No. 81445-7

IN THE SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SANTIAGO RIVERA-SANTOS,

Petitioner

Superior Court of Clark County, No. 07-1-01555-8

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2008 APR 22 A 10: 33
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MOTION FOR DISCRETIONARY REVIEW

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Rules

RAP 2.3 4

A. Identity of Petitioner

Santiago Rivera-Santos asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. Decision

Santiago Rivera-Santos wants this court to review the decision of the Superior Court, entered on March 14, 2008, which reversed the dismissal of the Driving While Under the Influence of Intoxicants/Drugs charge in the District Court. A copy of the decision is attached at the end of this motion.

C. Issue Presented for Review

1. When a person drives a vehicle in Washington over the border to another sovereign jurisdiction, like the State of Oregon, and that other jurisdiction charges and convicts the person of Driving While Under the Influence of Intoxicants, is Washington precluded by RCW 10.43.040 from prosecuting the person in Washington for a Driving While Under the Influence of Intoxicants charge stemming from that same course of conduct?

D. Statement of the Case

On January 12, 2007, Washington State Patrol Troopers received information from dispatch of a black 2007 Chevrolet Tahoe, license plate number OR CU 15443, being driven in an erratic manner in Clark County,

State of Washington. Dispatch gave Washington State Patrol Troopers the following information, which it reportedly received from a civilian informant, who was following the vehicle: The vehicle took the exit to eastbound SR 500 in the State of Washington, stopped at a signal light at St. Johns Boulevard, then performed a u-turn from the right lane, crossing the eastbound lanes and two turn lanes. The vehicle then took off at a high rate of speed. The vehicle entered I-5, going southbound, using all lanes near SR 14. Appendix, Exhibit 6, 9-10.

Washington State Patrol Troopers first began observation of the vehicle south of the Interstate Bridge in the State of Oregon. The troopers followed the vehicle and observed extremely poor lane travel, then an erratic swerve from the right lane onto Interstate Avenue. Approximately ¼ mile further, troopers observed the vehicle stop abruptly for about 15 seconds before continuing. The vehicle was observed swerving left and right, driving up onto a curb and across the center line several times. At one point, the vehicle crossed the center line, almost causing a head on collision with a Portland police vehicle. Portland police stopped the vehicle. Washington State Patrol Troopers observed the driver exit the vehicle, following instructions by Portland police to do so. Troopers described the driver as showing a lack of coordination and as having trouble following orders. Appendix, Exhibit 6, 9-10.

Portland police officers identified the driver of the vehicle by an Oregon driver's license as Santiago Rivera-Santos. Portland police placed Rivera-Santos under arrest and brought him to the Central Precinct in Portland Oregon, where they processed him for a DUI. At the precinct, Rivera-Santos was not able to stand up without assistance and was unable to perform sobriety tests. Rivera-Santos agreed to give breath samples. Breath samples were given on a CMI Intoxilyzer. Two readings of .184 and.175 were obtained. Appendix, Exhibit 6, 12-24.

Oregon charged Rivera-Santos with Driving Under the Influence of Intoxicants. Appendix, Exhibit 6, 25-26. In March of 2007, Rivera-Santos was convicted of the charge. This charge was based on the driving incident that occurred on January 12, 2007. Appendix, Exhibit 7, RP 4, A-33. Rivera-Santos was also charged in Washington with Driving Under the Influence of Intoxicants for the driving incident that occurred on January 12, 2007. The charge was filed. Rivera-Santos was issued a citation by Washington for DUI on January 16, Appendix, Exhibit 8, 40. Following the conviction for DUII in Oregon, a motion to dismiss the charge based on Constitutional Double Jeopardy and Statutory Double Jeopardy was heard by the trial court in Washington. The facts of the motion were presented by submitting the police reports for consideration and an affidavit from defense counsel. Appendix, Exhibit 7, RP 2-21, A-

29-34. On August 15, 2007, the court granted the motion on the ground that the charge violated Statutory Double Jeopardy and dismissed the charge with prejudice. Appendix, Exhibit 7, RP 21-24, A-35-38. The Superior Court reversed the decision of the trial court and remanded the case for further proceedings. Appendix, Exhibit 1, A-1-2.

E. Argument Why Review Should Be Accepted

This Motion for Discretionary Review follows a decision by the Superior Court acting in its role as an appellate court reviewing the decision of a court of lower jurisdiction. This case involves an issue of public interest which should be determined by an appellate court. RAP 2.3 (d).

To determine whether an issue involves a sufficient public interest the court considers "the public or private nature of the question, the need for future guidance provided by an authoritative determination, and the likelihood of recurrence." *Eide v. Dept. of Licensing*, 101 Wn. App. 218 223, 3 P.3d 208 (2000).

In *Eide*, the defendant at first refused to take a breath test but later, after consultation with an attorney, agreed to conduct the test. His first test was inconclusive because his breath sample was not continuous. His second test gave a reading on the first sample but the defendant belched before his second sample and the officer invalidated the test. A third test

was given. The first sample registered a result but then the defendant belched again. The officer concluded that the defendant was refusing the test as a result of his belching behavior. The appellate court denied discretionary review because the issue was fact specific, with a minimal need for future guidance and a low likelihood of recurrence.

This case does not involve a fact specific incident but a very broad public question. Any person driving a vehicle within Washington and crossing a border to another jurisdiction, like the State of Oregon, while his ability to drive is affected by intoxicants and/or drugs, is subject to the possibility of prosecution for the offense by both jurisdictions. Consequently, it is a question of public interest whether Washington may prosecute for a DUI offense, if a conviction has already been obtained in the other jurisdiction.

This particular issue has not been addressed by an appellate court in this state. In *State v. Ivie*, 136 Wn.2d 173, 961 P.2d 941 (1998), this court addressed the issue in the context of a DUI prosecution following a nonjudicial punishment proceeding by the Navy, but not when has DUI has previously been prosecuted by another state and an acquittal or conviction has been obtained.

RCW 10.43.040 provides, in pertinent part, as follows:

> Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

California, which has a substantially similar statute for the purpose of this issue, addressed the issue in *People v. Bellacosa*, 54 Ca. Rptr. 3d 691 (2007). In that case, the court concluded that the physical act of driving in California was separate from the physical act of driving in Nevada and therefore statutory double jeopardy did not apply. *Bellacosa*, supra, at 697. The court noted that California had rejected the "course- of -conduct rule for application of the prior conviction or acquittal defense." *Bellacosa*, supra, at 697.

In reaching this decision, California distinguished the prohibition against multiple punishments for the same acts. This prohibition against multiple punishments was dealt with by another statute. *People v. Belcher*, 113 Cal. Rptr. 1, 4-5, 520 P.2d 385 (1974). The court then held that "a defendant may not be convicted after a prior acquittal or conviction in another jurisdiction if all the acts constituting the offense in this state

were necessary to prove the offense in the prior prosecution." *Belcher*, supra, at 6-7.

Washington focuses on identity in fact and not identity of law when applying the double jeopardy protections of RCW 10.43.040. *State v. Caliguri*, 99 Wn.2d 501, 513, 664 P.2d 466 (1983). Washington cannot prosecute for an offense if it is "in fact alone identical to or included within an offense for which a defendant has been previously prosecuted in another jurisdiction." *Caliguri*, supra, at 514.

The Superior Court in this case found the element of driving a vehicle within the state a separate and distinct act, allowing for DUI prosecutions in both Oregon and Washington. The trial court found that the statute "focuses on acts or admissions, it focuses on whether or not the offenses are substantially the same identity." RP 21, Lns. 14-16. Thus, RCW 10.43.040 precluded prosecution for the DUI offense, following the conviction in Oregon.

Under its holding, California requires that the act of driving a vehicle in California be necessary to prove the DUI charge in Nevada before an acquittal or conviction would act as a bar to a prosecution in California. Thus, driving a vehicle in California was not necessary to prove the DUI charge in Nevada, nor visa versa, and therefore a

prosecution in California following a conviction or acquittal in Nevada did not violate statutory double jeopardy.

Washington appears to give greater protection under its interpretation of RCW 10.43.040 than does California under its statute. Washington speaks in terms of offenses which are identical in fact. In this case, the offense in both states requires the act of driving a vehicle as a necessary element. The act of driving a vehicle in Washington into Oregon is an identical act. The offense also requires the prosecuting agency to prove that the act occurred within its jurisdiction. Every charged crime requires proof of jurisdiction.

In *State v. Mathers*, 77 Wn. App. 487, 891 P.2d 738 (1995), the defendant took a woman's vehicle after assaulting and stealing from her. This crime occurred in Washington. Pursued by police officers, he crossed a bridge over the Columbia River, and drove into Oregon, where he was eventually apprehended. Among a multitude of charged crimes he was charged in Washington with Theft and with Taking a Motor Vehicle Without Permission. In Oregon, among other crimes, he was convicted prior to the Washington prosecution of Theft in the First Degree and Unauthorized Use of a Vehicle.

The court found that statutory jeopardy applied to Taking a Motor Vehicle Without Permission but not to the Theft prosecution. The

elements of the first offense, in Washington, required the prosecution to prove that the defendant intentionally take or drive away without the owner's permission a motor vehicle. In Oregon, unauthorized use of a vehicle required the prosecution to prove that the defendant took, operated or exercised control over, rode in or otherwise used the vehicle without the consent of the owner. Case law also imposed an element of intent. The court found that the statutes were of the same character and had substantial identity and therefore reversed the conviction on that charge. See *Mathers*, supra at 491-492.

The court, however, affirmed the theft conviction. The Theft in the First Degree statute in Oregon was not the same in fact. The Oregon charge was based on theft by receiving, that is, the defendant received, retained, concealed or disposed of property of another knowing or having good reason to know that the property was the subject of theft. The Washington charge required an intent to deprive and a certain range of value. *Mathers*, supra at 492-493.

In both Oregon and Washington, the prosecution, as pertinent to this case, must prove that the defendant drove a vehicle, and that the person have .08 percent more by weight of alcohol or that the person is under the influence of or affected by intoxicating liquor. The differences in the statutes are not substantial. Washington requires that the alcohol

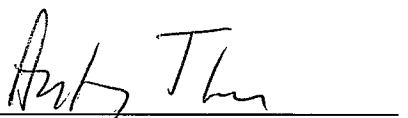
concentration be within two hours of driving, while Oregon does not place a specific time frame. Washington specifically states that the driving occur within the state, yet both states require proof of jurisdiction. The identity of fact is that both jurisdictions require the act of driving a vehicle within its jurisdiction. See RCW 46.61.502; ORS 813.010.

From the foregoing analysis, it is clear that an authoritative appellate decision is needed to provide future guidance on this issue, as it is sure to repeat itself.

F. Conclusion

This court should accept review for the reasons set forth in E, reverse the decision of the Superior Court and affirm the decision of the trial court, dismissing the charge.

April 20, 2008.



Anthony J. Lowe, WSB #17690
Attorney for Petitioner

Appendix

Exhibit 1, Order for Remand.....A-1
Exhibit 2, Findings of Fact and Conclusions of Law.....A-3
Exhibit 3, RCW 10.43.040.....A-6
Exhibit 4, RCW 46.61.502.....A-7
Exhibit 5, ORS 813.010.....A-8
Exhibit 6, Police Reports.....A-9
Exhibit 7, Excerpt from Report of Proceeding, District Court.....A-27
Exhibit 8, Affidavit of Defense Counsel.....A-40

COPY
ORIGINAL FILED

MAR 14 2008

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Appellant, v. SANTIAGO RIVERA-SANTOS, Respondent.	Superior Court Appeal No. 07-1-01555-8 District Court Case No. 612705 ORDER FOR REMAND

It is hereby ordered as follows:

1. The dismissal with prejudice is hereby reversed.
2. This case is to be remanded to District Court for further proceedings consistent with this decision.
3. No costs are awarded to either party.

DATED this 14 day of March, 2008.

John P. Wulle
Superior Court Judge

Exhibit 1 A-1

PRESENTED BY:

John E. (Jack) Peterson, WSBA #38362
Deputy Prosecuting Attorney

Approved as to form, true copy received, consent to entry granted, notice of presentation waived this 14th day of March, 2008

Anthony J. Lowe, #17690
Attorney for Respondent

Exhibit 1 A-2

3

SCANNED

FILED
MAR 11 2008
Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Appellant, v. SANTIAGO RIVERA-SANTOS, Respondent.	Superior Court Appeal No. 07-1-01555-8 District Court Case No. 612705 FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties agree that the Findings of Fact contained herein are for purposes of this appeal only and inadmissible for any purpose in the event of a trial in this matter. RL agreed to

THE COURT having reviewed and considered the motions put forth by counsel and the arguments of counsel makes and enters the following:

I. FINDINGS OF FACT

1. On January 12, 2007, the Defendant, who was driving a black 2007 Chevrolet Tahoe (OR CU15443), was initially observed driving on SR 500 by a civilian witness.
2. Starting at that location, the civilian witness observed the Defendant take the exit to eastbound SR 500 and stop at the signal at St. John's Blvd in the right lane.
3. The Defendant then performed a U-turn from the right lane into the westbound lanes, crossing the eastbound lanes and two turn lanes.

