

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

REPORT OF THE FATAL TRAFFIC ACCIDENT
LOCATED ON MANDALAY BEACH, OXNARD, CALIFORNIA,
INVOLVING OXNARD SENIOR POLICE OFFICER FRANK BRISLINGER
ON JUNE 12, 2006

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CINDY CONOLLY, DECEASED

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District Attorney
January 22, 2007

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ITEMS REVIEWED BY THE OFFICE OF THE DISTRICT ATTORNEY.....	3
III.	ACCIDENT DESCRIPTION.....	3
IV.	ACCIDENT SCENE AND TRAFFIC CONDITIONS.....	8
V.	OFFICER BRISSLINGER’S 4X4 SUV PATROL VEHICLE.....	9
VI.	OFFICER BRISSLINGER’S DRIVING RECORD AND RELEVANT TRAINING	9
VII.	OXNARD POLICE DEPARTMENT BEACH DRIVING POLICY	10
VIII.	WITNESS STATEMENTS	14
	Driver Frank Brisslinger	14
	Narrative Statement	14
	Follow-Up Questions	17
	Passenger Martin Polo	20
	Michael Arthur	25
	Doug Kirk	28
	Lynn Kirk.....	31
	Patricia Meyer-Arthur.....	33
	Jinky Quemuel.....	34
	Firefighters And Paramedics.....	35
IX.	PERTINENT FACTUAL FINDINGS	38
X.	GENERAL LEGAL PRINCIPLES	40
XI.	ANALYSIS OF CRIMINAL LIABILITY.....	42
XII.	CONCLUSION.....	54

I.

INTRODUCTION

On June 12, 2006, at approximately 1:52 p.m., a City of Oxnard Police Patrol SUV driven by Senior Officer Frank Brisslinger, ran over and killed Cindy Conolly (49) as she sunbathed on the beach just south of Mandalay Beach Resort. The accident occurred as Officer Brisslinger and his partner Senior Officer Martin Polo, began to patrol the beach in a 2003 four wheel drive (4x4) Chevrolet Tahoe. Officer Brisslinger drove up onto the beach from a concrete walkway that allows pedestrians to access the beach from a parking lot just south of the Mandalay Beach Resort.

Once on the sand, Officer Brisslinger drove straight toward the water. Just east of the shoreline was a small sand berm created by the ocean's tide. Ms. Conolly was sunbathing just below the berm, lying on her stomach, face down, with her body perpendicular to the shoreline. Neither Officer Brisslinger nor Officer Polo saw Ms. Conolly on the sand as they drove directly towards the shoreline. Officer Brisslinger drove the SUV down the berm, turned right, then traveled northbound up the beach toward the resort. Unbeknownst to the officers, the SUV's left front and left rear wheels ran over Ms. Conolly resulting in her death.

The officers continued driving north, patrolling the beach. They were not aware they ran over a sunbather until their dispatch unit contacted them approximately five minutes later. Officers Brisslinger and Polo then returned to the area of the accident. At about that same time, at 2:09 p.m., Ms. Conolly was pronounced dead by paramedic Anthony Ramage.

An autopsy was performed the next day by Ventura County Chief Medical Examiner Ronald O'Halloran. The cause of death was determined to be blunt force, head and chest injuries. The manner of death was listed as an "accident."

The fatal accident was investigated by the Oxnard Police Department. On August 23, 2006, Oxnard Police Traffic investigators forwarded a 158-page report including photographs, diagrams

and tape recordings to the Office of the District Attorney. The report reached the following conclusions:

- Officer Brisslinger caused the collision by driving the SUV at a speed unsafe for the terrain and surroundings. He was driving between 5-10 miles per hour.
- Based on crime scene measurements, the configuration of the SUV, and speed calculations, Ms. Conolly was only partially visible to Officer Brisslinger for two feet as he drove toward the shoreline. If he drove at 5 miles per hour, then Officer Brisslinger would have had .27 seconds to observe Ms. Conolly lying below the berm. If he drove at 10 miles per hour, then he would have had .13 seconds to observe Ms. Conolly lying below the berm.
- “Based on the physical evidence gathered and the various statements obtained, it is reasonable to conclude that an ordinary reasonable person would not have foreseen danger while approaching the berm/shoreline.”

The Ventura County District Attorney's Office has a 24-hours-a-day, seven-days-a-week call-out unit to respond to the scene of any officer involved fatalities. In this case, District Attorney Investigators Daniel Thompson and Wayne Simmons, along with Senior Deputy District Attorney Kevin Drescher, responded to the accident scene three hours after the collision.

Pursuant to Constitutional responsibilities, the Office of the District Attorney herein releases its findings and conclusions concerning any potential criminal liability for Frank Brisslinger in the death of Cindy Conolly. (See Cal.Const., Art. III, sec. 3; *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131.) This report addresses the central issue of whether Officer Brisslinger should be prosecuted for Vehicular Manslaughter pursuant to Penal Code section 192 et seq.

As noted in the analysis sections below, a careful review of the facts and circumstances surrounding the tragic accident establishes that the elements of a criminal vehicular manslaughter charge against Officer Brisslinger cannot be met, let alone, proven beyond a reasonable doubt.

II.

ITEMS REVIEWED BY THE OFFICE OF THE DISTRICT ATTORNEY

The following materials were examined in the preparation of this report.

- 158-page Oxnard Police Department Traffic Collision Investigation Report
- Accident Scene Photographs
- Medical Examiner's Autopsy Report and Photographs of the Autopsy
- Officer Brisslinger's Relevant Driving and Training Records
- Interview Tapes of Percipient Witnesses
- 911 Call, Dispatch Phone Call to Officer Brisslinger, and on-scene Audio Tape
- California State Parks Aquatic Safety Beach Driving Guidelines
- County of Los Angeles Lifeguard Emergency Vehicle Driving Operations Order 027
- Relevant Statutory and Case Law
- DA Investigator Reports and Personal Impressions from the Accident Scene

III.

ACCIDENT DESCRIPTION

Senior Officers Brisslinger and Polo are Beat Coordinators for the Oxnard Police Department.¹ Senior Officer Brisslinger is the Beat 22 Coordinator and Senior Officer Polo is the Beat 21 Coordinator. Beat 21 covers the west side of the city of Oxnard including the beach area near the Mandalay Beach Resort. At the time of the accident, the two officers had been partnered together for nine to ten months.

On Monday, June 12, 2006, at approximately 8:00 a.m., Officer Frank Brisslinger and Officer Martin Polo began their on-duty patrol of the city of Oxnard. They were in full, standard

¹ According to the Oxnard Police Department, "The role of the beat coordinator is to act as a liaison between the police department and the community, to act as a representative of the police department at community meetings and events, and to lead the efforts to resolve long-standing neighborhood problems."

police uniform. Officer Brislinger was the driver and Officer Polo was the front right passenger. They were patrolling in a 2003 Chevrolet Tahoe four wheel drive. The Chevy Tahoe is a marked police vehicle. See photograph A.



Photograph A

After making numerous arrests in the morning, the officers began to patrol the Oxnard Shores area early in the afternoon. Oxnard Shores is in Beat 21, Officer Polo’s beat. The beach area surrounding the Mandalay Beach Resort is also part of Beat 21.

Shortly before 2:00 p.m., Officer Brislinger drove the SUV into the parking lot off Sunset Lane, located just south of the Mandalay Beach Resort. He then drove westbound up over the parking lot curb, and onto a concrete walkway that leads to the beach. The beach is not visible from the parking lot. See photograph B.



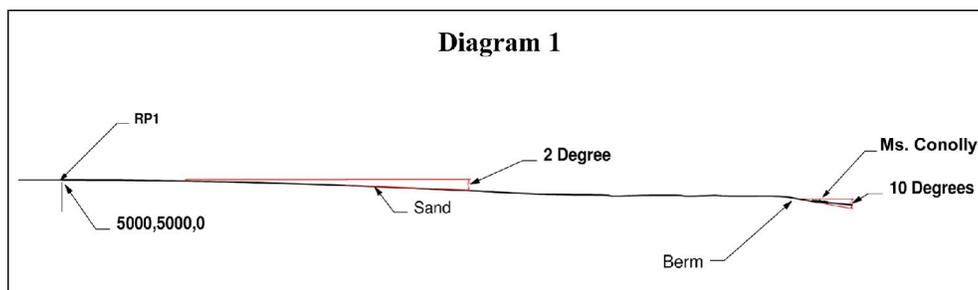
Photograph B

At the top of the walkway, Officer Brisslinger drove off the concrete path and onto the sandy beach. Officer Brisslinger drove the SUV directly towards the ocean, while Officer Polo leaned back in the front right passenger seat. The SUV was traveling five to ten miles per hour across the beach. Per witnesses' statements, there were very few people on this part of the beach at the time of the accident.

Approximately 250 feet west of the concrete walkway was a small sand berm. The small berm was created by the ocean's tide and ran parallel to the shoreline. From the top of the concrete walkway to the berm near the shoreline, there is a gradual, roughly six-foot drop in elevation. See photograph C. (The black arrow in the photographs point to the "berm area.")



Diagram 1 below depicts the gradual drop in elevation from the concrete walkway (left side) to the shoreline (right side.)



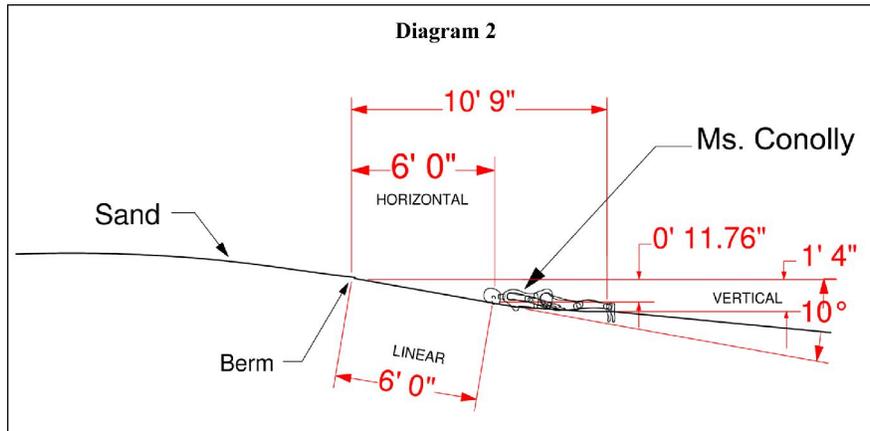
The small sand berm was difficult to notice when traveling west across the beach toward the ocean. Ventura County District Attorney Investigator Wayne Simmons arrived at the scene three hours after the collision. He was responsible for preparing the District Attorney’s scene report. He noticed a “slight berm” as he walked west across the beach toward the accident site. However, he noted in his report, “This berm was only apparent if someone was walking or standing on the west side of the berm where I could get the visual perspective of seeing only the upper portion of the person’s body.”

The height of the berm varied at different locations when viewed from the shoreline. The crest of the berm, however, had an approximate 10 degree slope downward towards the ocean. See photograph D.



The victim, Cindy Conolly, was a guest at the Mandalay Beach Resort. She was from Sioux City, Iowa. At the time of the accident, she was sunbathing on the beach, just south of the hotel. She was lying approximately six feet to the west of the berm and approximately one foot, four inches, below the crest of the berm. She was wearing a blue, one-piece bathing suit, lying on her stomach. She was lying down flat with her head on the beach. Her body was perpendicular to the

berm and the shoreline. Her feet were toward the ocean and her head was toward the berm. See diagram 2.



