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KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 07-1-03980-1 SEA

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

73186-6

STATE OF WASHINGTON,

) Case No. 07-1-03980-1 SEA

Plaintiff,

) ORDER TRANSFERRING MOTION TO

v.

) COURT OF APPEALS

EDWARD JAMES HILLS,

Defendant.

2014 DEC -4 PM 11:44
SUPERIOR COURT
STAFF CLERK
STEPHANIE

This matter came before the Court on the motion of Defendant Edward James Hills, acting *pro se*, seeking relief from the criminal judgment and sentence under CrR 7.8(c)(2) (a copy is attached). Mr. Hills contends that under the U.S. Supreme Court's decision in Missouri v. McNeely, 81 U.S.L.W. 4250, 133 S. Ct. 1552, 185 L.Ed.2d 696 (2013), his conviction should be overturned.

CrR 7.8(c)(2) provides that this Court "shall transfer" a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the Court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

This Court concludes that under CrR 7.8(c)(2), this matter must be transferred to the Court of Appeals, Division I, for consideration as a personal restraint petition.

King County Superior Court
516 Third Avenue, Room C-203
Seattle, Washington 98101
(206) 477-1537

Based on the foregoing, it is hereby ORDERED that Mr. Hills' motion for relief from judgment is hereby transferred to the Court of Appeals, Division I.

Dated this 1st day of December, 2014.

ls\ (E FILED)

JUDGE BETH M. ANDRUS
KING COUNTY SUPERIOR COURT

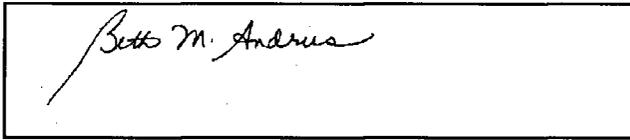
King County Superior Court
516 Third Avenue, Room C-203
Seattle, Washington 98101
(206) 477-1537

King County Superior Court
Judicial Electronic Signature Page

Case Number: 07-1-03980-1
Case Title: STATE OF WASHINGTON VS HILLS, EDWARD JAMES

Document Title: ORDER TRANSFERRING MOTION TO COA

Signed by: Beth Andrus
Date: 12/1/2014 3:33:07 PM



Judge/Commissioner: Beth Andrus

2014 DEC -4 PM 11:44
COUNTY OF KING
STATE OF WASHINGTON

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: D92F76D12132FF531AF16720A721F097AC7A50B6
Certificate effective date: 7/29/2013 12:26:48 PM
Certificate expiry date: 7/29/2018 12:26:48 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Beth
Andrus:dE53Hnr44hGmww04YYhwmw=="

COURT OF APPEALS DIVISION
STATE OF WASHINGTON

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Judge's Working
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JUDGE RICHARD F. McDERMOTT
DEPARTMENT 38

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IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

| | | |
|----------------------------|---|----------------------------------|
| <u>Edward J. Hills</u> |) | NO. <u>07-1-03980-1SEA</u> |
| <u>Petitioner</u> |) | |
| v. |) | MOTION FOR <u>RELIEF FROM</u> |
| <u>STATE OF WASHINGTON</u> |) | <u>JUDGMENT OR ORDER</u> |
| <u>Respondent</u> |) | <u>PURSUANT TO CrR 7.8(c)(2)</u> |
| |) | <u>(Clerk's Action Required)</u> |

I. RELIEF REQUESTED

Mr. Edward J. Hills moves the court for an order granting
this motion for relief pursuant to Missouri v. McNeely,
133 S.Ct. 1552 (2013). This motion is set for hearing on the _____
day of _____, 20____, at _____ a.m./p.m.

II. STATEMENT OF FACTS

The following facts support this motion (Set out a succinct statement of the material facts supporting
your motion. Add additional pages if necessary): On October 14, 2006, Petitioner
herein after ("Mr. Hills") was involved in a fatal accident
Motion For Relief - 1

1 that claimed the life of his dear friend Lindsey
2
3 M. Austin.