JC
KT

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Exhibit 2 A-3

4. The Defendant then took off at a high rate of speed.
5. The Defendant then continued to southbound I-5 and stopped just north of Mill Plain.
6. The Defendant then started to moving again and he began using all lanes of I-5 and SR 14.
7. The Defendant then crossed over the I-5 bridge that goes from Washington into Oregon.
8. Washington State Patrol officers finally noticed the Defendant's vehicle after it had entered Oregon, just south of the bridge.
9. The Defendant was then pursued by both the Washington State Patrol and the Portland Police Bureau until he was finally stopped and apprehended in Portland, Oregon.
10. The Defendant was charged with DUI in both Oregon and Washington.
11. In March of 2007, the Defendant was convicted of DUI in Oregon.

II. CONCLUSIONS OF LAW

In consideration of the above facts and the Court otherwise being fully informed of the law, the Court makes the following Conclusions of Law:

1. The court has jurisdiction over the person and subject matter of this appeal.
2. RCW 46.61.502 criminalizes the act of driving within the State of Washington while under the influence of alcohol.
3. A finder of fact could conclude that on January 12, 2007 the Defendant drove a motor vehicle within the State of Washington while he was under the influence of alcohol.

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4. The Defendant's act of driving under the influence of alcohol while in the State of Oregon on January 12, 2007 is a separate act for purposes of RCW 10.43.040.
5. Under RCW 10.43.040, the Defendant's Oregon conviction for DUI does not preclude the State of Washington from prosecuting the Defendant for his act of driving within the State of Washington while under the influence of alcohol.

Found March 11, 2008

Judge John P. Wulle

Presented by:

John (Jack) Eric Peterson WSBA #38362
Deputy Prosecuting Attorney

Approved as to Form:

Not approved, except first paragraph

Anthony J. Lowe WSBA #17690
Attorney for Defendant

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A-5

aken by use of force, e robberies occurred. 4) 101 Wash.2d 664, beas corpus granted ;, affirmed 93 F.3d ertiorari filed.

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ond-degree robbery assault merge where sary to commit rob- as acts of force al- ging assault; in such against double jeop- e from charging de- crimes. Matter of Wash.App. 175, 599

rly dismissed charge similar charge had ade against same de- e had pleaded guilty ffense of larceny and to maximum extent notwithstanding that have been charged and larceny arising since entirely aside of double jeopardy, nt required that hav- included offense and shed therefor, state should not be permitted to again charge him with that particular robbery. State v. Satterlee (1961) 58 Wash.2d 92, 361 P.2d 168.

Verdict of guilty of conspiracy to commit robbery, on accused's request to submit that issue, in prosecution for that robbery, is acquittal of crime charged and bar to subsequent prosecution therefor. State v. McNeil (1931) 161 Wash. 221, 296 P. 555.

23. Dismissal

Double jeopardy bar of § 10.43.010 (repealed) did not operate where subsequent information charged a felony. State v. Marshall (1984) 37 Wash.App. 127, 678 P.2d 1308, review denied.

Where greater offense was dismissed, all of included offenses were dismissed and retrial of defendant was precluded by rule that one may not be twice placed in jeopardy for the same offense. State v. Rhinehart (1979) 92 Wash.2d 923, 602 P.2d 1188.

24. Review

Although issue as to whether defendant's convictions for both first-degree robbery and second-degree assault violated double jeopardy clause was not raised at trial, the issue was appropriate for review on appeal, as it was of constitutional magnitude. State v. Springfield (1981) 28 Wash.App. 446, 624 P.2d 208, review denied.

Conviction or acquittal in other county

pon the trial of any person for a crime, it shall defendant has already been acquitted or convicted s, of the same crime, in a court having jurisdiction e in another county of this state, such former nviction is a sufficient defense.

; RRS § 2272.]

Historical and Statutory Notes

Library References

Double Jeopardy ⇐184.
WESTLAW Topic No. 135H.
C.J.S. Criminal Law § 254.

Double jeopardy, several sovereignties, see Wash.Prac. vol. 12, Ferguson, § 2208.

Notes of Decisions

Dismissal 1

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1. Dismissal

Dismissal of child rape charge which had been filed against defendant did not operate under double jeopardy clause to bar subsequent prosecution in separate county for separate alleged incident of child rape, in which date and place of alleged crime was different in charging documents than in prior prosecution. State v. Gary J.E. (2000) 99 Wash.App. 258, 991 P.2d 1220, amended on denial of reconsideration, review denied 141 Wash.2d 1020, 10 P.3d 1074.

10.43.040. Foreign conviction or acquittal

Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or country based upon the same act or omission.

[1999 c 141 § 1; 1909 c 249 § 19; RRS § 2271.]

Historical and Statutory Notes

Laws 1999, ch. 141, § 1, rewrote the section, which previously read:

"Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense."

Source:

RRS § 2271.

Law Review and Journal Commentaries

Double jeopardy and dual sovereignty, 34 Wash.L.Rev. 562 (1959).

Exhibit 3, A-6

(1935) 182

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7. Double jeopardy

Constitutional prohibition against being twice put in jeopardy precluded multiple punishment of defendant who was convicted of both reckless driving and reckless endangerment following high speed police chase, because the state necessarily had to prove reckless driving to prove reckless endangerment. State v. Potter (1982) 31 Wash.App. 883, 645 P.2d 60.

Trial on charge of driving automobile while intoxicated and dismissal thereof did not place defendant in former jeopardy with respect to charge of reckless driving covering same occasion, since evidence of one charge was not sufficient in itself to support conviction on other. State ex rel. Foley v. Yuse (1937) 191 Wash. 1, 70 P.2d 797.

8. Student drivers

Liability of instructor for reckless driving by pupil. Op.Atty.Gen. 1929–30, p. 81.

9. Suspension of license

Forfeiture of driver's license for reckless driving. Op.Atty.Gen. 1937–38, p. 235.

10. Sufficiency of evidence

Evidence that driver exceeded speed limit while passing vehicle on the right, on wet, narrow, gravel shoulder was prima facie evidence of reckless operation of motor vehicle, and mental state of wilful and wanton disregard for safety of persons or property was established by evidence that driver drove knowing that he was affected by alcohol, knowing that he had no license to drive and was inexperienced, and knowing that he had had little sleep the previous night. State v. Amurri (1988) 51 Wash.App. 262, 753 P.2d 540.

In prosecution for crime of negligent homicide in connection with operation of motor vehicle, there was sufficient evidence if believed by jury, to support finding of reckless driving, where state's evidence tended to show that defendant drove through intersection at speed of 30 to 35 miles per hour during very crowded vehicular and pedestrian traffic conditions and that his car swerved

across center line of highway and struck decedent with fatal results. State v. Baker (1960) 56 Wash.2d 846, 355 P.2d 806.

11. Penalty, compromise of

Compromise of misdemeanor is not appropriate for reckless driving charge. City of Seattle v. Stokes (1986) 42 Wash.App. 498, 712 P.2d 853.

12. Instructions

Instruction permitting jurors to infer reckless driving solely from fact that vehicular assault defendant was speeding violated defendant's due process rights; court could not say with substantial assurance that inferred fact of reckless driving more likely than not flowed from proven fact of excessive speed. Schwendeman v. Wallenstein, C.A.9 (Wash.)1992, 971 F.2d 313, certiorari denied 113 S.Ct. 975, 506 U.S. 1052, 122 L.Ed.2d 130.

Constitutionally deficient jury instruction, which permitted jurors to infer reckless driving solely from fact that vehicular assault defendant was speeding, could not be excused as harmless, as instruction erroneously permitted jury to find element of crime without considering all of the evidence presented at trial. Schwendeman v. Wallenstein, C.A.9 (Wash.)1992, 971 F.2d 313, certiorari denied 113 S.Ct. 975, 506 U.S. 1052, 122 L.Ed.2d 130.

Motorist's due process rights in reckless driving prosecution were not violated by inference instruction that jury could infer that if motorist was speeding, motorist was driving recklessly, as presumed fact of reckless driving more likely than not flowed from state's evidence of motorist's speed; state showed that motorist exceeded speed limit by 30 to 40 miles per hour, and trooper testified that motorist drove "erratically," ran a four-way stop, and tried to cut across lanes to negotiate a corner. State v. Farr-Lenzini (1999) 93 Wash. App. 453, 970 P.2d 313.

13. Collateral estoppel and res judicata

Driver was collaterally estopped from retrying claim about his negligent driving in civil case after driving had been determined to be reckless in prior criminal action, though doctrine was applied to driver as plaintiff on cross claims and not as defendant in the civil suit. Medrano v. Schwendeman (1992) 66 Wash.App. 607, 836 P.2d 833.

46.61.502. Driving under the influence

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

Exhibit 4, A-7

ORS
813.420. Refusal or failure of test, duration of suspension.
813.430. Increases in duration of suspension, grounds.
813.440. Validity of suspensions, grounds for hearings to determine.
813.440. Validity of suspensions, grounds for hearing to determine.
813.450. Refusal or failure of breath test, appeals from suspension.
813.450. Refusal or failure of breath test, appeals from suspension.
813.460. Suspension of driving privileges of wrong person, department procedures to correct.
813.470. Record of person acquitted after suspension, notations by Department.

HARDSHIP PERMITS.

813.500. Issuance of permits, restrictions.
813.510. Privileges granted by permit, limitations and conditions.
813.520. Authority to issue hardship permit or reinstate driving privileges, limitations.

IGNITION INTERLOCK DEVICES.

813.600. Ignition interlock programs; rules.
813.602. Ignition interlock device required; costs; failure to install; exemptions.
813.604. Court orders, notice; hardship permit notation.
813.606. Employees required to have device, exceptions.
813.608. Penalties for knowingly furnishing motor vehicle without ignition interlock device.
813.610. Solicitation of another to blow into ignition interlock device; penalties.
813.612. Unlawfully blowing into ignition interlock device; penalties.
813.614. Tampering with devices; penalties.
813.616. Funds used to maintain ignition interlock program.

GENERAL PROVISIONS

813.010. Driving under the influence of intoxicants; penalties

(1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:

(a) Has .08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

(b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

(c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled substance.

(2) A person may not be convicted of driving under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.

(3) A person convicted of the offense described in this section is subject to ORS 813.020 in addition to this section.

(4) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public.

(5) Driving while u
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Laws 1983, c. 338, § 58
c. 835, § 7; Laws 1999,

Laws 1999, c. 619 prov
section for inhalants.

Laws 1999, c. 1049 added
beginning of subsec. (4) an
and (6).

Laws 1999, c. 1049, § 8 (

Civil actions, limitation on r
Classes of offenses, treatme
161.566 and 161.568.
Crimes, criminal driving wh
Criminal citations, separate
Drivers licenses and permit
drunk driving, see OR
Drivers licenses and permits
809.265.
Drivers licenses and permits
habitual offender, see
Felonies, fines, see ORS 161.
Felonies, prison terms, see O
Financial responsibility law,
ORS 806.075.
Grand jury and indictments,
Health care providers, notic
see ORS 676.260.
Highway work zone violatio
ORS 811.230.
Judgment and sentence, len
ORS 137.129.
Misdemeanors, fines, see OR

Exhibit 5

A-8

WASHINGTON STATE PATROL REPORT

OFFICER: **Bill J. Jordan** BADGE #: **482**

SUSPECT: Rivera Santos, Santiago
CHARGE: DUI
LOCATION: S/B I-5 Milepost 1
CASE #: C0612705
DATE: January 12, 2007

On January 12, 2007 at approximately 2324 hours, I was informed via WSP Communications of a reported erratically driven vehicle northbound I-5 from the interstate bridge. The vehicle's behavior was reported as all over the roadway. Troopers C. Gardiner (K713), R. Wollnick (432) and I who were at the intersection of SR 503 and 71st Street and started that direction.