Officer Brisslinger drove the vehicle straight towards the shoreline. Neither he nor his partner, Senior Officer Polo, ever saw Ms. Conolly lying on the sand. The SUV did not stop as it approached the berm. According to the officers' accounts, Officer Brisslinger may have slowed down momentarily, but did not stop. As the SUV drove down the sand berm, its front left and rear tires drove over Ms. Conolly's head, back and buttocks. The SUV continued down the berm and turned right. It continued to drive northbound up the beach on the hard-packed sand. Neither officer knew they ran over a person on the beach.

Michael Arthur (51) witnessed the accident while boogie boarding in the ocean directly in front of the accident sight. He saw the police SUV's front and left rear tires run over Ms. Conolly as it descended down the berm. Ms. Conolly's body did not move once the SUV's front left tire cleared her body. He saw the SUV then turn right and drive away up the beach.

When Mr. Arthur exited the water he contacted a stranger, later identified as Doug Kirk, and asked him to call 911. Mr. Arthur assisted Mr. Kirk in the first aid of Ms. Conolly until paramedics arrived a few minutes later.

Unaware that they drove over Ms. Conolly, Officers Brisslinger and Polo continued to patrol northbound on the beach. They exited the beach at Amalfi and resumed their street patrol. A few

moments later, Oxnard Police Dispatch radioed Officer Brislinger and asked him to call dispatch using his cellular telephone. Dispatch Officer Steve Ramirez informed Officer Brislinger that dispatch just received a phone call reporting that their police SUV ran over someone on the beach. Officer Brislinger responded “Oh please! . . . Dude, there’s nobody there . . . Okay, we’ll go look though; I did not see anybody.”

Officers Brislinger and Polo returned to the beach and located the accident site. Noticing Ms. Conolly’s position in the sand in line with their previous tire tracks across the beach, the officers realized they ran over Ms. Conolly. Moments after the officers returned to the scene, paramedic Anthony Ramage pronounced Ms. Conolly dead. She was pronounced dead at 2:09 p.m.

IV.

ACCIDENT SCENE AND CONDITIONS

The accident occurred on a public beach in the city of Oxnard. The beach is located in the 2100 block of Mandalay Beach Road. The accident occurred at approximately 1:52 p.m. on June 12, 2006. At the time of the accident the temperature was 66 degrees. It was clear and sunny and the wind was blowing from the west at approximately 10 miles per hour. The predicted high tide was 3.4 feet at 11:49 a.m. and the predicted low tide was 2.5 feet at 3:54 p.m.

Located at the scene of the accident near Ms. Conolly’s body were a yellow T-shirt, a pair of brown sandals, a Seiko watch, a broken pair of sunglasses, an empty Pepsi can, Coppertone suntan lotion, and two white beach towels.

The tire tracks of the police SUV were also located at the scene of the accident. The tire track impressions in the sand clearly marked the SUV’s path of the travel as it came off of the concrete walkway, across the beach, down the berm, and then northbound up the beach on the hard-packed sand.

Public vehicles are prohibited from the beach. There are no roads on the beach. There are no posted speed limit signs. There were not many people on the beach near the accident site prior to the collision.

V.

OFFICER BRISSLINGER'S 4x4 SUV PATROL VEHICLE

Officer Brisslinger was driving a department owned and maintained 2003 Chevy Tahoe four wheel drive sports utility vehicle (SUV). The SUV is approximately 200 inches long and 78 inches wide. The SUV weighed 5600 lbs. The top front of the hood is 43 3/4 inches off the ground (driver and passenger side.) The front leading edge of the hood to the face of the steering wheel is 76 inches. The front leading edge of the hood to the front/center of the driver's head rest is 104 3/8 inches.

The SUV was visually inspected after the accident. Nothing appeared to be mechanically wrong or malfunctioning.

VI.

OFFICER BRISSLINGER'S DRIVING RECORD AND RELEVANT TRAINING

Senior Officer Brisslinger (age 39 at the time of the accident) has been a police officer with the Oxnard Police Department since June 30, 1997. He has been a peace officer for nine years.

The Oxnard Police Department provided no training to officers regarding the hazards of beach driving. Officer Brisslinger received no formal training specific to beach driving from any agency. Officer Brisslinger successfully passed a POST certified Skills and Knowledge Defensive Driving Update class in April 2002. Part of that class had limited 4x4 classroom training covering the department's 4x4 vehicles. The classroom training mentioned the types of terrain in Oxnard that may necessitate 4x4 wheel driving, "sand, mud, rough terrain and urban." Part of the classroom curriculum covered when to shift into 4x4, "Proper sight picture," "Three parts of a

turn,” “Ground clearance,” “Vehicle inputs,” and “Driving the terrain.”² Under “Proper sight picture” the class was taught to look in all directions. “If you can’t see, get out and look. Look where you want to go, not where you are going.” The course lacked any mention of known hazards or risks involved with beach driving.

A check of the California Department of Motor Vehicles records shows Officer Brisslinger currently owns a 2001 Chevrolet 4x4 truck. He has owned the 4x4 truck since 2001.

According to Officer Brisslinger’s DMV driving record, his license is valid. He does not have any moving violations. He was involved in an off-duty collision in 2004 where it was determined he was not at fault. According to the Oxnard Police Department, prior to the instant collision, Officer Brisslinger has not been involved in any preventable collisions in the last three years.³

VII.

OXNARD POLICE DEPARTMENT BEACH DRIVING POLICY

In response to a request by the Office of the District Attorney, the Oxnard Police Department confirmed that at the time of the accident it did not have a specific policy for off-road or beach driving. Moreover, the department lacked specific training programs concerning the operation of 4x4 vehicles on the beach.

The Ventura County District Attorney's Office inquired if other local agencies have guidelines, training or policies concerning driving a vehicle on the beach. The Ventura Police Department, the Port Hueneme Police Department and the Ventura County Sheriff’s Department do

² The District Attorney's Office was provided the PowerPoint slides from this class from the Oxnard Police Department Traffic Sergeant.

³ The Oxnard Police Department maintains records of preventable collisions for a period of 36 months.

not have policies or procedures for beach driving.⁴ The Ventura County Sheriff's Department Training Unit does not offer training on beach driving.

The Oxnard Fire Department requires an annual, two hour, water rescue training for its personnel. Fifteen to 20 minutes of the training is devoted to beach driving. The Ventura County Fire Department changed its training, policies and procedures after Ms. Conolly's death. It adopted the training, policies and procedures used by the Los Angeles County Fire Department's Lifeguard Division.⁵

The California Department of Parks and Recreation and the Los Angeles County Fire Department, Lifeguard Division, have standards for training, policies and procedures for beach driving.

The California Department of Parks and Recreation provide patrol and lifeguard services to the state beaches in Ventura County. According to the Department's *Aquatics Operation Handbook*, after five accidents from 1987 through 1992, a Beach Driving Committee was convened to study beach driving and recommend a training program to mitigate risk. All State Park Lifeguards must now be trained and tested prior to operating a department vehicle on the beach.

The Beach Driving Committee reviewed the prior beach accidents and noted certain accident patterns and risk areas.

- None of the accidents occurred on a crowded beach.
- None of the accidents occurred when a vehicle was responding to an emergency.
- All accidents occurred when the vehicle's speed was less than five miles per hour.

⁴ The Ventura Police Department and the Port Hueneme Police Department do not actively patrol the beach. The California Department of State Parks and Recreation patrol most of the beaches in the City of Ventura and the Port Hueneme City Lifeguards patrol the Port Hueneme beaches. The Port Hueneme City Lifeguard Parks and Recreation Division have established policies, procedures and training pertaining to the operation of a motor vehicle on the beach.

⁵ According to the training division of the City of Ventura Fire Department, it does not have any policies or training relating to beach driving since they are not responsible for emergency responses on the beach: that is the California State Parks jurisdiction. Moreover, the Ventura City Fire Department does not have vehicles capable of operating on the beach.

- Two of the accidents occurred when the driver went over a berm with a blind spot and struck a sunbather.
- “It became apparent to the Beach Driving Committee that an important element of the training is the practical experience of finding the size of the blind spots of the vehicle from the driver’s seat.”

Part of the State Park training is referred to as “Vehicle Buffer Zone Exercise.” The Handbook notes, “The practical exercise recommended by the committee not only gives the driver a sense of the blind spots, but just as important, it heightens the driver’s awareness of the need for diligence while driving on the beach.”

Two State Park beach driving policies are especially applicable in this case. 1) “The speed limit on a beach in all situations will be 15 MPH.” The only exception is life or death emergencies. 2) “A vehicle shall be driven over a berm or through a gully only when the driver has a complete view of the vehicle’s path and is completely safe.”

The State Parks Safe Vehicle Operations training specifically addresses berms. The following was obtained from the *Aquatic Operations Handbook*.

“Plan ahead to avoid crossing berms and gullies altogether. Driving over berms can be dangerous because:

1. The berm, as well as the Jeep’s hood, can obscure the driver’s vision.
2. Crossing up and over a berm usually requires the operator to accelerate.
3. Berms will usually cause the Jeep to sideslip a certain amount.
4. People may congregate at the base of a berm since it serves as windbreak or backrest.
5. Children often like to play around berms, especially by digging holes into them.

NEVER drive down a berm without having first seen what is below it. There are several ways to get a good look:

1. Drive parallel and North (so the driver is closest to the edge) along the berm, but not so close as to collapse it. This should give you a good look at what is below. Then, if you are sure no one has entered the area, you can turn around and descend at the spot you checked.
2. The surest way is to get out and look.
3. Always be aware of signs of digging where someone might

have dug a hole in the side of the berm, hiding themselves from view.

4. After checking for people, as above, drive slowly to the edge and apply the brakes just as the front tires reach the crest. You may have to pump and release them a few times. The object is to break down the berm and form a ramp for the vehicle. Go slowly until the rear bumper has cleared the berm.”

The Los Angeles County Fire Department Lifeguard Division has similar policy and guidelines when operating a vehicle on the beach. Some of its guidelines are relevant to this case:

- Headlights must be on when operating a lifeguard unit on the beach.
- Maximum speed unless an emergency is 15 miles an hour or slower depending on crowds or other conditions.
- The “go forward alarm” shall be on at all times while patrolling on the beach.⁶
- If your vehicle has a disabled “go forward alarm,” you are required to sound/tap your horn every 30 seconds to alert the public of the approaching vehicle. The frequency will be increased based on the density of beach activity.
- Extreme caution must be used at all times when operating a beach unit.
- Berms should be ascended or descended at obtuse angles. The best visibility can be obtained if the berm is positioned on the driver’s side of the vehicle. Before ascending or descending the berm, you must be certain that the other side is clear, get out and double-check if necessary.

⁶ The “Go Forward” alarm serves to warn the public on the beach that a vehicle is approaching.

VIII.

WITNESS STATEMENTS

DRIVER FRANK BRISSLINGER

A. Narrative Statement

On June 29, 2006, Senior Officer Frank Brisslinger, with his attorney, Michael Schwartz, gave a voluntary statement regarding the accident on June 12, 2006, at the Oxnard Police Department. The two-hour interview was recorded. The following is a summary of the narrative he gave at the beginning of the interview:

He arrived at work shortly before 7:30 a.m. Since he arrived prior to his partner, Officer Polo, he checked out the 2003 Chevrolet Tahoe and prepared the car for patrol. Officer Polo arrived shortly thereafter. Around 8:00 a.m. they began their patrol.

They first patrolled Officer Brisslinger's beat to check on some problem areas. They made numerous arrests in multiple locations.

Later that morning, Officer Brisslinger stopped at an auto shop to put air in the Tahoe's tires. He believed the air pressure in the SUV's tires was low. He inflated the tires to 60 psi. Thereafter, they went to Quizno's Restaurant at 2nd Street and Ventura Road.

