



INTEROFFICE MEMORANDUM

TO: SUZANNE JACKSON  
CHIEF OF COUNTY COURT

DATE: 7/11/16

FROM: NICOLE GARCIA  
ASSISTANT STATE ATTORNEY

RE: CLOSE OUT MEMO  
Walton, Mark A1ZLGOP

On April 23, 2016, Mark Davis Walton, Jr. (hereinafter "Defendant") was arrested for Driving Under the Influence (hereinafter "DUI") and Driving While License Suspended (hereinafter "DWLS"). After a thorough review of the evidence, there is not sufficient evidence to prove the charges beyond and to the exclusion of every reasonable doubt. Therefore, on July 11, 2016, the State dismissed all charges.

**FACTS**

On April 23, 2016 at approximately 3:45 AM, officers in an undercover capacity observed the Defendant driving at a high rate of speed. The Defendant parked improperly in front of a home on the opposite side of traffic and stepped out of the vehicle. He was the only occupant in his vehicle. The Defendant was positively identified and taken into custody.

While in custody, the officers observed indications of alcohol impairment: (1) bloodshot, watery eyes; (2) slow, slurred speech; and (3) an odor of alcohol emanating from the Defendant. As a result, the officers began a DUI investigation. The officers asked the Defendant to perform field sobriety exercises, some of which were not performed to standard.

As a result of the Defendant's performance on the field sobriety exercises, the Defendant was charged with DUI and transported to the City of Miami Police Department – South Station. While at the station, the Defendant provided breath samples upon request. The Defendant was advised of his *Miranda* rights and then admitted to drinking two (2) cups of beer approximately three (3) hours prior to his arrest. Further investigation revealed that the Defendant's license was suspended at the time of his arrest, which led to the additional charge of DWLS.

**ANALYSIS**

In order to make an arrest for any charge, an officer must have probable cause to believe that a crime was committed and that the person being arrested is responsible for the crime. The officers met that burden at the time of the arrest. The burden of proof at trial is significantly greater. At trial, the



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State must be able to prove the charges beyond and to the exclusion of every reasonable doubt. The State is not able to meet that burden.

For the charge of DUI, the State must prove (1) the defendant drove or was in actual physical control of a vehicle, and (2) while driving, the defendant was under the influence of alcoholic beverages to the extent that his normal faculties were impaired or had a breath alcohol level of .08 grams of alcohol per 210 liters of breath.

While the State can prove that the Defendant drove or was in actual physical control of the vehicle, the State would also need to prove beyond a reasonable doubt that the Defendant was driving under the influence to the extent that his normal faculties were impaired. In this case, the breath samples provided were all below the .08 grams of alcohol per 210 liters of breath. Had the Defendant's breath reading been at a .08 or above, there would be a legal presumption that the Defendant was impaired. Had the Defendant provided a breath sample under a .05, there would be a legal presumption that the Defendant was not impaired. Because the Defendant provided a breath sample above a .05 but below a .08, there was no presumption of impairment.

Because there is no legal presumption of impairment, more evidence would be needed to prove the Defendant was DUI at the time of the arrest. This evidence usually comes in the form of field sobriety exercises and observations by an officer or civilian witness. The remaining evidence was insufficient to prove beyond and to the exclusion of every reasonable doubt that the Defendant was DUI.

As for the second charge, the State can prove the Defendant was driving with a suspended license; however, the State dismissed the charge as a result of the Defendant's substantial compliance. In this case, the Defendant paid the outstanding fine, but his license has not been reinstated yet. Given this set of facts, any similarly situated defendant would have been afforded the same benefit.

Therefore, due to the aforementioned reasons the State dismissed all charges on July 11, 2016 and did not file any additional charges.



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