

Donald J. Lee, Jr.

Chief of Police



Key West

POLICE DEPARTMENT

September 7, 2016

John Eller
1617 Bertha Street
Key West, FL 33040

Mr. Eller,

I have received your complaint in regards to your arrest on November 29, 2015.

I will first address your issue with our tow policy. We feel our tow policy is sound and have no intentions of changing it. Officer Rodriguez followed our policy in your case. It is the policy of the Key West Police Department to tow vehicles in DUI cases, not to get people to lose their temper, but to protect the property of the arrestee. We cannot authorize persons to park vehicles on private property such as Circle-K. Furthermore in DUI cases, we are asserting the arrestee is not in their normal faculties. Which means any consent by the arrestee to leave a vehicle parked or released to another person, who is not the registered owner, puts the department in a potentially liable situation. We do understand the unfortunate financial burden that results, however we will not be changing our policy on this issue.

Secondly, I have reviewed Officer Rodriguez' in-car video and witness you stop past the stop bar on three separate occasions. Any of which is a legal reason for stop and was clearly not fabricated, as you stated yourself, you did commit these violations. As they relate to DHSMV Hearing or Trial, where the lines are positioned are not facts Officer Rodriguez is expected to speak to and if you felt they held relevance, should have been addressed by you or your legal counsel. The fact he did not speak of them has no bearing on his veracity. You are still expected to stop at the stop bars at per Florida Statute, regardless of if you feel they are positioned to far back or not. During the hearing you explained Officer Rodriguez stated he could not recall if you asked to give blood. As you know Officers are human and cannot be expected to recall every fact about a case. The fact he stated he was not sure, is the answer we expect from our Officers when they cannot recall the fact of a case. Your offer of giving blood does not come until you were already in the jail, your observation period ended and you were refusing a breath sample. Officer Rodriguez again asked you for breath and you still refused. As explained that night on a few occasions by Officer Rodriguez your refusal to offer a breath sample as requested will lead to the subsequent suspension of your license. With those facts in mind you still chose to refuse knowing the consequences, your subsequent suspension came as a result of your refusal.



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As to your driving pattern on Eaton Street. I have reviewed Ofc. Rodriguez' in-car video. I do not see any current construction as you mention. I do see for one block, between Margaret Street and Grinnell Street, a small section adjacent to the gutter which has been repaired and is paved over, but it does not have loose fill material as you stated; much less active construction on the whole lane which would cause your driving pattern. The repaired section leaves approximately three quarters of the lane to still travel within. As I watch the video, I observe as you do swerve within your lane, often causing you to run over potholes and such, not avoid them. You are correct in that you stop for a yellow light, but that is not a clear indicator you are or are not impaired as you suggest. In this instance, you again stop beyond the stop bar. As you leave that same stop light at the entrance to Trumbo Point, you do in fact weave on your scooter and are actually in the oncoming turn lane through the intersection for traffic that would be turning into Perry Court.

As to the physical signs you address such as your gate, bloodshot or droopy eyelids, I understand it is your position you didn't exhibit those signs, however Officer Rodriguez stated you did. There is no evidence to the contrary that I can find and certainly no evidence he falsified information regarding them.

I have spoken with the State Attorney on your case to gain his perspective. In speaking with him, he concurred there was probable cause for the stop and your subsequent arrest. I asked if he at any time, felt Officer Rodriguez was untruthful in any testimony; and he stated he did not. In my review of the case I cannot find any truthfulness issues either.

Often when a Judge dismisses a case, people often feel this is proof of innocence or that it amounts to stating an Officer falsely arrested a person. A Judge works on a standard of, "Beyond all reasonable doubt" and not on an Officers, "Probable Cause" standard. So a dismissal does not automatically indicate a false arrest. After a review of all the evidence in this case, I find there was probable cause for your arrest in this case. I do not find the arrest to be wrongful or malicious.

The issues you raised in your complaint, other than the tow policy, are court issues and either should have been addressed or were addressed in that venue.

In closing, I would like to remind you that driving in the state of Florida is a privilege, not a right. When you receive your driver's license, you are agreeing to, "Consent to any sobriety test required by law." This is printed across the bottom of your driver's license. When you refuse these tests, there are administrative penalties, such as losing your license. If you would have completed the field sobriety exercises as requested by Officer Rodriguez and required by law, and passed, you would have been released that night without having to deal with any of the issues you did.



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These matters are closed with no further action. If I can be of further assistance please do not hesitate to contact me.

Sincerely,

SGT. Randy Smith

Sgt. Randy Smith
Professional Standards Commander
305-809-1035



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