

NO. 9/204-1

FILED

JAN 06 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

VS.

JOSE MENDEZ

Defendant/Petitioner

FILED

JAN 15 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CRF

MOTION FOR DISCRETIONARY REVIEW

Jose Mendez # 936781
Coyote Ridge Correction Center
P.O. BOX 769
Connell, Wa. 99326

Jose Mendez
PRO SE

A. IDENDTY OF PETTIONER

I, JOSE MENDEZ ask this court to accept review of this decision or part of the decision designated in part B. of this motion.

B. DECISION

1. COMMISISONER'S RULING, Date: Sept. 8, 2014
No. 31580-1-III
2. ORDER DENYING MOTION TO MODIFY, Date: Dec. 11, 2014
No. 31580-1-III

C. ISSUES PRESENTED FOR REVIEW

1. CrR 3.5 Findings and Conclusions.
2. Sufficiency of the Evidence.
3. Exceptional Sentence.
4. Statements of Additional Grounds.

D. STATEMENT OF THE CASE

Jose Mendez, Jr., appeals the Yakima County Superior Court's April 12, 2013 judgment and sentence that the court entered on a jury verdict that found him guilty of attempting to elude a pursuing police vehicle, two counts of possession of controlled substance, first degree driving while license

revoked, and felony driving while under the influence.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. See APP.A, Commissioner's Ruling.

It is apparent that the issue is clear that the court incorrectly calculated Mr. Mendez offender score. As the commissioner's ruling is incorrect.(P.7) Shows that its clearly an oversight in viewing the argument. Mr. Mendez had set out to explain. To the point that it has never been an argument that the 1988 convictions and the 2002 conviction should of been ran concurrently.

The argument is that:

VUCSA #88-1-00365-4 Date of Sentence June20,1988

VUCSA #88-1-00365-4 Date of Sentence June20,1988

VUCSA #88-1-00365-4 Date of Sentence June20,1988

Making this one cause no. #88-1-00365-4 on 3 counts are and Mr. Mendez was sentenced to serve this concurrently.

(a). See Appx.B and C

Motion to Modify Commissioner's Ruling

Order Denying Motion To Modify

B. To explain that on count 4 "FIRST DEGREE DRIVING WHILE LICENSE REVOKED (GROSS MISDEMEANOR).

The state arguments are: "FREE CRIMES".

If convicted of all counts and not given an exceptional sentence Mr. Mendez would receive no punishment for the other

felonies, because they would not increase his standard range on the DUI (60 months). This meets the third requirement of the statute.

State fails to support RCW 9.94A.535(2)(c) in rewarding three Number 3. That high offender score results in some of the current offenses going unpunished.

Yet this is not the case here.

Exceptional Sentence; That "FREE CRIME" aggravator requires only three finding:

1. The defendant has committed multiple current offenses.
2. The defendant has a high offender score.
3. That high offender score results in some of the current offenses going unpunished.

RCW 9.94A.535 (2)(c).

B. The court erred by failing to enter written findings of fact and conclusions of law after the CrR 3.5 hearing. The court allowed certain statements and disallowed others upon holding a pretrial CrR 3.5 hearing. (2/19/13 RP 79-131). The rule requires entry of written findings and conclusions, but none were entered.

C. See Appx.E,F,G

The evidence was insufficient to support a finding of guilt because the state failed to prove identity beyond a reasonable doubt.

In the challenge to the sufficiency of the evidence, the test is whether, viewing it in a light most favorable to the state, any rational trier of fact could find the

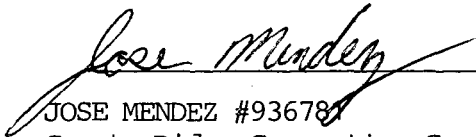
essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn. 2d 216, 220-21, 616 P.2d 628 (1980). So viewed, the State's evidence still fell short of showing by the requisite quantum of proof that Mr. Mendez was the person driving the car and committed the crimes. State v. Stevenson, 128 Wn. App. 179, 192, 114 P.3d 699 (2005).

F. CONCLUSION

Based on the forgoing, Mr. Mendez respectfully urges this Court to reverse his convictions and dismiss the charges. Alternatively, he asks that his exceptional sentence be reversed and the case remanded for resentencing within the standard range.

DATED this 4 day of January, 2015.

Respectfully Submitted,



JOSE MENDEZ #93678
Coyote Ridge Correction Center
P.O. BOX 769
Connell, Wa. 99326

APPENDIX A

COMMISSIONER'S RULING

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

September 8, 2014

Kenneth H. Kato
Attorney at Law
1020 N Washington St
Spokane, WA 99201-2237
khkato@comcast.net

James Patrick Hagarty
Tamara Ann Hanlon
Yakima County Prosecuting Attorney's Off
128 N 2nd St Rm 329
Yakima, WA 98901-2621
E-Mail

CASE # 315801
State of Washington v. Jose Mendez, Jr.
YAKIMA COUNTY SUPERIOR COURT No. 121015606

Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling (**October 8, 2014**). Please file the original with one copy; serve a copy upon the opposing attorney and file proof of such service with this office.

If a motion to modify is not timely filed, appellate review is terminated.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:jcs
Encl.

c: Honorable Michael G. McCarthy, Superior Court Judge
E-Mail

c: Jose Mendez, Jr.
#936781
Coyote Ridge Correction Center
PO Box 769
Connell, WA 99326

The Court of Appeals
of the
State of Washington
Division III

FILED

SEP - 8 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 JOSE MENDEZ, JR.,)
)
 Appellant.)
 _____)

No. 31580-1-III

COMMISSIONER'S RULING

Jose Mendez, Jr. appeals the Yakima County Superior Court's April 12, 2013 judgment and sentence that the court entered on a jury verdict that found him guilty of attempting to elude a pursuing police vehicle, two counts of possession of a controlled substance, first degree driving while license revoked, and felony driving while under the influence. He contends the superior court erred because it did not enter written findings of fact and conclusions of law in the CrR 3.5 hearing. He also contends the evidence was insufficient to support any of his convictions because the State failed to prove identity

beyond a reasonable doubt. Finally, he asserts the exceptional sentence was not sufficiently supported. Mr. Mendez has also filed two Statements of Additional Grounds for Review. The State moves on the merits to affirm.

Stated briefly, Mr. Mendez's convictions arose out of an incident in which a law enforcement officer observed the reckless driving of a vehicle, and pulled it over. When the officer got out of his car and approached the vehicle, the driver sped out. The officer gave chase. The driver eventually stopped, exited his vehicle, and ran. The officer eventually apprehended Mr. Mendez after he found him hiding nearby in a bush.

1. CrR 3.5 Findings and Conclusions.

The superior court entered the required findings and conclusions on May 9, 2014. Therefore, this issue that Mr. Mendez raised in his opening brief is now moot.

2. Sufficiency of the Evidence.

Mr. Mendez argues that the State did not prove he was the driver of the vehicle.

His argument, in total, is, as follows:

The sole defense offered at trial was that Mr. Mendez was not driving the car. From the beginning, he maintained he was not the driver. (2/21/13 RP 496-97). Although credibility is for the jury to decide, the existence of facts cannot be based on guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). In the circumstances here, the identity of the driver was indeed based on guess, speculation, or conjecture. The State's evidence was simply insufficient to prove the driver's identity beyond a reasonable doubt. The convictions must be reversed.

The State counters that the testimony and evidence establishes that Mr. Mendez was the driver of the vehicle beyond a reasonable doubt: First, Sergeant McNearney testified to the following:

[PROSECUTOR]: Okay and could you see the driver at that point as you were approaching [his vehicle]?

MCNEARNEY: I could see a face that was peering back in the driver's side mirror on the door at that time, yes.

[PROSECUTOR]: And how would you describe the face?

MCNEARNEY: It appeared to be a Hispanic male with shorter hair, facial hair wearing a red colored shirt.

[PROSECUTOR]: Okay and how close did you get to the driver's side door?

MCNEARNEY: I got approximately to the rear bumper of the vehicle.

[PROSECUTOR]: Okay, so could you clearly see his face in the rearview mirror?

MCNEARNEY: Yes, I could.

RP at 280. When the vehicle sped away before the sergeant got to the driver's side door, the sergeant returned to his patrol car and gave pursuit. He testified as follows:

MCNEARNEY: When I came around the corner I observed that the driver's side door was open and I saw the male that had been driving it getting out of the driver's door.

[PROSECUTOR]: So, you actually saw somebody getting out of the driver's seat?

MCNEARNEY: Yes, I did.

[PROSECUTOR]: Okay and did that person match the physicals of the person that you observed earlier when you pulled the vehicle over?

MCNEARNEY: Yes, it did.

[PROSECUTOR]: Okay and what did you base that upon?

MCNEARNEY: I based it off of the initial observation I saw the person looking at me and the fact that the person getting out had the same short hair and wearing the same red shirt.