The vehicle, a black 2007 Chevrolet Tahoe (OR CU15443), reportedly took the exit to eastbound SR 500 and stopped at the signal at St. John's Blvd in the right lane. The vehicle performed a U-turn from the right lane, crossing the eastbound lanes, two turn lanes and into the westbound lanes. The vehicle reportedly took off at a high rate of speed. The vehicle continued to southbound I-5, then stopped just north of Mill Plain. The reporting party stopped on the shoulder as well and waited until the vehicle started moving again. The vehicle began using all lanes of I-5 at SR 14. The vehicle crossed over the interstate bridge and we observed it just south of the bridge. We were ordered by Sgt. Roy Rhine to not initiate a stop at that time, but to continue behind the vehicle to give Communications updates on the vehicle's location.

We observed the vehicle's extremely poor lane travel as it swerved left and right. The vehicle took exit 306 towards Interstate Avenue. It appeared as though the vehicle was going to stay in the right lane on the exit towards Schmeer Rd., but at the last moment the vehicle swerved erratically to the left and continued on Interstate Ave. Approximately one quarter mile further on Interstate Ave., the vehicle stopped abruptly in the middle of the road for approximately fifteen seconds, then began moving again.

We observed the vehicle swerve left and right, driving up onto a curb and crossing the center line several times. At one point the vehicle crossed the center line and almost caused a head on collision with a Portland Police vehicle.

After crossing Lombard St. Portland Police officers positioned their vehicles behind the Tahoe and activated their emergency lights and sirens, signaling the vehicle to stop. The vehicle took an extended time to respond to the signals to stop. Once the vehicle did stop, it took several minutes for the Portland Officers to get the driver to comply with orders to step out of the vehicle. Once out of the vehicle the driver displayed a lack of coordination and failure to comply with orders.

Portland Officers placed the driver under arrest for DUI at 2345 hours. The driver was identified via Oregon driver's license as Rivera Santos, Santiago (12-23-68).

Exhibit 6 A-9

Refer to the Portland officer's report for the DUI processing details.

The erratic driving was reported by four separate parties, listed below:

Eric Dosi (971) 218-3204
Chris Griffin (503) 348-5045
Tod Studevant (503)515-7499
Sara Fernandez (360) 852-5191

I certify (declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. (RCW 9A.72.085)

Signature	482 Badge #	1-13-07 Date Signed	CLARK COUNTY, WA Place Signed

A-10

17 BAC

PORTLAND POLICE BUREAU — **CUSTODY REPORT** — ☒ ADULT ☐ JUVENILE — PAGE/OF 1/4

CASE NO.	REFER CASE NO.	CLASSIFICATION

DATE/TIME REPORTED	DATE/TIME ARRESTED	TYPE OF CUSTODY
011207/2338	011207/2345	☒ 1 PROBABLE CAUSE ☐ 2 WARRANT ☐ 3 STATUS OFFENSE ☐ 4 CITIZEN ARREST ☐ 5 CITE-IN-LIEU ☐ 6 PROTECTIVE CUSTODY ☐ 7

LOCATION OF CUSTODY: N. INTERSTATE AVE / SIMPSON

NAME OF PERSON IN CUSTODY: LAST	FIRST	MIDDLE	CRN	SEX	RACE	DOB
RIVERA-SANTOS,	SANTIAGO			M	H	12/23/6[illegible]
AKA/MONIKER/NICKNAME				SEX	RACE	DOB

HT	WT	HAIR	EYES	FACIAL HAIR/CLOTHING DESCRIPTION
5-02	122	BLK	BRO	

HOME ADDRESS: 534 SE 13TH AVE, HILLSBORO OR 97123 — ZIP — HOME PHONE: (503) 693-1197

BUSINESS/SCHOOL ADDRESS — ZIP — GRADE — WORK PHONE

SCARS/MARKS/TATTOOS

DRIVERS LICENSE	STATE	SSN	OTHER ID	PROPERTY RECEIPT NO.
4744897	OR			

AST: COMPLAINS OF ILLNESS OR INJURY? Y (N) — EVIDENCE OF ILLNESS OR INJURY? Y (N) — TREATED BY:

EXPLAIN

JUVENILE ONLY — LIVES WITH: ☐ PARENTS ☐ GUARDIAN ☐ OTHER — PARENTS/GUARDIAN NOTIFIED BY: — DATE/TIME

FATHER/GUARDIAN/LIVES WITH	ADDRESS	WORK PHONE: / HOME PHONE:
MOTHER/GUARDIAN	ADDRESS	WORK PHONE: / HOME PHONE:

COPIES: ☐ DET ☐ CAU ☐ CENTRAL ☐ EAST ☐ NORTH ☐ TRF ☐ DA ☐ DVD ☐ ID ☐ PROP ROOM ☐ CRIME PREV ☐ INTELL ☐ PATROL SUPPORT

CRIME ANALYSIS DESCRIPTORS

CIRCLE NO MORE THAN THREE IN EACH CATEGORY–OTHER DESCRIPTION IN NARRATIVE Y (N)

10. Build: Medium (01), Muscular 02, Obese 03, Other 98, Not Applicable 97, Stocky 04, Thin 05, Unknown 99 — 01

11. Hairstyle/Hair Length: Afro Lg 01, Afro Med 02, Afro Short 03, Bald 04, Coarse 05, Collar 06, Curly 07, Fine 08, Long 09, Other 98, Processed 10, Short 11, Shldr Lg 12, Straight 13, Thick 14, Thinning 15, Unknown 99, Wavy 16, Wiry (17) — 17

12. Skin Tone/Complexion: Acne 01, Albino 02, Black 03, Dark 04, Dark Brn 05, Fair 06, Freckled 07, Light 08, Light Brn 09, Medium 10, Med Brn (11), Olive 12, Pale 13, Pocked 14, Ruddy 15, Sallow 16, Tanned 17, Unknown 99, Yellow 18 — 11

13. Teeth: Dirty/Decay 08, Gold Lower 04, Gold Upper 03, Missing Lower 02, Missing Upper 01, Normal 07, Silver Lower 06, Silver Upper 05, Other 98, Unknown (99) — 99

14. Tattoo: Arms 01, Back 06, Chest 05, Face 03, Hands 02, Legs 04, Other 98, Unknown (99), Not Applicable 97 — 99

15. Speech/Voice: Effeminate 01, Foreign (02), Gruff 03, High Pitch 04, Lisp 05, Low Pitch 06, Medium 07, Monotone 08, Nasal 09, Obscene 10, Other 98, Plsnt/Soft 11, Raspy 12, Regional 13, Stutter 14, Unknown 99, Whining 15 — 02

16. General Appearance: Conservative 01, Dirty 02, Disguised 03, Flashy 04, Good-looking 05, Military 06, Other 07/08 98, Unkempt (07), Unknown 99, Unusual Odor (08), Well-groomed 09

CHARGES

IN CUSTODY OF/REFERRED TO: MCIJ

ADDITIONAL CHARGES LISTED IN NARRATIVE? Y (N) — ADVISED OF RIGHTS? (Y) N — RESISTED ARREST? Y (N) — ASSAULTED OFFICER? Y (N)

CASE NO.	ORS/ORD NO.		CHARGE/WARRANT/CITE NO.	LIEU-OF-CITE NO.	BAIL	COURT APPEAR DATE/TIME
	813.010	☒ STATE ☐ LOCAL	DUII (ALCOHOL) / Z16373[illegible]		CM	020407/0830
	811.140	☒ STATE ☐ LOCAL	RECKLESS DRIVE / Z16373[illegible]		"	" "
	811.445	☒ STATE ☐ LOCAL	FAIL TO YIELD TO EMERG. VEHICLE / Z16373[illegible]		242	" "

COMPUTER ENTRY: ☐ PERSON OPR ☐ VEHICLE OPR ☐ CRIME/PROP OPR ☐ BOOK OPR

FOR IDENTIFICATION DIVISION USE ONLY

NAME	POB

HFP

IDENTIFIERS LISTED BELOW	SEX	RACE	DOB	HT	WT	HAIR	EYES	PPB#
								FBI#

PROCESSING	JAIL TECH	ID TECH	TYPED	CHECKED	SID#

REPORTING OFFICER(S)	BPST	PREC/DIV	RLF/SHFT	ASSN/DIST	SUPERVISOR'S SIGNATURE
KOPPANG	37607	TRF	A	1524	

PPB-C-1-10/84

A-11

CASE NO.	CLASSIFICATION	TYPE OF CONTINUATION
		☐ INCIDENT ☐ TRAFFIC ACCIDENT ■ CUSTODY ☐ SPECIAL

SUBJECT'S NAME	CRN	SEX	RACE	DOB
RIVERA SANTOS, SANTIAGO		M	H	12/23/68

LOCATION OF OCCURRENCE
N INTERSTATE AVE/N BUFFALO ST

CASE NO.

NARRATIVE–The order of appearance for additional information will be:
ITEM 1: ADDITIONAL PERSON INFO–List additional people (not suspects) and identify their involvement with the appropriate code. Additional person info includes contacts.
ITEM 2: ADDITIONAL SUSPECT INFO–Report all suspect info on additional/incident reports. Each suspect must have coded crime analysis descriptors. Detail in the narrative only suspect info not covered in the boxes.
ITEM 3: ADDITIONAL VEHICLE INFO–List additional vehicles in the same fashion as reported in the vehicle section. Include the identifying code.
ITEM 4: ADDITIONAL WORTHLESS DOCUMENTS–Record multiple worthless documents on a multiple worthless document form and attach as additional pages. Record in the narrative the number of worthless documents written.
ITEM 5: ADDITIONAL PROPERTY–Record no more than four additional items of property in the narrative–and/or use a special report and attach as additional pages.
ITEM 6: ADDITIONAL OFFICERS–List all officers present and identify their involvement with the incident being reported.
ITEM 7: SUMMARY–A short summary is necessary if the narrative is more than one full page in length.
ITEM 8: NARRATIVE–List in chronological order all of the relevant details in the incident and/or elements of the crime or violation.

ITEM | CODE

Officer Hecht #45126 (543A), Officer J. Hughes #45063 (543A), Officer Desanno #29227 (7501), & Trooper B. JORDAN (WSP) #482.

I responded to Central Precinct to assist with processing an impaired driver. Upon arrival I observed Officer Hecht and Hughes escorting (SB)/Rivera into the precinct. The officers had hold of both of Rivera's arms. Rivera was staggering all over and obviously needed to be escorted by the officers to prevent him from falling down. I then made contact with Officers Hecht and Hughes to obtain a statement regarding their observations.

I was told that a marked WSP unit was calling in requesting a Portland unit to stop the listed vehicle. Updates in the call said that the vehicle was driving SB on Interstate Ave up on the sidewalk. Reserve Officer Desanno located the vehicle and attempted to initiate a traffic stop at N Interstate/Lombard using his lights and siren. Officers Hecht and Hughes arrived shortly there after and became the primary unit behind the vehicle. Officers Hecht and Hughes also were using their lights and siren to attempt to stop the listed vehicle. The vehicle was swerving from curb to curb as it continued SB and at times it was rubbing up against the curb. North units broadcast that they were in pursuit.

The vehicle eventually stopped at N Interstate Ave/Simpson and Rivera was taken into custody at gunpoint for the Attempt to Elude charge. Officers Hecht and Hughes informed me that Rivera had a strong odor of alcoholic beverage, droopy eyelids, watery/bloodshot eyes, unstable balance and he was unable to follow instructions very well. Officers Hecht and Hughes transported Rivera to Central Precinct.

When I made contact with Rivera he was very groggy. Another prisoner in the holding cell with Rivera informed me that Rivera urinated in the corner of the holding cell. There was a large puddle in the corner and Rivera had a large wet spot on the crotch of his blue jeans. Officer Hughes helped me escort Rivera into the Intoxilyzer room. Rivera was very unsteady on his feet. Officer Hughes and I had to support the majority of Rivera's weight as we held onto his arms. Rivera smelled strongly of alcoholic beverages. His face was dazed, eyes were watery/bloodshot, and his speech was slurred.

I read Rivera the Spanish side of my PPB issued Miranda card and also began my observation period of Rivera. Rivera consented to FST's. Rivera's balance was so bad that I had him remain seated during the HGN test. At 0024hrs I had Officer Hughes continue the observation period while I left the room to locate Rivera's ODL. I returned at 0025hrs and Rivera had not done anything to violate the pre-test observation period. When I asked Rivera if he understood English he said he did. Rivera's answers to my questions told me that he comprehended what I was saying to him. I asked Rivera how much alcohol he had to drink and he said, "Couple red wines, only couple." I read Rivera the ICF and asked if he would take a breath test. Rivera said, "Yea" at 0032hrs.

