

CRB SUPPLEMENTAL COMPLAINT EVALUATION FORM

Case Number: 09-006

Complainant Name: Shahdaroba Rodd

CASE SUMMARY

Date of Incident: 10/28/2006
Date of Complaint filed with IA: 5/26/09
Date of Complaint filed with CRB: 5/26/09

Officers: Officer Randall Smith
Officer D. Kouri
Officer M. Koehane

Allegation: False Arrest
Untruthfulness

The Complainant Evaluation and its attachments supplements the original CRB Complaint Evaluation Form relative to this case

This Supplemental Complaint Evaluation Form ads the following documents:

1. CRB letter Dated September 1, 2009 to Chief Lee;
2. KWPD IA additional proffered materials (additional pages to the CField Sobriety & Alcohol Influence Report);
3. Chief Lee's Response Letter to the CRB dated September 21, 2009;
4. Notice Letters to involved parties;

THE FACTUAL ALLEGATIONS OF THIS/THESE COMPLAINT(S) HAS/HAVE NOT BEEN INVESTIGATED BY EITHER THE INTERNAL AFFAIRS DIVISION OF THE KEY WEST POLICE DEPARTMENTMENT, NOR THE CITIZENS REVIEW BOARD (CRB). THIS/THESE COMPLAINT(S) IS/ARE BEFORE THE BOARD FOR ADMINISTRATIVE PROCESSING ONLY UNTIL SUCH TIME AS EITHER INTERNAL AFFAIRS OR THE CRB INVESTIGATES THE ALLEGATIONS OF THE COMPLAINT. ANY READER OF THIS/THESE COMPLAINT(S) SHOULD NOT PRESUME THAT THE OFFICER COMPLAINED AGAINST HAS ENGAGED IN ANY WRONGDOING.

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CITY OF KEY WEST

Citizen Review Board
PO Box 1946
Key West, FL 33041

September 1, 2009

Chief Donald J Lee
Key West Police Department
Post Office Box 1409
Key West, FL 33041

RE: Shahdaroba Rodd
CRB# 09-006
Officers: R. Smith, D. Kouri, M. Koehane

Dear Chief Lee:

On Monday, August 24, 2009, the Citizen Review Board (CRB) reviewed the above referenced complaint and your office's two responsive memorandums of explanation dated June 3, 2009 & July 21, 2009 in which your office declined to conduct a formal investigation into this matter. We understand that your rationale for not conducting an investigation is that these professionalism issues were presumably handled in the underlying criminal matter which resulted in not-guilty jury verdicts in favor of Mr. Rodd and one guilty judgment by the judge as to the improper lane change. However, resolution of police professionalism issues are within the KWPD's internal administrative duties with the assistance of this board, and not properly deferred to criminal courts in such a case.

Without any formal investigative results, the CRB attempted to carry out its function under the City Charter in reviewing the matter and tendering a competent recommendation to your office. Officer Smith was present and available for questions, but officer Kouri and Koehane were absent from the CRB meeting and thus could not assist with their valuable insight into the matter. After considerable review, the CRB members came to the unanimous conclusion that without some type of investigation, the true nature of what transpired during Mr. Rodd's arrest is unclear. Mr. Rodd firmly believes the mistakes made in his processing by the KWPD were purposeful and calculated.

Chief Donald Lee
September 1, 2009
Page 2

The charge against officer Randall Smith as to untruthfulness & false arrest was not acted on by the CRB because the evidence presented thus far, did not warrant any action. However, the remaining allegations are still pending against the officers as more fully explained herein. Please consider this the Board's formal request under City Charter provision 1.07(VII)(b)(6)(i) & (ii) to clarify the following issues summarized herein.

