

# Death Behind the Wheel



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## A LAWSUIT PORTRAYS A MIAMI-DADE TRANSIT BUS DRIVER AS UNFIT AT ANY SPEED



Barbara Rubenstein was killed by a bus driven by Jonas Lamonte McLeod, who reportedly racked up 47 citations and \$4000 in moving-violation fines prior to the accident. Map by Marcy Mock

On November 29, 2012, at 6:11 p.m., part-time Aventura resident Barbara Rubenstein was crossing the street while carrying groceries when she was struck by a Miami-Dade Transit bus. The 26-ton vehicle left 23-foot streaks on the pavement as it tried to stop. Rubenstein died 90 minutes later at Memorial Regional Hospital in Hollywood. She was 84 years old.

Two and a half years after that fatal accident, Rubenstein's surviving son, Ken, is suing Miami-Dade County for negligence.

"The [bus driver] was going way too fast," says Ramon Rasco, Ken Rubenstein's attorney from the law firm of Podhurst Orseck. "He wasn't looking to see if someone was at the intersection, and he ended up hitting her."

According to the 17-page complaint drafted by Rasco, the intersection where Rubenstein died, NE 29th Place and NE 199th Street, is dangerous. There were 53 collisions at the crossroads just north of Aventura Mall between January 2008 and December 2012, seven of which involved pedestrians.

The chaotic traffic conditions of NE 29th Place, where bus commuters often have to dodge cars to catch their next ride, was the subject of "Waiting to Happen," a story in the January 2013 issue of *Biscayne Times*.

Those road conditions, however, aren't the main focus of the lawsuit. Rasco points out that the City of Aventura hired the engineering firm Kimley-Horn and Associates to prepare a safety report following the accident that took Rubenstein's life. In June 2013, Kimley-Horn recommended investing \$227,000 toward installing flashing lights along crosswalks, replacing signage, and remolding corners on NE 29th Place, which is partly owned by Aventura Mall's owner, real estate developer Turnberry Associates.

Instead, the target of the lawsuit is the man behind the wheel of the bus that killed Rubenstein: 36-year-old Jonas Lamonte McLeod. The suit claims that McLeod racked up 47 citations and \$4000 in moving-violation fines prior to the accident; and that he was also involved in 12 collisions, eight of them while driving a Miami-Dade Transit bus. A *BT* review of McLeod's personnel file also revealed past incidents of unauthorized leave, tardiness, and insubordination. In addition, he has been cited three times for using a cell phone while driving a bus. (Police reports make no mention of a cell phone during the Rubenstein accident.)

That's where county negligence comes in, Rasco says. The county, he argues in the lawsuit, "breached its duty of care by failing to take proper and necessary corrective measures to ensure Mr. McLeod, as a Miami-Dade County Transit driver, did not pose a threat to the public at large."

McLeod, who was fired soon after the accident, couldn't be reached for comment. Assistant county attorney Benjamin Simon says the county is preparing a response to the lawsuit.



Attorney Ramon Rasco on Barbara Rubenstein: "She was in good shape, she swam every day, and she was very independent, and she had plenty of years to live." Courtesy Rubenstein family

Rubenstein was the second person to be killed by a Miami-Dade Transit bus on NE 29th Place. In November 2010, 51-year-old Tomislav Ritoper was hit by a bus driven by Goddess Newbold-Hayes less than a block away from the spot where Rubenstein was killed. Unlike McLeod, who stopped, Newbold-Hayes kept driving until she was notified by a supervisor about the accident. She was later charged with leaving the scene of a fatal accident. Her arrest was reported by local television news, and even got traction on national websites.

But charges against Newbold-Hayes, now 45, were dismissed last December after evidence turned up that Ritoper had a blood alcohol level of up to 0.25 and may have fallen in front of the bus.

According to a closeout memo by the Miami-Dade State Attorney's Office, an audio and video recording inside the bus also revealed that Newbold-Hayes repeatedly asked, "He fell? He fell?" "If he fell, it doesn't matter," a passenger replied. Another passenger looked behind the bus and then sat back down "as if nothing [was] wrong" when Newbold-Hayes asked if "he fell" a third time. No one else on the bus reacted.

The memo also noted that the lead traffic investigators from the Aventura Police Department "did not believe the case should be filed." A lawsuit filed by Ritoper's wife against the county and Newbold-Hayes was settled out of court in October 2012, about a month before Rubenstein was killed.

Her accident was immediately given to the Miami-Dade County Police Department. A traffic homicide report said there was nothing wrong with the bus's brakes, and an autopsy report stated that no trace of alcohol or drugs was found in Rubenstein's body. Although it was dark at the time of the accident, the street was well lighted and there weren't any visual impairments blocking McLeod's view.

"The driver of the MDT bus failed to yield for the pedestrian and struck her as she walked on the properly marked crosswalk," the homicide report declared. Rasco's lawsuit adds that the "pedestrian traffic signal was in the 'walk' phase as Ms. Rubenstein crossed the street using the designated crosswalk."