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RP at 304. In addition, the sergeant stated in court, as follows:

[PROSECUTOR]: Okay. When you observed Mr. Mendez leave the vehicle --- or how certain are you that Mr. Mendez is the same person that you saw getting out of the driver's side and run into the backyard?

MCNEARNEY: Absolutely certain.

[PROSECUTOR]: Okay, did you see any other people exit the Blazer --- Trailblazer?

MCNEARNEY: No.

[PROSECUTOR]: Okay, did you see any other people around that area?

MCNEARNEY: No.

RP at 318

In addition, other evidence supported the identity of Mr. Mendez as the driver. He was obviously impaired at the scene, which is consistent with the reckless driving the officer observed. Also, law enforcement found mail in the vehicle that was addressed to Mr. Mendez, and the vehicle itself was registered to a person who lived at that same address.

When viewed in the light most favorable to the State, the foregoing evidence is more than sufficient to convince a rational trier of fact beyond a reasonable doubt that Mr. Mendez was the driver of the vehicle. *See State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

3. Exceptional Sentence.

The superior court imposed an exceptional sentence of 131 months for Mr. Mendez's offenses. It ordered him to serve the sentences on several of the counts consecutively. The court cited RCW 9.94A.535(2)(c), the multiple offense policy. It

No. 31580-1-III

found as the aggravating circumstance that Mr. Mendez had “committed multiple current offenses and his high offender score [16] results in some of the current offenses going unpunished.” CP at 128.

Mr. Mendez relies upon *State v. Alvarado*, 164 Wn.2d 556, 192 P.3d 395 (2008) for the proposition that an offender score over 9 does not, by itself, justify an exceptional sentence. He also argues that the fact other current offenses existed here does not support the exceptional sentence because the jury’s special verdict added 12 months to his sentence for attempting to elude, based upon the risk of endangerment to others from such offense.

However, the supreme court in *State v. Stephens*, 116 Wn.2d 238, 246, 803 P.3d 319 (1991) specifically held that an offender score of 9 “in conjunction with multiple current offenses, may warrant an exceptional sentence if imposition of a standard sentence would result in there being no additional punishment for one or more of the current convictions.” That is precisely the case here.

The fact the jury had imposed a 12-month enhancement for endangerment to others is separate from the aggravator the court relied upon here, as is the fact that, when viewed separately, the particular offenses are not extraordinary.

The exceptional sentence is upheld.

STATEMENTS OF ADDITIONAL GROUNDS

In his Statements of Additional Grounds for Review, Mr. Mendez points out

No. 31580-1-III

alleged inconsistencies in the evidence. First, he cites the police report in which the officer stated he observed the driver sufficiently to later identify him, but could also see that the driver had activated his backup lights. Mr. Mendez believes the officer, standing in a position to observe the vehicle's back lights, would not have been able to see the driver well enough to identify him. Mr. Mendez points out that the officer did not include a description of the driver in the "CAD Call info/comments." Instead, he waited until he wrote his narrative police report to do so. He also cites what he believes is a discrepancy between two of the officers' descriptions of the path the suspect took as he ran from the vehicle.

Mr. Mendez's arguments are not persuasive. Sergeant McNearney testified he could see the driver's face in the vehicle's rearview mirror. Therefore, the fact he was in a position to also observe the rear lights does not discredit his description of the driver. Also, the fact he did not mention the description in the emergency call for additional officers does not discredit the description he included in his written police report when he had the time to more fully state what had happened. Finally, the discrepancy in the officers' description of the path the suspect took when he exited the car goes to the weight of that evidence. When the trier of fact considered it in the light of the other evidence, it could reasonably conclude that one of the officers was simply mistaken.

Mr. Mendez asks this Court to order credit for jail time he served on these offenses, as well as credit for good time. However, the superior court did so at page 4 of

No. 31580-1-III

the judgment and sentence. The amount of time only needs to be set, something this Court cannot do on the record before it. In any event, Mr. Mendez should first request credit from the Department of Corrections and/or the Yakima County Jail.

Finally, Mr. Mendez argues the superior court incorrectly calculated his offender score. He contends that the 1988 conviction for failure to return to work release was a misdemeanor and should not count. In addition, he believes his three 1988 convictions for controlled substance violations should be counted as one offense, as well as his three 2002 convictions, because they involved the same criminal conduct, and he served the sentences on them concurrently.

Mr. Mendez is incorrect. He committed the 1988 and 2002 offenses on different dates. Thus, they cannot amount to "same criminal conduct." *See* RCW 9.94A.509(1)(a). Nor is the court aware of any authority that holds that sentences served concurrently count as only one offense for offender score purposes, if they do not satisfy the criteria of "same criminal conduct".

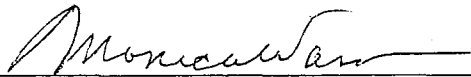
As for Mr. Mendez's other conviction, failure to return from work release was a felony, not a misdemeanor. *See* RCW 72.65.070, which was repealed by Laws 2001, ch. 264, § 7, eff. July 1, 2001, after Mr. Mendez was convicted for that offense in 1988. Prior to repeal, RCW 72.65.070, read as follows: "Any prisoner approved for placement under a work release plan who wilfully fails to return to the designated place of confinement at the time specified shall be deemed an escapee and fugitive from justice,

No. 31580-1-III

and upon conviction shall be *guilty of a felony* and sentenced in accordance with the terms of chapter 9.31 RCW.” (Emphasis added.)

Accordingly, IT IS ORDERED, the State’s motion on the merits is granted and Mr. Mendez’s convictions are affirmed.

September 8, 2014



Monica Wasson
Commissioner

APPENDIX B

MOTION TO MODIFY
COMMISSIONER'S RULING

Law Office of Kenneth H. Kato
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

September 12, 2014

Jose Mendez, # 936781
PO Box 769
Connell, WA 99326

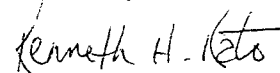
Re: Appeal

Dear Mr. Mendez:

The Court of Appeals sent you the Commissioner's Ruling affirming your convictions. I will file by October 8, 2014, a motion to modify that ruling. As you can see, the Commissioner not only looked at my arguments, but also considered your statement of additional grounds.

If you have any questions, please contact me.

Sincerely,


Kenneth H. Kato

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 31580-1-III
)
v.) MOTION TO MODIFY
) COMMISSIONER'S
JOSE MENDEZ,) RULING
)
 Appellant.)
_____)

1. IDENTITY OF MOVING PARTY

Jose Mendez, appellant, asks for the relief designated in part

2.

2. STATEMENT OF RELIEF SOUGHT

Mr. Mendez seeks to modify the September 8, 2014
Commissioner's Ruling affirming the decision of the trial court and
to have his case determined by the panel.

3. FACTS RELEVANT TO MOTION

Mr. Mendez incorporates by reference the statement of facts
in his brief.

4. GROUNDS FOR RELIEF AND ARGUMENT

Mr. Mendez incorporates by reference the grounds for relief
and argument set forth in his brief, with the exception that the

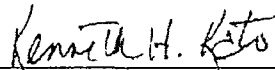
assigned error to the court's failure to enter written findings and conclusions now appears to be moot.

5. CONCLUSION

Based on the foregoing, Mr. Mendez respectfully urges this Court to modify the Commissioner's Ruling and have his case determined by the panel.

DATED this 25th day of September, 2014.

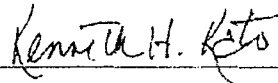
Respectfully submitted,



Kenneth H. Kato, WSBA # 6400
Attorney for Appellant
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

CERTIFICATE OF SERVICE

I certify that on September 25, 2014, I served a copy of the Motion to Modify Commissioner's Ruling by first class mail, postage prepaid, on Jose Mendez, # 936781, PO Box 769, Connell, WA 99326; and by email, as agreed by counsel, on Tamara Hanlon at tamara.hanlon@co.yakima.wa.us.



APPENDIX C

ORDER DENYING
MOTION TO MODIFY

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*

500 N Cedar ST
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December 12, 2014

E-mail

Kenneth H Kato
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James Patrick Hagarty
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128 N. 2nd St Rm 329
Yakima, WA 98901-2621
James.Hagarty@co.yakima.wa.us

CASE # 315801
State of Washington v. Jose Mendez, Jr.
YAKIMA COUNTY SUPERIOR COURT No. 121015606

Dear Counsel:

Attached is a copy of the Order Denying Motion to for Reconsideration of this Court's opinion under date of September 8, 2014.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a Petition for Review, an original and a copy of the Petition for Review in this Court within 30 days after the Order Denying Motion for Reconsideration is filed (may be filed by electronic facsimile transmission). RAP 13.4(a). The Petition for Review will then be forwarded to the Supreme Court.