The charges of "untruthfulness" against Officers D. Kouri and M. Koehane surrounding the authorship of the document "Field Sobriety & Alcohol Influence Report" are at issue. It is unclear which officer filled out this document and if they had personal knowledge, as the document reflects, to make such representations. Further, were the representations truthful and based on road sobriety tests and/or personal observations by an officer? It is unclear as to if this one page document reflects the entire report or not. Were field sobriety tests conducted on Mr. Rodd, and if so who conducted them, where were they conducted, and was the "Field Sobriety & Alcohol Influence Report" based on those tests? At first blush, it seems that Officer Koehane had little to do with the apparent processing errors, but since there was no IA investigation how can the Board reach such a conclusion by preponderance of the evidence?

Additionally Mr. Rodd alleges that he did not receive a copy of the traffic citation(s) that Officer Kouri authored which would apparently constitute his temporary license. Further, Mr. Rodd claims that Officer Smith purposefully ignored an administrative subpoena in his related department of motor vehicle license suspension hearing. Again, for the Board to reach any recommendation on such accusations, it would need some type of investigative to establish or refute these claims.

Additionally, The Board would like to know if this DUI processing of Mr. Rodd was in accordance with the KWPD operating procedures at the time. If not, why not. If so, in your opinion do the operating procedures need to be modified to avoid such apparent clerical errors from reoccurring?

While the Board would presume the best mechanism to clear up this confusion is to secure sworn statements from the Complainant and all involved officers, the CRB will defer to your discretion at this juncture on how to secure credible answers to the above stated questions that meet some level of evidentiary value.

Thank you for your continued attention to this matter.

Respectfully,



Bryan Green
Chairman

Chief Donald Lee
September 1, 2009
Page 2

cc: Jim Scholl, City Manger
Mr. Shahdaroba Rodd
Officer R. Smith
Officer D. Kouri
Officer M. Koehane

2

Citizens Review Board

From: Randall Smith
Sent: Wednesday, September 16, 2009 9:49 AM
To: Citizens Review Board
Cc: David T. Smith; Randall Smith
Subject: DOC002.PDF - Adobe Reader

Attachments: DOC002.PDF



DOC002.PDF (269
KB)



CITY OF KEY WEST - DEPARTMENT OF POLICE FIELD SOBRIETY & ALCOHOL INFLUENCE REPORT

Defendant: SHADROKH RUDOO KWPD Case No. 06-6576 DUI Citation No. 940176-W

STEP A> OBSERVATION AND STOPPING VEHICLE Off. R. Smith

1. I first observed vehicle at 0100 hours 10-28-06 date.
 2. My first observation occurred at 600 BIK SOUTH ST. in Monroe County.
 3. During this observation period, I observed vehicle (circle as needed): weaving, speeding, running off the roadway, and making wide turns. Other: _____
 4. I stopped that vehicle at 0103 hours, at 600 SOUTH ST location.
 5. I observed that Mr./Mrs./Ms. SHADROKH RUDOO was in actual physical control of the vehicle.
 6. Note any problems in stopping the vehicle _____
- Notes: _____

ACCIDENT CASE (Complete only if Traffic Crash Case)

7. I arrived at the crash at _____ hour, at _____ location.
 8. I verified that the crash occurred at _____ hours, at _____ location.
 9. I verified that Mr./Mrs./Ms. _____ was in actual physical control of the involved vehicle.
(Explain how verified) _____
 10. I verified that Mr./Mrs./Ms. N/A has consumed no alcoholic beverage since the crash.
(Explain how verified) _____
- Notes: _____

STEP B> EXAMINATION OF DRIVER

1. Response/Actions when asked for his/her driver's license and registration AGITATED
 2. I asked the driver today's date and present time _____
 3. His/Her speech was: sturred, incoherent, hysterical, shouting, other
 4. Odor of an alcoholic beverage on breath: strong, moderate, faint, other
 5. Eyes were: bloodshot, watery, glassy, pupils unequal, dilated, other
 6. Face was: flushed, pale, other
 7. Described clothing: DIRTY They were: dirty, soiled, disheveled
 8. Ability to walk: swaying, stumbling, falling, needing support, other
 9. Ability to stand: swaying, falling, leaning on objects for support, other
 10. Actions were: cooperative, fighting, abusive, crying, laughing, other ARGUMENTATIVE
- Notes: FAILED TO PROVIDE NEEDED IDENTIFICATION