After lunch, they focused their patrol on Officer Polo's beat. He and Officer Polo have worked together for the past nine or ten months. They began to learn each other's problem areas within their beats.

In the early afternoon they drove to the Oxnard Shores area. According to Officer Brisslinger, he and Officer Polo were talking about the Fourth of July coming up and how they might be out on the beach patrolling this year. They then drove to the parking lot south of the Embassy Suites Resort and decided to patrol the beach area. Officer Brisslinger said in the summertime there are alcohol violations, gang activity and fireworks on the beach.

He drove up over the curb onto the concrete pathway to the beach. He described having two wheels on the sand and the other two wheels on the concrete as he began driving up the concrete path. The two left tires were on the pavement and had traction. He placed the vehicle in four-wheel drive.

Once on the sand they drove toward the shore. He noticed a couple walking to their right. He remembered the couple looking at them and believes Officer Polo waved. Officer Brisslinger looked in front (west) and out to the south (left) and did not see anybody. He continued toward the shoreline. Officer Brisslinger estimated his speed was between 5 and 10 miles per hour. As he drove toward the shore it looked “like it was just a clear shot to the water, nice and flat. You know, as I looked out I saw nothing in front of me. I continued to look back and forth in all directions.”

As they approached the shoreline he remembered asking Officer Polo, “North or south?” Officer Polo said north. He continued driving approximately 5 miles an hour. Officer Brisslinger said he has to keep the tires going when driving the SUV in the sand because he does not want to get stuck. He remembered descending a “small crest” as he looked continuously forward. He stated, “As I descended . . . there was nothing in front of me. All I saw was sand.”

Unaware he ran someone over, Officer Brisslinger turned the SUV right and continued north, up the beach on the compacted, wet sand. He was not driving very fast. There were not many people out on the beach. He saw a lady who had a dog off the leash. Officer Polo told the lady to put a leash on her dog. They continued up the beach and eventually exited back onto the street.

Shortly after they were on the street, he saw a lady near a car who looked like a drug user. At about the same time he received a call from dispatch telling him to “10-21,” call in to dispatch. Officer Brisslinger called dispatch on his cell phone and spoke with Steve Ramirez. Officer Ramirez asked him if he was near the Embassy out by the hotel and Officer Brisslinger said yes. Officer Ramirez informed him that someone reported the SUV ran over somebody. Officer

Brisslinger did not believe him since there was nobody on the beach. He believed it could have been the lady Officer Polo yelled at with the dog or perhaps someone else just complaining because they did not like the police car out on the beach. Officer Ramirez told him fire and ambulance was responding. Officer Brisslinger said they would also respond. Officer Brisslinger then told Officer Polo, who was out of the SUV talking with the possible drug user, to return to the car. When Officer Polo returned to the car, Officer Brisslinger told him about the call from dispatch. Officer Polo also assumed it was the lady with the dog calling to complain.

Officers Brisslinger and Polo returned to the beach via the same route they took earlier. When they reached the sand, he saw paramedics running across the beach with their equipment. He also noticed what appeared to be the same couple they saw earlier towards the water. He also saw a man in a black wetsuit. They then drove to that location.

He stopped the SUV and started walking to the accident scene, but Officer Polo stopped him. Officer Polo took Officer Brisslinger's tape recorder from his pocket and told him to "stay here." Officer Brisslinger saw a breathing apparatus applied to the female. Officer Brisslinger said he could not believe it. He remembered saying, "My God, oh my God, I can't believe it. Where was she?"

Officer Brisslinger put his head in his hands. He started to feel numb, like sand was in his body. His ears were ringing. He could barely hold himself up.

Officer Polo came back and informed Officer Brisslinger that the lady died. Officer Brisslinger went and sat in the passenger side of the SUV.

Officer Brisslinger said, "I didn't see her. I mean, I was out there, I was looking. I was just thinking it over in my head, where was she? . . . I was, you know, I wasn't going very fast. I was taking every precaution. I was looking in front of me. I was looking where I was driving."

He recalled Officer Robles picking him up from the beach and driving him back to the police station. Eventually, his wife arrived at the station and picked him up.

B. Follow-up Questions

After Officer Brisslinger's narrative of the incident, Oxnard Police Traffic Investigators Jimenez and Pena asked specific follow-up questions. Below is a summary of the remainder of the interview:

There was nothing mechanically wrong with the SUV when he checked it out prior to beginning their patrol. The only thing he noticed was the low tire pressure because the week before when they were patrolling on the beach they got stuck in the sand and deflated the tires.⁷

He has been driving four-wheel drive vehicles his entire driving life, approximately 23 years; however, he has had no formal training pertaining to four-wheel driving.

He has been driving the Police Department's SUV for about the past 10 months. This is because he and Officer Polo have been partnered together for the last 9 or 10 months. Since Officer Polo's beat contains the beach areas, they drive the SUV. He estimates he has driven the Tahoe approximately 130 to 140 times. He estimates he has driven the Tahoe three to four dozen times on the beach. The only person who told him how to drive the 2003 Chevrolet Tahoe was Officer Polo. The only thing Officer Polo told him was how to engage the four-wheel drive mechanism.

When asked whether Officer Polo showed him how to drive on the sand, he replied "no." When asked if it was something he just "picked up," Officer Brisslinger replied, "It's a general rule, you know, when you're in softer sand you need to continue momentum to make sure the wheels are in motion, because if you stop the likelihood of you getting stuck is there. The softer sand is generally, or not the, uh, the wetter sand is generally a little easier to drive on. But besides that, that was pretty much it."

⁷ Off-road drivers often deflate their tires if they get stuck in sand. This gives the vehicle extra traction to remove itself from its position.

Neither he nor Officer Polo were using their cell phones at the time of the accident. He believes the FM radio was on, but at a low volume. He believes his window was cracked halfway open. The police radio was on.

When asked why they were out on the beach that day, Officer Brisslinger said, “You know, there’s no lifeguards . . . we just try to, when we go out there it’s more of a police presence, you know. It’s more to give people who pay taxes to the City and come to visit that nice hotel, or who live in the nice homes, saying, ‘Hey, you know, “we’re out here.”’ . . . it’s just a preventative thing.”

When they go on the beach, their usual entrance is via the concrete pathway located at the south parking lot of the Mandalay Beach Resort. That day, after he popped the curb to get to the concrete pathway, Officer Polo made a comment to him something like, “Go easy.” Officer Polo reminded him that there were new shocks or tires on the SUV. Officer Brisslinger estimated he popped the curb going about two miles an hour. He estimated his speed on the path to be about five miles an hour. Once on the sand, he said he did not go faster than five to ten miles an hour.

When asked where he was looking after he passed the couple on the beach he responded, “I continued to look out to the right, I didn’t see them anymore. I looked straight ahead. I looked uh, to my left, and I mean I was just like scanning.” When questioned about where he was looking as he approached the shoreline, he stated, “The water, it looked like a clear, a clear shot, and there was, you know, I was like, ‘cause I was going like, you know, as slow as I was going, I was looking, you know, um, not looking way out there, you know, looking like, you know, closer because I’m thinkin’, you know, if anything, someone’s gonna come, there’s kids out there, they’re gonna run in front of me, you know, playing with whatever and I’m just kind of like, you know, scanning about.”

He did not see a boogie boarder or anyone in the water. When asked whether Officer Polo said anything to him while he was driving on the beach, Officer Brisslinger responded, “Yeah, he may have, but I didn’t hear him. I don’t recall him mentioning anything, but, you know, he

sometimes talks and I don't listen to him either, so, you know, I have a tendency to when he's talking sometimes I try to listen to the, you know, the radio and stuff. I don't always listen to him." Officer Brisslinger did not hear Officer Polo say anything about a boogie boarder in the water.

Officer Brisslinger sat in the SUV in his regular position.

When asked about driving over sand berms in the past and how he approaches them, Officer Brisslinger said, ". . . it just depends, you know. I mean, sometimes I'll go, you know, straight over them, sometimes I'll hit more at an angle, you know, um, just every situation is different."

He was asked, "As you got closer to the shoreline, did you see the crest or the berm?" He responded "No." He was then asked, "Obviously you went over the crest berm, did you feel anything?" He replied "No." He was then asked, "Did you feel it going down?" He said he really did not feel anything. It felt like "the transfer, vehicle, the weight transfer, you know, from, you know, the, just normal, in a normal road. I mean, I didn't feel anything unusual, no."

When asked, "When you got to the crest of the berm, did you continue, you went straight through, straight or at an angle?" He responded, "I thought I went down slightly at a slight angle, but, you know, I just continued to look right in front of me, seeing absolutely nothing there." He remembered slowing down prior to descending toward the water.

When asked why he slowed down, he responded, ". . . I was just making sure there was nothing there. So I was just trying to be safe, you know, and careful." He believed he was driving less than five miles per hour when he slowed down.

He did not hear anybody yell, scream or whistle at him while he was driving. He did not see anybody in the water.

When asked about what he was thinking or paying attention to while on the beach, Officer Brisslinger responded, "It's weird, I mean, when you're out there, I mean, even the conditions are, they're different, you know . . . I'm more attentive . . . It's not just like your every day type of driving on the streets where, you know, you've done it over and over . . . I'm like even more

focused in on what's going on and more cautious of my surroundings trying to be, you know, extra careful . . . trying to shut out any whatever distraction there might be just focus on my driving and what's in front of me.”

When asked what Officer Polo was doing while they were driving on the beach, Officer Brisslinger said he was not paying much attention to Officer Polo. He believes it is the passenger officer's responsibility to be the second set of eyes and ears, and to look for any hazards. Officer Brisslinger said he focused on driving and assumed Officer Polo was paying attention. He remembered Officer Polo sitting in a “more relaxed” position, but cannot remember exactly how he was sitting. He said it is not unusual for Polo to sit in that position. He said Officer Polo was not distracting him.

When asked to estimate the height of the crest, Officer Brisslinger said, “I don't know, possibly two feet. I didn't look, you know, I didn't know I was on it until I was at the top of it.”

When asked to clarify his exposure to four-wheel driving, Officer Brisslinger said, “I'm one of those guys who owns a 4x4, but doesn't really use it, you know? I've gone out to the snow a couple of times, uh, you know, I think that's pretty much it.” He said he has not taken his 4x4 to the sand, but has been to the river bottom a couple of times.

When asked if he always notices or feels a crest each time he has driven on the beach, Officer Brisslinger responded “No.” He said the beach is unique. It changes all the time, depending on the time of the day and the different tides.

PASSENGER MARTIN POLO

Officer Polo was interviewed three times during the investigation. He was interviewed on June 12, 2006, approximately five hours after the accident; June 14, 2006, and June 19, 2006. In pertinent part, Officer Polo stated the following:

On June 12, 2006, Officer Polo worked as a two-man unit with Officer Brisslinger. They were scheduled to work a 12-hour shift that day. He said he and Officer Brisslinger wanted to target various problems in their respective beats, Beat 21 and Beat 22.

Officer Polo said whatever officer gets to the station first usually drives that day. When he arrived in the morning he saw Officer Brisslinger preparing the Chevy Tahoe for duty. Around 8:00 a.m. he met with Officer Brisslinger in the parking lot to begin their patrol.

They began patrolling Beat 22, Officer Brisslinger's beat. They targeted problem areas with other officers. Officer Polo estimated they made nine arrests at various locations that morning. They stopped around 11:30 a.m. at the Quizno's at 2nd Street and Ventura Road to have lunch.

