that the prosecution must prove the defendant was under the influence, and by operation of a motor vehicle, exhibited conduct establishing a “causal connection” between the driver’s conduct and the resulting accident which caused the victim’s death. In *Webber v. State*, 577 A. 2d 58 (Md. 1990), the defendant’s negligence was not proximate cause of death, even though he had a blood alcohol level of .23%, due to the fact that the victim’s blood alcohol level was .16%, and an accident reconstruction expert testified that a sober driver in the defendant’s position could not have avoided the victim. There was no proximate cause, but rather other “independent intervening causes.”¹⁶¹ This cannot be more true than in the accident in Mr. Casey’s case.

Unfortunately the Miami Beach Police Department did a careless job in their investigation and only a few witnesses actually saw the accident. However, accident reconstructionist, John Buchanan, and private investigators Jack and Lorraine Yuen,

¹⁶⁰ *Driving Drunk and Related Driving Offenses* (2005), by Robert S. Reiff, **Exhibit 60**

¹⁶¹ *M.C.J. v. State*, 444 So. 2d 1001 (1984)

were able to piece enough information together to show that “drunk” or not, this accident was going to happen.

It was a clear, sunny morning. Mr. Casey’s vehicle was behind a Metro bus at around 80th Street and Harding Avenue in the right lane of a three-lane roadway. His car was going with the flow of traffic.¹⁶² The car moved into the middle lane to pass the bus. There was no swerving, sporadic lane changes, or frequent application of the brakes, which are typical indicators of “drunk” drivers.

Meanwhile, Mary Montgomery decided to cross the roadway. Although the prosecution claims she got off the bus and crossed from west to east, all evidence indicates she crossed from east to west. This is even confirmed by the police. This major discrepancy brings into doubt the credibility of everything else the State Attorney’s Office has claimed in this case. In any event, Ms. Montgomery chose to cross right when a group of cars were passing approaching the next traffic signal at 74th Street, instead of waiting for a break in the traffic. Nobody claims Mr. Casey’s vehicle “came out of nowhere.” It was clearly visible. She probably attempted to cross quickly to clear all three lanes. She was a 71-year old somewhat overweight woman with emphysema and high blood pressure carrying heavy groceries.¹⁶³ She cleared the left lane, probably cleared the middle lane, then noticed either the bus or another vehicle in the right lane and literally “backed” into Mr. Casey’s vehicle, which apparently struck her on the very edge of the front-right panel. Only a matter of seconds would have gone by between passing the bus and the accident. Given her age and precarious health, she could have even fainted and “fell” onto Mr. Casey’s vehicle. Nobody knows what really

¹⁶² See Footnote 88 (“Argument” Section)

¹⁶³ See Footnote 139 (“Argument” Section)

happened. The State does not even know which way she was crossing the street! It is difficult to blame the victim in such a tragic death, but the fact remains that had she not violated the law and crossed the street not yielding to traffic this accident would **never** have happened.

Also, the record clearly shows how dangerous this stretch of roadway is for pedestrians. Howard S. Weinberg, a resident of Miami writes, "The pedestrian nightmare on Harding Avenue has been well known to our government officials for quite some time. **A viable solution has been in the city's possession since 1994...[A] review of the 'Visions' plan for Harding Avenue makes it quite apparent that lives may have been saved if the plan had been implemented.** Specifically with regard to Harding Avenue, the plan...will return [Harding] to a quiet, orderly residential street, reducing traffic, providing safe pedestrian walkways..."¹⁶⁴ Therefore, based on all the facts of this case, as in *Webber*, the driver of Mr. Casey's vehicle was not the "proximate cause" of the accident, but rather the victim crossing the roadway where she was not supposed to and poor roadway conditions were independent factors that **caused** the accident.¹⁶⁵ Whether the driver was drunk or sober, the accident could **not** have been avoided.

¹⁶⁴ The Miami Herald, "Architect had 'Visions' for Beach," by Howard S. Weinberg, Mar. 25, 2001, **Exhibit 61**

¹⁶⁵ Q: "What about the defendant—excuse me—the driver of the vehicle? That person was also at fault in the accident; is that correct?"

A: "At fault? How?"

Q: "In causing the accident. They were both contributing; wouldn't that be your opinion?"

A: "How did the car contribute?"

Q: "I am asking you."

A: "The car had the right of way."