CASE NO.	CLASSIFICATION	TYPE OF CONTINUATION
		☐ INCIDENT ☐ TRAFFIC ACCIDENT ■ CUSTODY ☐ SPECIAL

SUBJECT'S NAME	CRN	SEX	RACE	DOB
RIVERA SANTOS, SANTIAGO		M	H	12/23/68

LOCATION OF OCCURRENCE
N INTERSTATE AVE/N BUFFALO ST

CASE NO.

NARRATIVE–The order of appearance for additional information will be:
ITEM 1: ADDITIONAL PERSON INFO–List additional people (not suspects) and identify their involvement with the appropriate code. Additional person info includes contacts.
ITEM 2: ADDITIONAL SUSPECT INFO–Report all suspect info on additional/incident reports. Each suspect must have coded crime analysis descriptors. Detail in the narrative only suspect info not covered in the boxes.
ITEM 3: ADDITIONAL VEHICLE INFO–List additional vehicles in the same fashion as reported in the vehicle section. Include the identifying code.
ITEM 4: ADDITIONAL WORTHLESS DOCUMENTS–Record multiple worthless documents on a multiple worthless document form and attach as additional pages. Record in the narrative the number of worthless documents written.
ITEM 5: ADDITIONAL PROPERTY–Record no more than four additional items of property in the narrative–and/or use a special report and attach as additional pages.
ITEM 6: ADDITIONAL OFFICERS–List all officers present and identify their involvement with the incident being reported.
ITEM 7: SUMMARY–A short summary is necessary if the narrative is more than one full page in length.
ITEM 8: NARRATIVE–List in chronological order all of the relevant details in the incident and/or elements of the crime or violation.

ITEM	CODE	
		When I administered the first test to Rivera he kept moving his head all around during the breath samples. He also was spitting inside the mouthpiece. The Intoxilyzer listed the test result as 'Purge Fail.' I completed the suggested corrective action and administered a new breath test to Rivera. This test resulted in a .17 BAC level. I later issued Rivera the listed citations and the ICF paperwork, which I placed in his pants pocket. Rivera's walk was noticeably better as I escorted him to MCDC, but he was still swaying and staggering. See related reports for additional information.

REPORTING OFFICER(S)	BPST	PREC/DIV	RLF/SHFT	ASSN/DIST	SUPERVISOR'S SIGNATURE
KOPPANG	37667	TRF	A	1524	

PORTLAND POLICE BUREAU

FIELD SOBRIETY TEST REPORT

PAGE/OF 1/2

CASE NO.	REFER CASE NO.	DATE	BEGIN TIME	END TIME
		011307	0020	0024

NAME: LAST	FIRST	MIDDLE	CRN	SEX	RACE	DOB
RIVERA-SANTOS,	SANTIAGO			M	H	122368

VOLUNTARILY CONSENTED? [X] Yes [ ] No — ANSWER/STATEMENT: "YEA."

FST ADMONISHMENT ADVISED? [ ] Yes [X] No — ANSWER/STATEMENT

TYPE LOCATION WHERE TESTS PERFORMED: [ ] Street [ ] Shoulder [ ] Sidewalk [X] Other: INTOXILYZER ROOM

TYPE LIGHTING AT TEST LOCATION: [ ] Daylight [ ] Dusk/Dawn [ ] Streetlights [ ] Flashlight [X] Other: BUILDING LIGHTS

INJURY/IMPAIRMENT CLAIMED: [X] None

FOOTWEAR: ATHLETIC SHOES

CASE NO.

COPIES
- [ ] Traffic
- [ ] FA
- [ ] FC
- [ ] Dets
- [ ] DVCS
- [ ] CS
- [ ] OLCC
- [ ] File
- [ ] Orig. to CS
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]

1. HORIZONTAL GAZE NYSTAGMUS

CORRECTIVE LENSES: [X] None [ ] Glasses [ ] Glasses Removed for test

BLINDNESS: [X] None [ ] Right Eye [ ] Left Eye

EYE DISORDERS: [X] No [ ] Yes-Describe Below

ABLE TO FOLLOW STIMULUS? [X] Yes

TYPE OF STIMULUS USED: RED PEN LIGHT

RESTING NYSTAGMUS? [ ] Yes [X] No

TRACKING: [X] Equal [ ] Unequal

PUPIL SIZE: [X] Equal [ ] Unequal

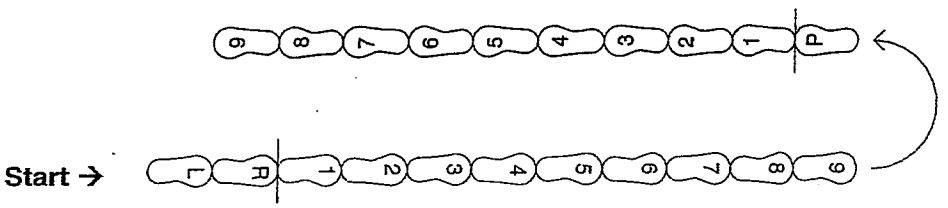
	LEFT EYE	RIGHT EYE
Lack of Smooth Pursuit	[X] Yes [ ] No	[X] Yes [ ] No
Distinct and Sustained Nystagmus at Maximum Deviation	[X] Yes [ ] No	[X] Yes [ ] No
Onset of Nystagmus prior to 45°	[X] Yes [ ] No	[X] Yes [ ] No
Vertical Nystagmus	[X] Yes [ ] No	

OTHER NOTES: (SB) SITTING DOWN. HE WAS TOO IMPAIRED TO STAND ON HIS OWN. W/B EYES, STRONG ODOR, DAZED FACE, & SLURRED SPEECH.

2. WALK AND TURN

INSTRUCTIONS STAGE
- [ ] Cannot Keep Balance
  No. of Times:
- [ ] Starts Too Soon
  No. of Times:

M = Missed Heel-to-Toe S = Stopped Walking ↖ = Stepped Off Line



WALKING STAGE	1st Nine	2st Nine	[ ] Improper Turn — DESCRIBE:
Stops walking			
Misses Heel-to-Toe			
Steps off Line			[X] Cannot Do Test — EXPLAIN:
Raises Arms			
Actual Steps Taken			

OTHER NOTES:

OFFICER	DPSST	PREC/DIV	RLF/SHFT	ASSN/DIST	SUPERVISORS SIGNATURE
KOPPANG	37667	TRF	A	1524	

TRAFFIC DIVISION 01/04 — 765 (1/04)

A-14

DMV
DEPARTMENT OF TRANSPORTATION
DRIVER AND MOTOR VEHICLE SERVICES
1905 LANA AVE NE, SALEM OREGON 97314

IMPLIED CONS[illegible]IT

COMBINED REPORT, NOTICE OF INTENT TO SUSPEND DRIVER, AND TEMPORARY DRIVER PERMIT
(ORS 813.100, 813.110, 813.120, 813.131, 813.410 and 813.300)

NAME OF DRIVER (PLEASE PRINT LAST, FIRST, MIDDLE)	DRIVER LICENSE/FILE REFERENCE NO.	STATE	DATE OF BIRTH
RIVERA SANTOS, SANTIAGO	4744897	OR	12/23/68

ADDRESS (CITY, STATE, ZIP CODE)
534 SE 13TH AVE, HILLSBORO OR 97123

EXACT DATE AND TIME OF ARREST	COUNTY OF ARREST	NEAREST CITY TO ARREST SITE
011207 / 2345	MULTNOMAH	PORTLAND

You were arrested for driving under the influence of intoxicants (DUII) and you were asked to submit to a test under the Motorist Implied Consent Law. At the time the request was made, there were reasonable grounds to believe that you were driving under the influence of intoxicants.

Before being asked to submit to a test, you were informed of the required rights and consequences information by the reporting officer or _____.

You were given a copy of this form and the Commercial Driver License (CDL) Addendum, if applicable, as written notice.

If requested, you were given a reasonable opportunity to contact counsel or others.

Your driving privileges will be suspended at 12:01 A.M. on the 30th day after the date of arrest (unless otherwise indicated) for the period of time and for the reason indicated below.

BREATH TEST FAILURE:

(.08% or greater; any amount if under age 21; or, .04% or greater if operating a commercial motor vehicle.)

You failed a breath test. The person administering the breath test was qualified under ORS 813.160 and the methods, procedures and equipment used in the test complied with ORS 813.160. The test was administered by the reporting officer or _____.

The instrument serial number is: 80-002017

Your suspension for failing a breath test will be for:
(ONLY MARK ONE BOX)

- [x] 90 days.
- [ ] 1 year, because you are subject to the increased provisions of ORS 813.430 (See paragraph (c) on back).
- [ ] CDL suspension only because the test result was .04% or greater but less than .08%. No suspension of base driving privileges - (See attached CDL addendum.)

TEST REFUSAL:

(Can NOT be in addition to a breath test failure above.)

* Exception: Only a **urine test** refusal and suspension length may be marked **in addition** to a Breath Test Failure.

- [ ] You refused to submit to a **breath test.**
- [ ] You refused to submit to a **blood test** when receiving medical care in a health care facility immediately after a motor vehicle accident.
- * [ ] You refused to submit to a **urine test.** You had been involved in an accident resulting in injury or property damage **or** you had already submitted to a breath test and the result was less than .08%. The officer who requested the urine test was certified by the Department of Public Safety Standards and Training as having completed 8 hours of training in recognition of drug impaired driving, and had reasonable suspicion that you had been driving while under the influence of a controlled substance, an inhalant or any combination of an inhalant, a controlled substance and intoxicating liquor. **NOTE:** The suspension will be consecutive to any other suspension imposed under the Motorist Implied Consent Law. The urine test was requested by the reporting officer or _____.

Your suspension for refusing a test(s) will be for:
(ONLY MARK ONE BOX)

- [ ] 1 year.
- [ ] 3 years, because you are subject to the increased provisions of ORS 813.430. (See paragraph (c) on back).

- [ ] The driver did not fail a breath test nor refuse to submit to a breath, blood or urine test. **(Do not forward copy to DMV. Keep for your own records.)**

If the person was driving a commercial motor vehicle, complete and attach the CDL Implied Consent Addendum (Form 735-0075A), in addition to this form.

I affirm by my signature that the foregoing events occurred.

SIGNATURE OF REPORTING OFFICER	AGENCY	TELEPHONE NUMBER
X [signature]	PORTLAND POLICE	
PRINT NAME AND AGENCY I.D. No. OF REPORTING OFFICER	BPSST#	
[signature]	376657	

A-15

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000® OPERATOR'S CHECKLIST

(Please Print)

01/13/07
Test Date

HECHT
Arresting Officer (Print)

RIVERA-SANTOS, SANTIAGO
Driver's Name (Last, First, Middle)

PPB
Arresting Officer's Department

OPERATIONAL CHECKLIST

☒ 1. **Pre-test observation period:** The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medications, etc.), vomited, or regurgitated liquid from the stomach into the mouth for at least fifteen (15) minutes before taking the breath test.

Observer Name (Print): KOPPANG / HUGHES #45063

Start pre-test observation time: 0020 End pre-test observation time: 0050

Timepiece used: ☒ Instrument ☐ Wristwatch ☐ Other: _____

☒ 2. When the instrument display indicates "Ready to Start", push "Start Test" button to initiate the testing sequence.

☒ 3. Using either the instrument's bar code scanner or keyboard, enter the operator and subject information requested by the instrument.

☒ 4. After instructing the subject on how to give a proper breath sample, have the subject provide a proper breath sample when "Please blow into mouthpiece to activate tone." appears on display. **When the instrument has accepted the sample, continue the required observation period.**

☒ 5. When "Please blow into mouthpiece to activate tone." again appears on display, have the subject provide a proper breath sample. When the instrument has accepted the sample, wait for the instrument to complete the testing sequence.

☒ 6. When the instrument display indicates "Comments", enter any appropriate comments regarding the testing sequence.

☒ 7. Remove the test report(s) from the printer.