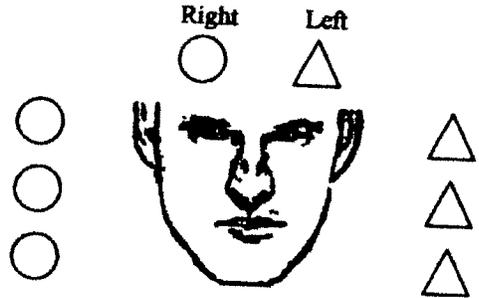
3. Finger to Nose Exercise

INSTRUCTIONS: Stand with your feet together, your hands at your sides, with your index fingers pointed. Do not start to perform the exercise until I tell you to do so. Do you understand the instructions so far? When I tell you to start, close both eyes and tilt your head back. Keep your eyes closed and head back until I tell you that the exercise is over. When I tell you to do so, bring your hand straight up and touch the tip of your nose with the tip of your index finger. After touching your nose, immediately bring that hand back down and to your side. Do you understand all instructions? (The exercise will be conducted in the following sequence: Left, Right, Left, Right, Right, Left.)

(If not performed, explain why) _____

- _____ Does not maintain eyes closed
- _____ Fails to return arm to side
- _____ Misses tip of nose with tip of index, or uses other than index finger
- _____ Wrong hand for exercise
- _____ Cannot perform exercise (5 points)
- _____ TOTAL POINTS (Decision = 2 points)

Notes: _____



4. One Leg Stand Exercise

INSTRUCTIONS: Is there any reason why you cannot stand on one leg? Stand straight with your feet together and your arms at your side. Do not move from that position until told to do so. Do you understand? When told begin, you are to raise which ever foot you feel most comfortable with, six inches from the ground with your knee locked and your toe pointed forward. (DEMONSTRATE) Keep your arms to your sides and look at your raised foot the entire time. Once your foot is raised, begin to count in this manner: 1001, 1002, 1003, etc., until you reach 1030 or until I tell you to stop. If you place your foot down while counting, just raise it up again and continue. Do not start counting over. Do you understand? Begin now.

If not performed, explain why _____

- _____ Sways while balancing
- _____ Uses arms to balance (Raise arms over 6 inches)
- _____ Hopping
- _____ Puts foot down
- _____ Cannot do exercise (Puts foot down 3 or more times, 5 points)
- _____ TOTAL POINTS (Decision = 2 points)

Which leg does he/she raise? Left right

Describe footwear _____

NOTES: _____

STEP D > ARREST

1. I placed the defendant under arrest at _____ hours, on _____ date.
2. If the original arrest charge was for other than DUI, specify time that probable cause was established for DUI _____ hours.
3. We departed arrest scene at _____ hours.
4. We arrived at _____ location, at _____ hours.

IMPLIED CONSENT WARNING

(Read the following to defendant after he has been lawfully arrested and probable cause has been established for DUI)

1. I have probable cause to believe that you were in actual physical control of a motor vehicle, and for that reason you are being charged with Driving Under the influence.
2. _____ **Breath Test**
I am now requesting that you submit to an approved test of your breath for the purpose of determining the alcoholic content of your breath.
- _____ **Urine Test**
I am now requesting that you submit to an approved test of your urine for the purpose of determining the presence of any controlled substances.
- _____ **Blood Test**
I am now requesting that you submit to an approved test of your blood for the purpose of determining its alcoholic content, or the presence of any controlled substances.
3. If you refuse to submit to this test, your privilege of operating a motor vehicle will be suspended for 12 months, or 18 months if your license has been previously suspended for refusing to submit to a required test. Your refusal to submit to this test can be used against you in any criminal proceedings.
4. In addition to the test that I request of you, you may, at your own expense, have other chemical or physical tests performed to determine the alcohol content of your blood or breath, or to detect the presence of a chemical and/or controlled substance.
5. Do you understand?

