

SUMMARY OF THE VOLUSIA COUNTY SHERIFF'S OFFICE (VCSO) MISCONDUCT IN INVESTIGATING THE DEATH OF EILEEN FLAHERTY AND THE INJURING OF HER BROTHER, ROBERT FLAHERTY

On April 2, 2023, a retired New York City police officer who was distracted and driving fast crashed his car into two pedestrians walking their dog on the sidewalk, killing Eileen Flaherty, and seriously injuring her brother Robert Flaherty. In less than two years, Eileen's dream of retiring to Florida was tragically cut short after a 40+ year career as an elementary school teacher and reading specialist.



The crash took place at 12:41 pm on a clear day on a dry road on the 1100 block of East Normandy Boulevard in Deltona, Florida.¹ Rather than conducting their promised "thorough traffic crash investigation,"² the VCSO engaged in a cover-up to protect "one of their own" by: (1) intentionally failing to conduct a proper investigation, (2) showing up to traffic court without evidence, and (3) refusing two offers of a continuance by the traffic court judge which resulted in the driver being acquitted of all charge, leaving a dangerous driver on the road.

A photo of Eileen with her award from the Pennsylvania Association of School Retirees for her "Unselfish, Dedicated and Exemplary Service to the Walnut Street Elementary School."

A SERIES OF CRASHES

Ralph Aguilar was identified as the driver of the car that killed Eileen and injured Robert in numerous reports³ and several hours of police body cam video. The series of crashes included:

- Crossing over the centerline.
- Running off the roadway.
- Striking a traffic sign located on the grass shoulder. (Police body cam footage shows that the sign was pulled out of the ground.)
- Continuing onto the sidewalk.
- Striking Eileen and Robert Flaherty, throwing Eileen 59 feet 5 inches.
- Coming to rest on the apron of 1166 East Normandy Boulevard and striking a large decorative rock weighing 2,340 pounds that was pushed 15 feet.



¹ Florida Traffic Court Report, May 30, 2023

² Press release titled "Deltona Woman Killed, Brother Injured by Distracted Driver" posted at 10:02 pm on the Volusia County Sheriff's Office website by Andrew Gant of the Office of Public Affairs & Media Relations.

³ Florida Traffic Court Report, May 30, 2023; VCSO Narrative/Supplement, June 2, 2023; and VCSO Incident Supplement, July 18, 2023

INVESTIGATORS' KNOWLEDGE THAT RALPH AGUILAR WAS A RETIRED POLICE OFFICER

Sgt. Patterson and Traffic Homicide Deputy Nicholas Maletto, who conducted the investigation, were quickly made aware that Ralph Aguilar was a retired police officer. Ralph Aguilar's brother Michael arrived on the scene quickly. Immediately upon meeting Sgt. Patterson, he launched into how he and his brother are retired New York police officers and that they come from a "family of blue." He told Sgt. Patterson, "Listen to me, man. I know a lot of you guys. I got cards from everybody." (By cards, he could mean courtesy cards that certain police departments distribute to friends and family to avoid traffic citations.) As he launched into his connections with Rubin Escobar (VCSO Detective) and Jeff Hoffman (VCSO Senior Deputy), Sgt. Patterson turned off his body cam.

Michael Aguilar can be seen on the body cam video of Officer Nealis (secured the crime scene) with his hand on Sgt. Patterson's shoulder and talking to him at length. Subsequently, Sgt. Patterson tells Nealis about Aguilar's police history and wanted to let him onto the scene to be with his brother. Nealis refuses, so Ralph is moved across the street outside of the crime scene so that his brother can join him.

When Deputy Maletto arrives on the scene, Michael Aguilar greets him within 1 minute and 37 seconds. He relays the same information to him as to Sgt. Patterson, including opening his wallet and pointing to a card. One must view the body cam to fully appreciate Michael's glad handing and name dropping.

THE DRIVER'S CONFLICTING STATEMENTS ABOUT THE CAUSE OF THE CRASH

Across the body cam video, Ralph Aguilar's description of the crash changed. Deputy Maletto turned a blind eye to this. All these descriptions can be viewed on the body cam video.