If the party opposing the petition wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:mk
Attach.
c: Jose Mendez, Jr.
#936781
Coyote Ridge Correction Center
P.O. Box 769
Connell, WA 99326

FILED

DEC 11 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 31580-1-III
)	
Respondent,)	
)	
v.)	ORDER DENYING
)	MOTION TO MODIFY
JOSE MENDEZ, JR.,)	
)	
Appellant.)	

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of September 8, 2014, and is of the opinion the motion should be denied.

Therefore,

IT IS ORDERED, the motion to modify is hereby denied.

DATED: 12/11/14

PANEL: Judges Siddoway, Brown, Korsmo

FOR THE COURT:



 LAUREL H. SIDDOWAY
 Chief Judge

APPENDIX E

LETTER SENT TO TRIAL ATTORNEY

Before I present the following evidence I would
like for you to know that the reason I asked
for my medical records was to see if there was any
evidence of the police hitting me repeatedly in the head.
Instead what I found was evidence to support my
defense.

2-1-13

Jose M

APPENDIX F

OFFICER'S CAD CALLS

WITH/MR. MENDEZ SUMMARIES OF CAD CALLS

CHECK ALL THAT APPLY:

- NON-IMPOUND / TOW
- AAA or OTHER ROADSIDE ASSISTANCE
- EVIDENCE
- SEIZED UNDER RCW 69.50 505
- IMPOUND ONLY
- DUI/PC IMPOUND WITH 12 HOUR HOLD
- DWLS IMPOUND WITH _____ DAY HOLD
- INFORMATIONAL COPY GIVEN TO SUSPENDED DRIVER
- REGISTERED OWNER MAY REDEEM _____

CHECK INDICATES DRIVER IS DWL&R AND IS NOT THE REGISTERED OWNER. REGISTERED OWNER / LEGAL OWNER OR AGENT OF THE OWNER MAY REDEEM AT THE END OF THE IMPOUND HOLD.

CHECK INDICATES THE DRIVER IS DWLS AND IS THE REGISTERED OWNER. DRIVER WILL NEED A SEPARATE RELEASE FORM FROM THE COURT OR THE AGENCY ORDERING THE IMPOUND.

UNIFORM WASHINGTON STATE

CASE / EVIDENCE NUMBER

124005197

TOW / IMPOUND AND INVENTORY RECORD

VIN 1GND S13S532400134				
LICENSE ADY759	STATE WA	YEAR 03	MAKE Chev	MODEL Trailblaze
<input type="checkbox"/> Report of Sale	MILEAGE	<input type="checkbox"/> Digital	STYLE SUV	COLOR Tan

DRIVER		REGISTERED OWNER	LEGAL OWNER
NAME (LAST, FIRST, MI) Jose Mendez		NAME (LAST, FIRST, MI) Riviera Petra	NAME (LAST, FIRST, MI) Sun
STREET ADDRESS		STREET ADDRESS	STREET ADDRESS
CITY, STATE, ZIP CODE		CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE
PHONE	DOB	PHONE	PHONE

AUTHORIZATION AND RECEIPT

ON THIS DATE OF 10/10/12 AT 2:54 (24 HOUR) PURSUANT TO RCW 48 55 085 / 113 AND HAVING PERSONALLY INVENTORIED THE ITEMS IN THE DESCRIBED VEHICLE, I HEREBY AUTHORIZE Elite Towing (TOWING FIRM)

TO REMOVE THIS VEHICLE FROM 1000 Blk Stewart

I CERTIFY THAT I HAVE RECEIVED THE ABOVE VEHICLE AND ITS CONTENTS LISTED BELOW.

TOW DRIVER'S SIGNATURE [Signature] DOL TOW TRUCK NO 5904-02 DATE 10/12/12

EQUIPMENT	DAMAGE	EVIDENCE (DRIVER'S SIDE)	EVIDENCE (PASSENGER'S SIDE)
<input type="checkbox"/> GLOVE BOX LOCKED <input type="checkbox"/> KEYS [] <input type="checkbox"/> AUTO STEREO <input type="checkbox"/> AUDIO TAPES / CD'S [] <input type="checkbox"/> CB RADIO <input type="checkbox"/> RADAR DETECTOR <input type="checkbox"/> TRUNK LOCKED <input type="checkbox"/> SPARE TIRE <input type="checkbox"/> JACK <input type="checkbox"/> CHAINS <input type="checkbox"/> OTHER _____	<input type="checkbox"/> FRONT <input type="checkbox"/> R FRONT <input type="checkbox"/> R SIDE <input type="checkbox"/> R REAR <input type="checkbox"/> L FRONT <input type="checkbox"/> L SIDE <input type="checkbox"/> L REAR <input type="checkbox"/> REAR <input type="checkbox"/> TOP <input type="checkbox"/> UNDERCARRIAGE <input type="checkbox"/> OTHER _____		

INVENTORY EVIDENCE	NARRATIVE OR DIAGRAM
<p>Pending Search Warrant</p>	<p>Impounded from pending search Warrant</p>

I CERTIFY (DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREMENTIONED IS TRUE AND CORRECT (RCW 9A.72.085)

OFFICER'S SIGNATURE [Signature] Yakima COUNTY, WA BADGE NO 434

DRIVER'S SIGNATURE CERTIFIES RECEIPT OF TOW/IMPOUND REPORT AND INFORMATION FOR DRIVERS TO REDEEM IMPOUNDED VEHICLE

DRIVER'S SIGNATURE X

SUPERVISOR

Yakima County District / Municipal Court
State of Washington

**REQUEST FOR A DETERMINATION OF
PROBABLE CAUSE AND FINDINGS**

In the Superior Court of the State of Washington
In and for the County of Yakima
Statement of Arresting Officer and Preliminary
Finding of Probable Cause

Superior Court Probable Cause:

The above named individual was arrested for the listed charges based upon the above facts and circumstances. I certify (or declare) under the penalty of perjury under the laws of the State of Washington that the attached report is true and correct.

Signed in **Union Gap, WA** **10/10/12**

Officer's Signature & Badge #


SGT. M. MCNEARNEY #434

District / Municipal Court Probable Cause Cont.

1. The undersigned certifies under penalty of perjury under the laws of The State of Washington that the following is true and correct:
2. I contacted Judge _____ by telephone this date at _____ HRS and under oath recited the above facts in support of my request that the court find probable cause to believe that the Defendant committed the above offense(s) and to detain the Defendant in lieu of bail or other conditions of release. Judge _____ made the following findings:
3. Probable Cause to believe the offense(s) was/were committed;
- No Probable Cause to believe the offense(s) was/were committed and ordered the Defendant's immediate release.
4. The Judge authorized me to make record of the above finding, attach this document to my official report and file the same with the court on or before the next judicial day along with the original complaint / citation.
Dated this Wednesday, October 10, 2
5. The foregoing report truly and accurately reflects the testimony given to me by the arresting officer and the finding of the court.

Signed in **Union Gap, WA** **10/10/12**

Officer's/Judge's Signature

SGT. M. MCNEARNEY #434

<input checked="" type="checkbox"/> Suspect information Report Law Enforcement Position on Release.	Subject has 10 felony convictions including a prior eluding and five prior VUCSA convictions. Request moderate bail.
---	--

NARRATIVE

10/10/12 approx 2026 hrs in the State of Washington, Yakima County, in the 2200 blk of S 4th Ave in the City of Union Gap, Jose Mendez 122367 is accused of attempting to elude, felony DUI, possession of cocaine, possession of heroin, possession of marijuana, driving on a suspended license in the first degree, driving without ignition interlock when required, hit and run(two counts), obstructing and resisting arrest.

Sgt McNearney was on duty in the city of Union Gap and was in full departmental uniform in a Union Gap police car with emergency lights and siren. Sgt McNearney was wbound on Walla Walla approaching S 5th Ave when Washington license ADY7519 pulled out in front of him and made a left turn. This vehicle was stopped at a stop sign and was required to yield to Sgt McNearney. Sgt McNearney had to brake heavily to avoid a collision. Sgt McNearney stopped the vehicle in the 2200 blk of S 4th Ave.

