



June 21, 2012

Captain Mark D. Welch
Office of Professional Compliance
Florida Highway Patrol
2900 Apalachee Parkway, MS-53
Tallahassee, FL 32399

Dear Captain Welch:

Thank you for your June 18th response to our May 31st letter to Gov. Scott concerning the official response to cyclist Tracey Kleinpell's death. We appreciate your timely reply. However, it didn't respond to the questions we asked of FHP in our May 31st letter to Colonel David H. Brierton, Jr., FHP Director (see Attachments 1 and 2), and we have several questions about your response. Subsequent to our letters, on June 1st the investigative file was made available to the public by the State's Attorney Office, which we reviewed as reflected in this letter.

1. With respect to the data you provided in your following statement:

"From 2007 to 2011, the patrol has investigated 224 fatal crashes involving bicyclists and 1,189 fatal crashes involving pedestrian throughout Florida. Those crashes resulted in 311 citations issued to parties involved."

This means citations were given in 22% of the bike/ped fatalities over the five-year period. What you haven't provided (as requested in our letter) is a breakdown of who was charged -- the pedestrian, cyclist or driver -- and what were the charges? Were those charges civil or criminal? In what percentage of the cases were vehicular homicide charges filed against the driver?

Although you haven't identified who was cited, we are concerned that only 22% of the cases resulted in citations. If all of these were against the motorists, are you implying that the remaining 78% were the fault of the victim? In Lee County, up until the time LeeDOT stopped gathering its own traffic crash data, we found that less than 40% (39% in case of cyclists and 35% in case of pedestrians) of all crashes between motorists and vulnerable users to be the fault of the vulnerable user. (See Attachment 3.) How could FHP's data be so different? BikeWalkLee would like a better breakdown of FHP's data, including specifics about the other 1,102 fatalities (1,413-311 = 1,102), and which parties were at fault in the 311 in which citations were issued, as well as the type of charges. We feel this discrepancy is the crux of the issue and relates to our contention that there's an inherent bias in cases investigated by FHP. Once we have this data, we will be able to respond to your request for evidence of a pattern of bias.

We would like to know the types of charges filed in these cases and how frequently each type of charge is filed. It appears to us that the charge of "failure to maintain your lane" (which was used in Kleinpell's case) is the least serious citation that could be filed. Why weren't charges of reckless driving or inattentive driving considered, at a minimum? If a motorist was texting and ran over a pedestrian or cyclist, would charges be filed? If so, what type? We heard the spokesperson for the State's Attorney's Office say on camera that it's not illegal to fall asleep at the wheel and kill someone. If this is true, would you recommend (as requested in our May 31st letter) that a new law is needed to ensure that justice is achievable in such an instance?

2. With respect to your statement:

“Our personnel in Tallahassee have reviewed the report and determined that Corporal Gissendanner conducted a proper homicide investigation. In order to charge any person with a crime in Florida, the law enforcement officer must have probable cause that a crime was committed. There was no indication that probable cause for any crime existed in this crash.”

If FHP did not believe a crime was committed, why did they put forward an Affidavit of Criminal Offense (#FHPF11OFF027095; Traffic Homicide Case # FHP711-18-012) for “DUI Manslaughter, In Violation of F.S.S. 316.193(a)(b)(c)(3), Second Degree Felony, 1 Count”? Please explain this apparent contradiction.

3. Considering that the State’s Attorney Office declined to prosecute, BikeWalkLee would like an explanation as to why a field sobriety test wasn’t administered -- even when medical personnel indicated her behavior as being “lethargic, sleepy, didn’t seem to understand severity” and “felt Shirley was impaired”? Gordon Kleinpell’s (husband of the victim and witness to the accident) statement to investigating officers related to Shirley that “moments before the crash dazed eyes open.” And why weren’t Sanibel Police Department records apparently reviewed to determine whether anyone reported Shirley’s driving as being problematic prior to the crash?

Did FHP confer with SAO to determine why they declined to prosecute? Would FHP have done something different so your affidavit would have had a better chance of being prosecuted?

4. As previously requested (see Attachments 1 and 2), please provide the data requested, including information on each of the cases listed of Lee County pedestrian and cyclists fatalities in 2011 and 2012 to date.

We look forward to receiving the requested data and responses to our questions. Thank you.

Sincerely,

/s/

Darla Letourneau
On behalf of BikeWalkLee

cc: Captain Tim Culhane, District Commander for Fort Myers District, FHP

Attachments:

Attachment 1: Excerpt from BikeWalkLee’s May 31, 2012, letter to Col. David H. Brierton, Jr., FHP Director

Attachment 2: Lee County Bicycle and Pedestrian Fatalities: 2011 & 2012 to-date

Attachment 3: Excerpt from BikeWalkLee’s Nov. 9, 2009, report: “How safe are Lee County Streets for pedestrians?”

For background documents, see BikeWalkLee’s website: [BikeWalkLee speaks out on Tracey Kleinpell’s death and the failure of the law enforcement system...](#) click [here](#) for the full statement and [here](#) for the op-ed published in the News-Press (5/31/12). The May 19 News-Press editorial on Kleinpell is available [here](#). BWL also sent letters to [Gov. Scott](#), the [Florida Highway Patrol](#) and the [State Attorney’s Office](#).