- **Stories #1 and #2 (Day of the Crash):** Aguilar told Officer Bryant that a drawstring bag fell down, got caught between his legs, he bent down to pick it up, and it got caught in the steering wheel. In his next description of the crash to Bryant, he doesn't mention the steering wheel. Aguilar said twice that he looked away for just one second.
- **Story #3 (Day of the Crash):** When Deputy Maletto arrived on the scene about an hour and a half later, Aguilar tells him that cars were in front of him, the bag fell from his seat (his passenger later said it was between the seat and the car door), got caught on his foot, the bag didn't want to come loose, he broke the bag loose, and when he looked up he was in the driveway bouncing and noticed that he struck a woman, and then stood on the brake. After Deputy Maletto reads him his Miranda rights and questions him again, Aguilar says there is nothing to add or take away and said again that he stood on the brake.
- **Story #4 (After Deputy Maletto closed the case on June 2, 2023):** Deputy Maletto called Aguilar while driving in his police car to tell him the case was closed, there would be no charges, his car has been released from evidence, that there will probably be a mandatory court appearance, and that he would be issued a careless driving citation which Aguilar had already received. Aguilar provided Maletto with a more elaborate description of the crash that couldn't be explained the day of the crash because he was in shock. Aguilar said he was stopped from picking up the bag by the seatbelt, he was worried about hitting the cars in front of him, he used his other foot to try to break it free, then that foot got caught in a mesh pocket on the bag, and he couldn't get over to the brake pedal to stop. He then tried lifting his legs up, bent down to get the bag, and then found himself in the

driveway bouncing all over the place. Maletto tells him that is pretty much what he said the day of the crash, which isn't true.

THE INVESTIGATION THE DAY OF THE CRASH

The investigation started off well, with 14 law enforcement personnel arriving on the scene according to the Detailed History of this police event. This included the VCSO Traffic Homicide Investigations Unit and the Crime Scene Unit. Police body cam has been provided for seven police personnel only.

- Officer Bryant brought order to the scene, identified two witnesses, and provided them with witness forms to complete. The witnesses, however, were never questioned on anyone's body cam video. They filled out the forms which were eventually collected before they were permitted to leave.
- Officer Borbely identified three homes with video doorbells that could provide video of the crash for Sgt. Wingard, the Traffic Homicide Investigation Unit Supervisor.
- Upon arriving, Officer Nealis immediately started securing the crime scene.
- Officer Rogaliner cared for the Flaherty's dog in a humane and compassionate manner.

COVER-UP TO PROTECT "ONE OF THEIR OWN"

The investigation conducted by Deputy Maletto was closed on June 2, 2023 with a recommendation of only a careless driving citation for Aguilar. The case was re-opened briefly to conduct a skid-to-rest test that only took place because of constant follow up from the Flaherty brothers. Here is how the VCSO covered up the crash.

- **Deputy Maletto initially estimated Aguilar's average driving speed of 13.9 miles per hour to ensure his speed would not qualify as reckless driving which could have led to criminal charges.**⁴ This is impossible. One of the witnesses said that he was driving fast, and on his body cam video, Deputy Maletto stated that he was sure the driver must have been moving at a pretty decent clip because the rock weighed 1,000 pounds. When weighed by Tomoka Landfill, the rock weighed 2,340 pounds.
- **The VCSO only conducted additional testing to determine a more accurate rate of speed because of pressure from the Flaherty brothers, but those calculations were performed incorrectly to again protect Aguilar against potential reckless driving charges.** Based on the results of a skid-to-rest test, Deputy Maletto stated that the minimum amount of speed to move the boulder was 19.3 miles per hour.⁵ His calculations miss a critical point: the car hit the rock after a series of crashes which are not accounted for. Further, the boulder was uprooted from years of settlement and the weight did not include pieces that were broken off.
- **The VCSO held onto Mr. Aguilar's blood alcohol test sample for two days, leaving time for the specimen to potentially be stored improperly and resulting in a false negative, thus protecting Aguilar from possible vehicular manslaughter charges.** To obtain accurate blood alcohol results,

⁴ Florida Traffic Crash Report, May 30, 2023 and the June 6, 2023 Narrative/Supplement

⁵ Incident Supplement, July 18, 2023

blood specimens must be stored in cold temperatures. On July 29th, Robert Flaherty first requested the toxicology report and chain of custody information on the sample from the Florida Department of Law Enforcement (FDLE), which conducted the toxicology test and found no presence of alcohol or drugs. A month later, the VCSO provided the toxicology report. Chain of custody information has yet to be provided. There is no body cam video of what happened to the sample after it was collected. It is possible the sample was left in a hot police car the day of the crash.