Sgt McNearney had activated the emergency lighting on his patrol car. He approached the driver side of the vehicle and could see a Hispanic male wearing a reddish colored shirt was driving. The driver suddenly put the vehicle into gear and accelerated away/spinning its tires. Sgt McNearney advised SunComm dispatch of the pursuit and activated his siren. The vehicle went to Valley Mall Blvd and turned wbound, failing to stop at a posted stop sign. It then turned nbound on to S 5th Ave and continued through the posted stop signs at Walla Walla and Whitman without stopping. The vehicle was traveling at approx 50 mph in a posted 25 mph residential zone. The driver then turned ebound onto Whatcom St to S 3rd Ave. An unidentified vehicle turned wbound onto Whatcom from S 3rd Ave and had to pull off the roadway to avoid being hit. The driver braked heavily and lost control and struck a power pole on the southwest corner of 3rd and Whatcom. This lightly damaged the pole but caused well over \$1000.00 damage to the suspect vehicle. The driver then continued through the posted stop sign and nbound onto S 3rd Ave. Sgt McNearney continued after the vehicle with his lights and siren activated. The vehicle continued nbound and through a red light at Washington Ave traveling at approx 30 mph. There were vehicles both east and west on Washington. These vehicles had to brake heavily to avoid a collision. The vehicle continued nbound to Mead Ave at approx 60 mph and slowed somewhat but continued through another red light at approx 30 mph. The suspect vehicle had to swerve to the left to avoid a collision. The vehicle then approached Nob Hill and slowed down and then turned wbound onto Prasch almost striking cars parked along the roadway. The vehicle continued wbound on Prasch running three stop signs while traveling at approx 35 mph. When the vehicle — reached S 10th Ave it turned nbound failing to stop at a posted stop sign. It struck a sbound car driven by Dirk Spencer and continued nbound. It did not stop to check on Spencer's condition or exchange information. The vehicle continued nbound across Nob Hill and went through a red light at approx 25 mph. It then made a quick left turn onto Stewart. When Sgt McNearney turned behind the vehicle he saw it had stopped in the road and saw the driver running from the driver door. The driver ran around the front of the vehicle and nbound into


a yard in the 1000 blk of Stewart. Sgt McNearney began chasing the subject on foot and took him into custody a short distance away. When Sgt McNearney was taking the subject into custody he was actively trying to get away from Sgt McNearney and turned toward him in a fighting stance as if to fight him. On the ground just outside the driver door was a bag of white powder that tested positive for cocaine. In a bush where the driver had tried to hide Sgt McNearney found a bag that tested positive for heroin. Just inside the door to the vehicle was a bag of green vegetable matter that was recognized to be marijuana. The driver was identified as Jose Mendez 122367. A check of DOL showed him to be DWLS 1st degree with an ignition interlock requirement. A criminal history check showed four prior DUI convictions within the last 10 years.

I certify (or declare) under penalty of perjury under the laws of The State of Washington that the foregoing report is true and correct.

Signed in **Union Gap, WA**

10/10/12

Officer's Signature & Badge #


SGT. M. MCNEARNEY #434

10/15/12
15:57

Union Gap Police Department
LAW Incident Table:

Page: 235
1

Incident
Incident Number: 12U005197 Nature: TRAFFIC STOP
Case Number: Photo: PHO
*Address= 2200 S 4TH AVE
*City: Union Gap *State: WA *ZIP: 98903
Area: U1 UGPD AREA 1 Contact: McNearney M

Complainant
Numbr: 13144
Last: CITY OF UNION GAP Fst: Mid:
DOB: / / SSN: - - Adr= 102 W AHTANUM RD
Race: Sx: Tel: [REDACTED] Cty: Union Gap ST: WA ZIP: 98903

Details
*Offense Codes: TOFF AEVA CSPM CSPC CSSO & Reported: TOFF Observed: AEVA
Circumstances: LT13
*Rspndg Officers: Adams T Boyle S Gocha C &
*Rspnbl Officer: McNearney M *Agency: UGPD CAD Call ID: 363227
Received By: Davis D Last RadLog: 00:06:14 10/11/12 CMLPT
How Received: O Officer Report *Clearance: RTF Report to Follow
When Reported: 20:26:06 10/10/12 *Disposition: CAM Disp Date: 10/11/12
*Occurrd between: 20:26:03 10/10/12 Judicial Sts:
*and: 20:33:00 10/10/12 Misc Entry:
MO:

Narrative
*Narrative: (See below)
Supplement: (See below) (See below) &

=====
INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	4193	10/10/12	SPENCER, DIRK SCOT JR	VICTIM
NM	13144	10/10/12	CITY OF UNION GAP,	*Complainant
NM	17270	10/10/12	MENDEZ, JOSE JR	ARRESTED
VH	4664	10/10/12	SIL 2003 CHEV TRBLA WA	VEHICLE
CA	363965	10/11/12	19:16 10/11/12 ACCIDENT HITRUN	RELATED INCIDENT
CA	363227	10/10/12	20:26 10/10/12 TRAFFIC STOP	*Initiating Call
PR	52940	10/12/12	CD \$0	EVIDENCE
PR	52831	10/11/12	Marijuana \$0	EVIDENCE
PR	52832	10/11/12	Envelope \$0	EVIDENCE
PR	52833	10/11/12	Phone Apple I-phone \$250	EVIDENCE
PR	52770	10/10/12	GRN Money \$131.23	SEIZED
PR	52771	10/10/12	Identification \$0	SAFEKEEPING
PR	52772	10/10/12	WHI Cocaine \$0	EVIDENCE
PR	52773	10/10/12	Drug \$0	EVIDENCE

Image codes for Incident:

Seq Code	Image Codes	Id Description
1	PHO	Photograph

LAW Incident Offenses Detail:

Seq Code	Offense Codes	Amount
1	TOFF Traffic Incident	0.00
2	AEVA Eluding	0.00
3	CSPM Cont Subst, Poss Marijuana	0.00
4	CSPC Cont Subst, Poss Cocaine	0.00
5	CSSO Cont Subst, Sale/Manu Other	0.00
6	DWSR Driving Suspended/Revoked	0.00
7	RIPO Resisting/Interfering w/Police	0.00
8	OBST Obstructing Justice	0.00

LAW Incident Circumstances:

Seq Code	Contributing Circumstances	Comments
1	LT13 Highway, Road, Alley	

LAW Incident Responders Detail

Responding Officers

Seq	Name	Unit
1	Adams T	YK94
2	Boyle S	YT13S
3	Gocha C	YC5
4	Grant S	YC1
5	James S	U448
6	McNearney M	U434
7	Panattoni J	U462

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc Description
00:06:14 10/11/12	1	U434	CMPLT	U1	UGPD (MDC) Completed call incid#=12
23:42:30 10/10/12	1	U434	VHREG	U1	UGPD MDC: pl=ADY7519 st=WA
23:42:29 10/10/12	1	U434	VHINQ	U1	UGPD MDC: pl=ADY7519 st=WA
23:42:19 10/10/12	1	U434	VHREG	U1	UGPD MDC: pl=ADY519 st=WA
23:42:18 10/10/12	1	U434	VHINQ	U1	UGPD MDC: pl=ADY519 st=WA
23:32:47 10/10/12	1	U434	LOCTN	U1	UGPD Unit Location: ugpd
22:54:47 10/10/12	1	U462	CMPLT	U1	UGPD incid#=12U005197 Completed Cal
22:24:51 10/10/12	1	U462	DLINQ	U1	UGPD MDC: name=FIGUEROA, FERNANDO J
22:24:50 10/10/12	1	U462	NMINQ	U1	UGPD MDC: name=FIGUEROA, FERNANDO J
22:22:10 10/10/12	1	U462	VHREG	U1	UGPD MDC: pl=ADY7519 st=WA
22:22:09 10/10/12	1	U462	VHINQ	U1	UGPD MDC: pl=ADY7519 st=WA
22:21:46 10/10/12	1	U462	DLINQ	U1	UGPD MDC: name=MENDEZ, JOSE
22:21:45 10/10/12	1	U462	NMINQ	U1	UGPD MDC: name=MENDEZ, JOSE
22:07:28 10/10/12	1	U448	CMPLT	U1	UGPD (MDC) Completed call incid#=12

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
21:55:41	1	U462	DLINQ	U1	UGPD	MDC: name=FIGUEROA, FERNANDO J
21:55:40	1	U462	NMINQ	U1	UGPD	MDC: name=FIGUEROA, FERNANDO J
21:39:43	1	U434x	DLINQ	U1	UGPD	MDC: name=MENDEZ, JOSE dob=12/
21:39:42	1	U434x	NMINQ	U1	UGPD	MDC: name=MENDEZ, JOSE dob=12/
21:38:05	1	YT13S	CMPLT	U1	YKPD	Completed Call call=6061
21:24:38	1	U434x	LOCTN	U1	UGPD	Unit Location: ENR UGPD W/EVID
20:54:42	1	U448	LOCTN	U1	UGPD	Unit Location: CJ ASST 462
20:54:34	1	U462	LOCTN	U1	UGPD	Unit Location: CJ W/1
20:51:13	1	U448	LOCTN	U1	UGPD	Unit Location: ENR CJ ASST 462
20:48:16	1	U462	LOCTN	U1	UGPD	Unit Location: ENRT CO JAIL
20:43:54	1	U462	NMINQ	U1	UGPD	MDC: name=MENDEZ, JOSE dob=12/
20:43:53	1	U462	DLINQ	U1	UGPD	MDC: name=MENDEZ, JOSE dob=12/
20:43:04	1	U462	DLINQ	U1	UGPD	MDC: name=MENDEZ, JOSE
20:43:03	1	U462	NMINQ	U1	UGPD	MDC: name=MENDEZ, JOSE
20:40:48	1	YC1	CMPLT	U1	YKPD	(MDC) Completed call incid#= c
20:40:05	1	U434	DLINQ	U1	UGPD	MDC: name=MENDEZ, JOSE JR dob=
20:40:04	1	U434	NMINQ	U1	UGPD	MDC: name=MENDEZ, JOSE JR dob=
20:37:45	1	YK94	CMPLT	U1	YKPD	Completed Call call=6061
20:34:58	1	YC5	CMPLT	U1	YKPD	(MDC) Completed call incid#= c
20:31:31	1	YT13S	ARRVD	U1	YKPD	c=6061
20:30:39	1	U462	LOCTN	U1	UGPD	Unit Location: 11TH/BAKER
20:29:57	1	YK94	ARRVD	U1	YKPD	c=6061
20:29:22	1	YC1	ARRVD	U1	YKPD	c=6061
20:29:22	1	YC5	ARRVD	U1	YKPD	c=6061
20:29:08	1	U448	ARRVD	U1	UGPD	c=6061
20:27:39	1	U462	ARRVD	U1	UGPD	Arrived on Scene call=6061
20:26:09	1	U434	ARRVD	U1	UGPD	Traffic stop call=6061

