



# D.U.I. PROBABLE CAUSE AFFIDAVIT

ON THE 19th DAY OF JANUARY 20 17, AT 01:03 ☒ AM ☐ PM

SUBJECT: KELLY, MICHAEL CASE NUMBER: 17-028448

AGENCY: PALM BEACH COUNTY SHERIFF'S OFFICE ARRESTING OFFICER: INV. J. SCHAEFER #8777

## PERSONAL CONTACT

DRIVING PATTERN: ACTUAL PHYSICAL CONTROL (PHYSICAL EVIDENCE OR STATEMENTS PUTTING DEF. BEHIND WHEEL OF VEHICLE)

At approximately 01:07hrs I responded to a report of a suspicious vehicle which was parked in the grass swail in the 14400 block of Greenbriar Blvd which is located in the Village of Wellington, Palm Beach County. I arrived on scene at 01:16hrs and observed a white 2017 Chevy Malibu bearing Florida tag GHV-K86 running with the car in gear. The Chevy was missing the front left tire and had pieces of bushes in the front grill. The Chevy was occupied by a W/M who was passed out behind the wheel.

## OBSERVATION OF DRIVER:

Upon making contact with the driver who was identified as "MICHAEL KELLY" by his passport from Ireland, I immediately detected an obvious and strong odor of an unknown alcoholic beverage emitting from his person and face area. Kelly was sleeping in the driver seat of the Chevy and was the sole occupant. Kelley was drooling down the front of his shirt and was unresponsive to several sternum rubs. Finally after getting Kelly to wake, he was extremely disoriented. In removing Kelly from the vehicle, the odor of the unknown alcoholic beverage intensified as I spoke to him. Kelly had extremely glassy, glazed, and blood shot eyes. His speech was slurred, slow, and thick, and at times difficult to understand with an Irish accent. Kelly's movements were slow and deliberate. Kelly was lethargic in his movements with poor coordination. Kelly had an unsteady gait while walking to my patrol vehicle.

## DRIVER'S STATEMENTS:

Post Miranda admissions from Kelly while on scene were he had only consumed 1 glass of wine while at dinner with friends. Admissions at the BAT were he had consumed 5 or 6 beers and was operating the vehicle.

## ODORS:

A strong and obvious odor of an unknown alcoholic beverage was emitting from Kelly person and face area which intensified as I spoke to them.

## GENERAL OBSERVATIONS

SPEECH: Kelly's speech was slurred, slow, and thick, and at times difficult to understand.

ATTITUDE: ~Sleepy, polite, friendly, cooperative, and apologetic

CLOTHING: blue vest / blue striped shirt / blue jeans / orange & blue sneakers

MEDICAL/OTHER: none stated

STATE OF FLORIDA  
COUNTY OF PALM BEACH

INV. J. SCHAEFER #8777

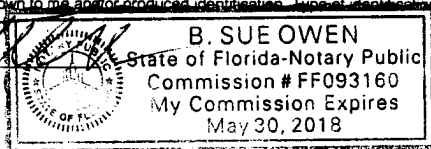
Signature of Arresting/Investigative Officer

The foregoing instrument was sworn to or affirmed and subscribed before me this 19th day of JANUARY 20 17 by INV. J. SCHAEFER #8777

Print name of Arresting/Investigative Officer, who is personally known to me and/or produced identification. Type of identification produced

PERSONALLY KNOWN

Notary Public, Clerk of Court, Officer (F.S.S. 117.10)



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## ROADSIDE TASKS

### HORIZONTAL GAZE NYSTAGMUS:

☒ LT EYE-LACK OF SMOOTH PURSUIT

☒ RT EYE-LACK OF SMOOTH PURSUIT

☒ LT EYE-DISTINCT & SUSTAINED NYSTAGMUS AT MAX. DEVIATION

☒ RT EYE-DISTINCT & SUSTAINED NYSTAGMUS AT MAX. DEVIATION

☒ LT- EYE-ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES

☒ RT- EYE-ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES

### Other Observations:

Kelly would sway roughly in a side to side front to back pattern throughout the task. Kelly did not touch the tip of the pen as directed to positively identify the point to be tracked. He touched the left side of the pen and dragged his hand up the tip. Kelly was reminded numerous times to track the pen with his eyes only. He failed to keep his head still while tracking the stimulus. Kelly was instructed to hold his chin with his left hand and his left elbow with his right hand to further stabilize his head and keep it from moving.

### WALK & TURN:

I explained and demonstrated the instructions for the "Walk & Turn" to Kelly who stated the he understood. Kelly would sway roughly in a side to side, front to back pattern throughout the demonstration phase. Kelly could not maintain his balance while listening to instructions and stepped out of the stance during the demonstration. Kelly started the task before being instructed to do so. Kelly had pauses to regain his balance. Kelly, on the first pass missed heel-to-toe steps and stepped off the line, using his arms for balance. Kelly performed the turn other than the way it was demonstrated. . On the return, he would miss heel-to-toe steps and stepped off the line. Additionally, Kelly performed the incorrect number of steps of 8 on the first pass and 10 steps on the return. Kelly was asked how many steps he was told to take and he responded by saying "9". When asked why he took the the incorrect number of steps he had no reply.