[Buchanan Dep. 30:23-25, 31:1-6, Nov. 18, 2003, **Exhibit 36**]

Another element usually found in a manslaughter charge is “culpable negligence.” In *Jackson v. State*, 100 So. 2d 839 (Fla. App. 1 Dist. 1958), the Courts defined this element as:

“...that degree of negligence of gross and flagrant character, evincing reckless disregard of human life...it does not follow, however, that every fatality, regrettably as it may be, is accompanied by and results from conduct warranting a criminal conviction...The occurrence of an automobile collision carries with it the presumption of negligence in some degree on the part of someone but is not necessarily legally sufficient to warrant a conviction for manslaughter predicated upon culpable negligence...Speed alone is not necessarily such ‘culpable negligence’ as to sustain a charge of manslaughter by automobile nor is the fact that defendant had been drinking or was to some degree under the influence of intoxicant proof of culpable negligence.”

In *W.E.B. v. State*, 553 So. 2d 323 (Fla. App. 1 Dist. 1989), the Court found:

“Evidence that juvenile drove vehicle after he had been drinking, exceeded speed limit, and drove over center line and collided with oncoming vehicle after driving off shoulder of road was insufficient to establish that he drove vehicle in reckless manner as to support finding that he committed felony offense...”

As in *Jackson* and *W.E.B.*, there is no evidence of “culpable negligence” in Mr. Casey’s case. This is also a key element in the charge of Vehicular Homicide, which Sean was also convicted of in the plea agreement despite the fact the Courts have made it clear that when a single death occurred, the defendant cannot be convicted of **both** DUI manslaughter and Vehicular Homicide. In *Sofrany v. State*, App. 2 Dist., 895 So. 2d 1145 (2005), the Court ruled, “A single death cannot support convictions for both Driving Under the Influence (DUI) manslaughter and Vehicular Homicide.” Also, in *Galiana v. State*, App. 3 Dist., 868 So. 2d 1218 (2004), the Court determined that “[j]udgments of defendant’s conviction for vehicular homicide, the sentences for which were suspended, were dismissed upon conviction for DUI manslaughter; single death

could not support convictions for both DUI manslaughter and vehicular homicide.” A review of Mr. Casey’s Judgment Information Sheet will show that he was convicted of both, although the sentence for Vehicular Homicide was suspended.¹⁶⁶ As in *Sofrany* and *Galiana*, Sean Casey’s conviction for Vehicular Homicide should have been dismissed. Moreover, the evidence does not even provide sufficient grounds for conviction in either of the charges.

According to Florida Statute §782.071, “Vehicular Homicide” is the killing of a human being...caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of another human being. In *State v. Gensler*, the Court added that “the reckless operation of the motor vehicle must be the proximate cause of the death of the human being.”¹⁶⁷ Furthermore, “Vehicular Homicide cannot be proven without also proving the elements of reckless driving.”¹⁶⁸

“Reckless driving”, according to Florida Statute §316.191, is driving a vehicle in a willful or wanton disregard for the safety of persons or property. “Willful’, in the context of the reckless driving statutes, means intentional, knowing, and purposeful, and ‘wanton’ means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.”¹⁶⁹ If Mr. Casey was driving his vehicle at the time of the accident, he absolutely no way did so intentionally, knowingly or purposefully. In the most simple definition of the word, it was an accident; an accident that could not have been avoided by anyone.

¹⁶⁶ See **Exhibit 24**

¹⁶⁷ *State v. Gensler*, App. 3 Dist., 929 So. 2d 27 (2006)

¹⁶⁸ *State v. Del Rio*, App. 2 Dist., 854 So. 2d 692 (2003)

¹⁶⁹ *D.E. v. State*, App. 5 Dist., 904 So. 2d 558 (2005)

In *House v. State*, the “[e]vidence did not support defendant’s charge of vehicular homicide, whose only evidence of manner in which defendant was driving at time he collided with victim was that he was speeding.”¹⁷⁰ Although the State Attorney’s Office has stated on record that Mr. Casey’s vehicle was traveling at a high rate of speed, even the State’s own expert in this case, Officer Steven Nagel, can only put the vehicle at 1 to 11 MPH over the posted speed limit.¹⁷¹ Experts testified that speed was *not* a factor.¹⁷² As already mentioned, the police report indicates Mr. Casey’s vehicle was “weaving in and out of traffic,” but the reality is that his vehicle switched lanes once to pass a Metro bus. Even the police diagram shows the vehicle traveling in a straight path.¹⁷³ It was a clear, sunny morning. There were no reasons to take extra precautions necessary when driving in the rain or at night. Mr. Casey’s vehicle was traveling slightly above the speed limit, certainly not “reckless driving” by any sense of the word or by Florida Statute.