After lunch, they decided to patrol Officer Polo's beat, Beat 21. After driving in and out of various neighborhoods close to the beach, Officer Brisslinger suggested they drive out to the beach because it was a nice, sunny day. According to Officer Polo, Officer Brisslinger asked, "Hey, do you want to drive out on the sand?" Officer Polo agreed and they proceeded to the beach. He said they patrol the beach "pretty often." When they patrol Beat 21, they try to drive on the sand at least once.

Officer Polo said Officer Brisslinger drove their normal way to access the beach; the south parking lot of the Embassy Suites Resort. There is a sidewalk and concrete path that leads up to the sand. Officer Polo said Officer Brisslinger hit the curb hard as they drove up over the curb onto the concrete pathway. He said this may have scared some people on the beach walkway.

Officer Polo told Officer Brisslinger to be careful because the Tahoe was recently serviced and he did not want anything to break. Officer Brisslinger responded by telling Polo he should not worry because he was driving slowly.

Once on the pathway they drove past three pedestrians. Polo waved hello as they drove past them. He estimated the speed of the Tahoe was about 10 to 15 miles per hour. He said they were “going slow on the sand.”⁸

As they left the concrete path and drove toward the beach, Officer Polo reclined back in his passenger seat. He demonstrated how his back was reclined and his right foot was up on the dashboard. The unit radio was on as well as the car stereo. He did not have his seat belt on nor did he believe Officer Brisslinger was wearing his seat belt. The windows of the SUV were down. He had a “clear unobstructed view” in front of him.

At this time, he did not see anybody on the beach. He saw a male subject in the water that looked like a surfer or a boogie boarder. Officer Polo originally thought the boogie boarder was in distress because he was waving his arms. After additional observation, however, Officer Polo believed this person was just trying to swim to shore and not in distress. He did not mention these observations to Officer Brisslinger.

As they neared the shoreline, he recalled Officer Brisslinger saying, “North, south, north, south?” He said Officer Brisslinger was referring to what direction they should travel. He said he looked north and then south and as he looked south he saw Officer Brisslinger also looking to the south. He replied, “North.” He said he looked north and south again to check if it was clear for them to proceed.

Officer Polo said at no time did the Tahoe stop on the beach. They slowed down as they approached the shoreline, but never stopped.

With regard to the berm on the day in question, he said he was aware the berm was there but said it was deceiving because it looked flat.⁹ He said you could not see a break in the berm; “the

⁸ In his interview on June 14, 2006, Officer Polo said the SUV was going between 5-10 mph up the concrete walkway. On June 19, 2006, Officer Polo said believed the SUV was traveling between 5-10 mph on the sand.

color of the sand looked just like the wet sand.” He could see straight ahead and saw the boogie boarder in the water. He repeated the berm looked flat. He said as they drove toward the water the sand looked flat, as if there was no berm.

He said Officer Brisslinger drove down the berm. He made a right turn and drove northbound along the shoreline. When they went over the berm he did not feel anything under the vehicle. Polo also said when they drove up the beach he did not hear anyone yelling or see anyone trying to get their attention.

As they drove north on the beach, Officer Polo remembered yelling at a lady who did not have her dog on a leash. Shortly thereafter, they decided to drive off of the beach because there were not many people on the beach.

Once off the beach, they decided to check a problem area of Eastbourne Bay. They saw a lady standing outside of a red car and suspected she may be involved in narcotics activity. Officer Polo got out of the car and contacted her. While Officer Polo was talking to the female, Officer Brisslinger yelled out from the Tahoe and told him to return to the car. Officer Brisslinger told him Officer Ramirez in dispatch called him and said someone had reported that they ran over someone on the beach and that fire and ambulance were responding to the scene.

Officer Polo said he did not believe it. He thought somebody was just complaining. He thought it may have been a male pedestrian they passed on the concrete walkway or the lady with the dog that he yelled at.

They left Eastbourne Bay and returned to the beach. When they arrived in the south parking lot, they noticed the Oxnard Fire Department arriving. He said at this point they became concerned because it was not someone complaining, but that someone might be hurt. Officer Polo told Officer Brisslinger, “There was no one out there; there was no one on the beach.”

⁹ It is not clear from Officer Polo’s statements when he became aware of the berm, either before or after the collision.

Officer Brisslinger drove toward the sidewalk and concrete pathway that leads to the beach. He said the fire department truck drove behind them. As they made their way to the top of the walkway, he could see two people standing near the edge of the water. Officer Polo said he could also see the tire marks from their vehicle on the sand and the tire marks led directly toward the two people by the water. He believed one of the people was the boogie boarder he saw in the water earlier.

Officer Brisslinger drove toward the boogie boarder. When they drove toward the berm they veered right and stopped, facing in a northerly direction.

He told Officer Brisslinger not to get out and that he would “handle this.” He said he got a minicassette recorder from Officer Brisslinger and began recording as he exited the SUV.

Officer Polo got out of the SUV and walked to the area where the people had congregated. He did not see Ms. Conolly was lying in the sand until he was a few feet away from the berm. He saw the paramedics, who had previously arrived, roll Ms. Conolly over on her back and noticed she had blood on her face. He realized it was not a good situation.

Officer Polo noticed Officer Brisslinger step out of the Tahoe and begin to walk toward Ms. Conolly. Officer Polo told Officer Brisslinger, “Don’t come over here. Stay right there.” Officer Polo noticed Officer Brisslinger possibly going into shock, so Officer Polo went to assist Officer Brisslinger. He said Officer Brisslinger looked ill. He heard Officer Brisslinger say, “This is like a bad dream.”

Officer Polo told Officer Brisslinger to sit in the car and try to relax. Officer Brisslinger sat in the car and repeated, “This is like a bad dream, oh my God.”

Officer Polo left Officer Brisslinger and returned to Ms. Conolly’s location. The paramedics told Officer Polo that Ms. Conolly had died. Officer Polo said he began calling for a sergeant, a traffic investigator, a chaplain, and other units to respond to the scene.

When questioned about his training and use of the police SUV 4x4 vehicle, he said the only training he received was when Senior Officer John Ahearn (now retired) instructed him on the use of the vehicle on the sand several years ago. He said Ahearn put on a class on how to drive an older 4x4 vehicle, one that is no longer in service. He said when the 2003 Chevrolet Tahoe was put into service he was not given any additional training.

He was told he was responsible for the 2003 Chevrolet Tahoe 4x4 because it was assigned to him. He said he requested formal training, but no training was provided to him by the police department.

When asked what training he provided to Officer Brisslinger, if any, he said Officer Brisslinger had told him he had prior four-wheel drive experience. He said he assumed Officer Brisslinger had experience and he only showed him which button to push to engage the four-wheel drive.

Officer Polo was questioned about methods of driving in the sand, specifically over a berm. He said sometimes they drive straight over a berm, sometimes at an angle, and sometimes they drive along the berm. He said the height and appearance of the berms change daily. He said the change is due to the weather conditions, wind and tide. There are some places on the beach where there are no berms. Other places, further north on the beach, have high noticeable berms. They don't always expect to see berms. He said they "pretty much just go by what we see."

When asked specifically why Officer Brisslinger drove straight over the berm the day of the incident, Officer Polo said they were both able to see forward. They did not see anyone, the beach looked empty.

MICHAEL ARTHUR

Mr. Arthur (51) was interviewed twice by the Oxnard Police Department regarding the accident. Below is a summary of his pertinent comments:

He and his wife, Patricia Meyer Arthur, arrived at the beach at approximately 1:00 p.m. He and his wife walked through the parking lot located on the south side of Mandalay Beach Resort and then walked up along the concrete walkway to the beach. They walked out to the beach and placed their belongings approximately 40 feet south of where Ms. Conolly was sunbathing. He and his wife went into the ocean and began swimming and boogie boarding.

His wife stayed near the shoreline to keep an eye on their belongings on the beach. He went into the ocean and began boogie boarding in deeper water. He felt a strong current pushing him north in the water. Approximately 20 minutes later he noticed he was 60 to 100 feet offshore directly in line with the concrete walkway. He saw Ms. Conolly lying in the sand near the shore directly in line with the concrete walkway. He noticed Ms. Conolly lying face down on the berm near the shore. He said Ms. Conolly's feet were toward the ocean and her head was toward the top of a small berm. He estimated Ms. Conolly's head was approximately one foot below the crest of the berm. He remembered her lying on a purple towel and she appeared to be sleeping or sunbathing. He believed Ms. Conolly was alone and the only person near her was an older white male sitting on a blue chair. He remembered an older white male sitting on top of the berm approximately 15 feet north of Ms. Conolly.

He described the berm as "flat" and "not very high." He said it would be difficult to see just below the berm if you were driving straight, "especially high in an SUV like that."

Later as he looked at the shore while he was swimming he saw a black and white police Chevrolet Tahoe driving westbound toward the shore from the concrete walkway. He could not see into the Tahoe to identify who was driving, but noticed the driver wearing sunglasses. He did not know whether there were any passengers in the Tahoe. He estimated the Tahoe's speed at approximately four to six miles an hour. The SUV drove straight toward the shore, directly toward Ms. Conolly. He described the SUV's speed as a fast walk.

He continued looking at the Tahoe as it approached the shoreline. He thought the officer was going to drive around Ms. Conolly, so he originally did not attempt to alert the officer. He said it appeared as if the officer was looking at him in the ocean and not looking at the shore. As the vehicle came closer to the shore, driving directly toward Ms. Conolly, he attempted to alert the officer by waving his arms and yelling. He also began to swim back to the shore in an attempt to alert the officer and Ms. Conolly. He believed the officer may have been distracted by him as he attempted to get the officer's attention.

He saw the officer drive over the berm. He said Ms. Conolly did not move as the officer continued over the berm. He saw the front left wheel of the Tahoe drive directly over Ms. Conolly's head, back and buttocks. Ms. Conolly's body did not move once the vehicle's front wheels cleared her body. He saw the left rear wheel drive directly over Ms. Conolly's head, back and buttocks. He said the Tahoe's wheels, axles or body did not move or flex in an unusual manner when the officer drove over the berm and Ms. Conolly. Ms. Conolly remained motionless as the officer continued to drive onto the shore.

The Tahoe drove approximately three feet off of the berm, onto the shore, and then turned right and continued northbound along the shoreline. He said the officer accelerated slowly to a speed of approximately 12 miles an hour as it continued northbound. Mr. Arthur said he began yelling to the officer and other people on the beach in an attempt to stop the SUV. Once he reached the beach, the SUV was several hundred feet north of where the collision occurred, traveling northbound. The SUV did not stop.

He yelled at his wife and several people on the beach to call 9-1-1. However, no one nearby had a phone. He ran toward a male and female couple walking to the beach from the concrete walkway. (These people were later identified as Doug and Lynn Kirk.) He ran toward Mr. Kirk and asked him if he had a phone. Mr. Kirk called 9-1-1.

He and Mr. Kirk went to Ms. Conolly and began to render first aid. Ms. Conolly was on her knees, face down in a fetal position. Mr. Kirk provided first aid by checking Ms. Conolly's pulse and immobilizing her. He said Mr. Kirk continued talking on the phone with 9-1-1; however, he appeared to be losing his connection.

When Mr. Arthur held Ms. Conolly, she had difficulty breathing and was gasping for air. He noticed significant injuries to her face, back and legs. He said he held Ms. Conolly for approximately ten minutes prior to medical personnel arriving. He noticed the first responding fire and medical personnel arrive on foot. They came from the resort, from the northeast. Approximately two minutes later, the police vehicle involved in the collision arrived and parked on the sand north of where the collision occurred. An officer got out of the passenger side of the Tahoe and the driving officer remained seated in the vehicle.