Implied Consent Warning given at _____ location, at _____ hours,

Date, witnessed by (if applicable) _____

Defendant _____ did _____ did not elect to submit to the above test. The 20-minute observation period began at _____ hours, _____ date. I verify that the defendant did not smoke, drink, vomit, belch, or place his/her hands in their mouth _____

The following samples were taken using the following instrument _____ with serial number _____

Breath Test Operator's Name _____

with _____ Agency.

Defendant was given his copy of breath test printout _____ hours.

_____ HOURS/RESULTS _____
_____ HOURS/RESULTS _____
_____ HOURS/RESULTS _____

STEP F> INTERVIEW

INSTRUCTIONS: After you have secured a waiver of rights, proceed with the interview, quoting the defendant's answers.

Were you operating a vehicle? _____ Where were you going? _____

What street or highway were you on? _____ What direction were you traveling? _____

Where did you start? _____ What time did you start? _____ Am/Pm

Is it day or night right now? _____ What time is it now? _____ Am/Pm. What is the date? _____

What day of the week is it? _____ What city and county are we in now? _____

INSTRUCTIONS: Interviewer, record actual time _____ Am/ Pm, Date: _____

Day of week: _____ Interviewer's name: _____

When did you last eat? _____ What did you eat? _____ Where? _____

What were you doing during the last three hours? _____

Have you been drinking? _____ What? _____ How much? _____

Can you feel the effect of an alcoholic beverage now? _____ Are you under the influence? _____

Are you wearing an artificial limb? _____ Do you have false teeth? _____ Do you have a glass eye? _____

Do you have any physical defects? _____ If so, what? _____

Are you sick or injured? _____ If so, what's wrong? _____

When did you last sleep? _____ How much sleep did you get? _____

Were you involved in a traffic crash today? _____ Did you get a bump on the head? _____

Have you had any alcoholic beverages since the crash or since you were arrested? _____ If so, what? _____

Where? _____ How much? _____ When? _____

Are you under the care of a doctor or dentist? _____ If so, who? _____

What for? _____ Are you taking tranquilizers, pills, or medicines of any kind? _____

If so, what kind? (Get samples) _____ Last dose? _____ Am /pm

Do you have epilepsy? _____ Diabetes? _____ Do you take insulin? _____ If so, last dose? _____ Am/pm

Have you used any types of drugs recently? _____ If so, what for? _____

What kind of drug? _____ Last dose? _____ Am/pm

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Donald J. Lee, Jr.
Chief of Police



Key West
POLICE DEPARTMENT

September 21, 2009

Mr. Bryan Green
Citizens Review Board
PO Box 1409
Key West, FL 33041

RE: Shahdaroda Rodd 09-006

Dear Chairman Green,

I have received and reviewed your letter dated September 1, 2009, in reference to Mr. Rodd's complaint to the board. I appreciate and respect the board's concerns regarding this arrest. However, I have conducted a review of the arrest and allegations made by Mr. Rodd and do not intend on opening an internal affairs investigation into these allegations. The circumstances alleged by Mr. Rodd do not meet the basis for such an investigation.

As requested, I have also reviewed our departments DUI policy. After review, I am confident that our current DUI policy is legal and effective. I have also met with Mr. Dennis Ward, State Attorney, to review our current DUI policy as it relates to procedure and prosecution. Mr. Ward was satisfied with our policy and procedures as it relates to DUI enforcement and arrest.

Again, I recognize that Ofc. Kouri was careless and or sloppy in some of his documentation but only the jury knows if these clerical errors resulted in Mr. Rodd's acquittal. The evidence in this case was limited to officer testimony and observations. Juries are unpredictable and I am aware of cases in which stronger evidence such as video of field sobriety test and high blood alcohol content were presented and resulted in acquittals.