Returning to *Sizensky v. State*, when the Court dismissed the charge of DUI manslaughter because it was impossible to determine the defendant’s blood alcohol content (BAC) at the time of the accident from a blood draw two hours later, the State attempted to maintain its conviction without the BAC evidence by showing he was impaired, but the Court found that there was no testimony that his “eyes were

¹⁷⁰ *House v. State*, App. 2 Dist., 831 So. 2d 1230 (2002)

¹⁷¹ See Footnote 88 (“Argument” Section)

¹⁷² Q: “You don’t believe the vehicle’s speeding.----”

A: “If you are going to walk out in front of a vehicle that is going 5 or 10 over, you are going to get hit anyway.”

[Buchanan Dep. 35:5-10, Nov. 18, 2003, **Exhibit 36**]

¹⁷³ See Footnote 91 (“Argument” Section)

bloodshot, that his speech was slurred, or that he was unsteady on his feet.” The only evidence against appellant was that he was speeding. His speed was estimated at 68 MPH; 33 MPH over the posted limit. The Court ruled, “[I]t is self-evident that the presence of excessive speed alone in the absence of any other factors, does not show that alcohol impaired the driver’s faculties. We, therefore, reverse and vacate appellant’s conviction.”¹⁷⁴ There can be no closer case in point to Mr. Casey’s. As already mentioned, police drew Sean’s blood 6 hours after the accident, not 2, and even the police officers, all 6 of them in contact with him within an hour of the accident claim he was *not* impaired!¹⁷⁵ The State had no evidence to convict Sean Casey of these charges.

Finally, had Mr. Casey been “slipped a pill” at the bar where he was at causing him to lose his memory and if he was driving the vehicle at the time of the accident, he certainly cannot be held responsible for the accident. In *State v. May*, the court ruled:

“Motorist did not willfully drive in manner that would likely have caused death of another, and thus granting of judgment of acquittal on vehicular homicide charge was proper, where on morning of accident giving rise to criminal charges, doctor injected motorist with Demerol to treat migraine headache, experts testified that Demerol could affect motorist’s judgment and memory, motorist was not informed that she had been given Demerol, and motorist did not remember calling doctor, driving herself to his office, what happened in doctor’s office, filling prescription, or accident.”¹⁷⁶

If someone had placed Rohypnol in Sean Casey’s drink at The Boardwalk, which had happened on many occasions to other clients, triggering his memory loss, as in *May*, he should not be convicted of Vehicular Homicide. Unfortunately, police did an

¹⁷⁴ *Sizensky v. State*, App. 2 Dist., 588 So. 2d 287 (1991)

¹⁷⁵ See Footnote 159 (“Evidence” Section)

¹⁷⁶ *State v. May*, App. 2 Dist., 670 So. 2d 1002 (1996)

incompetent job in their investigation and never tested for any substance other than alcohol even though they knew it was a strong possibility he had been slipped a “roofie.”¹⁷⁷

Similarly, Mr. Casey should not have been charged and convicted of Leaving the Scene of an Accident as defined by Florida Statute §316.027, “The driver of any vehicle involved in a crash resulting in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of Florida Statute §316.062. Any person who willfully violates this paragraph is guilty of a felony of the second degree.” In *Reeves v. State*, App. 2 Dist., 647 So. 2d 944 (1994), the Court established, “Knowledge that accident has resulted in death or injury to a person was essential element of willfully leaving scene of the accident.” Also, in *Perry v. State*, the Court ruled, “Verdict finding defendant guilty of leaving the scene of accident resulting in death or injury was defective for failure to contain essential element of ‘willfulness’ as set forth in applicable statutes.”¹⁷⁸ Finally, *State v. Mancuso* stated, “Criminal liability under state [law] prohibiting motorist from leaving scene of accident involving death or personal injury requires proof that motorist knew of resulting injury or death or reasonably should have known from nature of accident.”¹⁷⁹ It has been established and proven by experts that Mr. Casey has no memory of the accident and, if he was driving the car, was unaware of the injury and resulting death. Even witnesses did not

¹⁷⁷ See Footnote 130 (“Argument” Section)

¹⁷⁸ *Perry v. State*, App. 1 Dist., 362 So. 2d 460 (1978)

¹⁷⁹ *State v. Mancuso*, 652 So. 2d 370 (1995)

know what was struck.¹⁸⁰ Also, Sean Casey's character and past behavior show that he would have stopped and rendered aid had he been of conscious mind to know somebody had been struck by his vehicle.