- **The blood specimen is mislabeled as being from “R AGULER,” which could have given Aguilar’s attorney an opportunity to have this evidence thrown out if it had been positive.** Drivers who kill someone in a crash under the influence can be charged with DUI manslaughter. *Eileen Flaherty’s dead body was tested for drugs and alcohol during the autopsy.*
- **Sgt. Wingard, the Traffic Homicide Investigation Unit Supervisor, stopped Officer Borbely from collecting incriminating Ring doorbell camera footage from three houses.** Officer Borbely thought these videos were a “gold mine.” He reported this to Sgt. Wingard when he arrived on the scene. (Note: Sgt. Wingard was off duty that day, so we have no further body cam video of him.) Sgt. Wingard told him that we’ll take care of that, but this evidence was never collected.
- **Robert Flaherty was the only person to secure video footage of the accident demonstrating that Deputy Maletto had no interest in collecting incriminating video evidence.** After he got out of the hospital, Robert Flaherty knocked on 41 doors in the neighborhood where the crash occurred and left notes providing Deputy Maletto’s contact information for anyone who had camera footage of the crash. Robert spoke with Hoang Asam (1175 East Normandy Boulevard) who confirmed he had video of the crash. Robert informed Deputy Maletto on April 19th.
- **A week after Deputy Maletto was informed about Mr. Asam’s video of the crash, he had yet to follow up with him and never collected the potentially incriminating video evidence identified by Officer Borbely.** On April 25th, Mr. Asam had yet to be contacted by Deputy Maletto and expressed surprise to Robert Flaherty that the police weren’t doing much of an investigation and that Robert had to do it on his own. Deputy Maletto eventually secured the video from Mr. Asam. Deputy Maletto stated that he had reviewed some video, but it was only of Eileen and Robert walking. This would have been impossible because the homes identified by Officer Borbely are located in the crash zone. There is mention of Maletto having audio of the crash from 1126 East Normandy Boulevard, but this residence is 10 houses away from where the car landed.
- **Deputy Maletto never asked Ralph Aguilar to voluntarily open his cell phone or requested a search warrant of his phone records to ensure he wouldn’t find evidence that Aguilar potentially violated recently enacted distracted driving laws.** Given that this crash involved at least one death, and Deputy Maletto did not know at that time whether Robert would survive, asking Aguilar to voluntarily open his phone seemed reasonable. When Robert subsequently asked Lt. Paul, the Traffic Homicide Unit Assistant Commander, why a search warrant was not requested for Aguilar’s phone records, Lt. Paul claimed they didn’t have probable cause. Robert asked him multiple times via email how a death doesn’t warrant probable cause but never received a response.
- **Sgt. Wingard told Deputy Maletto not to share any reports without checking with him first, clearly to stall the Flaherty family’s numerous phone and email inquiries about the shortcomings of the investigation.** The records department provided Robert with an email chain that began between him

and Lt. Paul on June 9, 2023. Along the line, there is an email between Deputy Maletto and Sgt. Wingard where Sgt. Wingard tells him, "Please don't send any reports to anyone without letting me know first." Maletto goes on to state that he didn't send him [Robert] "that." It is not clear which document "that" is referring to.

- **Deputy Maletto's interview with Victor Hernandez, Aguilar's passenger, took place sometime later over the phone while he was driving and was far from probative.** Hernandez stated that he was tired so all he saw was Aguilar struggling with a bag, that he was half asleep, then he heard a bang, they hit the sign, then the car went out of control. Later in the conversation, he talked about the bag again, now in more detail even though he stated that he was half asleep. He mentioned that Aguilar got his foot caught in the bag, aligning himself with Aguilar's 4th story about the crash. When Maletto asked him how fast Aguilar was driving, Hernandez asked if the speed limit is between 35-40 mph. Maletto takes that as an answer and puts this information in the Incident Supplemental, conflicting with his other estimates of 13.9 and 19.3 miles per hour.
- **Deputy Maletto didn't even get simple facts correct in his reports, providing an opportunity for this evidence to be potentially thrown out in court.** In the VCSO's May 30, 2023 and June 2, 2023 reports, the driver is initially identified correctly as Ralph Aguilar and his passenger is identified as Victor Hernandez. All subsequent references to the driver are as Victor Aguilar. Further, these reports identify the landing address of Aguilar's car as 1162 East Normandy Boulevard, while body cam video clearly shows the address as 1166 East Normandy Boulevard.