I will attend the board's next meeting to answer any questions or concerns you may have regarding this case.

Thank you for your attention and concern in this matter.

Respectfully,

Donald J. Lee Jr.



RESPECT - INTEGRITY - FAIRNESS

Key West Police Department 1604 N. Roosevelt Blvd. Key West, FL 33040 (305) 809-1111
www.keywestcity.com



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CITY OF KEY WEST
Citizen Review Board
P.O. Box 1946
Key West, FL 33041
Ph: (305) 809-3887
Fax: (305) 293-9827

September 22, 2009

VIA REGULAR US MAIL

Mr. Shahdaroba Rodd
P.O. Box 742
Key West, FL 33041

Complaint File: **CRB No. 09-006**
KWPD-IA File Number: (None)

Dear Mr. Rodd:

Enclosed please find a copy of the Chief Lee's letter relative to the CRB letter addressing your file. I left a voice message on your phone answering service today noticing you that the CRB will address your file again at its upcoming meeting scheduled for 6:00 p.m. at Old City Hall, 510 Greene Street, Key West Florida on Monday, September 28, 2009. Please plan on being present so that you address the CRB with any formal responses to this enclosed letter. Please also bring any witnesses/speakers you would like to proffer to the Board as your file may be finalized and a CRB recommendation rendered at this meeting. Enclosed is a copy of the meeting's Amended Agenda for that night.

Respectfully,

A handwritten signature in black ink, appearing to read "Stephen C. Muffler", is written over the word "Respectfully,".

Stephen C. Muffler, Esquire
Executive Director
Attorney-at-Law
cc: File

Donald J. Lee, Jr.
Chief of Police



Key West
POLICE DEPARTMENT

September 21, 2009

Mr. Bryan Green
Citizens Review Board
PO Box 1409
Key West, FL 33041

RE: Shahdaroda Rodd 09-006

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Respectfully,

Donald J. Lee Jr.



RESPECT - INTEGRITY - FAIRNESS

Key West Police Department 1604 N. Roosevelt Blvd. Key West, FL 33040 (305) 809-1111
www.keywestcity.com



AMENDED AGENDA

Citizen Review Board Meeting
Old City Hall, 510 Greene Street
Monday, September 28, 2009
6:00 p.m.

1. CALL THE MEETING TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES:
 - a. August 24, 2009
5. COMMISSION APPOINTED MEMBER INTRODUCTION (IF NEEDED)
6. TRACKING CHART REVIEW
7. CONTINUED OR NEW BUSINESS
 - a. File review: **CRB Case No. 09-005 (Price)**
 - b. File review: **CRB Case No. 09-007 (Downs)**
 - c. File review: **CRB Case No. 09-006 (Rodd)**
8. COUNSEL'S REPORT
9. CHAIRPERSON'S REPORT
10. BOARD MEMBERS REPORT/GENERAL COMMENTS
11. EXECUTIVE DIRECTOR'S REPORT
 - a. Update on Proposed CRB Budget FY 09-10
 - b. NACOLE Conference- Identification of the Two Members who Will Attend
 - c. Proposal to Cancel Some CRB Upcoming Meeting(s) Due to Low File Load;
 - d. CRB Fall 2009 E-Newsletter to go out October 1, 2009
 - e. Scheduling the 2010 Meeting Dates (in order to Reserve the Chambers)
12. PSO/IA COMMENTS/FOLLOW-UP
13. PUBLIC INPUT
14. MEDIA AND PRESS QUESTIONS
15. ADJOURNMENT



Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Lt. David Smith
FROM: Stephen Muffler, Esquire
DATE: 9/22/09
RE: CRB Amended Agenda for 9/28/09

Attached please find the Amended agenda for the above referenced CRB meeting. Also enclosed please find the respondent officers' notices. **Would you please forward these notices to the individual officers so that they are aware of this upcoming meeting?** It would be desirable for a representative from your office attend this meeting to help address the Board's specific questions on any files or procedures. Please note that all of the Board materials are now available for yourself or the respondent officers to view on the CRB website.