Overall, there are no grounds to sustain convictions in this case for DUI manslaughter, Vehicular Homicide, and Leaving the Scene of the Accident. There is absolutely no way to prove Mr. Casey was the driver or even in the vehicle at the time of the accident. Furthermore, had he been the driver there is no way to know if he was Driving Under the Influence from a blood test taken 6 hours after the accident, and there is no evidence that suggests excessive speeding or reckless driving. This accident could happen to *anyone* and *everyone* reading this story.

Regarding the conviction for Failure to Appear in violation of Florida Statute §843.15, it is true that Sean Casey ultimately made the decision to flee the jurisdiction and not appear in Court. However, it can certainly be argued that the persuasion by Milton Hirsch and Michael Rappaport and fear they instilled in him of going to prison and surviving life behind bars certainly affected Sean's judgment. Here was a person who has never been in a courtroom before, has never been in trouble with the law, has absolutely no criminal mind whatsoever, who has no memory of the crimes he was being charged with, has experts telling him he could not possibly have committed the crime, whose constitutional rights were violated in the most blatant way by police, which was confirmed by a Circuit Court judge, against a State Attorney's Office that has convicted innocent people on circumstantial evidence, that has lied under oath and used deceptive tactics to prejudice him, and a judge that could very well sentence him

¹⁸⁰ Montgomery: "...I thought he ran into like a truck or something like that, that was carrying packages or whatever...I seen [sic] packages and looked like clothes or material go up in the air."
[Interview of John Montgomery, p. 6, Jul. 3, 2001, Exhibit 37]

to upwards of 45 years. Given these circumstances almost *everyone* reading this story would have made the same decision, especially when advised to do so by one of the most distinguished and respected attorneys in Miami.

Assistant State Attorney Gail Levine, who only worked on this 5½-year case for 48 days, contends no plea bargain was ever considered. However, Milton Hirsch wrote Mr. Casey on June 10, 2004, about a plea deal of 8 years, and perhaps a year or two less, from Assistant State Attorney Jon Granoff, who is no longer with the State Attorney's Office, but who spent more time on this case than any other prosecutor, reviewed all the evidence, and personally conducted all the depositions.¹⁸¹ Sean did not become aware of this letter because he had already left the country. He sent the letter the day *after* an arrest warrant was issued for failing to appear in court.¹⁸² Milton Hirsch knew he was gone. He later denied under oath that he made any attempt to contact Mr. Casey, but his letter shows otherwise.¹⁸³

When Sean Casey returned and a Speedy Trial demand was made, pursuant to Florida Rule of Criminal Procedure 3.191, Assistant State Attorney Gail Levine refused to negotiate a plea as a matter of policy.¹⁸⁴ She was furious that she had to prepare for

¹⁸¹ "The State has offered eight years; however, Michael [Haber] thinks Granoff might go down a year or two."
[Letter from Milton Hirsch to Sean Casey, Jun. 10, 2004, **Exhibit 62**]

¹⁸² Complaint/Arrest Affidavit, Case No. F06-032696, Sept. 28, 2006, **Exhibit 63**

¹⁸³ Defense: "Did you make any efforts to find him?"
Hirsch: "No. I had no way to find him."
[Hr'g. Tr. 113:6-7, Jan. 8, 2007, **Exhibit 14**]

¹⁸⁴ Levine: "And usually what happens in just practical terms, what has your experience been when you file a speedy demand?"
Hirsch: "...I know generally representatives of your office will say that the filing of the speedy trial demand renders plea negotiations off the table...."
Levine: "During the time period that you filed the speedy demand and the time period that the case was brought forth before the Court for trial, there were no plea discussions?"
Hirsch: "None whatsoever."

trial in such a short time and assumed Sean Casey should have known that she would not offer a plea if he made a Speedy Trial demand.¹⁸⁵ However, the decision was made by his attorney, Milton Hirsch, who never discussed this specific ramification with Mr. Casey. In fact, he told Sean that Michael Haber was going to speak to the head of the Criminal Division at the State Attorney's Office to discuss a plea. Whether this happened or not is unknown, but it shows how Milton Hirsch did not even expect this response, so how was Sean supposed to know? Furthermore this inconvenience in her agenda should not have been used to prejudice Sean Casey, especially since it was a strategy decision by his attorney who probably opted for the quickest way out so that his unethical behavior of advising and assisting his client flee never be revealed.

The State Attorney's Office should have in good faith offered a plea *before* the scheduled trial day that considered the strong mitigating factors mentioned here, instead of the statutory minimum sentence. Although it is well-established that there is no right to plea bargaining, the U.S. Supreme Court has held that:

“...to punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, and for an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is 'patently unconstitutional'.”¹⁸⁶

[Hr'g. Tr. 111:18-24, 112:1-4, Jan. 8, 2007, **Exhibit 14**]

Levine: “And didn't I tell you that there was literally nothing you could say to me that would change the plea in this case?”

