

Donald J. Lee, Jr.
Chief of Police



Key West
POLICE DEPARTMENT

TO: Stephen Muffler, Esquire
FROM: Inspector Randy Smith, Office of Internal Affairs (15)
DATE: November 4, 2008
RE: PS 08-010, Gregg Harden

I have read your attached letter and the enclosed documentation. As to Mr. Harden's complaint, it was originally reviewed by Lt. David Smith who, in a letter drafted to Amanda Willet, the CRB and Mr. Harden, dated May 19, 2008, explained this was a court issue and statements given by Mr. Harden could affect his ongoing legal case. Lt. Smith also advised if, at the conclusion of Mr. Harden's case, issues arise or his concerns are not resolved we would look further into the matter. To my knowledge, Mr. Harden has not asked for any further investigation into this matter. At your request I have reevaluated Mr. Harden's complaint and found the following.

As you are aware by Mr. Harden's court case which you have attached, he has pled guilty to Possession of Cocaine and Battery on a Law Enforcement Officer. Mr. Harden in his plea has negated the majority of his complaint and brought his credibility into serious question. Following his arrest he clearly stated the drugs were "planted" on him and were not his, although ultimately he pled guilty to the very charge. He then further states he was immediately handcuffed and brutalized by the police. However, there is evidence showing injury to the officers and again Mr. Harden pled guilty to Battery on a Law Enforcement Officer; this again brings his credibility into question.

The basis for Mr. Harden's complaint lies in an area in which he has opted to interpret the law as it best suits him and not as it is set forth by the judicial system. Mr. Harden feels the incident stems from an unlawful detention, which then led to the chain of events which followed. Mr. Harden is wrong in his opinion as to his detention, which is proven not only in the court's finding for his case, but is also supported by a large amount of case law.

On the evening in question, as is stated in Ofc. Kouri's report, Ofc. Kouri was on routine patrol in the area of Seaside Drive and A1A. He saw Harden standing at the intersection talking on his cell phone. He goes on to state he has seen Harden in the Bahama Village area and knew that he did not reside at the location he was observed. This was on a Tuesday morning at 0300hrs. Ofc. Kouri made a consensual encounter with Mr. Harden in which Mr. Harden was asked for identification then his name.



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Mr. Harden denied the information by stating, "I don't need to tell you my name.", which would imply cursory knowledge of the law and a consensual encounter. Furthermore, Mr. Harden also seems to question whether the officer had any reason to request identification in this first place. This point is irrelevant for a request to see identification has never required justification (*See Florida v. Royer*). Mr. Harden had the opportunity to walk away at this time or simply to stop speaking with the officer; he opted to not do either. As for the basis for Ofc. Kouri making the initial encounter, by the Florida Legal Guidelines which are clearly stated in the 2008 Florida Law Enforcement Handbook, two factors which should be used in deciding to make a "Stop" are, "Subject is found in an area not usually frequented at that particular hour of the day or night" and "Knowledge of his or her criminal record." Mr. Harden had been convicted of and served prison time for narcotic possessions/sales and fleeing and eluding prior to the night in question and, by his own statement, felt the officers were aware of that. It is not common to find persons standing at that intersection on a Tuesday morning at 0300hrs. Ofc. Kouri did not use racial profiling in his decision to speak with Mr. Harden but rather sharp investigative skills. However, with these elements met, which raised the suspicion of Ofc. Kouri, he kept his encounter consensual. Mr. Harden states Ofc. Betz then arrived on scene; this again does not constitute a detention, as Mr. Harden was free to leave. At no time does Mr. Harden ever state he was told he wasn't free to leave or does he give a court accepted reason as to why he would feel detained. Mr. Harden states he felt detained because a second officer arrived on scene. Mr. Harden refers to Ofc. Kouri's report in which he states Ofc. Kouri flagged down Ofc. Betz for assistance. Mr. Harden poses the question, "Assistance for what?" Ofc. Kouri is well within the law and Key West Police Policy to ask a second officer to assist him. There are varying reasons why the assistance may have been requested, first and foremost being officer safety. Had Ofc. Kouri called multiple units to the scene rather than flagging down a passing officer, the argument could reasonably be made he felt detained. Again, Mr. Harden could have ended the encounter upon seeing Ofc. Kouri flag down Ofc. Betz or upon seeing a second police vehicle enter the area. At this point the story then differs between Mr. Harden and the officers. The officers state they asked for consent to search, which was granted as long as they did not enter Mr. Harden's pockets. Mr. Harden stated he never gave consent and was just grabbed. In Mr. Harden's own statement he says: "When Ofc. Betz approached me the first thing he did was grab my left wrist and stated he was going to search and I verbally declined and I then snatched my wrist away. Simultaneously, Ofc. Betz, grabbed my t-shirt and slung me to the ground, causing my shirt to rip. While face down on the ground Ofc. Betz purposely applied excessive force to the right side of my face with a motion of some sort that cause a large portion of the left side of my face to become swollen and scraped. After placing me under arrest." The previous statement is proven false not only by Mr. Harden later admitting he fought with the officers in the form of pleading guilty, but also by the physical evidence from that night. There are photos showing the contusions and abrasions on both Ofc. Kouri and Ofc. Betz from the physical altercation which took place. If the encounter happened as Mr. Harden stated neither officer would have sustained injury. In checking both officers' records, neither has ever had a complaint of illegal or unlawful searches or excessive use of force, which in itself is not to say it



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could not have happened. However, with Mr. Harden's integrity in serious question and both officers stating the search was consensual, and furthermore now having the court's opinion in this specific case as he was found guilty of the charges, we will have to assume the search was legal.

In the question posed by Mr. Harden in attempting to qualify his statement that the officers fabricated the report and planted the evidence, he asked the following question, "Why is there not a question of what is this in your pocket rather than an uttered assumption?" Ofc. Betz, through his training and experience as a person and law enforcement officer, knows what a pill bottle feels like. Furthermore, prescription bottles are a common container for illegal substances, i.e. cocaine, to be carried in. If Ofc. Betz was wrong in his "uttered assumption" Mr. Harden could have corrected him and dispelled any myth as to what was in his pocket. However, with the discovery of what appeared to be a prescription pill bottle, Ofc. Betz now had legal justification to detain Mr. Harden pending further investigation. This detention is based on Florida law that it is illegal to possess a controlled substance without having a prescription for said substance. As described by the officers, upon being questioned about the prescription bottle, Mr. Harden tried to flee and subsequently fought with the officers.

Mr. Harden asks the question as to why Ofc. Betz states in his report that search incident to arrest is when the pill bottle was located with the items within. Ofc. Betz did not know what was within the pill bottle until a full search incident to arrest was conducted and therefore that is when the items were actually located. At the time of the full search, Mr. Harden was legally arrested for Battery on a Law Enforcement Officer and Resisting Arrest with Violence. I have reviewed the Response to Resistance which was prepared for this incident. Based on the facts given and evidence provided, I find the officers were well within the use of force policy and find no evidence to support an excessive use of force claim.

In closing, I believe that Mr. Harden himself has provided the most compelling arguments as to why there does not need to be an investigation into this case. He pled guilty to the Possession of Controlled Substances and also to Battery on a Law Enforcement Officer. The courts also found the officers did not unjustly question or detain Mr. Harden which eliminates his other complaint. Mr. Harden also showed his "Violence", which he denied having, when he committed the battery on the officers who were in the course of their lawful duties. Mr. Harden is a prime example as to why having Ofc. Betz on scene "for assistance" was a sound decision by Ofc. Kouri.

If I can be of any further assistance, please let me know.



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