4
5 On April 12, 2007, Mr. Hills was charged with
6
7 vehicular homicide while driving under the influ-
8
9 ence of Marijuana THC 1.6mg/ml pursuant to
10
11 DUI statute RCW 46.61.502 and charges was
12
13 later amended on September 21, 2007, to in-
14
15 clude vehicular assault. (see Exh-A) Mr. Hills
16
17 blood sample was analyzed at the Washington
18
19 State Toxicology Laboratory and the State
20
21 admitted Mr. Hills DUI Toxicology Report into
22
23 evidence as exhibit 29. (see Exh-B)

24
25 Motion For Relief - 2
26

1 On October 9, 2007, officer Michl (SPD) testified
2
3 he has specialized training in driving under the
4
5 influence. He also testified that his training included
6
7 recognizing the effects of marijuana on a
8
9 person's ability to drive. (See RP 10-9-at 36-37
10
11 and his Statement Form Exh-C). Officer Michl
12
13 testified that he did not go to the scene of
14
15 the accident as he was instructed to do but
16
17 instead, went directly to Harborview Medical
18
19 Center to make contact with Mr. Hills.
20

21
22 Officer Michl testified that his observation
23
24 of Mr. Hills was "he had watery bloodshot eyes.
25
26 (RP 10-9-at 41).

Motion For Relief-3

1 Officer Michl testified, "that's one of
2
3 many signs that a person has been using
4
5 marijuana." (RP 10-9-at 42). After officer
6
7 Michl testified he read Mr. Hills his Miranda
8
9 Warnings, Mr. Hills asked him to explain in
10
11 more detail why he was being placed under
12
13 arrest. Officer Michl stated, "I told him
14
15 I had probable cause to arrest him for - I
16
17 am sorry, I told him that his passenger
18
19 was not expected to survive since the injuries
20
21 were so serious and that the law permitted
22
23 me to proceed in this manner," (RP 10-9-at 43)
24
25
26

Motion For Relief - 4

1 The state also asked officer Michli:

2
3 Q. "A part from your then getting -- I
4
5 assume that you then went on to get a
6
7 legal blood draw from him?"
8

9 A. "Right", I advised him of the
10
11 special evidence warning and obtained a
12
13 blood sample that way." (RP 10-9- at 45).
14
15

16 On October 17, 2007, the trial court
17
18 found Mr. Hills guilty based on the blood
19
20 draw being vaild, vehicular homicide, and
21
22 vehicular assault. (see Exh-D)
23
24
25
26

Motion For Relief - 5

1 **III. STATEMENT OF THE ISSUE**

2 The following issues are presented for resolution by the court (Specify the issues, e.g., whether
 3 the court should grant plaintiff leave to amend, etc.): 1). Whether the United States
 4 Supreme Court's decision in Missouri v. McNeely,
 5 133 S.Ct. 1552 (April 17, 2013) apply retroactively
 6 to Mr. Hill's case on Collateral review.

7
 8 **IV. EVIDENCE RELIED UPON**

9 This motion is supported by the following documents (Specify what documents support your
 10 motion, e.g., Declaration of John Doe, etc.): Amended Information, DUI Report,
 11 RP's 10-9-07 and 10-17-07, officer Michil's report, Expert's
 12 declaration, SPD's Blood draw forms ESS5B 5912, and
 13 New paper article regarding Cody Money.

14 **V. LEGAL AUTHORITY**

15 This motion is brought on the following grounds (Specify the grounds in which your motion is
 16 brought, include court rules, statutes and/or case law, etc. Add additional pages if necessary): CrR 7.8(c)
 17 (2); Washington State Constitution art. I sec.
 18 3; art. I sec. 7, and the U.S. Const. Amend.
 19 14, RCW 46.20.308(3); . . . RAP 16.4(c); and
 20 RCW 10.73.100(b).

21
 22
 23
 24
 25 Motion For Relief-6
 26

166 Wn.App 99, 268 P.3d 359 (2012).

Petitioner have established an actual and substantial prejudice resulting from a constitutional error. As pointed out; the United States Supreme Court has held that it is a fundamental due process violation to convict and incarcerate a person for a crime without proof of all the elements of the crime. Fiore v. White, 531 U.S. 225, 228-29, 121 S.Ct. 712, 148 L.Ed.2d 629 (2001). (See Permstick, 3 Wash. 673, 675, 29 P. 350 (1892).