Narrative:

Union Gap Police Department Incident Report

CASE#: 12U005197

DATE: Wed Oct 10 22:54:28 PDT 2012

INCIDENT: ELUDING/VUCSA/ETC

SYNOPSIS: 10/10/12 Jose Mendez was arrested for Eluding/VUCSA, DWLS and other charges for fleeing from police in the 2200 blk of S 4th Ave. He was booked into the Yakima County Jail. Evidence tagged A15966-A15968.

NARRATIVE: 10/10/12 approx 2026 hrs I was on patrol wbound on Walla Walla from 4th Ave. As I was approaching 5th Ave there was a SUV stopped sbound at Walla Walla at 5th Ave. As I got near the intersection the vehicle suddenly pulled out in front of me and made a left turn. I had to stop to avoid colliding with the vehicle.

I turned and stopped the vehicle in the 2200 blk of S 4th Ave. The vehicle stopped and when I activated my emergency lights. I had my spotlight on the rear of the vehicle and driver side.

I approached the driver side door. I could see the driver was a Hispanic male and he was wearing a reddish colored shirt and had short hair. As I was approaching the vehicle I saw the brake lights come on and heard the engine race. I saw the back up lights come on and then go off as if the vehicle was

being put into gear. The vehicle then accelerated sbound away from me and the traffic stop.

I returned to my patrol car and began to pursue the vehicle. I advised SunComm of my situation.

The vehicle continued sbound to Valley Mall Blvd and then turned wbound without stopping at the posted stop sign. I activated my siren and continued after the vehicle. I saw it turn nbound onto S 5th Ave and got behind the vehicle. It accelerated to approx 30-35 mph and went through a stop sign at Walla Walla. It continued to accelerate to approx 50 mph as it continued through a four way stop at Whitman St. It continued nbound to Whatcom and turned ebound.

I got behind the vehicle as it was ebound on Whatcom St. I saw a SUV turn wbound onto Whatcom St from S 3rd Ave. This vehicle had to quickly pull off the road to avoid colliding with the suspect vehicle. The suspect braked heavily and slid on the roadway striking a power pole on the southwest corner of 3rd and Whatcom. The driver continued through a posted stop sign and turned nbound onto S 3rd Ave without stopping.

I got behind the vehicle nbound on 3rd Ave. The driver accelerated to around 30 mph as it approached a red light on Washington Ave. The vehicle continued through the intersection without stopping. There were multiple vehicles in the intersection that had to brake heavily to avoid a collision. The vehicle continued nbound on 3rd Ave accelerating to approx 50 mph. As it approached the intersection with Mead Ave it had a red light. It slowed to approx 30 mph but continued through the intersection without stopping. The suspect vehicle had to swerve to the left while other vehicles in the intersection had to brake to avoid a collision.

The vehicle continued nbound with the driver pulling into the sbound lane of travel. When it reached Prasch Ave it turned wbound and almost struck two vehicles that were parked along the roadway. The driver then accelerated to approx 50 mph wbound on Prasch and went through three stop signs without stopping. There did not appear to be any traffic on this side street at the time. I had dropped behind the vehicle as I had to clear the intersections. I saw it turn nbound onto S 10th Ave.

When the suspect made the right turn I saw a smaller car sbound stop in the roadway. The driver of this car later contacted police to indicate that the suspect had struck his car, causing damage, and then continued nbound without stopping.

I saw the vehicle nbound on 10th Ave go through a red light at Nob Hill Blvd. The vehicle was traveling at approx 25 mph when it went through the intersection. I saw it turn wbound onto Stewart.

When I turned onto Stewart I saw the driver getting out of the driver door and run around the front of the vehicle. I saw him run nbound through a yard mid block. I notified dispatch that he was running and began chasing after him on foot.

I ran around the house of the yard I saw the suspect run into. I heard the sound of bushes rustling and saw the suspect attempting to hide. I had drawn my duty weapon and had it at the ready. I ordered the suspect out of the bushes and onto the ground. He came out of the bushes and began running wbound. I saw

he did not have anything in his hands and holstered my weapon and began chasing him again. He ran into the roadway and fell down. He then ran sbound and fell again. When he was trying to get up I attempted to kick his leg out from under him and trip him to the ground. This did not work and he turned toward me and squared up as if to fight. It appeared he was going to try and hit me and I reacted by hitting him in the left side of his head with my right fist. He fell to the ground but was still swinging his arms toward me. He was in a sitting position and wrapped his arms around me. I gave him two palm strikes to the side of his head while telling him to quit fighting. He went onto his back but was still trying to get away from me and I gave him a knee strike. The male stopped swinging his arms toward me and just covered his head. I did not deliver any more strikes at this time and grabbed his right wrist. I straightened his arm out and told him to roll onto his stomach. He did as I ordered and I placed him into cuffs.

While with the suspect I could smell the odor of intoxicants coming from him. He was also unsteady on his feet when walking.

Ofc Panattoni arrived on scene and assisted in the search of the driver. He was identified by a Washington ID card as Jose Mendez. He began saying that the "devil" was chasing him and that is why he was running. Ofc Panattoni placed Mendez into the back of his patrol car.

Ofc James had arrived on scene. He called me to the driver door and on the ground. I saw a plastic bag with white powder on the ground that I recognized as suspect cocaine. I seized this and secured it into my patrol car.

I traced the steps of the suspect. I checked the bush where I first saw him hiding. In the bush I found a plastic bag that had a brown black substance that I recognized as black tar heroin. It was on top of leaves that had fallen off the bush. I seized this as well and secured it into my patrol car.

Ofc Panattoni and Ofc James took Mendez to the county jail.

The suspect vehicle smelled hot and was still running. I opened the door and reached inside to turn it off. I saw there was a plastic bag of green vegetable substance on the floorboard that I recognized as suspect marijuana. I took a picture of this and left it where it was so I could apply for a search warrant.

Elite Towing responded to the scene and impounded the vehicle. I followed it to their lot and then placed evidence tape over the doors and initialed it.

I returned to my PD to process evidence. I weighed the suspect cocaine and heroin at 1.69 and 7.38 grams respectively. I tested them using the appropriate test kits with positive results for both. I then packaged them both and reweighed them at 3.05 and 8.93 grams respectively. I tagged them and placed them into evidence under tag number A15967 and A15968 respectively.

A check of DOL via MDT showed that Mendez was DWLS 1st degree with an ignition interlock. A criminal history check showed he has four prior DUI convictions within ten years.

I completed a SIR for Mendez and faxed it to the Yakima County Jail.

I will be applying for a search warrant for the suspect vehicle.

Coban: Yes _____ No x

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing report, written in the County of Yakima, City of Union Gap is true and correct, and I am entering my authorized user ID and password to authenticate it.

Reporting Officer: Sgt Monty McNearney

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
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1 Panattoni J	22:34:20 10/10/12	On 10-10-12 at approx. 2026 hours, I responded to assist Sgt. M. McNearney with a vehicle pursuit. He stated that the vehicle had been failing to yield, and was N/B on S. 3rd Avenue from the 1900 block. I responded from the 900 block of W. Washington Avenue. While I was traveling E/B on W. Washington Avenue, I observed the defendant's vehicle (WALIC:ADY7519) travel N/B on S. 3rd Avenue, crossing Washington Avenue. After it was safe to proceed through the intersection, I turned N/B and was the second police vehicle in the pursuit.
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I observed the traffic light at S. 3rd Avenue and W. Mead Avenue to be red for North/South traffic, and observed the defendant vehicle travel N/B through the intersection at a high rate of speed. The speed was approx. 55 miles per hour. The vehicle continued N/B, and I observed it swerve into the oncoming lane, nearly striking the curb North of Mead Avenue. The driver then turned W/B onto Prash Avenue. He continued W/B, failing to stop at the stop signs at all the intersections between S. 3rd Avenue and S. 10th Avenue at approx. 50 miles per hour. The driver then turned N/B on S. 10th Avenue. The driver continued N/B through W. Nob Hill, failing to stop for the red light. The driver then turned W/B on Stewart Avenue, where he ran from the vehicle. Sgt. McNearney advised he was running N/B through the alley, so I continued N/B in an attempt to contain him.