He and his wife were eventually escorted off the beach after the police obtained his statement.

DOUG KIRK

Mr. Kirk was interviewed by the Oxnard Police Department regarding the collision. The following is a summary of the pertinent parts of his statement:

He and his wife, Lynn Kirk, arrived at the south parking lot of the Mandalay Beach Resort at approximately 1:44 p.m. on June 12, 2006.¹⁰ He and his wife went to the beach to have a picnic to celebrate their wedding anniversary.

He and his wife gathered their items and walked on the concrete pathway that leads to the beach. When they were approximately ten yards on the sand they were passed by two police officers in a police SUV. He said the SUV followed tracks that appeared to be commonly used by

¹⁰ His parking ticket was stamped at 1:44 p.m.

vehicles to enter the beach. He and his wife decided to walk directly behind the SUV because the tracks patted down the sand.

He described the speed of the SUV to be “normal” and “a safe driving speed.” He used to be a lifeguard when he was a teenager and part of his duties required him to drive a vehicle on the beach. His past experience of driving on the beach led him to believe the police speed was a safe speed.

He noticed the SUV drive toward the water, then drop down a berm and turn right heading north along the beach. He did not know how far he was from the berm when he saw the SUV go down it, but thought he was approximately halfway between the concrete walkway and the berm. He did not see the SUV hit Ms. Conolly.¹¹

He saw two people in the water boogie boarding. When the SUV passed, the boogie boarders become animated. The boogie boarders were jumping up and down, making different kinds of noise. He did not know what caused the boogie boarders to act like that. As the boogie boarders made their way onto the beach, he heard them yell something about “cell phone,” “police,” “cops.” He began to walk quickly toward the boogie boarders, who were now out of the water. He heard one of them say, “They ran over a bather.” He realized the boogie boarders were trying to get the police officers’ attention.

Mr. Kirk noticed Ms. Conolly lying in the sand face down on her stomach. He ran over to Ms. Conolly and saw that her head and shoulders were lying in the left tire track. He said Ms. Conolly was in a fetal position with her knees under her body. He picked up Ms. Conolly so she could lie on her right shoulder because he wanted to get her face out of the sand, fearing she

¹¹ In a follow-up interview by the District Attorney’s Office, Mr. Kirk said as he and his wife walked towards the water, he was paying attention to the ocean and boogie boarders, not what was directly in front of the SUV. On the day of the incident he did not recall seeing the berm before the SUV went over it. He said he knows there is a slope or berm in that general area from frequently visiting that beach; however, the location and slope of the berm changes often.

could not breathe. He noticed her body was limp, her breathing was shallow, and she was making gurgling sounds. She appeared to be unconscious.

He took out his cell phone and called 9-1-1. He said he called 9-1-1 at 1:53 p.m. according to his cell phone records. In Mr. Kirk's 9-1-1 call, he told dispatch officer Steve Ramirez, "A lifeguard/police patrol just ran over a sunbather as they were going over the berm. They didn't even see the person. They were going at a fairly good clip."¹²

While he was on the phone with 9-1-1, he looked north and saw the police SUV leaving the beach on the north side of the Mandalay Beach Resort.

He was on the phone with the 9-1-1 operator trying to explain where they were on the beach. He was placed on hold for an extended period of time, but the dispatcher did come back and reconfirm some of the information regarding their location. He said Mr. Arthur was out of the water and came over to assist him holding Ms. Conolly on her right shoulder.

A large fire truck showed up in front of the Mandalay Beach Resort and two firemen started running toward the water. It appeared to him the firemen did not know where they were running since they were south of where the firemen were. He used a towel he brought to the beach and started waving it at the firemen to get their attention. The firemen arrived and started first aid. The police SUV, along with another fire truck, drove directly up to the scene.

He and his wife were asked to stay back on the concrete pathway. They returned to the parking lot to wave in emergency vehicles. Once they were told it was a crime scene he left the area after leaving his contact information with a police officer.

¹² In a follow-up interview by the District Attorney's Office, Mr. Kirk was asked to explain his comment to the dispatcher, "They were going at a fairly good clip." Mr. Kirk said he did not recall making that statement. He said if he did say that to the dispatcher he did not mean to imply that the SUV was driving fast prior to, or during the accident. He said when he was speaking to 911, the SUV was driving north on the damp, hard-packed sand. If he made that statement, he was referring to the SUV driving off the beach well north of where the victim was struck and that the dispatcher could contact the SUV so it could return to the scene. He reiterated the SUV was traveling at a normal and safe speed just prior to, and during the accident.

LYNN KIRK

Ms. Kirk was interviewed by the Oxnard Police Department and gave the following pertinent information regarding the accident:

She arrived at the beach with her husband, Doug Kirk, at approximately 1:44 p.m. on June 12, 2006. She and her husband walked to the beach from the cement walkway that leads from the south parking lot of the Mandalay Beach Resort up to the beach. She said soon after they reached the sand she saw a black and white police SUV pass them on the sand to their left. She saw there were two officers in the vehicle. She suggested to her husband that they walk behind the SUV in its tracks because it would be easier to walk on the flattened sand.

She was looking down at the sand and also looking up as she and her husband walked out over the sand. She noticed two boogie boarders in the water that were a few feet north of her line of sight (to her right).

She was not able to estimate the SUV's speed, but stated, "It was not speeding." She watched the vehicle drive down the berm and then turn right, heading north paralleling the waterline. She said she could not remember if the police SUV slowed or made a complete stop prior to driving over the berm, but stated, "If it did, it did not make a complete stop." She estimated she was approximately 40 feet behind the police vehicle when it went down the berm.¹³

After the SUV went down the berm it preceded northbound. She heard a male boogie boarder, later identified as Michael Arthur, yell, "Cops, stop." She heard the boogie boarder yell, "Stop the cops, they ran over someone." She recalled the male boogie boarder and a female boogie boarder trying to get out of the water at this time as they were yelling. When the male boogie

¹³ In a follow-up interview by the District Attorney's Office, Ms. Kirk said when she walked in the tracks behind the SUV her focus was on the ocean. She did not recall seeing the berm before the vehicle went over it, but her attention was on the water. She added the SUV was partially blocking her view as they walked towards the beach.

boarder got out of the water, he approached her husband Doug and asked if he had a cell phone to call the police.

She stopped approximately 30 feet away from the berm and could not see the victim lying in the sand. Her husband called the police and tended to the victim. She said she could not see the victim until her husband moved the victim onto her right shoulder.

At this time the female boogie boarder, later identified as Patricia Arthur, was wandering up and down the beach looking for a doctor or a nurse. She said the male boogie boarder was walking around in the general area with his hands on his head saying, "Oh my God," and making gestures with his hands and arms as if he was in disbelief. Her husband asked Mr. Arthur to help hold the victim by her shoulder to keep her from falling back down.

She stayed in the area for approximately five minutes, but decided to go back toward the parking lot in an attempt to wave down emergency vehicles as they arrived. Shortly thereafter, she noticed a black and white police SUV arrive in the parking lot, but she was not sure if it was the same SUV she saw earlier. She waved at the police and they drove over to her. The passenger officer rolled down the window and asked her, "What happened?" After she told them that a vehicle similar to theirs ran over a person on the beach, she heard an officer say, "Oh my God," or something to that effect. She believed the officer was in shock or disbelief. The police SUV then drove forward onto the beach and parked to the right of the victim.

She said the second vehicle to arrive on the scene was a red 4x4 fire truck. It drove past her and did not stop. A third emergency vehicle, a white ambulance with paramedics, arrived. That vehicle, however, parked in the parking lot and the paramedics walked to the beach.

She sat on one of the benches near the top of the concrete walkway away from the incident. Sometime thereafter, her husband Doug met with her at the benches. They were told the area was a crime scene and they left.

PATRICIA MEYER-ARTHUR

Witness Patricia Meyer-Arthur was interviewed twice by the Oxnard Police Department. A summary of the pertinent information from her interviews is as follows:

She and her husband, Michael Arthur, arrived at the beach at approximately 1:00 p.m. on June 12, 2006. They parked their vehicle on Sunset Drive and accessed the beach by walking through the south parking lot of the Mandalay Beach Resort. They walked up the concrete pathway and reached the sand. They walked in a southwest direction toward the shore. As she and her husband walked to the shore, she noticed a female, later identified as victim Conolly, and a male companion, later identified as Bob Pierson, Ms. Conolly's fiancé, sitting on the berm directly out from the concrete walkway.

She and her husband placed their belongings about 40 feet south of where Ms. Conolly was positioned. She and her husband went boogie boarding; however, she remained closer to the shore so she could be near their items on the beach.

She noticed the current pushed her husband approximately 75 feet north of her location. She also noticed Ms. Conolly lying face down sunbathing while her male companion was taking pictures with a camera or looking at the ocean through binoculars.

She boogie boarded for approximately 20 to 30 minutes and did not pay much attention to what was happening on the beach. Then she heard her husband, who was still swimming in the ocean, yelling, "Stop the police car." She looked north along the shore and saw a police SUV driving northbound along the shoreline. She estimated the vehicle was cruising at 20 to 30 miles per hour as it traveled north, up the beach on the hard packed sand.

She immediately got out of the ocean and ran to her husband. When her husband approached the shore he told her the police vehicle ran over Ms. Conolly. She looked at Ms. Conolly and noticed her lying in a fetal position on the berm. She said Ms. Conolly was face down on her arms and knees. She and her husband ran toward Ms. Conolly and noticed she was

bleeding from her face. She came within about six feet of the victim, but did not want to look at her any more.

Her husband continued to run northbound, yelling at the officers to stop. Her husband was also yelling at people on the beach to call 9-1-1. She began to search the beach several minutes to find someone who could provide medical assistance. She was unable to find anyone who could help.

When Ms. Meyer-Arthur returned to the scene, she saw fire, medical and police officers there. Fire and medical personnel were treating Ms. Conolly. The officers set up a perimeter around Ms. Conolly and began interviewing people. After Ms. Meyer-Arthur was interviewed, she and her husband were escorted off the beach.

JINKY QUEMUEL

Ms. Quemuel contacted the Oxnard Police Department the next day after she read the newspaper story about the accident. Below is a summary of the pertinent information from her interview:

In the afternoon of June 12, 2006, Ms. Quemuel was walking up the cement walkway that leads from the south parking lot of the Mandalay Beach Resort to the beach. She walked up the trail and just stepped off when “all of a sudden there was a police officer that whipped around the corner.” She said she was startled because the police SUV came around the corner so fast. She said it was going too fast for a walking trail. She was unable to estimate the speed, but said it was faster than 5 to 10 miles an hour.

She saw the SUV continue up and then straight onto the beach. She did not think the officers saw her. She looked in and saw the officers “laughing and having a good time.” When the SUV passed her it was approximately 10 to 15 feet away from her. She originally thought the SUV was responding to an emergency, but changed her mind because its emergency lights were off.

Ms. Quemuel walked towards the Mandalay Beach Resort. She last saw the SUV driving toward the water.

Approximately 10 minutes later, she heard sirens and thought the police “caught the bad guy.” She saw various emergency vehicles arrive at the scene as she walked back to her vehicle in the parking lot.

After reading the newspaper the next day she felt it important to report the manner the police SUV was driven. She said that if the accident had not happened she would not have made a report.

FIREFIGHTERS AND PARAMEDICS

Oxnard Fire Station 6 and Gold Coast paramedics were dispatched to the collision. Fire Captain George Todd, engineer Tom Suguwara, and firefighter Bret Buffington responded in engine 66. Fire Captain John Colamarino responded to the incident in a red fire pickup truck. Gold Coast Paramedics Anthony Ramage and Brandon Bauer were also dispatched to the scene.