THE COVER-UP COUP D'ETAT: FAILING TO SUBMIT THE PROPER EVIDENCE SO THE DRIVER IS ACQUITTED OF ALL CHARGES

Deputy Maletto came to Mr. Aguilar's July 24, 2023 traffic court hearing without the needed evidence and any witnesses to identify Ralph Aguilar as the driver. Given that Deputy Maletto protected Aguilar at every turn during the investigation, it is hard to believe this was an accident.

- **Even though the careless driving citation sent to Mr. Aguilar indicated that a mandatory court appearance was required, Aguilar was a "no show" at his traffic court hearing.** Aguilar's attorney, David Shekhter, attended. It is stunning that Aguilar didn't have the decency to show up and apologize to Robert Flaherty for injuring him and to apologize to all three Flaherty brothers for cutting their sister's life short. Robert Flaherty is investigating how this was permitted.
- **Deputy Maletto took no action to ensure witnesses appeared in court, including Aguilar.** One of the witnesses, Fontanez Garcia, is on the body cam the day of the crash disclosing that he had some involvement with the police and had to disclose this in any dealings with them. He was assured that his actions that day were to help so he was not in any trouble. One could understand why Garcia wouldn't want to come to court and it is not far-fetched to wonder if he had been discouraged from doing so by the VCSO. The other witness, Giovanna Borges, who was in the car with Garcia, informed Deputy Maletto that she was removing herself as a witness on April 20, 2023, even though she signed a statement and said she was traumatized for life when driving away. Aguilar's passenger, Victor Hernandez, was conveniently missing as well.
- **Even though there was a mountain of evidence that Ralph Aguilar was the driver – three incident reports, several hours of police body cam video, the toxicology report, and the careless driving**

citation – Deputy Maletto came to court with nothing. He claimed to have emailed Judge Dempsey the video Robert Flaherty secured from Hoang Asam, but she did not receive it. Maletto then claimed to have the video on a thumb drive but then could not find it.

- **Judge Dempsey offered to give Deputy Maletto a continuance twice, but he declined, knowing that Aguilar would then be acquitted of all charges.** Mr. Shekhter objected to Deputy Maletto's identification of Mr. Aguilar as the driver as hearsay. Mr. Shekhter moved for an acquittal based on identification, and Judge Dempsey denied it. Then Mr. Shekhter said "ID" and the judge granted an acquittal. After the hearing, Deputy Maletto and Mr. Shekhter moved close to each other and spoke quietly.

The family found out after the hearing that transcripts are not available in traffic court and would have paid for a stenographer had they been informed. The summary provided by the traffic court did not include the two offers of a continuance but does indicate that Judge Dempsey denied Mr. Shekhter's first request for an acquittal.

DOCUMENTS THAT CAN BE PROVIDED

- Police Body Cam Video for Blisset (was sent to close off a street only), Bryant, Nealis, Borbely, Rogaliner, Patterson, and Maletto
- Transcripts of the Body Cam Video Produced with Transcription Software
- VCSO Narrative/Supplement Dated April 4, 2023
- Florida Crash Report Dated May 30, 2023
- VCSO Narrative/Supplement Dated June 2, 2022
- VCSO Incident Supplement Dated July 18, 2023
- Traffic Court Summary
- Witness Statements
- Eileen Flaherty's Autopsy Report
- Eileen Flaherty's Death Certificate
- Email Chain Where Sgt. Wingard Tells Deputy Maletto Not to Send Any Reports to Anyone Without His Permission
- Communication log of 84 law enforcement/official email exchanges.

Robert Flaherty requested the videos and toxicology chain of custody and supporting documents but have yet to receive them.