After approx. one minute, I observed Sgt. McNearney at 11th Avenue and Stewart with the suspect. I assisted in searching the suspect, identified as Jose Mendez Jr. (DOB:12-23-67). I secured him in the back seat of my patrol car. I observed Mendez kicking at the metal bars covering the window of my patrol car. He was screaming "The devil's gonna get me!" repeatedly.

I transported Mendez to the Yakima County Jail for DUI. I could smell the strong odor of alcohol on Mendez. He refused the breath test, and was booked on an SIR of several charges.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing report, written in the County of Yakima, is true and correct, and I am entering my authorized user ID and password to authenticate it.

Date, Time; Wed Oct 10 22:51:39 PDT 2012

Reporting Officer: J. Panattoni #462

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
2 McNearney M	00:06:14 10/11/12	

CAD Call info/comments
=====

20:27:04 10/10/2012 - Davis D
W/B.VM..N/B S 5TH AV..FOR FAIL TO YEILD...N/B TO WHATCOM 55 MPH...CH
CLEARED..E/B WHATCOM TO 3RD AV..
20:27:21 10/10/2012 - Davis D
HIT A POLE..NOW N/B..
20:28:00 10/10/2012 - Davis D
SIGNALING TO GO W/B ON MEAD, BUT WENT N/B..
20:29:01 10/10/2012 - Garcia S
15S ADV YPD CAN SPIKE
20:29:08 10/10/2012 - Davis D
W/B ON PRASCH..H/M DRIVER POSS..W/B THRU 50 MPH..CORNELL THUR STOP...LT TRAF..AT
10TH AV..
20:29:38 10/10/2012 - Davis D
N/B AT 10TH CROSSING NOB HILL..GOING N/B THRU ALLEY.
20:30:08 10/10/2012 - Davis D
SUBJ NOW ON FOOT..
20:30:41 10/10/2012 - Davis D
462 AT 11TH AV/BAKER..
20:31:18 10/10/2012 - Davis D
1 DETAINED AT S 11TH AV/STEWART..
20:33:59 10/10/2012 - Davis D
CH 1 RE-OPENED PER SGT BOYLE..
20:36:15 10/10/2012 - Blomberg W
* 833 4583 - DIRK SPENCER - VIC OF HIT & RUN @ 10TH & PRASCH / WHT 84 FORD
ESCORT
20:46:02 10/10/2012 - Garcia S
ELITE TOWING ENRT
21:36:26 10/10/2012 - Blomberg W
** 833 4583 - DIRK CALLING BACK - REQ OFCR ETA - HAS TO LEAVE TO PICK UP
SOMEONE FROM WORK BUT WILL BE BACK IN 5 MIN TO THIS LOCATION
21:59:53 10/10/2012 - Hansen W
**RP IS AT THIS LOC NOW

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
3 James S	20:53:31 10/11/12	

NARRATIVE: ON 10-10-12 AT APPROX 2026 HRS I HEARD SGT MCNEARNEY CALL OUT WITH
TRAFFIC STOP AND ADVISED THE VEHICLE WAS FAILING TO YIELD. HE THEN ADVISED
DISPATCH HE WAS IN PURSUIT OF THE VEHICLE.

I WAS RESPONDING FROM ACROSS TOWN AND HEARD OFFICER PANATTONI WAS ONLY A COUPLE
OF BLOCKS FROM SGT MCNEARNEY. THE PURSUIT CONTINUED UP INTO YAKIMA WHERE THE
SUSPECT RAN FROM THE VEHICLE IN THE AREA OF S. 11TH AVE AND STEWART. HE WAS
TAKEN INTO CUSTODY AFTER A SHORT FOOT CHASE.

SGT MCNEARNEY ADVISED ME THAT HE COULD SMELL INTOXICANTS COMING FROM THE SUSPECT
AND ONE OF HIS CHARGES WERE FOR DUI. OFFICER PANATTONI SECURED THE SUSPECT IN
THE BACK OF HIS PATROL CAR. HE WAS ID'D AS JOSE MENDEZ JR 12-23-67.

I PHOTOGRAPHED THE SUSPECT VEHICLE AND OBSERVED A SMALL CLEAR PLASTIC BAGGY
CONTAINING A WHITE POWER IN THE CORNER OF THE BAGGY. I RECOGNIZED THIS FROM MY

TRAINING AND EXPERIENCE TO BE SUSPECT COCAINE. SGT MCNEARNEY ADVISED HE HAD ALSO LOCATED A BAGGY CONTAINING SUSPECT HEROIN. SGT MCNEARNEY GATHERED UP THE EVIDENCE AND I FOLLOWED OFFICER PANATTONI TO PROCESS MENDEZ FOR DUI.

AT THE COUNTY JAIL I ASKED IF MEND HAD BEEN DRINKING TONIGHT, HE SAID YES. I ASKED HIM HOW MUCH HE HAD AND WHEN WAS HIS LAST DRINK; MENDEZ SAID HE HAD A FEW AND THAT HIS LAST DRINK WAS AWHILE AGO. I ASKED WHERE HE HAD BEEN DRINKING THIS EVENING AND HE SAID NEVER MIND. MENDEZ'S EYES APPEARED BLOOD SHOT, DROOPY, AND WATERY. HE HAD A VERY STRONG ODOR OF INTOXICANTS AS HE TALKED TO ME AND HIS FACE WAS FLUSHED. HE WAS ARGUMENTATIVE WITH MOOD SWINGS. HIS COORDINATION APPEARED POOR WHEN HE WALKED FROM THE PATROL CAR TO THE BAC MACHINE.

I ASKED JOSE IF HE WOULD BE WILLING TO SUBMIT TO A FIELD SOBRIETY TEST, HE SAID NO.

I READ MENDEZ HIS MIRANDA WARNINGS FROM THE DUI PACKET AND ASKED IF HE UNDERSTOOD THEM, MENDEZ SAID YES. I ASKED MENDEZ IF HE WOULD BE WILLING TO TALK TO ME, HE SAID YES. I ASKED HIM SIGN ALL APPROPRIATE LINES INDICATING HE UNDERSTOOD, HE REFUSED. I READ MENDEZ HIS IMPLIED CONSENT WARNING FOR BREATH AND ASKED IF HE UNDERSTOOD THEM, HE SAID YES, BUT I WAS NOT DRIVING AND REFUSED TO SIGN.

THE OBSERVATION TIME BEGAN AT 2105 HRS AT WHICH TIME I CHECKED MENDEZ'S MOUTH AND VERIFIED THERE WAS NOTHING WITH IN IT. I CHECKED THE 4 BAC PROTOCOLS ON THE BAC INSTRUMENT. I ALSO CHECKED THE BAC THERMOMETER, WHICH SHOWED A READING OF 34 DEGREES C. I KEPT MENDEZ UNDER OBSERVATION THE ENTIRE TIME UNTIL HE REFUSED TO GIVE A SAMPLE AND AT NO TIME DID HE BURP, OR BELCH. THE BAC TEST WAS ADMINISTERED AND THE RESULT WAS A REFUSAL. THE RESULTS OF THE TEST WERE FAXED TO DOL BY ME. A DOL CHECK VIA MY MDT SHOWED HIS DRIVING STATUS AS DWLS/R 1ST DEGREE.

MENDEZ WAS BOOKED INTO THE YAKIMA COUNTY JAIL FOR DUI, DWLS/R 1ST, ELUDING, VCSA AND OTHER CHARGES.

ON 10-11-12 AT APPROX 1615 HRS I ASSISTED SGT MCNEARNEY ON A SEARCH WARRANT FOR MENDEZ'S VEHICLE. SGT MCNEARNEY HAD OBSERVED SUSPECT MARIJUANA INSIDE THE VEHICLE AT TIME OF IMPOUND. I DEPLOYED MY NARCOTICS K-9 DAISY TO DO AN EXTERIOR AND INTERIOR SNIFF OF THE VEHICLE. K-9 DAISY IS TRAINED TO ALERT TO THE PRESENCE OF THE ODOR OF NARCOTICS.

