



May 31, 2012

Stephan Russell
State Attorney
State Attorney's Office, 20th Circuit
P.O. Box 399
Fort Myers, FL 33902

Dear State Attorney Russell:

BikeWalkLee is a community coalition raising public awareness and advocating for complete streets in Lee County, streets that are designed, built, operated and maintained for safe and convenient travel for all users -- pedestrians, bicyclists, motorists, and transit riders of all ages and abilities. For the past decade, Florida has been the most dangerous state in the country for pedestrians and cyclists according to a number of independent authorities, and it is past time for state leadership to take action to reverse this embarrassing distinction.

A recent tragic case in Lee County has focused our attention on the need for action. On May 7, 2011, 46-year-old Tracey Kleinpell was struck by a truck and killed while bicycling on the Sanibel Causeway. Driver Theresa Shirley veered across the oncoming traffic lane and struck Kleinpell, who was riding in the proper fashion along the bridge shoulder. Kleinpell died at the scene. Shirley walked away – and now, a year later, apparently she will walk away again without having to take any substantial responsibility for her actions.

There are many troubling questions about how the investigation was handled by the Florida Highway Patrol and why the State Attorney with the 20th Judicial Circuit did not bring criminal charges against Shirley. On a broader scale, we have serious concerns about how the FHP statewide enforces the traffic laws and investigates bicycle and pedestrian fatalities and serious injuries, and how the State's Attorney Offices prosecute the cases referred to them. We sent a letter to Gov. Scott about our concerns and requests for action (you were copied on this letter), and outlined our detailed questions and specific requests for action in the online statement at http://www.bikewalklee.org/BWL_PDFs/BWL_facts/052212traceyBWLStatementFinal.pdf. We have also summarized our concerns in a commentary was published in News-Press on May 31st (http://bikewalklee.com/BWL_PDFs/NewsPress/053112_NPtraceyoped.pdf).

First, we have asked Gov. Scott to launch an investigation into the handling of this case by the FHP, as well as a broader look into FHP's investigative practices into bicycle/pedestrian fatalities and serious injuries in general. The troubling pattern of disregard for the rights of the most vulnerable road users warrants a closer look by an impartial party.

Second, we have asked the Governor and his administration to undertake a comprehensive study into the safety of the state's transportation system for vulnerable road users (pedestrians, cyclists, and motorcyclists). This includes a focus on data collection that would allow better understanding of the risks and options facing vulnerable users, as well as implementing design and enforcement options to make our state transportation system safer and more effective for all.

Third, we are requesting that the 20th Judicial Circuit State's Attorney Office (SAO) provide the following data for the past five years:

- The number of bicycle and pedestrian fatalities and serious injuries cases referred by law enforcement to the SAO for action.
- Of those, the number and percentage of referrals that the SAO filed charges on.
- What was the outcome of the cases? Were charges brought against the driver (or the cyclist/pedestrian)? What were the charges? What percentage were criminal charges vs. civil charges?
- What percentage of cases were referred and how many of those resulted in charges being brought against the driver?
- Have vehicular homicide charges ever been filed in a bicycle/pedestrian fatality? How many motorists have been convicted of vehicular homicide for killing a pedestrian or cyclist?
- In what percentage of the bicycle/pedestrian fatality and serious injury cases that were prosecuted were won? What percentage resulted in jail time for the responsible driver?

Forth, we are requesting that the SAO provide the above information on each of the cases in the attached list of the Lee County pedestrian and cyclist fatalities in 2011 and 2012 (See attachment).

Fifth, if there's a legal gap here that allowed Shirley to fall through the cracks, we need to hear about it from the SAO. While we think there are plenty of laws in place that could have been applied here, if a new law is really needed to ensure justice is achievable, tell the public what it is so they can rally to support it.

Fair and thorough enforcement of the traffic laws as a primary means to keep our roadways safe. When laws are enforced, they are obeyed; conversed, when enforcement is lax or inconsistent, more road users will cut corners, engage in dangerous behavior and put themselves and their fellow road users at risk. When those who are acting dangerously are surrounded by two tons of fast-moving steel, more vulnerable road users such as bicyclists and pedestrians are even more at risk – but such dangerous behavior imperils us all. If Shirley had drifted across the Causeway and hit a school bus head on rather

than side-swiping a bicyclist, the response and reaction in that case would have been much different... but the risk Shirley created would have been no less dangerous.

We urge you to take the unnecessary death of Tracey Kleinpell as a catalyst for change so that her memory – and the memories of all bicyclists and pedestrians killed on our roadways – can spark positive changes for cyclists and pedestrians in Florida. Thank you.

Sincerely,

Darla Letourneau
On behalf of BikeWalkLee

cc: Pam Bondi, Attorney General of Florida

Attachment : Lee County Bicycle and Pedestrian Fatalities: 2011 & 2012 to-date

For more information about BikeWalkLee, visit us online at www.bikewalklee.org, our blog at <http://bikewalklee.blogspot.com>, and look for us on Facebook & Twitter.

Attachment:

Lee County Bicycle and Pedestrian Fatalities: 2011 & 2012 to-date

2012 Bicycle Fatalities to Date:

4/12/12 U.S. 41 south of Del Prado Blvd. – Lee County
3/10/12 U.S. 41 at Palm Drive – Lee County

2012 Pedestrian Fatalities to Date:

1/30/12 Gasparilla Drive (north of 7th Street East) -- Boca Grande
2/1/12 U.S. 41 at Sweetwater Ranch Blvd -- Estero
2/7/12 San Carlos Blvd. at Beach Walk Blvd. – Lee County
2/8/12 Cape Coral Parkway at SW 17th Ave. -- Cape Coral
2/10/12 U.S. 41 at Jamaica Bay – Lee County
3/9/12 Estero Blvd at Lenell Road -- Fort Myers Beach

2011 Bicycle Fatalities:

2/20/11 Three Oaks Parkway -- Estero
4/17/11 U.S. 41 in Estero
5/7/11 Sanibel Causeway (Tracey Kleinpell)
5/7/11 Downtown Bonita Springs
5/27/11 Lexington Ave. & Tice St. -- Fort Myers

2011 Pedestrian Fatalities:

4/11/11 Garcia Ave. & Ortiz Ave. -- Fort Myers
4/24/11 Hancock Bridge Parkway & Orange Grove Blvd. – North Fort Myers
5/6/11 425 Gray Ave. South – Lehigh Acres
10/12/11 Pondella Rd. at Hibiscus Lane—Lehigh Acres
11/20/11 Pine Island Road at U.S. 41 – North Fort Myers
11/20/11 Pine Island Road at U.S. 41 – North Fort Myers