



May 23, 2012

BikeWalkLee Statement: Kleinpell's death demands action

First, there's shock, which turns to sadness. Then, there's outrage. Now, we're left with questions – lots of questions.

That's the gamut of emotions roused by the tragic events surrounding the end of Tracey Kleinpell's life on May 7, 2011. The facts are simple: While driving her truck across one of the Sanibel Causeway bridges, Theresa Shirley veered across the oncoming traffic lane and struck Kleinpell, who was riding her bicycle 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.

So, now, the questions:

- Why did it take the Florida Highway Patrol (FHP) more than a year to complete its investigation?
- Why didn't FHP do a field sobriety test? Why were the FHP-ordered studies not sent to the proper laboratory for analysis until February – nine months after the crash?
- Why didn't FHP promptly gather the evidence to demonstrate that Shirley was driving erratically prior to the crash?
- How was so little evidence collected by FHP that the State Attorney's Office (SAO) felt it was left with few legal options to seek punishment for Shirley? The SAO's [letter](#) commenting on the case is riddled with contradictions, suppositions and implications – but appallingly few facts.
- Look at the cocktail of prescription drugs (muscle relaxants, anti-anxiety meds and narcotic pain pills) found in Shirley's bloodstream, any one of which carries a clear warning that "this medication may cause drowsiness-- use caution when operating a car or dangerous equipment." Don't authorities deem that to be "reckless" behavior or worthy of "driving under the influence"? Just because they're prescribed medications doesn't mean she was any less impaired as a driver.
- Was "failure to drive within a single lane" the best legal option left for the SAO? Really? We have a lot of laws on the books that could have been considered, and the SAO's decision to file this paltry a charge is a cruel joke on Kleinpell's family and friends. Even if the FHP botched the investigation, prosecutorial discretion allows the SAO to aggressively pursue criminal acts in court *if the situation warrants* – and, here, we think it does. SAO's claim that falling asleep at the wheel is not reason enough to pursue vehicular homicide charges is incorrect. For example, in

the 2007 case in our circuit, *Meus vs. the State of Florida*, a truck driver who never even admitted to falling asleep at the wheel was convicted and sentenced to two 15-year prison terms for killing two passengers in another vehicle on circumstantial evidence. Shirley admitted to falling asleep and was “groggy” and “lethargic” at the scene, according to medical personnel. This demonstrates there is enough evidence to pursue this charge, but apparently the state does not want to charge her.

- Is FHP capable of properly investigating any fatality involving a bicyclist or a pedestrian? In case after case locally, the agency either drags its collective heels, botches the outcome or rushes to judgment to absolve the motorist of any substantial fault. This pattern indicates that cyclists and pedestrians are second-class citizens when it comes to roadway safety.
- Where is the data that would allow agencies and watchdogs to better track the causes and outcomes of crashes between motor vehicles and bicyclists/pedestrians? It used to be compiled, but once it was used to point out the growing danger to the more vulnerable bicycle/pedestrian users on Florida’s roadways, some agencies stopped collecting it. Previous trends indicated that vulnerable road users were being found at fault during official investigations at a far higher rate than the general data would indicate – which leads one to assume a tendency to “blame the victim” in such crashes. It would be nice to have better data to prove or disprove that belief.
- Where is the data that could document what happens to investigations involving fatalities of bicyclists and pedestrians, detailing in what percentage of cases are motorists charged and with what? How about the percentage of cases result in motorists being convicted of vehicular homicide and doing jail time?
- Finally, where’s the justice? How can one person take the life of another person, in a case where the fault is crystal clear, and the killer be allowed to walk away with minimal consequences – about the same as if they had run a red light? How can this legal system tell someone’s husband, someone’s parents, someone’s children, that this is the best we can do when someone they love is killed by another -- and have anyone believe this system is fair, just and effective?

We don’t have answers, but we do have some suggestions on what needs to happen next:

First, we call on 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 call on the SAO to relook at this case and consider bringing vehicular homicide charges against Shirley, and to provide data about what happens to all bicycle and pedestrian traffic cases referred to it for action. The data can tell us whether there's a pattern at the SAO of frequently choosing not to pursue charges on motorists who injure cyclists and pedestrians.

Third, we call on the FHP to recuse its personnel from any investigation into bicycle and pedestrian traffic homicides until this independent inquiry is complete and any recommended changes in procedures can be implemented. Local law enforcement agencies typically have qualified traffic

homicide investigators who could capably handle such investigations while FHP's practices are being reviewed and revamped.

Fourth, we recommend Gov. Scott and the Legislature authorize 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. This could be done reasonably through an existing institution (such as USF's Center for Urban Transportation Research), and would give policymakers a better basis to make changes to a system that is clearly broken.

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 and FHP. 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.

Sixth, Florida needs an aggressive campaign to end distracted driving, led by Gov. Scott and his administration. Florida, proven to be the most dangerous state in the country for pedestrians and cyclists, is one of only six states in the nation NOT to have passed any law dealing with cell phones and texting. The *News-Press'* May 19 [editorial](#) urged our Legislature to pass such legislation, and we wholeheartedly agree. It might not have made a difference in this tragedy, but it would make a big difference on our roadways.

Finally, we encourage bicyclists and pedestrians to keep the faith. Despite deaths such as Kleinpell's, despite travesties such as this case, despite the litany of crashes and the failure of investigators and prosecutors, cycling and walking are still very safe pursuits and a vast majority of motorists do drive responsibly and are willing to share the road with other users. If we can keep designing better road systems and keep educating both motorists and bikers/walkers on the safe way to interact throughout our transportation system, we can lower fatalities and increase usage.

What can you do?

- Contact Gov. Rick Scott -- <http://www.flgov.com/contact-gov-scott/> or call (850) 488-7146 – and ask him to investigate FHP's handling of this case and support a study of the safety of Florida's roads for the most vulnerable road users.
- Contact the SAO (stateattorney@sao.cjis20.org) or call (239) 533-1000 to ask State Attorney Stephen Russell to bring vehicular homicide charges against Shirley, and to provide the public with data on the outcome of all bicycle/pedestrian traffic cases referred to them.
- Contact FHP (fhp@flhsmv.gov) to ask them what went wrong here and to suggest they recuse themselves from bicycle and pedestrian traffic homicide investigations until answers can be found.

We can't stress enough the importance of fair and thorough enforcement of the traffic laws as a primary means to keep our roadways safe. By "fair" enforcement, we don't mean cracking down only on

vulnerable road users but applying laws across the spectrum against any violator. Fair enforcement must also mean focusing primarily upon those who can do the most damage and who are truly putting others at risk.

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.

Cases such as the unnecessary death of Tracey Kleinpell should inspire outrage, not fear. And her memory – and the memories of all bicyclists and pedestrians killed on our roadways -- should inspire us to seek justice and change.

BikeWalkLee is a community coalition raising public awareness and advocating for complete streets in Lee County, FL--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 more information, visit us online at www.bikewalklee.org, visit our blog at <http://bikewalklee.blogspot.com>, and look for us on Facebook & Twitter.