K-9 DAISY SHOWED NO ALERTS ON THE EXTERIOR SNIFF OF THE VEHICLE. ON THE INTERIOR SNIFF OF THE VEHICLE K-9 SHOWED A POSITIVE ALERT TO THE CLEAR BAGGY ON THE DRIVERS SIDE FLOOR BOARD, THE BAGGY CONTAINED GREEN VEGETABLE MATTER. SGT MCNEARNEY TOOK CUSTODY OF THE BAGGY. K-9 DAISY SHOWED NOT OTHER ALERTS INSIDE THE VEHICLE.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing report, written in the County of Yakima, is true and correct, and I am entering my authorized user ID and password to authenticate it.

Date, Time;Thu Oct 11 20:59:48 PDT 2012

Reporting Officer:S. JAMES 0448

Law Supplemental Narrative:

Supplemental Narratives

Seq Name Date Narrative
4 McNearney M 22:52:08 10/11/12
Union Gap Police Department Supplemental Report

CASE#: 12U005197
DATE: Thu Oct 11 22:52:27 PDT 2012
INCIDENT: ELUDING/VUCSA

NARRATIVE: 10/11/12 approx 1530 hrs I contacted the on call District Court Judge, Judge Federspiel, in reference to this case. I had typed up a telephonic search warrant. SunComm had put me in contact with Judge Federspiel on recorded line.

Judge Federspiel swore me in and I read him the affidavit for search warrant and the search warrant itself. Judge Federspiel authorized the telephonic search warrant.

I went to Elite Towing and served the search warrant with the assistance of Ofc James and his K-9 partner, Daisy.

I found a plastic bag with suspect marijuana on the driver side floor area. This is the same bag I had seen when turning the vehicle off. I also seized an Apple I phone that was on the driver floor board area and two envelopes that had the name of Jose Mendez Jr on them. I did notice there were numerous air fresheners in the vehicle.

I secured these items and transported them to my PD. I tested the bag of suspect marijuana and it tested positive. It weighed just under four grams as found. I tagged the marijuana, phone and envelopes into evidence.

Coban: Yes _____ No x _____

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing report, written in the County of Yakima, City of Union Gap is true and correct, and I am entering my authorized user ID and password to authenticate it.

Reporting Officer: Sgt Monty McNearney

Throughout the Union Gap Police Department Incident Report and the Officer Report for Incident 12U005917 there are some inconsistencies and discrepancies that should be brought to the attention of whom it may concern. The facts of the case that will be mentioned are in regards to the responsible officer's approach to the vehicle, the suspect/driver fleeing from the vehicle and the responsible officer's CAD Call comments. The reason for this is being brought to your attention is that one cannot be certain that Mr. Jose Mendez was the driver of the vehicle on the night that this incident occurred, nor that he was the only person in the vehicle.

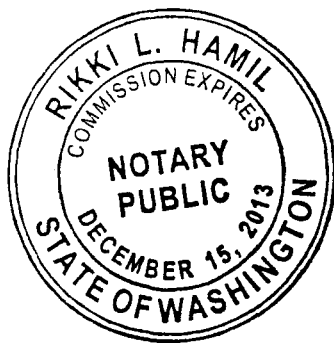
The first point being highlighted can be found in the narrative of the Officer Report for Incident 12U005197, received on 10/15/12 in which Sgt. M. McNearney refers to himself from a first person perspective. He makes the following statement regarding his approach to the vehicle. "I approached the drivers side door. I could see the driver was a Hispanic male and he was wearing a reddish colored shirt and had short hair. As I was approaching the vehicle I saw the brake lights come on and heard the engine race. I saw the back up lights come on and then go off as if the vehicle was being put into gear. The vehicle then accelerated sbound away from me and the traffic stop." This statement can be found on page three of five of the Officer Report for Incident 12U005197. Where as in the second narrative received regarding the incident, which is written from a third person perspective referring to Sgt M. McNearney, some of the facts mentioned differentiate and are not included in his approach to the vehicle. This copy of the incident report was received on 01/24/13 through attorney Jeff Swan. The second statement is as follows. "He approached the driver side of the vehicle and could see a Hispanic male wearing a reddish colored shirt was driving. The driver suddenly put the car into gear and accelerated away, spinning it tires." This statement can be found approximately one third down page three of thirteen of the Union Gap Police Department Incident Report. One could assume that the statements differentiate because it would be very difficult for any person to be close enough to identify the driver and be able to notice the back up/brake lights of the vehicle, especially late in the evening.

The next point being brought to attention encompasses both the first and second narratives of the incident reports as well as a law supplemental narrative provided by Panattoni, J. Sgt. M. McNearney declares that he seen the suspect/driver get out of the driver door, run around the front of the vehicle and run through a yard. In the first incident report written by Sgt. M. McNearney the statement referring to the suspect/driver getting out of the vehicle is as follows. "When I turned onto Stewart I saw the driver getting out of the driver door and run around the front of the vehicle. I saw him run nbound through a yard mid block. I notified dispatch that he was running and began chasing after him on foot." This statement can be found one third of the way down page four of five of the Officer Report for Incident 12U005197. In the second incident report of Sgt. M McNearney, written from a third person perspective, the statement referring to the suspect/driver is as follows. "When Sgt. McNearney turned behind the vehicle he saw it had stopped in the road and saw the driver running from the driver door. The driver ran around the front of the vehicle and nbound into a yard of the 1000 blk of Stewart." This statement can be found on the end of page three of thirteen and the beginning of page four of thirteen of the Union Gap Police Department Incident Report. As opposed to the Law Supplemental Narrative provided by Panattoni, J which states that the suspect/driver ran through an alley after getting out of the vehicle. The statement given by officer Panattoni, J in regards to the suspect/driver removing themselves from the vehicle is as follows. "The driver then turned W/B on Stewart Avenue, where he ran from the vehicle. Sgt. McNearney advised he was running N/B through the alley, so I continued N/B in an attempt to contain him." This statement can be found on page ten of thirteen of the Union Gap Police Department Incident Report.

Further evidence of discrepancy can be found on page eleven of thirteen of the Union Gap Police Department Incident Report in the CAD Call info/comments of Sgt. M McNearney. Prior to the CAD Call comment mentioned below all of Sgt. M McNearneys' CAD Call comments were referring to the actions of the driver. In a comment logged at 20:29:38 10/10/12 he makes the following comment, "N/B AT 10TH CROSSING NOB HILL..GOIN N/B THROUGH ALLEY." Also, Sgt. M

McNearney failed to give a description of the suspect through any of the CAD Call comments. Yet in his narrative of the Officer Incident Report he describes the driver almost immediately upon approaching the vehicle during the traffic stop but fails to pass this information on to the other pursuing officers. This can be seen on the same page as the other CAD Call comments.

Rikki Hamil
12/15/13

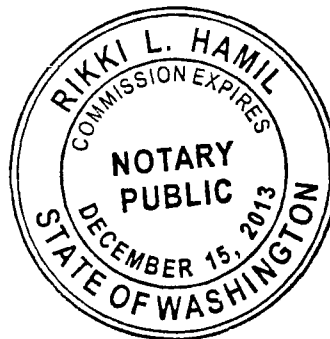


Joel Mundy
1-28-13

Once more the responding officers contradict themselves in their narratives when it comes to the officers locating various drugs. In one of the two narratives of the Incident Report Sgt. M. McNearney states that after officer James finds what McNearney identifies as "suspect cocaine" McNearney then claims he retraces his steps and locates what he recognizes as black tar heroin. This statement can be found in Sgt. McNearney's narrative on page nine of thirteen of the Incident Report and is as follows. "Ofc James had arrived on scene. He called me to the driver door and on the ground. I saw a plastic bag with white powder on the ground that I recognized as suspect cocaine. I seized this and secured it into my patrol car. I traced the steps of the suspect. I checked the bush where I first saw him hiding. In the bush I found a brown black substance that I recognized as black tar heroin. It was on top of the leaves that had fallen off the bush. I seized this as well and secured it into my patrol car." As opposed to the Law Supplemental Narrative provided by James, S in which he states that Sgt. McNearney had already located what he recognized as black tar heroin when he approached James. This statement can be found on page eleven of thirteen of the Incident Report in James' Law Supplemental Narrative and is as follows. " I photographed the suspect vehicle and observed a small clear plastic baggy containing a white powder in the corner of the baggy. I recognized this from my training and experience to be suspect cocaine. Sgt. McNearney advised he had also located a baggy containing suspect heroin. Sgt. McNearney gathered up the evidence and I followed officer Panattoni to process Mendez for DUI."