Comments: _____

80-002017
Instrument Serial #

PORTLAND POLICE - CENTRAL
Location

KOPPANG
Operator's Name (Print)

Operator's Signature

PPB
Operator's Department

37667
Operator's Permit #

8000OCL (eff. 08.07.2006)

A-16

OREGON DEPARTMENT OF STATE POLICE
FORENSIC SERVICES DIVISION
BREATH TEST REPORT

TEST DATE: 01/13/2007

INSTRUMENT: CMI INTOXILYZER - ALCOHOL ANALYZER MODEL 8000
SN: 80-002017 TEST LOCATION: PORTLAND POLICE - CENTRAL

SUBJECT NAME: RIVERA SANTOS,SANTIAGO
SUBJECT LICENSE #: OR 4744897
SUBJECT DOB: 12/23/1968

Test	%BAC	Status	Time
Air Blank	0.000	PASS	00:50 PST
Diagnostics	OK	PASS	00:50 PST
Air Blank	0.000	PASS	00:50 PST
Subject Sample	0.184	OBTAINED	00:52 PST
Air Blank	0.000	PASS	00:53 PST
Air Blank	0.000	PASS	00:55 PST
Subject Sample	0.175	OBTAINED	00:56 PST
Air Blank	0.000	PASS	00:57 PST
Control Sample	0.070	PASS	00:57 PST
Air Blank	0.000	PASS	00:58 PST

** EXPECTED VALUE FOR CONTROL: 0.085 %BAC **

TEST RESULT: 0.17 %BAC

ADDITIONAL INSTRUCTIONS: Any observations made by the operator during the testing sequence may be recorded in the comments section below.

OPERATOR'S NAME: KOPPANG,ERIK J
OPERATOR'S PERMIT #: 037667
TEST METHOD: OAR 257-030-0130

The above-named individual has satisfactorily met the requirements of ORS 813.160 in the chemical analysis of a person's breath and is approved to operate the above listed equipment using the above listed method as specified by the Department of State Police.

COMMENTS:

OREGON DEPARTMENT OF STATE POLICE
FORENSIC SERVICES DIVISION
BREATH TEST REPORT

TEST DATE: 01/13/2007

INSTRUMENT: CMI INTOXILYZER - ALCOHOL ANALYZER MODEL 8000
SN: 80-002017 TEST LOCATION: PORTLAND POLICE - CENTRAL

SUBJECT NAME: RIVERA SANTOS,SANTIAGO
SUBJECT LICENSE #: OR 4744897
SUBJECT DOB: 12/23/1968

Test	%BAC	Status	Time
Air Blank	0.000	PASS	00:37 PST
Diagnostics	OK	PASS	00:37 PST
Air Blank	0.000	PASS	00:38 PST
Subject Sample		OBTAINED	00:40 PST
Air Blank	0.000	PASS	00:41 PST
Air Blank	0.000	PASS	00:43 PST
Subject Sample		OBTAINED	00:45 PST
Air Blank	PUR	*INVALID	00:45 PST
Control Sample			
Air Blank			

** EXPECTED VALUE FOR CONTROL: 0.085 %BAC **

TEST RESULT: Purge Fail

ADDITIONAL INSTRUCTIONS: *INVALID TEST - PURGE FAIL.
The test is NOT complete - refer to the suggested corrective action statement below. The instrument was unable to purge the sample cell after running a breath test. This may be due to the purge pump not operating or the breath path being obstructed.

SUGGESTED CORRECTIVE ACTION: 1) The operator should consider removing the mouthpiece from the breath tube and checking for any obvious obstructions. 2) Use a new mouthpiece and restart the test. 3) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517. 4) Leave the instrument power on and consider locating an alternative testing location. 5) Any observations made by the Operator during the testing sequence may be recorded in the comments section below.

OPERATOR'S NAME: KOPPANG,ERIK J
OPERATOR'S PERMIT #: 037667
TEST METHOD: OAR 257-030-0130

The above-named individual has satisfactorily met the requirements of ORS 813.160 in the chemical analysis of a person's breath and is approved to operate the above listed equipment using the above listed method as specified by the Department of State Police.

COMMENTS:

(SB) SPIT INTO MOUTHPIECE.

Portland Police Bureau

USE OF FORCE REPORT

PAGE/OF 1/2

Case No.	Refer Case No.	Classification

Date/Time Reported	Date/Time Occurred	Location of Occurrence
011207/2340	011207/2340	N. INTERSTATE / N. SIMPSON

	Name of Subject	CRN	Sex	Race	DOB
UF	RIVERA SANTOS, SANTIAGO		M	H	122368

Address	Hgt	Wgt	Hair	Eyes
534 SE 8TH, HILLSBORO 97123	5'2"	120	BLK	BRO

Case No.

Conditions

Lighting Conditions: [X] 01 DARK [ ] 02 LOW LIGHT [ ] 03 BRIGHT

Copies: [ ] Dets [ ] Cent [ ] East [ ] North [ ] NE [ ] SE [ ] PLM [ ] Trng [ ] Traf [ ] TOD [ ] [ ]

Applicable Suspect Conditions (Check all that apply)

- [ ] 01 Actually armed
- [ ] 02 Reported to be armed
- [ ] 03 Assaulted officer
- [ ] 04 Assaulted citizen
- [ ] 05 History of violence
- [X] 06 Failure to comply
- [ ] 07 Engaged in or indicated the intent to engage in physical resistance
- [ ] 08 Engaged in or indicated the intent to engage in aggressive physical resistance
- [ ] 09 Other _____

Under the Influence (Check all that apply)

- [X] 01 Alcohol
- [ ] 02 Drugs
- [ ] 03 Mental Illness
- [ ] 04 None apparent
- [ ] 05 Other (explain) _____

Event Conditions: [ ] 01 High risk incident [ ] 02 Search warrant [ ] 03 Other _____

Use of Force / Control Necessary to:

- [ ] 01 Defend self
- [ ] 02 Defend another
- [X] 03 Make arrest
- [ ] 04 Prevent escape
- [ ] 05 Civil hold
- [ ] 06 Accomplish official purpose (explain) _____
- [ ] 07 Other _____

Warning Given Before Deployment: [ ] YES [ ] NO [ ] Not feasible

Control

Physical Control: [ ] 01 Pressure points [ ] 03 Control holds [ ] 05 Hobble [ ] 06 Not applicable
[X] 02 Handcuffing [ ] 04 Takedowns — **Effective?** [X] YES [ ] NO

Impact Weapons: [ ] 01 Hands/Feet [ ] 03 Flashlight [ ] 05 Other _____
[ ] 02 Baton [X] 04 Not applicable — **Effective?** [ ] YES [ ] NO

Pepper Spray: Distance (Feet) [ ] 01 1-3' [ ] 02 4-7' [ ] 03 7'+ [X] 04 Not applicable
Duration (Seconds) 1st _____ 2nd _____ 3rd _____ — **Effective?** [ ] YES [ ] NO

Pointing of Firearm: # of Officers _____ # of Subjects _____

- [X] 01 Handgun Distance (feet) _____
- [ ] 02 Shotgun Distance (feet) _____
- [ ] 03 AR-15 Distance (feet) _____
- [ ] 04 Impact Munitions Distance (feet) _____
- [ ] 05 Not applicable

Discharge of Firearm

[X] Not applicable

Weapon	Subject	Result
[ ] 01 Handgun (Primary)	[ ] 01 Person	[ ] 01 Death
[ ] 02 Handgun (Secondary)	[ ] 03 Other	[ ] 03 Missed
[ ] 03 Shotgun	[ ] 02 Animal _____	[ ] 02 Injury
[ ] 04 AR-15		

COMPUTER ENTRY Person _____ Entry _____

Impact Munitions

[X] Not applicable

Type/Distance

- [ ] 01 Bean bag _____ Feet
- [ ] 02 Stingers _____ Feet
- [ ] 03 Sage _____ Feet
- [ ] 04 Other _____ Feet _____

Effective? [ ] YES [ ] NO If not, why?

- [ ] 01 Clothing
- [ ] 02 Missed
- [ ] 03 Malfunction
- [ ] 04 No physical effect
- [ ] 05 Other _____

Rounds Fired _____ **Hits** _____

Reporting Officer	DPSST	Prec/Div	Rlf/Shift	Assn/Dist	Supervisor's Signature
HUGHES / HECHT	45083 / 45260	N	A	543	

A+19

PORTLAND POLICE BUREAU

CONTINUATION REPORT

CASE NO.

CLASSIFICATION

TYPE OF CONTINUATION ☐ INCIDENT ☐ TRAFFIC ACCIDENT ☐ CUSTODY ☒ SPECIAL

SUBJECT'S NAME: RIVERA SANTOS, SANTIAGO

CRN

SEX: M | RACE: H | DOB: 122368

LOCATION OF OCCURRENCE: N. INTERSTATE / N. SIMPSON

CASE NO.

NARRATIVE—The order of appearance for additional information will be:
ITEM 1: ADDITIONAL PERSON INFO–List additional people (not suspects) and identify their involvement with the appropriate code. Additional person info includes contacts.
ITEM 2: ADDITIONAL SUSPECT INFO–Report all suspect info on additional/incident reports. Each suspect must have coded crime analysis descriptors. Detail in the narrative only suspect info not covered in the boxes.
ITEM 3: ADDITIONAL VEHICLE INFO–List additional vehicles in the same fashion as reported in the vehicle section. Include the identifying code.
ITEM 4: ADDITIONAL WORTHLESS DOCUMENTS–Record multiple worthless documents on a multiple worthless document form and attach as additional pages. Record in the narrative the number of worthless documents written.
ITEM 5: ADDITIONAL PROPERTY–Record no more than four additional items of property in the narrative–and/or use a special report and attach as additional pages.
ITEM 6: ADDITIONAL OFFICERS–List all officers present and identify their involvement with the incident being reported.
ITEM 7: SUMMARY–A short summary is necessary if the narrative is more than one full page in length.
ITEM 8: NARRATIVE–List in chronological order all of the relevant details in the incident and/or elements of the crime or violation.

ITEM	CODE	
8		THE VEHICLE FAILED TO YIELD AND CONTINUED SOUTHBOUND ON N. INTERSTATE. THE VEHICLE WEAVED FROM SIDE TO SIDE, RUBBING THE CURB OF THE MAX TRACKS AND COMING CLOSE TO HITTING PARKED CARS ON THE WEST SIDE OF STREET. THE VEHICLE WAS TRAVELING 35 - 40 MPHS AS IT CONTINUED SOUTHBOUND ON N. INTERSTATE. THE BRAKE LIGHTS OF THE VEHICLE WERE ACTIVATING REPEATEDLY AND INAPPROPRIATELY. THE VEHICLE FINALLY PULLED OVER AND CAME TO A STOP AT N. INTERSTATE/N. SIMPSON. WE CONDUCTED A HIGH RISK STOP AND SEVERAL OFFICERS POINTED GUNS AT RIVERA SANTOS(UF) AND THE VEHICLE. RIVERA SANTOS(UF) WAS VERY SLOW TO FOLLOW COMMANDS IN ESPANISH OR ENGLISH. AS HE GOT OUT OF THE VEHICLE HE WOULD PUT HIS HAND UP, THEN DROP THEM DOWN AGAIN. HIS BALANCE WAS WOBBLY AND HE SWAYED FRONT TO BACK. RIVERA SANTOS(UF) WAS TAKEN INTO CUSTODY. WE TRANSPORTED HIM TO CENTRAL WHERE OFC. KOPPANG PROCESSED HIM FOR DWI.

REPORTING OFFICER(S): ~~HUGHES~~ HUGHES/HECHT | BPST: 45263/45266 | PREC/DIV: N | RLF/SHFT: A | ASSN/DIST: E43 | SUPERVISOR'S SIGNATURE

Portland Police Bureau

SPECIAL REPORT

☐ INFORMATION ☐ CLEARANCE ☐ CONTINUATION ☐ SUPPLEMENTAL

PAGE/OF 1 / 3

CASE NO. | REFER CASE NO. | CLASSIFICATION

☐ 1. UNFOUNDED ☐ 3. SUSPENDED ☐ 5. EXCEPTIONAL
☐ 2. PENDING ☐ 4. CLR BY ARREST ☐ 6. REFERRED

ORIGINAL REPORT DATE/TIME: 1/12/06 2336

DATE/TIME OF PURSUIT: 1/12/06 2340

LOCATION OF OCCURRENCE: N. LOMBARD ST. / N. INTERSTATE AVE.

PERSONS

PR - Pursuit Subject

PR	NAME: LAST FIRST MIDDLE	CRN	SEX	RACE	DOB
	RIVERA SANTOS SANTIAGO		M	H	12/23/68

ADDRESS: 534 SE 13th AVE HILLSBORO, OR ZIP: 97123

PHONE:

SUBJECT OF THIS REPORT: **Vehicle Pursuit**

PROPERTY RECEIPT NO.:

CASE NO.