### ONE LEG STAND:

I explained and demonstrated the instructions for the "One Leg Stand" to Kelly who stated that he understood. He would sway roughly in a side to side, front to back pattern throughout the demonstration phase. He continued to sway while balancing on one leg. Kelly used his arms to balance raising them more than 6 inches from his sides. Kelly put his foot down at 1, 8, 12, & 20 seconds to regain his balance before the 30 seconds had elapsed.

### FINGER TO NOSE:

I explained and demonstrated the instructions for the "Finger to Nose" task to Kelly who stated that he understood. He would sway roughly in a side to side, front to back pattern throughout the demonstration phase. He did not keep his eyes closed and had to be reminded numerous times. Kelly failed to return his arm down to his side as instructed after touching his nose. Kelly's index finger did not touch the tip of his nose on 4 of the 6 attempts. Kelly hesitated & searched for the tip of his nose prior to touching the tip. The sequence used for this task was L, R, L, R, R, L.

### ROMBERG ALPHABET:

I explained and demonstrated the instructions for the "Rhombert Alphabet" task to Kelly who stated that he understood. He would sway roughly in a side to side, front to back pattern throughout the demonstration phase. Kelly incorrectly recited the alphabet twice. Kelly recited "A" through "V" then stated "G, U, V G, Z, X, Y" then restarted correctly to "V" then stopped and laughed.

BREATH TEST RESULTS: .171 .178

STATE OF FLORIDA  
COUNTY OF PALM BEACH

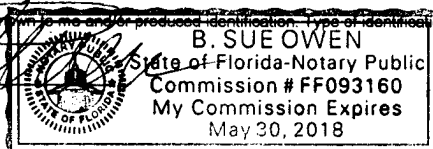
INV. J. SCHAEFER #8777

(Signature of Arresting/Investigative Officer)

The foregoing instrument was sworn to or affirmed and subscribed before me this 19th day of JANUARY, 2017 by INV. J SCHAEFER #8777

(Print name of Arresting/Investigative Officer), who is personally known to me and/or produced identification. Type of identification produced PERSONALLY KNOWN

Notary Public, Clerk of Court, Officer (F.S.S. 117.10)



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# WITNESS LIST

CASE NUMBER: **17-028448**

ARRESTING OFFICER: **INV. J. SCHAEFER #8777**

ADDRESS: **3228 GUN CLUB ROAD WPB, FL 33406**

PHONE NUMBERS (HOME): \_\_\_\_\_ (WORK) **(561)681-4500**

CAN TESTIFY TO: **SEE OFFENSE REPORT**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBERS (HOME) \_\_\_\_\_ (WORK) \_\_\_\_\_

CAN TESTIFY TO: \_\_\_\_\_

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CAN TESTIFY TO: \_\_\_\_\_

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# TESTING FACILITY TASK REPORT

AGENCY: PBSO  
SUBJECT: Kelly, Michael CASE NUMBER: 17-028448  
DATE: 1/19/17 VIDEO TAPE NUMBER: DMD# 62006  
BEGINNING TIME: 0304 ENDING TIME: 0325  
BREATH TESTS RESULTS: 1) .171 TIME 0310 PM 2) .178 TIME 0313 PM  
3) \_\_\_\_\_ TIME \_\_\_\_\_ A.M./P.M. 4) \_\_\_\_\_ TIME \_\_\_\_\_ A.M./P.M.

BREATH OPERATOR: S. Owen #3184

MAINTENANCE TECHNICIAN: J. Karlecki #6467

## TESTING OFFICER'S OBSERVATIONS

SPEECH: Irish accent

ATTITUDE: quiet, co-operative

CLOTHING: Tennis shoes, jeans, blue/white LS shirt, blue vests

MEDICAL CONDITIONS: none

MEDICATIONS: none

OTHER: 32 yoa

odor of unknown Alcoholic beverage detected during test

COMMENTS: A/O & A arrived at 0244 hrs

A/O observed 20 minutes

A/O requested breath test, A agreed

No problem with test, tech explained results

A/O Read c/w on scene & video, A understood rights & answered Q & A A admitted drinking beer (5) or (6) Horse Train or

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## **IMPLIED CONSENT FOR DUI IN A MOTOR VEHICLE**

**NOTE: READ ONLY THE PARAGRAPH APPLICABLE TO THE TYPE OF TEST YOU ARE REQUESTING.**

I am now requesting that you submit to a lawful test of your BREATH for the purpose of determining its alcohol content.

-OR-

I am now requesting that you submit to a lawful test of your URINE for the purpose of detecting the presence of chemical or controlled substances.

-OR-

I am now requesting that you submit to a lawful test of your BLOOD for the purpose of detecting its alcohol content and the presence of chemical or controlled substances.

**NOTE: READ ONLY IF THE SUBJECT DOES NOT COMPLY WITH YOUR REQUEST.**

I am \_\_\_\_\_ of the \_\_\_\_\_.