Engineer Suguwara drove engine 66 to the Mandalay Beach Resort. He learned the injured party was reported to be on the beach, so he drove the fire engine up on the walkway which travels around the resort. He stopped at the southwest corner of the resort because he saw an unknown white male standing in the dunes area directing them out toward the beach.

Engineer Suguwara and firefighter Buffington ran west onto the beach while Captain Todd remained at the resort attempting to gather information about the injured subject. As Suguwara and Buffington were running out to the beach, they were directed by bystanders to go south of the resort. They noticed a male subject standing on the back side of the berm, several hundred yards south of the resort, attempting to get their attention.¹⁴ They were only able to see the upper torso of this male because of the height of the berm. They then ran in a southwest direction toward

¹⁴ Responding emergency personnel could notice the berm since bystanders had gathered on the west side of the berm near Ms. Conolly, thus giving it perspective.

Ms. Conolly's location. (This is a different path than the path the Officers Brisslinger and Polo took when they drive out to the beach.)

Buffington said he did not see Ms. Conolly until he was approximately 15 feet from the berm. Suguwara said once he was about 75 to 100 feet from the berm, he was able to see Ms. Conolly lying in the sand face down in a fetal position. Suguwara remembered Ms. Conolly's head approximately two to three feet below the crest of the berm and Buffington recalled her head approximately four to six feet below the berm.

Suguwara and Buffington immediately provided first aid to Ms. Conolly. She was, however, unresponsive, not breathing, and did not have a pulse. They turned her over on her back and immediately began CPR. While they were conducting their CPR, they noticed Officers Brisslinger and Polo arrived on the scene driving westbound out on the beach. They pulled their car off to the right, north of the scene and parked. Moments thereafter, they noticed Captain Colamarino and Gold Coast paramedics Anthony Ramage and Brandon Bauer arrive in Captain Colamarino's 4x4 fire pickup truck.

Suguwara and Buffington continued to provide CPR until the paramedics arrived and took over. Shortly thereafter Ms. Conolly was pronounced dead.

Fire Captain John Colamarino decided to respond to the incident with his department-issued 4x4, Ford F-250 pickup truck. While engine 66 responded directly to the Mandalay Beach Resort, Colamarino decided to access the beach through the south parking lot of the Mandalay Beach Resort. As he was traveling on Mandalay Beach Road, an unidentified female, later identified as Lynn Kirk, waved at him and pointed him toward the beach.

As he made his way into the south parking lot he noticed Officers Brisslinger and Polo arrive just before him. He followed the officers up the concrete pathway and onto the beach. As he drove out on the beach, the police SUV pulled over to the right of the berm and parked. He said he

was slightly confused because he could not see where the victim was located. He noticed engineer Suguwara and Buffington beyond the berm, but could not see below their thighs.

Colamarino continued toward the berm and still could not see the victim. As he approached approximately 10 to 15 feet from the berm he turned left and drove southbound. He looked out to his right and was still unable to see the victim. He turned his truck around and parked facing northbound along the berm. This was directly east of where Suguwara and Buffington were standing. After he parked his vehicle he looked out to his left and saw Ms. Conolly. She was lying face up. Her head was approximately two feet below the crest of the berm.

Captain Colamarino quickly assessed Ms. Conolly and realized she was in full arrest. He returned to his vehicle and radioed that information. He learned from Captain Todd, who had now arrived on-scene, that two paramedics arrived in the south parking lot. He drove his pickup truck to the south parking lot and picked up paramedics Ramage and Bauer. When he returned to the scene, Suguwara and Buffington were still performing CPR. The paramedics got out of his truck and continued with CPR. Moments thereafter, Ms. Conolly was pronounced dead.

Paramedics Anthony Ramage and Brandon Bauer work for Gold Coast Ambulance and were dispatched to the scene. They responded in their ambulance and drove to the south parking lot of the Mandalay Beach Resort. There they spoke to an unknown female who told them a female was run over by vehicle on the beach. Fire Captain Colamarino arrived in the red 4x4 pickup truck and picked them up in the parking lot. They placed their equipment in the bed of the truck, climbed into the cab and headed toward the beach.

As they drove to the accident scene, neither paramedic was able to see the victim. As they approached, the paramedics saw two firemen kneeling down, apparently treating someone. Captain Colamarino drove them directly to the site and parked his vehicle. Both paramedics said they were not able to see Ms. Conolly in the sand until they actually pulled up at the scene. They approached

Ms. Conolly and took over the resuscitation efforts. Mr. Ramage pronounced her dead a few moments thereafter.

When Captain Todd reached the accident scene by foot, Officers Brisslinger and Polo had already returned. He said Officer Brisslinger was standing next to the police SUV. Captain Todd told Officer Brisslinger that it looked like a vehicle had run over the victim. Captain Todd told Officer Brisslinger he did not know who did that. Officer Brisslinger told him, "I think I did it." Captain Todd described Officer Brisslinger as upset and distraught.

Captain Todd remembered a brief conversation he had at the scene with Officer Polo. Captain Todd told Officer Polo that the fire department trains to go down berms at an angle because the driver may not be able to see what is on the other side of the berm. Officer Polo said that he was the passenger in the police SUV and that Officer Brisslinger did not have much experience driving on the sand.

IX.

PERTINENT FACTUAL FINDINGS

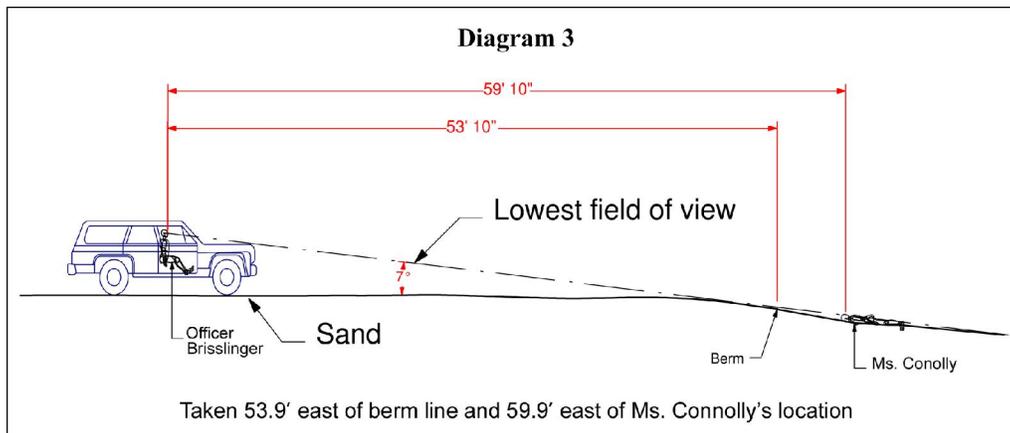
The Oxnard Police Department Traffic Unit conducted the investigation and analysis of the collision. The Traffic Unit reached a number of factual conclusions. The following factual findings are most relevant to determining whether criminal charges are warranted.¹⁵

The investigators conducted an analysis of Officer Brisslinger's "field of view" from the driver's seat of the SUV. Based on accident scene measurements obtained on the day of the

¹⁵ The Oxnard Police Department asked the California Highway Patrol Multidisciplinary Accident Investigation Team (MAIT), to review their Investigation Report. Officer Chris Black, a certified MAIT investigator with extensive experience and training in accident reconstruction and investigation reviewed a draft of the report. In an interview with the District Attorney's Office he said the Oxnard Traffic Investigators did a good job. He said they used state of the art equipment and their investigative techniques were sound.

The District Attorney's Office did not seek further scientific analysis of the accident scene due to the changed conditions of the sand and berm. In fact, District Attorney Investigator Simmons returned to the accident site the following day and noted the condition of the beach, including the accident scene, had already changed.

collision and other later-obtained measurements, investigators diagramed and photographed Officer Brisslinger's "field of view" prior to the collision. Based on these measurements and the configuration of the SUV, investigators concluded Ms. Conolly was visible to Officer Brisslinger as he approached her in the SUV only from a distance of approximately 59 feet, 10 inches to 57 feet, 10 inches away. In other words, there was a two foot window of opportunity for the driver of the SUV to partially view Ms. Conolly as she lay below the berm.¹⁶ See Diagram 3.



Investigators then performed a "speed analysis" to determine Officer Brisslinger's "minimum time needed" or opportunity to view Ms. Conolly lying on the sand as the SUV approached her. Investigators made the following findings:

- Driving at 5 miles per hour, Officer Brisslinger would have had .27 seconds to observe Ms. Conolly lying below the berm since he would have been traveling 7.3 feet per second.
- Driving at 10 miles per hour, he would have had .13 seconds to observe Ms. Conolly lying below the berm since he would have been traveling 14.67 feet per second.
- Driving at 15 mile per hour, he would have had .09 seconds to observe Ms. Conolly lying below the berm since he would have been traveling 22 feet per second.

¹⁶ The Oxnard Police Department Traffic Investigators utilized the software *Crash Zone* version 7.3, from The Cad Zone Company, in analyzing and diagramming the accident.

X.

GENERAL LEGAL PRINCIPLES

Manslaughter is the unlawful killing of a human being without malice. (Pen. Code § 192.)

Pursuant to Penal Code section 192(c)(2), Vehicular Manslaughter occurs when a traffic-related death results from:

A. Driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence;

Or

B. Driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence (i.e., to commit a lawful act with negligence, that is, without reasonable caution and care).

(Pen. Code § 192(c)(2); see *People v. Thompson* (2000) 70 Cal.App.4th 40, 53; see also CALCRIM 593.) Ordinary negligence is sufficient for criminal liability under section 192(c)(2). Ordinary negligence is defined as:

Ordinary negligence is the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation/or fails to do something that a reasonably careful person would do in the same situation.

(CALCRIM 593.)

In any Vehicular Manslaughter prosecution, it must be demonstrated that the defendant “caused” the death at issue by his unlawful or negligent act. (See CALCRIM 593.) CALCRIM 593 defines “cause.” It reads in part:

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act.

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.

Under California law, the contributory negligence of another is no defense to Vehicular Manslaughter. (See CALCRIM 593.) When the conduct of two or more persons contributes concurrently to a death, each actor may be individually punished if his conduct was also a *substantial factor* contributing to the result. (*Id.*; see also *People v. Scola* (1976) 56 Cal.App.3d 723, 726.)

Vehicle Code section 20001(a), commonly referred to as “hit and run,” provides,

The driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

Under California law, the hit and run driver must know that he had been involved in an accident that injured another person. CALCRIM 2140.

City of Oxnard Code of Ordinances section 8-25, provides,

Upon the private property of another or upon any public property which is not held open to the public for any vehicular use and which is not subject to the provisions of the Cal. Vehicle Code:

(A) No person shall operate or drive a motor vehicle, motorcycle, mini-bike, dune buggy, motor scooter, jeep or other form of transportation.

(B) The provisions of this section shall not apply to emergency vehicles, governmental agencies or to persons driving upon such property with the written consent of the owner or person in lawful possession of such property, or to the owner himself, his family, employees, agents or lessees.

(64 Code, Sec. 18-123) (Ord. No. 1300)

Section 21001 of Division 11 of the California Vehicle Code states that the “provision of this division [RULES OF THE ROAD] refer exclusively to the operation of vehicles upon the highways, unless a different place is specifically referred to.”

XI.