McLeod was ultimately charged with careless driving, a misdemeanor that could have cost him his commercial driving license if he'd been convicted. He wasn't. The judge dismissed the charge in June 2013.

"The court found that he couldn't have avoided the accident," says assistant county attorney Simon, who defended McLeod.

The county attorney's office routinely defends bus drivers charged in non-felony accidents, Simon explains, adding that he didn't know anything about McLeod's other traffic infractions, either on or off the job. "I don't really have any comment," Simon says. "I'm not aware of what happened at those other incidents."

McLeod had a long on-again, off-again career with Miami-Dade County. A graduate of Miami Central High, he started out as a part-time park service aide in 1998, making \$5.97 per hour. In March 2001, he was hired by the public works department as a semi-skilled laborer. Less than a month later, he transferred to Miami-Dade Transit as a part-time para-transit driver's attendant. By May 2002, following the completion of his bus operator training, he was earning \$12.76 an hour as a part-time bus operator.

Even before he received his full-time job, McLeod was getting in trouble. Between July 2001 and January 2002, while he was still an attendant, he received two reprimands for being late for work, a write-up for a "rule violation," and "formal counseling" for submitting a late report. In October 2002, McLeod received counseling once again, this time for using a cell phone while on the job. Following a lecture, a supervisor declared that McLeod had learned his lesson and agreed to follow county safety regulations. Nevertheless, McLeod received a lackluster job review. Supervisors noted that he "needs improvement" and that his job "performance does not fully meet job requirements."

That review didn't stop his promotion. McLeod, along with other part-time drivers, was granted full-time status on January 19, 2003. By the end of that

month, McLeod received a glowing "satisfactory" job performance. "Employee is commended on his/her job performance," his superiors wrote, "and is being encouraged to continue to improve in the performance of his/her responsibilities."

McLeod's file, however, suggested that his conduct didn't improve. He was lectured or written up about missing work and for having a poor attitude. In one incident that occurred in December 2005, a dispatcher ordered McLeod to tuck in his shirt. Instead, "Operator McLeod refused to follow Dispatcher Carti's instructions and walked away to go play checkers."

In spite of his promise to obey county safety regulations, McLeod was busted twice more for using a cell phone while on the job. In April 2008, a passenger complained that McLeod "failed to curb the bus properly, entered the intersection on a yellow light, dialed his cellular phone, and could be heard talking on the cellular phone while the bus is in motion." In September 2010, another passenger complained that McLeod failed to see that the light had changed because he was busy texting on his cell phone. (McLeod was suspended for ten days following the texting incident.)

McLeod sometimes hit things while driving a bus, too. He was involved in three county vehicle-related accidents in 2003 (one of which resulted in a three-day suspension) and at least two accidents in 2004 (which were grounds for a five-day suspension, including incidents of missing work and insubordination).

He was also written up for a "preventable" accident involving a bicyclist in November 2011, and in 2012 he required the assistance of the county attorney's office to beat charges of improper lane changing that resulted in "damage."

His record of driving was also shaky off-duty, Rasco claims. "Mr. McLeod has had to attend driving school seven times, in connection with seven different offenses, and there were only three occasions in which driving school was voluntarily elected," according to the lawsuit. "Within a period spanning two consecutive months in 2005, Mr. McLeod had been ordered to attend aggressive driving school in connection with two completely separate traffic incidents."

McLeod's driving record was less than perfect even before being hired by Miami-Dade Transit. Between January 1997 and July 2001, McLeod was ticketed 15 times for traffic infractions, such as driving without proof of insurance, driving without a license plate, careless driving, and speeding.

Ironically, McLeod's regular driver's license was suspended in December 2004 for failing to show proof of insurance, according to documents provided to the *BT* by Rasco's law firm. McLeod was subsequently ticketed twice for

driving with a suspended driver's license in April 2010. His commercial driver's license, or CDL, which enables him to drive a bus legally, was without a "proper endorsement" from July 24, 2009, to April 5, 2010, according to a chart provided by Podhurst Orseck.

Rasco argues that county transit officials "either knew or should have known" that McLeod was "totally unfit to operate a Miami-Dade Transit bus but failed to take proper corrective measures to ensure the safety of Miami-Dade County citizens, including Ms. Rubenstein."

In spite of Rubenstein's advanced age, the retired secretary was in excellent shape. If it weren't for the accident, Rasco insists, Rubenstein would have continued to be the matriarch for her three adult children and four grandchildren for years to come.

"She was in good shape, she swam every day, and she was very independent," Rasco says, "and she had plenty of years to live. She was healthy."

Yet even if Rasco persuades a jury that Miami-Dade Transit was negligent, the most he'll be able to extract from the county is \$200,000, thanks to the state's sovereign immunity laws, which protect local governments from civil lawsuits. But Rasco insists that Ken Rubenstein's motivation to sue the county isn't financial. "What he's really after," Rasco says, "is for this to mean something."