COPIES
☐ DET
☐ CENT
☐ EAST
☐ SE
☐ NORTH
☐ NE
☐ TRAF
☐ DVD
☐ ID
☐ Prop Room
☐ Crime Prev
☐ Intell
☐ Training
☐ CHO
☐ PLM
☐
☐

80

Initial Reason for Pursuit

Person Felony	1	☐
UUMV	2	☐
Other Prop. Felony	3	☐
Drug Crime	4	☐
Warrant/Fugitive	5	☐
Traffic Crime	6	☒
Person Misdemeanor	7	☐
Property Misdemeanor	8	☐
Other	9	☐

Duration

0-1 Minute	1	☒
1-5 Minutes	2	☐
5-10 Minutes	3	☐
10-30 Minutes	4	☐
Unknown	9	☐

Speed

0-19 MPH	1	☐
20-34 MPH	2	☐
35-54 MPH	3	☒
55-74 MPH	4	☐
75-99 MPH	5	☐
100+ MPH	6	☐
Unknown	9	☐

Intervention*

Box	1	☐
P.I.T.	2	☐
Stopstick	3	☐
Air Support	4	☐
Ram	5	☐
Barricade	6	☐
None	8	☒
Other	9	☐

*If multiple interventions attempted, select the most successful.

Conclusion

Terminated	1	☐
Stop / Surrender	2	☒
Stop / Run	3	☐
Crash	4	☐
Crash / Run	5	☐
Escape / Elude	6	☐
Other	9	☐

Injury/Death

Citizen Death	1	☐
Officer Death	2	☐
Suspect Death	3	☐
Citizen Injury	4	☐
Officer Injury	5	☐
Suspect Injury	6	☐
No Death / No Injury	7	☒
Other (Combination)	9	☐

Damage

Suspect Prop	1	☐
Private Prop	2	☐
City Prop	3	☐
No Damage	4	☒
Other	9	☐

COMPUTER ENTRY

VEHICLE

P - Pursued Vehicle

CODE	LICENSE NO.	STATE	LIC. YR	TYPE	VIN	VEH YR	MAKE
P	CU15443	OR	2010	SUV	1GNFK130475140313	07	CHEV

PERSON

MODEL	STYLE	COLOR
TAHOE	SUV	BLACK

VEHICLE

TOWED BY/TOWED TO: 21st CENTURY / SEIZURE WORLD

☒ DEPT REQ ☐ PRIVATE REQ

HOLD (Y) N REASON: DUII

CHARGE/CITE NO: RECKLESS / 1637344

ENTRY

Writer, if not Primary Pursuit Officer	DPSST	Prec/Div	Rlf/Shift	Assn/Dist

Primary Pursuit Officer	DPSST	Prec/Div	Rlf/Shift	Assn/Dist	Supervisor's Signature
HUGHES / HECHT	45063/45126	N/A	A	543	

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PORTLAND POLICE BUREAU

CONTINUATION REPORT

PAGE/OF 3/3

CASE NO.

CLASSIFICATION

TYPE OF CONTINUATION: ☐ INCIDENT ☐ TRAFFIC ACCIDENT ☐ CUSTODY ☒ SPECIAL

SUBJECT'S NAME: RIVERA SANTOS, SANTIAGO

CRN

SEX	RACE	DOB
M	H	12/23/68

LOCATION OF OCCURRENCE: N. LOMBARD ST. / N. INTERSTATE AVE.

CASE NO.

NARRATIVE—The order of appearance for additional information will be:
ITEM 1: ADDITIONAL PERSON INFO—List additional people (not suspects) and identify their involvement with the appropriate code. Additional person info includes contacts.
ITEM 2: ADDITIONAL SUSPECT INFO—Report all suspect info on additional incident reports. Each suspect must have coded crime analysis descriptors. Detail in the narrative only suspect info not covered in the boxes.
ITEM 3: ADDITIONAL VEHICLE INFO—List additional vehicles in the same fashion as reported in the vehicle section. Include the identifying code.
ITEM 4: ADDITIONAL WORTHLESS DOCUMENTS—Record multiple worthless documents on a multiple worthless document form and attach as additional pages. Record in the narrative the number of worthless documents written.
ITEM 5: ADDITIONAL PROPERTY—Record no more than four additional items of property in the narrative and/or use a special report and attach as additional pages.
ITEM 6: ADDITIONAL OFFICERS—List all officers present and identify their involvement with the incident being reported.
ITEM 7: SUMMARY—A short summary is necessary if the narrative is more than one full page in length.
ITEM 8: NARRATIVE—List in chronological order all of the relevant details in the incident and/or elements of the crime or violation.

ITEM	CODE	
(8)		STILL FAILING TO YIELD. TO OUR LIGHTS AND SIRENS, THE VEHICLE CONTINUED TO SWERVE FROM THE MAX TRACKS TO THE WEST CURB LINE OF N. INTERSTATE AVE. THE VEHICLE STOPPED AT N. INTERSTATE AVE / N. SIMPSON ST. THE DURATION OF THE PURSUIT WAS APPROX. ONE MINUTE. THE DRIVER OF THE VEHICLE WAS UNRESPONSIVE TO OUR COMMANDS. OFC. FRITZ INFORMED OFC. HECHT AND I THAT THE DRIVER WAS HISPANIC AND POSSIBLY DIDN'T UNDERSTAND ENGLISH. AFTER A MINUTE OR TWO THE DRIVER EXITED THE VEHICLE, THE DRIVER WAS TOLD NUMEROUS TIMES IN SPANISH TO KEEP HIS HANDS UP, WHICH HE DID NOT. OFC. KING AND OFC. FRITZ APPROACHED THE VEHICLE AND HANDCUFFED THE DRIVER. THE CAR WAS CLEARED A SHORT TIME LATER, THERE WERE NO OTHER OCCUPANTS IN THE VEHICLE. THE DRIVER WAS IDENTIFIED AS RIVERA SANTOS, SANTIAGO, BY HIS ODL. OFC. FRITZ AND OFC. KING HAD TO HELP RIVERA SANTOS WALK BACK TO MY PATROL CAR AS HE COULD NOT WALK ON HIS OWN. OFC. HECHT AND I TRANSPORTED RIVERA SANTOS TO CE PRECINCT FOR PROCESSING BY OFC. ROPANO (SEE DMV INVESTIGATION FOR MORE). RIVERA SANTOS HAD BLOODSHOT AND WATERY EYES AS WELL AS A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIM. WHEN OFC. HECHT AND I ARRIVED AT CE PCT. WE HAD TO PHYSICALLY WALK RIVERA SANTOS INTO CE PCT. AS HE COULD NOT STAND OR WALK ON HIS OWN.

REPORTING OFFICER(S)	BPST	PREC/DIV	RLF/SHFT	ASSN/DIST	SUPERVISOR'S SIGNATURE
HUGHES	45063	n/a	A	543	

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Portland Police Bureau

SPECIAL REPORT

☐ INFORMATION ☐ CLEARANCE ☐ CONTINUATION ☐ SUPPLEMENTAL

PAGE/OF 1 / 2

CASE NO.

REFER CASE NO.

CLASSIFICATION

☐ 1. UNFOUNDED ☐ 3. SUSPENDED ☐ 5. EXCEPTIONAL
☐ 2. PENDING ☐ 4. CLR BY ARREST ☐ 6. REFERRED

ORIGINAL REPORT DATE/TIME: 011207/2340

DATE/TIME OF PURSUIT: 011207/2340

LOCATION OF OCCURRENCE: N. INTERSTATE / RAIL ROAD BRIDGE No. of DENVER

PERSONS

PR - Pursuit Subject

PR	NAME: LAST	FIRST	MIDDLE	CRN	SEX	RACE	DOB
	RIVERA-SANTOS,	SANTIANGO			M	H	122368

ADDRESS: 534 SE. 13TH Hillsboro, OR. ZIP: 97123

PHONE:

SUBJECT OF THIS REPORT: **Vehicle Pursuit**

PROPERTY RECEIPT NO.

CASE NO.

COPIES
☐ DET
☐ CENT
☐ EAST
☐ SE
☐ NORTH
☐ NE
☐ TRAF
☐ DVD
☐ ID
☐ Prop Room
☐ Crime Prev
☐ Intell
☐ Training
☐ CHO
☐ PLM
☐
☐

80

Initial Reason for Pursuit

Person Felony	1	☐
~~UUMV~~	~~2~~	☐
Other Prop. Felony	3	☐
Drug Crime	4	☐
Warrant/Fugitive	5	☐
Traffic Crime	6	✱
Person Misdemeanor	7	☐
Property Misdemeanor	8	☐
Other	9	☐

Duration

0-1 Minute	1	✱
1-5 Minutes	2	☐
5-10 Minutes	3	☐
10-30 Minutes	4	☐
Unknown	9	☐

Speed

0-19 MPH	1	☐
20-34 MPH	2	☐
35-54 MPH	3	✱
55-74 MPH	4	☐
75-99 MPH	5	☐
100+ MPH	6	☐
Unknown	9	☐

Intervention*

Box	1	☐
P.I.T.	2	☐
Stopstick	3	☐
Air Support	4	☐
Ram	5	☐
Barricade	6	☐
None	8	✱
Other	9	☐

*If multiple interventions attempted, select the most successful.

Conclusion

Terminated	1	☐
Stop / Surrender	2	✱
Stop / Run	3	☐
Crash	4	☐
Crash / Run	5	☐
Escape / Elude	6	☐
Other	9	☐

Injury/Death

Citizen Death	1	☐
Officer Death	2	☐
Suspect Death	3	☐
Citizen Injury	4	☐
Officer Injury	5	☐
Suspect Injury	6	☐
No Death / No Injury	7	✱
Other (Combination)	9	☐

Damage

Suspect Prop	1	☐
Private Prop	2	☐
City Prop	3	☐
No Damage	4	✱
Other	9	☐

COMPUTER ENTRY

VEHICLE

P - Pursued Vehicle

CODE	LICENSE NO.	STATE	LIC. YR	TYPE	VIN	VEH YR	MAKE
P	CU15443	OR.	10	UT	1GNFK13047J140333	2007	Chev.

MODEL	STYLE	COLOR
TAHOE	UT	BLACK

TOWED BY/TOWED TO: 21ST CENTURY ☐ DEPT REQ ☐ PRIVATE REQ

HOLD (Y) N REASON: DUI II

CHARGE/CITE NO

PERSON

VEHICLE

ENTRY

Writer, if not Primary Pursuit Officer	DPSST	Prec/Div	Rlf/Shift	Assn/Dist

Primary Pursuit Officer	DPSST	Prec/Div	Rlf/Shift	Assn/Dist	Supervisor's Signature
DESANNO / MOORE	29229/15650	NO	A	1501	

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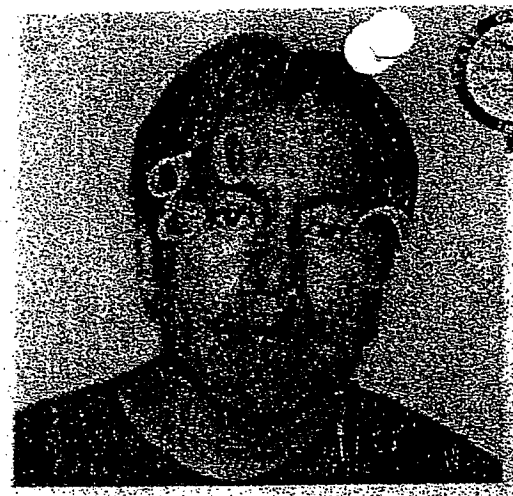

OREGON CLASS C

DRIVER LICENSE

4744897 Expires 12-23-2012

RIVERA SANTOS, SANTIAGO

DOB 12-23-1968 Issue Date 07-01-2005

Endorsements

Sex M

Record Created 1988

Restrictions

Height 5'02"

Weight 122

RIVERA SANTOS, SANTIAGO
534 SE 13TH AVE
HILLSBORO, OR 97123

☐ VIOLATION(S) (SEE B ON BACK) | OR (Not Both) | ☒ CRIME(S) (SEE A ON BACK) | ☐ Traffic ☐ Other ☐ Wildlife ☐ Boating ☐ Commercial Fishing

LAINT 1637344 DA #

In the Circuit Court of the State of Oregon for Multnomah County

☒ STATE OF OREGON ☐ CITY OF GRESHAM ☐ CITY OF WOOD VILLAGE ☐ COUNTY OF MULTNOMAH ☐ TRI-MET ☐ CITY OF PORTLAND ☐ PORT OF PORTLAND VS.