Genevieve Casey: “Yes.”

[Hr'g. Tr. 85:5-8, Jan. 8, 2007, **Exhibit 14**]

¹⁸⁵ Levine: “And Mr. Hirsch told you that now is the time for you to file a speedy demand, a demand for trial within the next day or so to catch the prosecutors off guard; wasn't that the discussion you had?”

Casey: “He already had it prepared. He said we're going to do a speedy trial...He explained to me what a speedy trial is. You would have a trial within sixty days...He never explained to me that this State Attorney's Office would not offer any plea when you do a speedy trial. I never knew that...”

[Hr'g. Tr. 47:6-25, 48:1-2, Jan. 8, 2007, **Exhibit 14**]

¹⁸⁶ *Bordenkirscher v. Hayes* (1978)

Clearly, prosecutor Gail Levine sought to severely punish Mr. Casey for relying on his right to a Speedy Trial, even though it was his attorney who encouraged him to make such a request.

It is worthy of mention that Florida law allows for downward departures from the recommended sentence when there are “circumstances or factors that reasonably justify mitigating the sentence.”¹⁸⁷ A mitigating factor stipulated in the statute is when “the offense was committed in an unsophisticated manner, and was an isolated incident for which the defendant has shown remorse.”¹⁸⁸ Mr. Casey certainly did not plan to be involved in the death of Mary Montgomery, if he even was involved. He has no prior criminal history. He is very remorseful and will have to live with the tremendous burden of not knowing what really happened for the rest of his life!

Furthermore, the law contains several grounds that should be weighed in favor of withholding a sentence of imprisonment and these can also apply here.¹⁸⁹ They are:

- (a) The defendant has no prior delinquency or criminal activity or had a law-abiding life before the commission of the present crime;
- (b) The defendant’s criminal conduct was the result of circumstances unlikely to recur;
and
- (c) The character and attitudes of the defendant indicate he is unlikely to commit another crime.

¹⁸⁷ Fla. Stat. §920.0026

¹⁸⁸ Ibid.

¹⁸⁹ Fla. Stat. §921.005

Sean Casey is a good citizen. His crime is being involved in an unfortunate automobile accident although nobody knows for certain how.

If Mr. Casey was Driving Under the Influence and caused the accident that resulted in the death of Mary Montgomery, despite all the circumstances and evidence that show otherwise, the Courts have held that a sentence can still be lowered below the statutory minimum. In *State v. Van Bebber*, the appellate court determined that, "Evidence supporting finding that driving under the influence (DUI) was an isolated incident committed in an unsophisticated manner for which defendant showed remorse, and thus supports finding of statutory mitigator warranting downward departure under sentencing guidelines."¹⁹⁰

On May 23, 1999, Paul Van Bebber was driving home after a party at which he had consumed sufficient alcohol that his faculties were impaired. He failed to stop at a stop sign and collided with another vehicle that contained a family of six. Three children suffered injuries and one adult died. The State charged Mr. Van Bebber with one count of DUI with property damage, three counts of DUI with personal injury, one of them with serious bodily injury, and one count of DUI manslaughter. He pleaded no contest. The Court sentenced him to 20 years in prison following statutory guidelines, but suspended his entire sentence to 15 years probation. The State appealed this decision, but the appellate court upheld this downward departure. Chief Judge Altenbernd said:

"I write to encourage the legislature to consider authorizing more discretion for trial courts to impose adequate alternative punishments for DUI manslaughter...Mr. Van Bebber is twenty-five years old. At the time of the offense he was employed as a plumber...he has no criminal record...[He] has never previously been arrested for DUI...If Mr. Van Bebber had run the stop sign with no other car in the intersection, the

¹⁹⁰ *State v. Van Bebber*, App. 2 Dist., 805 So. 2d 918 (Fla. App. 2 Dist. 2001)

police would have arrested him for simple DUI. His likely penalty would have been a \$500 fine. He was not so fortunate...Given that this crime is primarily the result of terribly bad judgment rather than an evil criminal mind, one questions whether [20 years imprisonment] is the best way to deter future offenses or punish Mr. Van Bebber...Without a drivers license, it seems highly unlikely that this...man will ever drive intoxicated again...The current system, however, incarcerates people who are not always dangerous to society."¹⁹¹

¹⁹¹ Ibid.