ANALYSIS OF CRIMINAL LIABILITY

The Oxnard Police Department concluded Officer Brisslinger caused the collision by driving the SUV “at a speed unsafe for the terrain and surroundings.” The report opined he was driving between 5-10 miles per hour. “The uneven terrain surrounding the area of the collision and configuration of [the SUV] made the conditions unsafe to drive on the beach.” The report also concluded, however, that “an ordinary person would not have foreseen danger while approaching the berm/shoreline.” They cited four facts in support of its conclusion:

- The recorded measurements and reconstruction of the scene.
- The lack of noticeable decline (slope) of the sand leading to the berm and Conolly’s location in relation to the berm.
- A limited window of opportunity to see Conolly as one approached the berm.
- Witness statements indicating that Conolly was not visible to them as they approached the berm.

The Oxnard Police Department did not make any recommendations whether to file criminal charges against Officer Brisslinger.

Based on the all the relevant facts, the Ventura County District Attorney’s Office concludes Senior Officer Brisslinger caused the death of Cindy Conolly. The facts also demonstrate, however, that based in part on the Oxnard Police Department’s failure to establish formal training, guidelines and/or policies pertaining to the safe operation of a patrol vehicle on the beach, Officer Brisslinger’s actions in this tragic accident do not rise to the level of criminal conduct.

The Traffic Collision Investigation Report found the officers were “on purposeful patrol” in the SUV. Although the officers were not responding to a specific call, they were patrolling an area that the Oxnard Police Department is responsible to keep safe. The Mandalay Beach area is part of

Officer Polo's beat. The District Attorney's Office recognizes there are, at times, legitimate reasons to actively patrol the beach. Moreover, Oxnard Code of Ordinances section 8-25, specifically exempts emergency and governmental vehicles from the prohibition of operating a motor vehicle on the beach. Thus, it was not unlawful for the Oxnard Police Department to patrol the Mandalay Beach in a motor vehicle.

Generally speaking, the California Vehicle Code provisions pertaining to the safe operation of motor vehicles "refer exclusively to the operation of vehicles upon the highways, unless a different place is specifically referred to." (Vehicle Code section 21001.) Since Officer Brisslinger was not driving upon roadways open to the public at the time of the accident, he did not violate any traffic laws of the Vehicle Code. Thus, he did not drive a vehicle in the commission of an unlawful act in violation of the Vehicle Code.

Since Officer Brisslinger did not drive the SUV in the commission of an unlawful act, in order to establish a charge of vehicular manslaughter, it must be shown that he drove the vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence. (See Pen. Code § 192(c)(2).) In other words, did he perform a lawful act that might produce death, but in a negligent manner?

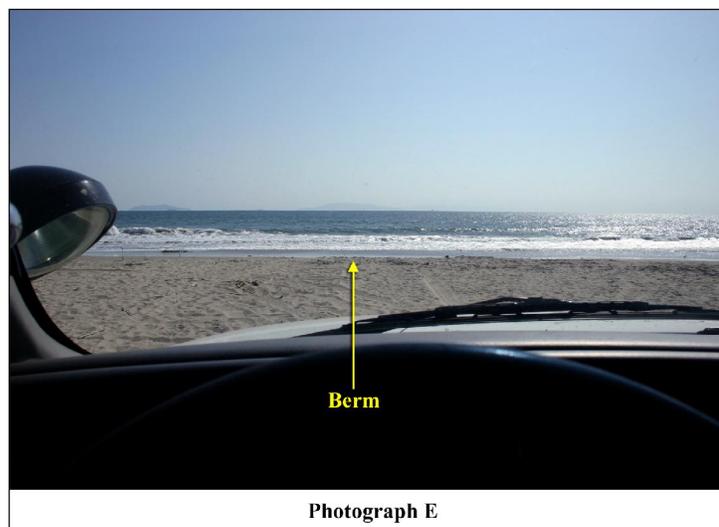
Driving a vehicle on a public beach is a dangerous act that might produce death. A driver on the beach must use extreme caution at all times since people could be playing or sunbathing anywhere on a beach. The driver must drive at a safe, reasonable speed in order to avoid all hazards, including people.

Here, Officer Brisslinger's speed at the time of the collision was between 4 and 10 miles per hour. The only eye witness to the actual collision itself was Mr. Arthur. He opined, based on his knowledge of walking speeds, the SUV was traveling between four and six miles per hour at the time of the collision. Mr. Kirk was walking across the beach behind the SUV. In his interview, he described the SUV traveling at a "safe speed." The SUV's speed on the beach prior to the accident

was less than the 15 mph maximum speed limit set forth in the California Department of Parks and Recreation and the Los Angeles County Fire Department, Lifeguard Division training manuals. There is no reliable evidence to suggest Officer Brislinger was speeding or driving recklessly on the sand prior to colliding with Ms. Conolly.¹⁷

Ms. Conolly’s position below the small berm was in a blind spot that Officers Brislinger and Polo did not see as they approached the shoreline. The berm itself was relatively small but deceptive, especially when viewed from inside the SUV facing west. Officers Brislinger and Polo both said the beach looked flat that day. Officer Brislinger stated the drive across the sand appeared to be a “clear shot to the water, nice and flat.” Officer Polo said the berm was “deceiving” because the sand looked flat. Officer Brislinger said he did not see the berm. He felt the SUV come off a “small crest” as he approached the shoreline. He then slowed to make sure nothing was “right in front of me.”

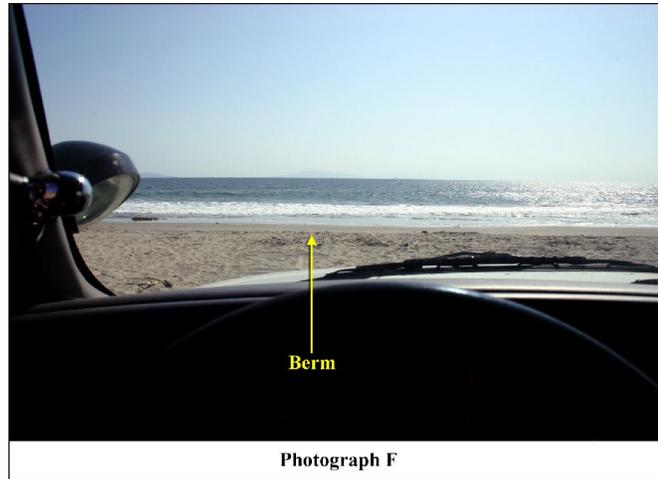
Measurements and photographs taken the day of the accident corroborate the officers’ assertion that the beach “looked flat” as they drove towards the ocean. The below photo “E” was taken 92 feet east of the berm line looking west.



Photograph E

¹⁷ Although Jinky Quemuel opined the SUV was going faster than 10 mph as it passed her on the concrete walkway, she did not observe the SUV’s speed as it drove across the sand towards the water.

The below photo “F” was taken 67 feet east of the berm line facing west.



The above photos “E” and “F” depict the officers’ view as they approached the shoreline. The beach looks deceptively flat: it is difficult to see a berm when there is not a person or an object standing below it to give it perspective.¹⁸ Officers Brisslinger and Polo said they did not see anybody between the SUV and the water as they drove towards the shoreline.

The berm is noticeable, however, when a person is standing below it. The below photograph “G” was taken 127 feet east of the berm line looking west.

¹⁸ District Attorney Investigator Wayne Simmons’ first-hand observations at the accident scene corroborate the photographic evidence documenting the deceptive nature of the small berm when viewing it from the east. (See *supra*, p.6-7.)



Photograph G

The “berm” in this case might be better described as a gradual slope. The berm can best be seen in the two photos “H” and “I” below. Photo “H” was taken from the shoreline facing northeast.



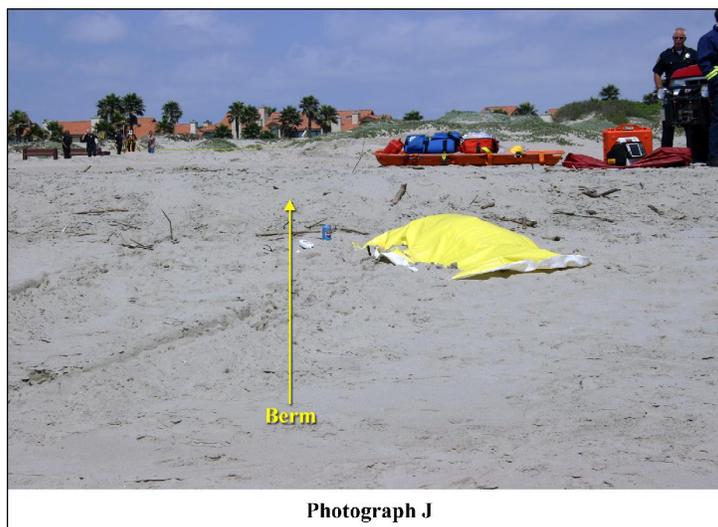
Photograph H



Photograph I

Photo “I” was taken from the shoreline facing south east.

The below photo “J” was taken from the shoreline facing east. Photo “J” demonstrates the gradual decline from the end of the concrete pathway (where the people are gathered in the top left portion of the photo) to the area where Ms. Conolly was lying (the yellow tarp.) This photo also shows the sand did not change color from the concrete walkway to the berm area.¹⁹



Photograph J

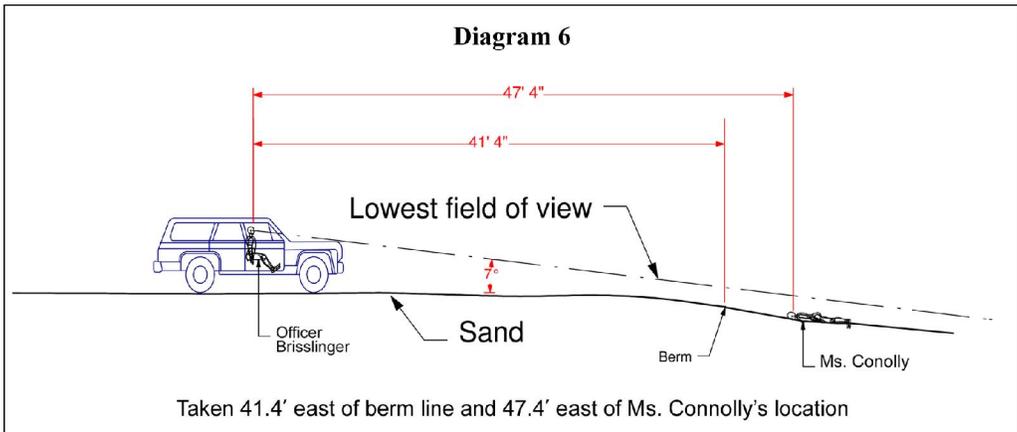
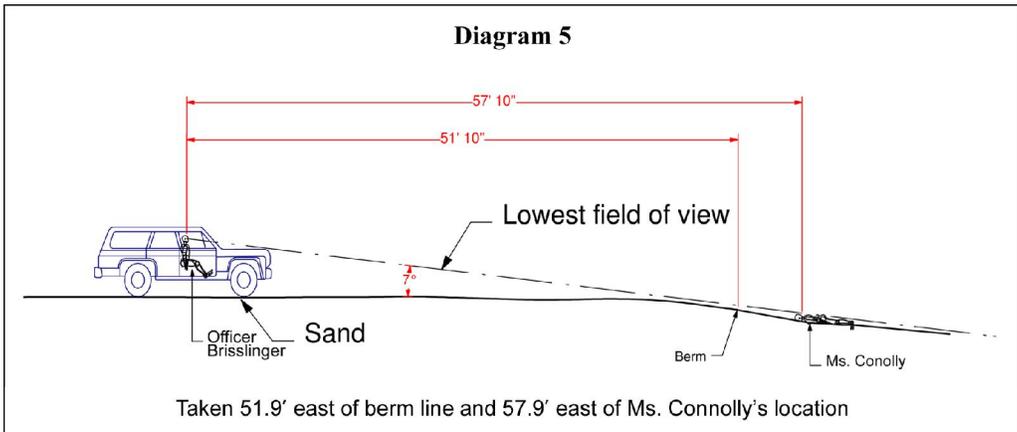
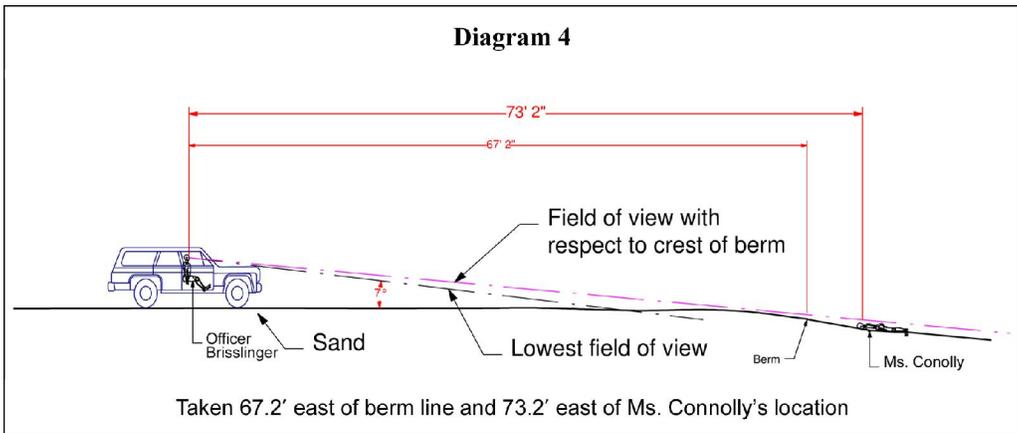
¹⁹ District Attorney Investigator Simmons noted, “The color of the sand did not change until much further west of the berm at the water line, adding to the difficulty in seeing the berm.”