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:

ID TYPE	ID NO	STATE	TEL. NO.
ODL	4744897	OR	

NAME: LAST: RIVERA-SANTOS FIRST: SANTIAGO MIDDLE INITIAL:

ADDRESS: 534 SE 13TH AVE LIC CLASS: ☐ Employed to Drive

CITY: HILLSBORO STATE: OR ZIP CODE: 97123 DEF. IS ☐ Passenger ☐ Other

SEX	RACE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
M	H	122368				

AT THE FOLLOWING TIME & PLACE IN THE ABOVE MENTIONED STATE & COUNTY:

OFFENSE DATE ON OR ABOUT: MONTH 011307 DAY / YEAR 2336 TIME ☐ AM ☐ PM ☐ Premises Open To Public ☒ Hwy

AT OR NEAR LOCATION: N. INTERSTATE / SIMPSON ☐

INVOLVING THE FOLLOWING:

TYPE: P/U | REGIS / VIN / ID NO: CU5443 | STATE: OR | ☐ Accident ☐ Injury ☐ Properly Damage ☐ Endanger Others ☐ Driver Not Reg Owner ☐ Haz Material ☐ Commercial Vehicle

VEHICLE Year, Make, Model, Style, Color; OR Other, Describe: 07 CHEV TAHOE

OTHER

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

	DESCRIBE Alleged Spd Designated Spd ☐ VBR ☐ Posted Limit		1. Base Fine
1. VIOLATED (Cite ORS/ORD/Rule): 811.140	DESCRIBE: RECKLESS DRIVE	☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Psid Sch Zn ☐ Hwy Wrk Zn	CM ☐ Radar ☐ Pace ☐ Laser ☐
2. VIOLATED (Cite ORS/ORD/Rule):	DESCRIBE:	☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Psid Sch Zn ☐ Hwy Wrk Zn	2. Base Fine
3. VIOLATED (Cite ORS/ORD/Rule):	DESCRIBE:	☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Psid Sch Zn ☐ Hwy Wrk Zn	3. Base Fine

OTHER/EXPLAIN: Custody Report Done ☒ Video Evidence ☐

I CERTIFY UNDER ORS 153.045 AND 153.990 AND UNDER OTHER APPLICABLE LAW AND UNDER PENALTIES FOR FALSE SWEARING, DO SWEAR/AFFIRM THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED DEFENDANT/PERSON COMMITTED THE ABOVE OFFENSE(S) AND I HAVE SERVED THE DEFENDANT/PERSON WITH THIS COMPLAINT.

DATE ISSUED	1ST OFFICER SIGNATURE	PRINT NAME	OFC ID/PRECINCT
011307	KOPPANG	37667	TRF

AGENCY ID: ☒ PPD ☐ POP ☐ MCSD ☐ GREPD ☐ OSP ☐ TRIMET ☐ SCHOOL ☐ OTHER

DATE ISSUED	Arresting Person or 2nd Ofc (if necessary) SIGNATURE	PRINT NAME	OFC ID/PRECINCT
	HECHT	45126	ND

AGENCY ID: ☒ PPD ☐ POP ☐ MCSD ☐ GREPD ☐ OSP ☐ TRIMET ☐ SCHOOL ☐ OTHER

YOUR CIRCUIT COURT APPEARANCE DATE, TIME & LOCATION ARE:

MONTH / DAY / YEAR: 2/09/07

TIME: ☒ 8:30 a.m. ☐ 1:00 p.m. ☐ 5:00 p.m. ☐ Other:

☐ Circuit Court Room 106	1021 SW Fourth Ave, Portland, OR	503-988-3235
☐ Circuit Court Gresham	150 W Powell Gresham OR	503-988-3199
☒ Justice Center Ctrm #4	1120 SW 3rd Ave., Portland OR	503-988-3235
NON-TRAFFIC OFFENSES ONLY		
☐ Community Court	Justice Center Courtroom #1 1120 SW 3rd Ave, Portland, OR	503-988-3235

02/06

1637344

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☐ VIOLATION(S) (SEE B ON BACK) | OR (Not Both) | ☒ CRIME(S) (SEE A ON BACK) | ☐ Traffic ☐ Other ☐ Wildlife ☐ Boating ☐ Commercial Fishing

LAINT 1637343 DA #

In the Circuit Court of the State of Oregon for Multnomah County

☒ STATE OF OREGON ☐ CITY OF GRESHAM ☐ CITY OF WOOD VILLAGE ☐ COUNTY OF MULTNOMAH ☐ TRI-MET ☐ CITY OF PORTLAND ☐ PORT OF PORTLAND VS.

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:

ID TYPE	ID NO	STATE	TEL. NO.
ODL	4744897	OR	

NAME: LAST: RIVERA-SANTOS, FIRST: SANTIAGO MIDDLE INITIAL:

ADDRESS: 534 SE 13TH AVE LIC CLASS: ☐ Employed to Drive

CITY: HILLSBORO STATE: OR ZIP CODE: 97123 DEF. IS ☐ Passenger ☐ Other

SEX	RACE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
M	H	122368	5-02	122		

AT THE FOLLOWING TIME & PLACE IN THE ABOVE MENTIONED STATE & COUNTY:

OFFENSE DATE ON OR ABOUT: MONTH 011207 DAY / YEAR 2336 TIME ☐ AM ☒ PM ☒ Premises Open To Public ☒ Hwy

AT OR NEAR LOCATION: N. INTERSTATE / SIMPSON ☐

INVOLVING THE FOLLOWING:

TYPE: P/U | REGIS / VIN / ID NO: CU5443 | STATE: OR | ☐ Accident ☐ Injury ☐ Properly Damage ☐ Endanger Others ☐ Driver Not Reg Owner ☐ Haz Material ☐ Commercial Vehicle

VEHICLE Year, Make, Model, Style, Color; OR Other, Describe: 07 CHEV TAHOE

OTHER

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

	DESCRIBE Alleged Spd Designated Spd ☐ VBR ☐ Posted Limit		1. Base Fine
1. VIOLATED (Cite ORS/ORD/Rule): 813.010	DESCRIBE: DUII (ALCOHOL)	☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Psid Sch Zn ☐ Hwy Wrk Zn	CM ☐ Radar ☐ Pace ☐ Laser ☐
2. VIOLATED (Cite ORS/ORD/Rule):	DESCRIBE:	☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Psid Sch Zn ☐ Hwy Wrk Zn	2. Base Fine
3. VIOLATED (Cite ORS/ORD/Rule):	DESCRIBE:	☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Psid Sch Zn ☐ Hwy Wrk Zn	3. Base Fine

OTHER/EXPLAIN: Custody Report Done ☒ Video Evidence ☐

I CERTIFY UNDER ORS 153.045 AND 153.990 AND UNDER OTHER APPLICABLE LAW AND UNDER PENALTIES FOR FALSE SWEARING, DO SWEAR/AFFIRM THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED DEFENDANT/PERSON COMMITTED THE ABOVE OFFENSE(S) AND I HAVE SERVED THE DEFENDANT/PERSON WITH THIS COMPLAINT.

DATE ISSUED	1ST OFFICER SIGNATURE	PRINT NAME	OFC ID/PRECINCT
011307	KOPPANG	37667	TRF

AGENCY ID: ☒ PPD ☐ POP ☐ MCSD ☐ GREPD ☐ OSP ☐ TRIMET ☐ SCHOOL ☐ OTHER

DATE ISSUED	Arresting Person or 2nd Ofc (if necessary) SIGNATURE	PRINT NAME	OFC ID/PRECINCT
	HECHT	45126	ND

AGENCY ID: ☒ PPD ☐ POP ☐ MCSD ☐ GREPD ☐ OSP ☐ TRIMET ☐ SCHOOL ☐ OTHER

YOUR CIRCUIT COURT APPEARANCE DATE, TIME & LOCATION ARE:

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☐ Circuit Court Gresham	150 W Powell, Gresham, OR	503-988-3199
☒ Justice Center Ctrm #4	1120 SW 3rd Ave., Portland, OR	503-988-3235
NON-TRAFFIC OFFENSES ONLY		
☐ Community Court	Justice Center Courtroom #1 1120 SW 3rd Ave, Portland, OR	503-988-3235

02/06

1637343

OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not Be Filed/ORS 153.045 or 133.069

COMPLAINT

Z1637345

DA #

☒ VIOLATION(S) (SEE B ON BACK) | OR (Not Both) | ☐ CRIME(S) (SEE A ON BACK) | ☒ Traffic ☐ Other ☐ Wildlife ☐ Boating ☐ Commercial Fishing

In the Circuit Court of the State of Oregon for Multnomah County

☒ STATE OF OREGON ☐ CITY OF GRESHAM ☐ CITY OF WOOD VILLAGE ☐ COUNTY OF MULTNOMAH ☐ TRI-MET ☐ CITY OF PORTLAND ☐ PORT OF PORTLAND VS.

THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON:

ID TYPE	ID NO	STATE	TEL. NO.
ODL	4744897	OR	

NAME: LAST RIVERA-SANTOS FIRST SANTIAGO MIDDLE INITIAL

ADDRESS 534 SE 13TH AVE | LIC CLASS | ☐ Employed to Drive

CITY HILLSBORO STATE OR ZIP CODE 97123 | DEF. IS ☐ Passenger ☐ Other

SEX	RACE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
M	H	122368	5-02	122		

AT THE FOLLOWING TIME & PLACE IN THE ABOVE MENTIONED STATE & COUNTY:

OFFENSE DATE ON OR ABOUT MONTH 011207 DAY 2336 YEAR TIME ☐ AM ☒ PM | ☐ Premises Open To Public ☒ Hwy

AT OR NEAR LOCATION N. INTERSTATE / SIMPSON

INVOLVING THE FOLLOWING:

TYPE P/U | REG'S / VIN / ID NO. CU15443 | STATE OR | ☐ Accident ☐ Injury ☐ Property Damage ☐ Endanger Others

VEHICLE Year, Make, Model, Style, Color, OR Other/Describe: 07 CHEV TAHOE | ☐ Driver Not Reg Owner ☐ Haz Material ☐ Commercial Vehicle

OTHER BLK

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

1. VIOLATED (Cite ORS/ORD/Rule) 811.145 | DESCRIBE Alleged Spd Designated Spd ☐ VBR ☐ Posted Limit FAIL TO YIELD TO | 1. Base Fine 242.00

☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Pstd Sch Zn ☐ Hwy Wrk Zn EMERGENCY VEHICLE | ☐ Radar ☐ Pace ☐ Laser ☐

2. VIOLATED (Cite ORS/ORD/Rule) | DESCRIBE | 2. Base Fine

☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Pstd Sch Zn ☐ Hwy Wrk Zn

3. VIOLATED (Cite ORS/ORD/Rule) | DESCRIBE | 3. Base Fine

☐ Intentional ☐ Knowing ☐ Reckless ☐ Crim Neg ☐ No Culpable Mental State ☐ Pstd Sch Zn ☐ Hwy Wrk Zn

OTHER/EXPLAIN: | Custody Report Done ☒ | Video Evidence ☐

I CERTIFY UNDER ORS 153.045 AND 153.990 AND UNDER OTHER APPLICABLE LAW AND UNDER PENALTIES FOR FALSE SWEARING, DO SWEAR/AFFIRM THAT I HAVE SUFFICIENT GROUNDS TO AND DO BELIEVE THAT THE ABOVE-MENTIONED DEFENDANT/PERSON COMMITTED THE ABOVE OFFENSE(S) AND I HAVE SERVED THE DEFENDANT/PERSON WITH THIS COMPLAINT.

DATE ISSUED	1ST OFFICER SIGNATURE	PRINT NAME	OFC ID/PRECINCT
011307	KOPPANG	37667	TRF

AGENCY ID: ☒ PPD ☐ POP ☐ MCSD ☐ GREPD ☐ OSP ☐ TRIMET ☐ SCHOOL ☐ OTHER

DATE ISSUED	Arresting Person or 2nd Ofc (if necessary) SIGNATURE	PRINT NAME	OFC ID/PRECINCT
	HECHT	45126	NO

AGENCY ID: ☒ PPD ☐ POP ☐ MCSD ☐ GREPD ☐ OSP ☐ TRIMET ☐ SCHOOL ☐ OTHER

YOUR CIRCUIT COURT APPEARANCE DATE, TIME & LOCATION ARE:

MONTH / DAY / YEAR	TIME			
2/09/07	☒ 8:30 a.m. ☐ 1:00 p.m. ☐ 5:00 p.m. ☐ Other:	☐ Circuit Court Room 106	1021 SW Fourth Ave, Portland, OR	503-988-3235
		☐ Circuit Court Gresham	150 W Powell, Gresham, OR	503-988-3199
		☒ Justice Center Ctrm #4	1120 SW 3rd Avd., Portland, OR	503-988-3235
		NON-TRAFFIC OFFENSES ONLY		
		☐ Community Court	Justice Center Courtroom #1, 1120 SW 3rd Ave, Portland, OR	503-988-3235

02/06

COURT #

1637345

A-26

29

SCANNED

FILED

NOV 05 2007

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

SANTIAGO RIVERA-SANTOS,

Defendant.