Attachment 1

Excerpt from BikeWalkLee's May 31, 2012 letter to Col. David H. Brierton, Jr., FHP Director:
(http://www.bikewalklee.org/BWL_PDFs/BWL_PR/053112_FHPletter.pdf)

In addition to the study requested of the Governor, we are requesting that FHP provide the following data for the past five years:

- Number of bicycle and pedestrian fatalities and serious injuries investigated by FHP
- How long each investigation took
- What was the outcome of the investigation--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 all investigations resulted in charges being brought against the driver?
- Have vehicular homicide charges ever been filed in a bicycle/pedestrian fatality?

We are also requesting that the Fort Myers FHP Office 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 2.)

Attachment 2:

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

Attachment 3

Excerpt from BikeWalklee's Nov. 9, 2009 report:

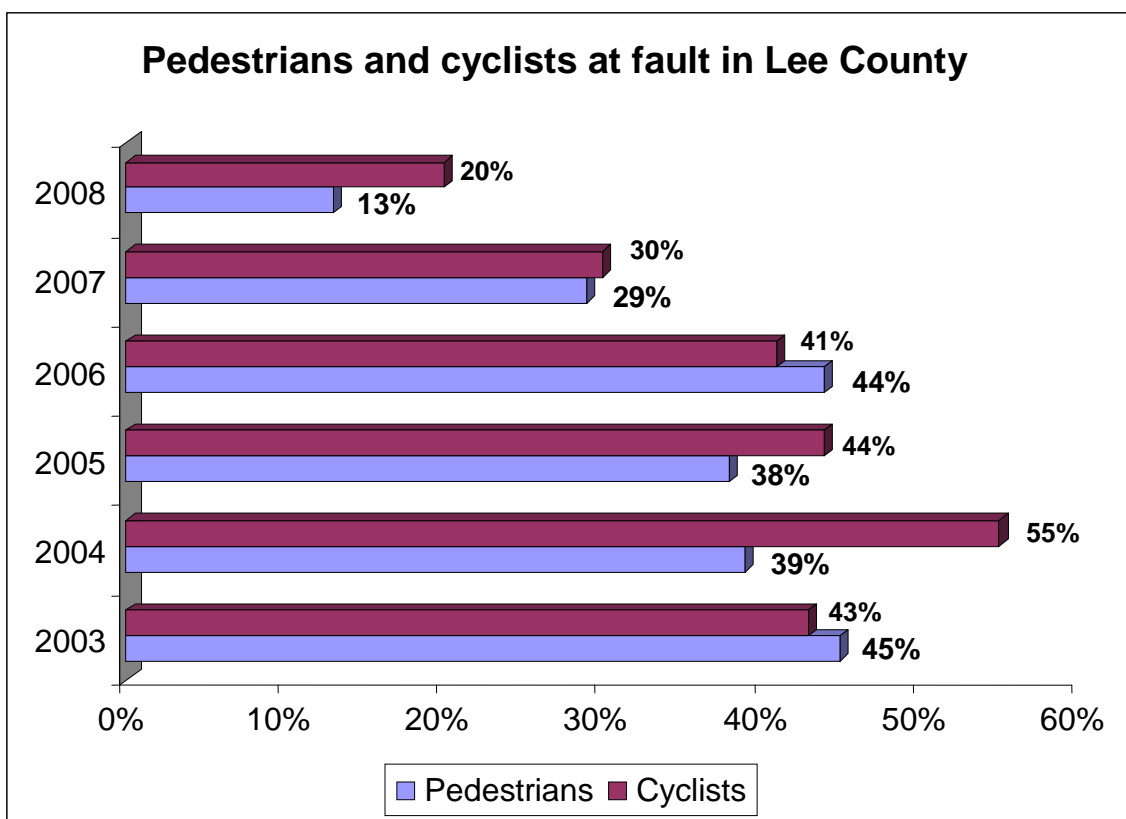
How safe are Lee County Streets for pedestrians?

A Look at Lee County in the national context of "Dangerous by Design" report

(http://www.bikewalklee.org/BWL_PDFs/BWL_facts/BWLPed%20report%20FINAL.pdf)

Who is at fault in pedestrian crashes?

In addition to the national and state official databases on fatalities and injuries, Lee County Department of Transportation (DOT) maintains crash data that provides some additional insights into where and why the crashes are occurring. The Lee DOT database records who is at fault (driver or walker/cyclist) in the crash. It's interesting to look at this data and the trends. The great majority of crashes with pedestrians and cyclists are the fault of the driver, with more drivers at fault in recent years than in the past.*



*Source of Lee County crash data: Lee County DOT, Traffic Section's Crash reporting system.

Although crash reporting systems attribute error on the part of motorist or pedestrian/cyclist, "Dangerous by Design" points out that an overwhelming proportion of these crashes share a similar factor: They occurred along roadways that were dangerous by design — streets that were engineered for speeding cars and made little or no provision for pedestrians or cyclists or people in wheelchairs.**

**Source: "Dangerous by Design," p. 45