Jose Mendez
2-1-13

Rikki Hamil
12/15/13



APPENDIX G

MEDICAL RECORDS

6. pages

Request Report - OPEN

Printed: 1/28/2013 11:02:28AM

Request Number: 290959

Submitted: 1/26/13 6:39 am

Inmate Number: 017270

Type: MEDICAL

Inmate Name: MENDEZ, JOSE

Sub Type: MEDICAL REQUEST

Location: YDOC-MJ ANNEX E ANNEX E

<u>Stamp</u>	<u>Username</u>	<u>Note Prefix</u>	<u>Note</u>
1/26/2013 6:39:26AM		ORIGINAL REQUEST:	MAY I PLEASE GET A MEDICAL RECORD OF ALL THE MOUTH OF 10/10/12 FROM 10/10/12 TO THE END OF THAT MOUNT ONLY PLEASE I NEED IT ASAP IF CAN BE DONE IF NOT MAY YOU PLEASE LET ME KNOW WHAT I MUST DO TO GET A COPY THANK YOU VERY MUCH
1/26/2013 9:20:21AM	rdriesen	GROUP ASSIGNED CHANGED TO	LEGAL RECORDS REQUEST/ARCHIVES
1/28/2013 8:41:51AM	ktrevino	RESPONSE:	Yes, medical records are charged a \$.15 cents per page copying fee. I can check with medical to see how many pages we are looking at and let you know the price for the copies. Thank you Trevino
1/28/2013 11:01:43AM	ktrevino	RESPONSE:	Mr. Mendez, You have 6 pages of medical records for the time period of 10/10/12 to the end of October 2012. I can provide you these medical records this once without charge because of the few amount of records. If you are wanting copies or duplicate records you will be subject to the copying fee. The records will be provided today. Thank you Trevino

Commed Healthcare Management, Inc.
Inmate Worker Medical Clearance

Inmate Name (Last, First, MI): MENDEZ Jose		Inmate ID No: 125-04729
Clearance Type Requested: <input type="checkbox"/> Work Detail <input type="checkbox"/> Food Service	Requested By:	Request Date: 10.12.12

Medical Approval / Disapproval

Date of Last Physical:	Date of Assessment:	Assessment/Chart Review Conducted By:
------------------------	---------------------	---------------------------------------

Clearance: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Approved with Restriction <input type="checkbox"/> Disapproved	Duration (if Approved with Restriction or Disapproved): <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> 7 Days <input type="checkbox"/> 30 Days <input type="checkbox"/> Other (Specify):
Restriction (if Applicable):	

450⁺ No comp no pain no rash

O/E - Chest! C/A

Heart r/r

Abd: soft

All OK to work
W

Additional Comments

Medical Staff Member Signature: Hinderasfer	Title: W	Date: 10/15/12	Time: 1418
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C-781 (01/09)

Original Health Record
cc Classification

CONMED Healthcare Management, Inc.		Inmate Name (Last, First, MI):	
Physician's Orders		Mander Jose	
Diagnosis:		Housing Unit:	Inmate ID No:
			12J-04729
		Allergies:	
		<input type="checkbox"/> NKA	

Order		Orders	Transcriber
Date	Time		
8/10/12	0202	MO chart ✓ — AMA — W. 5/2/12	Initials:
10/11/12		✓ Ibuprofen 200mg # 3 TID 7dy	Title:
Profiled			Date: 10/11/12
10-11-12	1518	Clinician: [Signature]	Time:
	CW	Unless otherwise indicated, above medication order(s) may be utilized for release medications	
12/3/12		✓ No work today	Initials:
Emailed JI			Title:
12-3-12	0902	Clinician: [Signature]	Date:
	CW	Unless otherwise indicated, above medication order(s) may be utilized for release medications	
12/11/12		✓ Naproxen 500mg BID x 30dy	Initials:
2:30		✓ Mycogest crev BID x 30dy	Title:
Profiled/Rx			Date:
12-11-12	1521	Clinician: [Signature]	Time:
	CW	Unless otherwise indicated, above medication order(s) may be utilized for release medications	
12-26-12	0908	AMA NOTED	Initials:
			Title:
			Date:
		Clinician: [Signature]	Time:
		Unless otherwise indicated, above medication order(s) may be utilized for release medications	

47288 (Rev. 09/15/10)

ht 1-8-13
3/13/13

✓ Mycogest crev BID x 90dy
[Signature]

[Signature]
1/8/13
F33

A-C

CONMED, Inc. Intake Health Screening		Site: Yakima County Department of Corrections		Agency Transferred From: UGPD				
Inmate Name (Last, First, MI): Mendez, Jose JR			Completing Corrections Officer/Corporal: Hamis		S#: 47			
Inmate #: R- 17270		Booking #: 125-6840		Date of Birth: 12-23-67				
Date of pre-booking: 10-10-12			Time of pre-booking:		BAC Level: .087 @ 2130			
C.O.: ASK THE FOLLOWING QUESTIONS			Yes	No	C.O.: OBSERVE THE FOLLOWING			
Do you have any medical problems, illnesses or injuries?				<input checked="" type="checkbox"/>	Can the prisoner stand/walk under their own power?			
Do you have any mental health problems?				<input checked="" type="checkbox"/>	Signs/indicators of alcohol toxicity?			
Are you thinking about harming yourself or others?				<input checked="" type="checkbox"/>	Signs of illness, injury, open sores, bleeding or disfigurement?			
Have you attempted suicide in the past year?				<input checked="" type="checkbox"/>	Inappropriate behavior or acting out?			
MEDICAL STAFF TO COMPLETE THE FOLLOWING INFORMATION								
Blood Pressure: 108/60	Pulse: 102	Medications: Ø meds per I/M			- 160			
O2: 98	Temperature: 97.7				- 517			
MEDICAL	Yes	No	Comment					
Diabetes		<input checked="" type="checkbox"/>						
Seizures		<input checked="" type="checkbox"/>						
Pregnancy: Current/ Recent		NA						
Recent Illness		<input checked="" type="checkbox"/>						
Chronic cough		<input checked="" type="checkbox"/>						
Coughing up blood		<input checked="" type="checkbox"/>						
Weight loss		<input checked="" type="checkbox"/>						
Fever / Night sweats		<input checked="" type="checkbox"/>						
Allergies		<input checked="" type="checkbox"/>	onions / ASP					
Hepatitis		<input checked="" type="checkbox"/>						
Heart problems		<input checked="" type="checkbox"/>						
Hypertension		<input checked="" type="checkbox"/>						
Dental problems		<input checked="" type="checkbox"/>						
Other medical concerns		<input checked="" type="checkbox"/>	involved in car accident clo (LF) rib pain					
CHEMICAL DEPENDENCY	Yes	No	Comment					
Alcohol consumed	<input checked="" type="checkbox"/>		Last use:		How much: 2 Beer			
Drug Use		<input checked="" type="checkbox"/>	Last use:	Type:	How much:			
Experienced withdrawal		<input checked="" type="checkbox"/>	What symptoms:		When:			
MENTAL HEALTH	Yes	No	Comment					
Past mental illness		<input checked="" type="checkbox"/>						
Current mental illness		<input checked="" type="checkbox"/>						
History of suicide attempts		<input checked="" type="checkbox"/>	How:		When:			
Current suicide thoughts		<input checked="" type="checkbox"/>						
Medication		<input checked="" type="checkbox"/>						
APPEARANCE	Yes	No	Comment	BEHAVIORS	Yes	No	Comment	
Sweating		<input checked="" type="checkbox"/>		Disorderly		<input checked="" type="checkbox"/>		
Tremors		<input checked="" type="checkbox"/>		Appropriate		<input checked="" type="checkbox"/>		
Anxious		<input checked="" type="checkbox"/>		Insensible		<input checked="" type="checkbox"/>		
Disheveled		<input checked="" type="checkbox"/>		Lethargic		<input checked="" type="checkbox"/>		
Rash		<input checked="" type="checkbox"/>		Persistent cough		<input checked="" type="checkbox"/>		
Signs of IV drug use		<input checked="" type="checkbox"/>		Body deformities		<input checked="" type="checkbox"/>		
DISPOSITION								
<input checked="" type="checkbox"/> General Population		<input type="checkbox"/> General Population w/Referral To:		<input type="checkbox"/> Seclusion		<input type="checkbox"/> Emergency Referral		
Medical Staff Member: R. Rindus			Title: CPN		Date: 10-11-12		Time: 0519-	
I authorize Yakima County Department of Corrections/Conmed Healthcare Management Inc. to send, receive and request medical records.				Prisoner signature: X Jose Mendez				

10-36

[Handwritten signature]

Conmed Healthcare Management, Inc.		Inmate Name (Last, First, MI):	
Interdisciplinary Progress Notes		Mendez, Jose Jr	
Facility:	YCDC	DOB:	12-23-67
		SSN:	125-06840
			# 17270

Date	Time	Notes (SOAP Format)
10/11/12	0700	S/O: I/M was booked in last night pt. Clo @ side Rib pain. d/f car accident. Pt. unable to recall how he was injured. I/M states he was drinking beer but does not expect to w/d.
		A/P: ✓ MO clinic for flu - R. Mendez
10/11/12		H/O MVA last night Clo pain on lt lower chest @ seat belt site
		O/E Chem. O/A Thorax Tend @ seat belt area Heart: R/R
		A/C Contusion
		PI - Ib W