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Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Officer M. Koehane
FROM: Stephen Muffler, Esquire
DATE: 9/22/09
RE: CRB Complaint #09-006/Rodd

Attached please find a copy of the proposed Amended Agenda for the CRB meeting to be held at 6:00 p.m. at the Old City Hall on September 28, 2009. One or more of the Board Members and/or the Executive Director as placed the above referenced file on the Agenda for discussion. You are a respondent in this file and are invited to attend this meeting to help clarify the matter to the Board members. You are under no obligation to attend nor speak to the Board, but your input on the matter would be carefully weighed and would assist the Board in reaching a fair and just recommendation. You may attend personally, via a union representative or through legal counsel. Materials on this file may be viewable via the CRB website prior to the meeting.

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Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Officer D Kouri

FROM: Stephen Muffler, Esquire

DATE: 9/22/09

RE: CRB Complaint #09-006/Rodd

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Citizen's Review Board
City of Key West Florida
Executive Director's Memo

TO: Inspector Randy Smith
FROM: Stephen Muffler, Esquire
DATE: 9/22/09
RE: CRB Complaint #09-006/Rodd

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Citizens Review Board

From: Citizens Review Board
Sent: Tuesday, September 22, 2009 1:52 PM
To: David Kouri
Cc: Citizens Review Board; David T. Smith
Subject: Attached is your CRB Notice

Attachments: Kouri Notice 092209.PDF



Kouri Notice
092209.PDF (47 KB..)

Stephen C. Muffler, Esquire
Executive Director
Attorney at Law

City of Key West
Citizen Review Board
P.O. Box 1946
Key West, Florida 33041
tel(305) 809-3887
fax(305) 293-9827
crb@keywestcity.com
www.keywestcity.com

Note To Recipients: Under Florida law, this communication and any response or reply to it, will be subject to public records requests/disclosure laws, unless an applicable privilege or rule of evidence applies.

Note to Citizen Review Board Members: In accordance with the Florida Sunshine Law, please do not "reply to all" if there are other board members receiving this e-mail concerning Board business. Please only reply to non-board members when responding.

Citizens Review Board

From: Citizens Review Board
Sent: Tuesday, September 22, 2009 1:53 PM
To: Randall Smith
Cc: Citizens Review Board; David T. Smith
Subject: Attached is your CRB Notice

Attachments: Smith Notice 092209.PDF

Good day:

Attached is your notice for the upcoming CRB meeting on September 28, 2009. Please feel free to contact me directly



Smith Notice
92209.PDF (47 KB..)

with any questions you may have concerning this matter.

Stephen C. Muffler, Esquire
Executive Director
Attorney at Law

City of Key West
Citizen Review Board
P.O. Box 1946
Key West, Florida 33041
tel(305) 809-3887
fax(305) 293-9827
crb@keywestcity.com
www.keywestcity.com

Note To Recipients: Under Florida law, this communication and any response or reply to it, will be subject to public records requests/disclosure laws, unless an applicable privilege or rule of evidence applies.

Note to Citizen Review Board Members: In accordance with the Florida Sunshine Law, please do not "reply to all" if there are other board members receiving this e-mail concerning Board business. Please only reply to non-board members when responding.

Citizens Review Board

From: Citizens Review Board
Sent: Tuesday, September 22, 2009 1:55 PM
To: Kuniko Celcer
Cc: Citizens Review Board; David T. Smith
Subject: Attached is your CRB Notice

Attachments: Koehane Notice 092209.PDF

Good day:

Attached is your notice for the upcoming CRB meeting on September 28, 2009. Please feel free to contact me directly



Koehane Notice
092209.PDF (47 ...)

with any questions you may have concerning this matter.

Stephen C. Muffler, Esquire
Executive Director
Attorney at Law

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