SUPERIOR COURT CASE NUMBER:
07-1-01555-8

DISTRICT COURT CASE NUMBER:
612705

REPORT OF PROCEEDINGS

Exhibit 7 A-27

Bgm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. SANTIAGO RIVERA-SANTOS, Defendant.	SUPERIOR COURT CASE NUMBER: 07-1-01555-8 DISTRICT COURT CASE NUMBER: 612705

CD PROCEEDINGS

Dates and **times** requested for transcription:

August 2, 2007 & August 15, 2007

HEARD BEFORE THE HONORABLE:

James P. Swanger

COUNSEL FOR THE PLAINTIFF:

John (Jack) Eric Peterson

COUNSEL FOR THE DEFENDANT:

Brandy Jeffers

Also needed for transcription is a copy of the clerk's minutes, mainly for spellings of witness' names, etc, if not on CD

Evelyn M. Pierce, 5404 N.E. 121st Ave., #69, Vancouver, WA 98682
Telephone: 360-944-0449
Fax: 360-944-0830
EVIEMPIERCE@HEI.NET

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JP: [inaudible ... both speaking]

BJ: And did you just recite the facts like I did?

JP: I ... I just attached the facts and looked at the police reports.

BJ: Okay. Then ...

JP: The same way you did.

BJ: ... okay. Then that's fine, Your Honor.

Judge: Okay.

BJ: I just wrote them up in an affidavit but ...

Judge: Okay. Well and my under ... my understanding of the facts based on the motions and affidavits as well as the attached reports, January 12th, 2007, WSP receives a ... a call there up at the fairgrounds ... actually 179th Street, in that area anyway and actually ... I don't know if it's ...

BJ: Is that ... I didn't think he was that far in, Your Honor.

Judge: ... see that's SR ... I'm sorry. SR 503 ...

BJ: Yeah.

Judge: ... which would ... which is ... and 71st Street which would be Orchards ... on the way to Battle Ground ... Andres ... 117th is SR 503.

BJ: Well the reporting party, Your Honor, be ... reported it at SR 14 and I-5 ...

Judge: Right.

BJ: ... right across the Portland bridge.

Judge: Yeah. The ... it ... it's reported ... it's called in by a citizen who appears to be following ...

BJ: That's correct.

Judge: ... Mr. Rivera-Santos and it's my reading of the reports that the troopers didn't see any driving till south of the I-5 bridge.

BJ: That's correct.

JP: Just a second. That's correct.

Judge: Okay.

JP: A citizen saw the off ... the person driving ...

Judge: Yeah the citizen said ...

JP: ... on the bridge.

Judge: ... yeah. Northbound ...

JP: The SP ...

Judge: ... SR 500 ...

JP: ... saw the bridge.

Judge: ... does a "U" turn at St. Johns, gets back on the freeway, stops at Mill Plain, starts again ...

JP: Correct.

Judge: ... and then the officers see the driving

south of I-5.

BJ: That's correct, Your Honor.

Judge: Okay. Okay. And Ms. Jeffers?

BJ: And Your Honor, I do want to make sure that part of the facts were that the ... Mr. Rivera-Santos was convicted and sentenced on ...

Judge: March ...

BJ: ... the DUI in Oregon in March of 2007.

Judge: ... right.

BJ: And that was for the same series of events where the police office in this case followed him to Oregon and continued pursuit while directing Oregon police to his location.

Judge: Was he ... was Mr. ... was your client convicted of both the reckless and the DUI or ...

BJ: I didn't ask him ...

SRS: Just DUI.

BJ: ... just DUI ...

Judge: Just the DUI.

BJ: ... Your Honor.

Judge: Okay.

BJ: I want to make sure that ...

Judge: Okay. And argument?

both our briefs. I'm sorry.

BJ: Okay.

Judge: Well just ... well, okay.

BJ: All right. Are we ready?

Judge: Yeah, I'm ready.

BJ: So I think we're in agreement on the facts. Basically the police report and then the additional information about Mr. Rivera-Santos' conviction in Oregon in 2000 ... March of ... or excuse me ... is it March? I believe it was. Yup, March of 2007. So I'll get onto the argument.

Your Honor, double jeopardy precludes a person from being prosecuted twice for the same offense under

south of I-5.

BJ: That's correct, Your Honor.

Judge: Okay. Okay. And Ms. Jeffers?

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Judge: Okay.

BJ: I want to make sure that ...

Judge: Okay. And argument?

BJ: I just want to make sure ...

JP: We've always start ... you're familiar with

both our briefs. I'm sorry.

Judge: Right. Right.

JP: Okay.

Judge: Well just ... well, okay.

BJ: All right. Are we ready?

Judge: Yeah, I'm ready.

BJ: So I think we're in agreement on the facts. Basically the police report and then the additional information about Mr. Rivera-Santos' conviction in Oregon in 2000 ... March of ... or excuse me ... is it March? I believe it was. Yup, March of 2007. So I'll get onto the argument.

Your Honor, double jeopardy precludes a person from being prosecuted twice for the same offense under the Fifth Amendment to the United States Constitution. It says that "nor shall any person be subject to the same offense, to be twice put in jeopardy of life and limb". This is applicable to the states through the Fourteenth Amendment.

The Washington Constitution also says that no person shall be twice put in jeopardy for the same offense. That's Article I, Section 9.

The Supreme Court has ruled double jeopardy applies if the two offenses for which the Defendant has been punished or tried cannot survive the same elevance (ph) test. That test is outlined in *Blockberger versus United States,* 284 US 299, at 304 and the rule is where the same act or

statute had never been amended to include it.

JP: Yeah. So there's like ...

Judge: Yeah, and I just ...

JP: ... one case.

Judge: Yeah.

August 15, 2007:

Judge: Santiago Rivera-Santos? Okay. 612705. I appreciate the additional time to look over everything. I've read ... read and re-read several reported opinions, several unpublished opinions regarding double jeopardy. Just to cut to the point, I'm going to dismiss for the following reasons:

Under the statute, the ... what I'm referring to is RCW 10.43.040 ... the ... expands the double jeopardy protections under the Constitution. The statute focuses on acts or admissions, it focuses on whether or not the offenses are substantially the same identity. The Oregon ... Oregon DUI statute, the Washington DUI statute are substantially identical. There may be some technical differences. *Calgary* ... *Calgary* indicates ... [inaudible ... noise from counsel table] that there may be crimes defined by different sovereigns may differ in certain technical respects which ... which have little to do with other protections.

But in none of them do they ... do they focus on where the acts occurred. For example, in *Mathers* the acts occurred in Klickitat County. They took the vehicle ...

they took the vehicle in Klickitat County, drove ... drove it over ... across The Dalles bridge and was driving it in Oregon and they had no problem ... or our courts had no problem indicating that they were looking at the act ... the taking of the vehicle and the riding without permission.

Then they got into some talk about intent and weren't concerned over whether or not it had occurred that there was driving in Oregon as well as driving in Washington. Obviously there are different interests protected by ... you know ... whether you're protecting the citizens of Washington or the citizens of Oregon. But they didn't focus on that. There are two unpublished opinions which I am not going to cite which also involved offenses in other states that carried over into Washington or visa versa which they didn't even ... it doesn't even come up. It's never even mentioned that ... that it's in different states. As a matter of fact, in *Mathers*, the state didn't even argue that there were different ... that he took the car in Washington, was driving it in Washington and driving in Oregon as a whole different ... different crime. And what the state argued is that there ... they just argued that they were different mental states.

So I think when it has the same character and has the same substantial same identity, under the statute and again because I think it expands to double jeopardy protect ... protections, I'm going to dismiss. And again, the

facts are pretty much undisputed. Some private citizens indicated they ... they saw the Defendant driving I-5 northbound in an erratic manner, took SR 500, did a "U" turn at St. Johns, headed back to I-5, crossed back over into Oregon, at which time WSP had caught up with him and ... and also Oregon ... in Portland they observed his driving there. And it appears as though they are substantially the same ...

Although if I would invite the state to appeal, because it's obviously ... if I'm ... if I'm missing something ... you know ... obviously I ... I think there's ... and who knows. It may be in ... in the *Mathers* case he had so many other charges that they may have just thought what's the big deal? It's just the taking and unauthorized use as opposed to an offense here. I think an argument could be made that there are ... you know ... different protections ... one protecting the people of Clark County against drunk drivers versus erratic ... impaired drivers versus the people of Oregon.

But again I think based on ... on the case law that with the expanded protection of 10.43.040, that these are the same character and it is the same substantially identical. And reluctantly, I'm going to dismiss. I will prepare formal Findings so the state can have ...

JP: Thanks, Your Honor.

Judge: ... just ... just to make it clear, I'm

doing this specifically under the statute. Not under ... I think under ... I think the statute's been around since 1909, but specifically ruling under the statute. Not under the ...

BJ: Thank you, Your Honor.

Judge: ... Washington Constitution.

JP: Thank you.

Judge: Do you want me to cite this on for presentation of ... I'm ... I'm gone next week. Or do you want to just ...

BJ: Your Honor, I ... I don't mind either way. I guess if you want to do that you can just forward it my office.

Judge: Okay.

BJ: I don't think it has to be cited on and I'll forward it to my client.

Judge: Okay. Thank you.

BJ: Thank you, Your Honor.

Hearing ends

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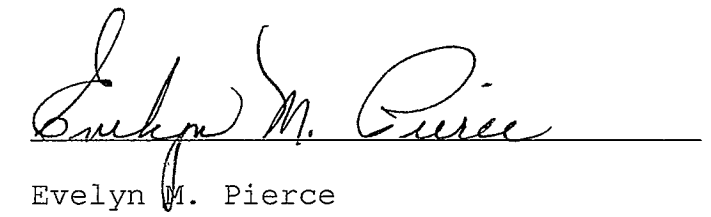
C E R T I F I C A T E

I, Evelyn M. Pierce, certify that the hearings in the matter of *State of Washington v. Santiago Rivera-Santos* occurred at the times and places set forth and that at said time and place the hearings were recorded on CDs. That I subsequently transcribed the entire recorded hearings to the best of my ability as accurately as possible.

October 31, 2007.



Evelyn M. Pierce

Certified transcriptionist

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AFFIDAVIT

STATE OF WASHINGTON)
: ss.
County of Clark)

I, Brandy Y. Jeffers, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

1. I represent Santiago Rivera-Santos in the above captioned matter.
2. The following is true to the best of my knowledge. On 1/12/07 at approximately 2324 hours, WSP communications informed Officer Bill Jordan of an erratically driven vehicle northbound I-5 from the interstate bridge. The reporting party stayed on the line as directed ofc. Jordan as to its location. Ofc. Jordan observed the vehicle south of the interstate bridge and was ordered by Sgt. Roy Rhine not to initiate a stop but to follow the vehicle to give Communications updates on the vehicle's location.
3. While following the vehicle, Ofc. Jordan observed the vehicle acting erratically. This included swerving, stopping abruptly before moving again, driving up on a curb, and crossing the centerline almost causing a collision. Portland Police officers arrived and initiated a traffic stop. Portland Officers placed the driver, Santiago Rivera-Santos under arrest for Driving under the Influence of Intoxicants (DUII), Oregon Revised Statute 813.010. On 1/16/07, Ofc. Jordan issued a traffic citation against Santiago Rivera-Santos for Driving under the influence (DUI), Revised Code of Washington 46.61.502, for the same incident and based on the same evidence. Mr. Rivera-Santos was convicted and sentenced on the Oregon DUII charge arising from this incident in March of 2007.

_____

Brandy Y. Jeffers, WSBA# 37475

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2007.

_____
NOTARY PUBLIC FOR WASHINGTON
My commission expires: _____

Exhibit 8, Affidavit 40

JEFFREY D. BARRAR, P.S.
500 W. 8TH ST., SUITE 230
VANCOUVER,WA 98660

CERTIFICATE OF SERVICE

I certify that I hand-delivered a copy of the foregoing to John Peterson, Deputy Prosecuting Attorney at 1013 Franklin St., Vancouver Washington 98660 on April 21, 2008.

Anthony J. Lowe, WSB #17690
Attorney for Petitioner