If you fail to submit to the test I have requested of you, your privilege to operate a motor vehicle will be suspended for a period of one (1) year for a first refusal, or eighteen (18) months if your privilege has been previously suspended as a result of a refusal to submit to a lawful test of your breath, urine or blood. Additionally, if you refuse to submit to the test I have requested of you and if your driving privilege has been previously suspended for a prior refusal to submit to a lawful test of your breath, urine or blood, you will be committing a misdemeanor. Refusal to submit to the test I have requested of you is admissible into evidence in any criminal proceeding.

SUBJECT'S SIGNATURE: (X) \_\_\_\_\_

## **CONSTITUTIONAL WARNINGS**

**I AM REQUIRED TO WARN YOU BEFORE YOU MAKE ANY STATEMENTS THAT YOU HAVE THE FOLLOWING RIGHTS:**

1. You have the right to remain silent and not answer any questions.
2. Any statement must be freely and voluntarily given.
3. You have the right to the presence of a lawyer of your choice before you make any statement and during any questioning.
4. If you cannot afford a lawyer, you are entitled to the presence of a court appointed lawyer before you make any statements and during any questioning.
5. If at any time during the interview you do not wish to answer any questions, you are privileged to remain silent.
6. I can make no threats or promises to induce you to make a statement. This must be of your own free will.
7. Any statement can and will be used against you in a court of law.

SUSPECT'S SIGNATURE: (X) Read on Scene & Video

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## QUESTIONS AND ANSWERS

I AM NOW GOING TO ASK YOU SOME QUESTIONS. WITH THESE RIGHTS IN MIND, YOU MAY ANSWER SOME OF, ALL OF, OR NONE OF THE FOLLOWING QUESTIONS AS YOU LIKE.

WERE YOU OPERATING A MOTOR VEHICLE AT THE TIME OF THE STOP ACCIDENT? YES

WHERE WERE YOU GOING? HOME

WHAT STREET OR HIGHWAY WERE YOU ON? I DON'T KNOW

DIRECTION OF TRAVEL? DK WHERE DID YOU START? "FEI" ON APPALOOSA TRAIL

WHAT TIME DID YOU START? DK WHAT TIME IS IT NOW? 3:09 AM

WHAT IS TODAY'S DATE? 19th WHAT DAY OF THE WEEK IS IT? THURS.

WHAT COUNTY AND CITY ARE YOU IN NOW? WELLINGTON 33414

WHEN DID YOU LAST EAT? 4pm WHAT DID YOU EAT? CANDY

WHAT HAVE YOU BEEN DOING FOR THE LAST THREE HOURS? APOLOGIZING TO LADY

HOW MUCH DO YOU WEIGH? 168 HAVE YOU BEEN DRINKING? YES WHAT? BEER

HOW MUCH? 5 BEERS WHERE? BONEFISH MAC WITH WHOM? FRIENDS FROM WORK

WHEN DID YOU HAVE YOUR FIRST DRINK? 7pm AND YOUR LAST DRINK? 11pm

HOW DID YOU CONSUME YOUR LAST TWO DRINKS? CASUALLY

CAN YOU FEEL THE EFFECTS OF THE ALCOHOL? OBVIOUSLY ARE YOU UNDER THE INFLUENCE? NO

HAVE YOU CONSUMED ANY ALCOHOL SINCE THE ACCIDENT? NO HOW MUCH? NO

WHAT? NO WHERE? NO WHEN? NO

WHAT LINE OF WORK ARE YOU IN? HORSE TRAINER WHEN DID YOU LAST WORK? WED.

DO YOU HAVE ANY PHYSICAL DEFECTS OR INJURIES? NO WHAT? NO

ARE YOU SICK OR INJURED? NO WHAT'S WRONG? NO

DO YOU LIMP? NO DID YOU RECEIVE A BUMP ON THE HEAD RECENTLY? NO

WERE YOU IN AN ACCIDENT TODAY? NO

HAVE YOU TAKEN ANY DRUGS OR SMOKED ANY MARIJUANA TODAY? NO WHEN? NO

HAVE YOU SEEN A DOCTOR OR DENTIST TODAY? NO WHO? NO WHY? NO

ARE YOU TAKING ANY PRESCRIPTION MEDICINES? NO WHAT? NO WHEN? NO

DO YOU HAVE:

EPILEPSY?	<u>NO</u>
GLASS EYE?	<u>NO</u>
FALSE TEETH?	<u>NO</u>
EAR INFECTION?	<u>NO</u>
INNER EAR TROUBLE?	<u>NO</u>
DIABETES?	<u>NO</u>

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DO YOU HAVE ANY PROBLEMS WITH YOUR EYES THAT ARE NOT CORRECTED BY GLASSES? NO

DO YOU TAKE INSULIN? NO IF SO, WHEN WAS YOUR LAST INJECTION? NO

HAVE YOU EVER HAD A DRIVER'S LICENSE IN ANY OTHER STATE? YES WHERE? IRELAND

INTERVIEWER: Inv G Schuler #887 COUNTRY IRELAND