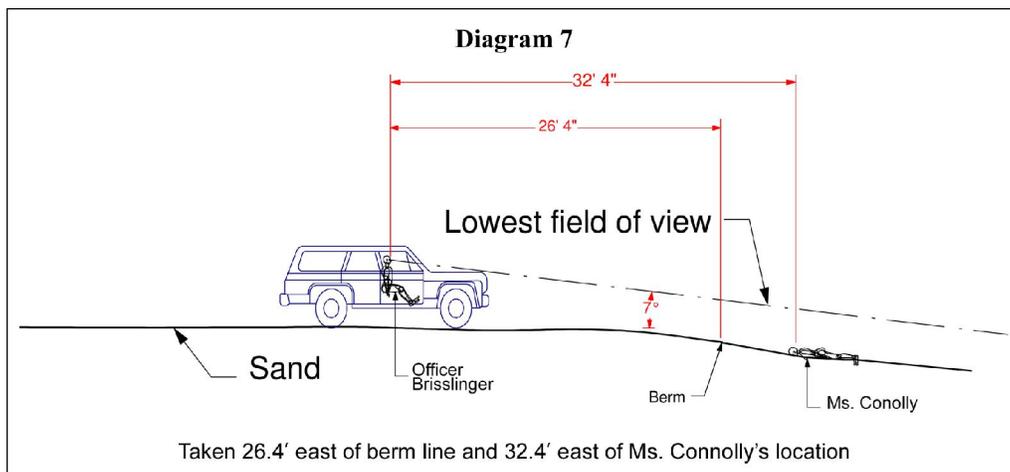
In light of the deceptive terrain, it is reasonable to conclude Officer Brisslinger did not see the “berm” while driving towards the water as he said in his statement. Since Officer Brisslinger did not notice the berm as he approached the shoreline, he did not foresee the blind spot ahead of him past the berm.

As Officer Brisslinger continued towards the water, he was scanning, looking in all directions, including forward. In fact, Officer Polo noticed Officer Brisslinger look left as they approached the berm. According to the measurements of the terrain, the configuration of the SUV, Officer Brisslinger’s position in the SUV, and his speed of 5-10 mph across the sand, Officer Brisslinger had less than one third of a second to partially view Ms. Conolly as he drove towards the shoreline. The opportunity to observe Ms. Conolly from inside the SUV lasted approximately two feet in distance, between 59’ 10” and 57’ 10” away from Ms. Conolly.

Even responding emergency personnel could not see Ms. Conolly as they crossed the beach, approaching the accident scene. Engineer Suguwara and firefighter Buffington said Ms. Conolly was not visible to them as they ran southwest across the beach from the hotel; she became visible to them as they neared her location on the sand, below the berm. Fire Captain John Colamarino, who responded to the incident with his department-issued 4x4 pickup truck (traveling across the beach in the same direction as the police SUV) said he was slightly confused because he could not see where the victim was located when he pulled up to the berm. Paramedics Anthony Ramage and Brandon Bauer, who were driven across the beach by Fire Captain Colamarino, also could not see Ms. Conolly as they drove across the beach. They did not see her until they actually arrived at her location on the sand.

The Oxnard Police Department Traffic Investigator’s diagrams below demonstrate Officer Brisslinger’s field of view from the specified distances as he approached the berm in the SUV.





Once Officer Brisslinger felt the vehicle’s weight transfer, he realized he was descending down, what he described as, a “small crest.” He then slowed down as he descended “making sure there was nothing there. I was just trying to be safe.” Based on the terrain, the configuration of the SUV and Ms. Conolly’s position on the sand, he could not see her. Under all these circumstances, it is highly unlikely that a reasonably careful person in Officer Brisslinger’s position would have seen Ms. Conolly sunbathing on the sand just past the berm.²⁰

Also relevant to whether Officer Brisslinger is criminally liable for the death of Ms. Conolly is his lack of beach driving training and the use of a large SUV which is not well-suited for beach patrol. The size of the vehicle limited the driver’s field of vision and the weight of the vehicle made stopping without getting stuck in the sand problematic. Regrettably, the Oxnard Police Department did not have any training, guidelines or policies established to ensure the safe operation of a motor vehicle on the beach.

²⁰ While a driver of a vehicle is ultimately responsible for the manner in which it is driven, passenger officers in a patrol vehicle serve as an additional lookout for the driver. As Officer Brisslinger described, Polo is to be the “second set of eyes and ears.” Here, Officer Polo admitted, and Officer Brisslinger acknowledged, that he was sitting back in the front-right passenger seat, reclined, with a foot up on the dash board in a relaxed position as they drove out onto the beach. Since the beach looked empty, it appears Officer Polo may not have been as vigilant as he should have been prior to the collision.

Patrolling a beach in a motor vehicle has inherent risks and dangers. It is a skill that must be taught and practiced if it is to be done correctly and safely. The Oxnard Police Department never formally trained Officers Brisslinger or Polo to patrol a beach in a vehicle, let alone the SUV used here. They were never formally trained on what constitutes a safe speed to drive on the beach, how to detect and avoid blind spots, how to notice berms and avoid them, or that most accidents occur when the beach looks empty. Had Officer Brisslinger been trained and taught to always be on the lookout for berms and blind spots near the shoreline, perhaps he would have noticed the small berm and blind spot and this tragedy would have been avoided.

The Oxnard Police Department has patrolled the Oxnard beaches in a motor vehicle for years without established training, guidelines, or policies designed to protect the public. According to his statement, prior to the collision, Officer Polo requested but did not receive 4x4 beach driving training. The department's failure to provide him, or any other officer, formal beach driving training may have been a contributing cause of this tragic collision. In fact, had Officer Brisslinger received formal beach driving training from his department (similar to the California Department of Parks and Recreation or the Los Angeles County Fire Department, Lifeguard Division) and had he failed to drive according to his formal training, the decision not to prosecute him may have been different.

Similarly, use of the department's 2003 Chevy Tahoe for beach patrol may also have contributed to this tragic accident. The Traffic Collision Investigation Report said the uneven terrain and "the configuration of [the SUV]" made it unsafe to drive on the beach. Although the report did not specify why the SUV's configuration made it unsafe to drive on the beach, the Traffic Investigators' demonstrate the height of the SUV's hood hampered Officer Brisslinger's ability to see out in front of the vehicle. A smaller configured 4x4 vehicle would have provided Officer

Brisslinger with a better opportunity to view Ms. Conolly in the sand, as opposed to the department's full sized SUV.²¹

Also, the Chevy Tahoe 4x4 weighed 5,600 pounds. Officer Brisslinger said he needed to keep the SUV moving forward because if he did not, the SUV might get stuck in the sand. Officer Brisslinger added air to the SUV's tires that morning because the previous week the SUV got stuck in the sand and the officers had to deflate the tires in order to remove the SUV from the beach. In fact, district attorney investigators who responded to the scene of the accident after the collision, witnessed the SUV get stuck in the sand as the Oxnard Police Department tried to drive it off the beach. A 4x4 vehicle that has to maintain forward momentum to prevent it from getting stuck in the sand is not conducive for beach patrol.

Police officers often times are required to accept responsibilities that are inherently dangerous when protecting the public. When conducting the public's businesses under such circumstances, officers rely on their department to provide them the training and equipment to carry out their public safety duties in a safe manner. Here, Officer Brisslinger was not provided with the training and equipment necessary to safely patrol the beach in a vehicle.

Based on the known evidence, it cannot be proven beyond a reasonable doubt that Officer Brisslinger drove the SUV on the beach in an unlawful manner.²² Although he caused

²¹ The Ventura County District Attorney's Office contacted the California State Parks, Field Services Safety Officer responsible for coordinating the training of state-certified lifeguards. The District Attorney's Office learned that the vehicles used by California State Parks are not standardized. In fact, State Parks use a variety of vehicles including SUV type vehicles as well as 4x4 pickups. State Park employees, who patrol on the beach, however, are required to train in the same type of vehicle they normally operate on the beach.

According to a deputy chief with The Los Angeles County Fire Department Lifeguard Division's, LACOFD's primary beach patrol vehicle is Nissan Frontier pickup. They, too, do not have a standardized vehicle; however, they do consider "driver visibility" when selecting vehicles for beach patrol.

²² When considering possible criminal charges against Officer Brisslinger, it must be underscored that guilt must be proven *beyond a reasonable doubt*. California law dictates that when two reasonable interpretations of evidence exist, one of which points to innocence and the other which points to guilt, the jury must adopt that interpretation which points to innocence. (See CALCRIM 224)

Ms. Conolly's tragic death by accidentally driving over her on the beach, it cannot be established beyond a reasonable doubt that he was driving negligently at the time of the collision. The elements of a criminal vehicular manslaughter charge against Officer Brisslinger cannot be met, let alone proven beyond a reasonable doubt.

Additionally, Officer Brisslinger cannot be charged with a hit and run resulting in death, Vehicle Code section 20001. There is no evidence, whatsoever, that Officer Brisslinger was aware that he ran over Ms. Conolly and fled the scene.

XII.

CONCLUSION

The death of Cindy Conolly was a great tragedy. The totality of the circumstances evidences that criminal charges against Senior Officer Brisslinger are not warranted since the elements of a vehicular manslaughter cannot be established, let alone proven beyond a reasonable doubt. It is a fact of human nature that on occasion, mistakes will occur, sometimes with tragic results. This is such a situation. Civil and administrative actions are appropriate means to remedy the mistakes that led to Ms. Conolly's tragic death.

The Office of the Ventura County District Attorney strongly urges the Oxnard Police Department, and other local agencies that patrol public beaches, to implement guidelines, training and policies concerning the safe operation of motor vehicles on the beach.