Petitioner's liberty is unlawfully restrained in violation of due process of law based on former DUI statute RCW 46.61.502. Petitioner has met the threshold requirement of a constitutional error that require this writ be granted.

1). PETITIONER'S LIBERTY IS CURRENTLY RESTRAINED IN VIOLATION OF DUE PROCESS OF LAW BASED ON FORMER IMPLIED CONSENT STATUTE RCW 46.20.308 PERMITTING POLICE OFFICERS TO OBTAIN PETITIONER'S BLOOD WITHOUT HIS CONSENT OR THE AUTHORITY OF LAW

STANDARD OF REVIEW

RCW 10.73.100(6) provide in relevant part: A significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in criminal or civil proceeding instituted by the State or local government, and either the legislature has expressly provided that the change in law is to be applied retroactively, or a court interpreting a change in the law that lacks express legislature intent regarding retroactive application determines that sufficient reason exist to require application of the change legal standard. In re Pers. Greening, 141 Wn.2d 687, 695, 9 P.3d 206, 211 (2000).

Washington's implied consent law was passed by popular initiative in 1968. Laws of 1969, Ch.1 section 1 (Initiative Measure No. 242, adopted November 5, 1968); State v. Morales, 173 Wn.2d 560, 571-72, 269 P.3d 263 (2012). Codified at RCW 46.20.308, the law provides law enforcement officers with an effective means of obtaining physical evidence

Motion For Relief-7

of intoxication since any person operating a motor vehicle on the roads of this State is deemed to have consented to the administration of blood alcohol test. State v. Bartels, 112 Wn.2d 882, 885, 774 P.2d 1183 (1989). "The implied consent statute, RCW 46.20.308 was adopted to control or reduce the drunk-driver hazard to highway safety." State v. Moore, 79 Wn.2d 51, 53, 483 P.2d 630 (1971). It operates by recognizing that drivers have consented to alcohol testing by the operation of a motor vehicle within this State RCW 46.20.308(1). Washington's implied consent law creates a statutory presumption that anyone arrested for driving under the influence of alcohol has consented to a breathor blood test for purposes of determining the level of alcohol. Because of the seriousness of the offense, the Legislature has mandated that vehicular assault suspects submit to a blood test regardless of consent. State v. Schulze, 116 Wn.2d 145, 146, 804 P.2d 566 (1991)(RCW 46.20.308(3)) State v. Morales, 269 P.3d at 268.

Officer Michl failed to report to the scene of the accident. He testified that Detective Karn Belshay notified him and informed him that alleged marijuana was found in the petitioner's car.

Officer Michl testified that he was a Drug Recognition Expert; However, he never testified that he performed any of the 12-steps requirement known to be reliable indicator's of marijuana uses, or impairment. Instead, he testified that petitioner had watery blood shot eyes and that running a red light is a classic sign of a person who's impaired by marijuana. (RP 10-9-at44)(Exh-C)

The Washington State DRE program began in March 1996, although it did not become operational until July 1997. The Washington State DRE program complies with the IACP standards, and officers in this State use the same 12-step protocol adhered to nationally. Currently, the program is used in King, Pierce, Thurston, Yakima, and Spokane counties. DRE's are trained to determine whether a driver is under the influence of drugs, and then

Motion For Relief-8

to determine the type of drug causing the observable impairment. To accomplish this DRE's classify drugs into seven categories:

(1) Central nervous system (CNS) depressants, (2) inhalants, (3) phencyclidin (PCP), (4) cannabis, (5) CNS stimulants, (6) hallucinogens, and (7) narcotic analgesics. The training is based on the premise that each drug within a category produces particular signs and symptoms. The effect of any given drug can vary from drug to drug, primarily in terms of intensity and duration of action, and is dependent on many factors, including the amount ingested, the user's tolerance to the drug, and the drug's purity. In theory, the DRE protocol enables the DRE to rule in or out many medical conditions, such as illness or injury, contributing to the impairment. To determine whether a driver is under the influence of a specific category of drugs other than alcohol, DREs use a 12-step procedure based on a variety of observable signs and symptoms that are known to be reliable indicators of drug impairment. All DREs, regardless of agency, use the same procedures in the same order on all drivers. In theory, a DRE will not reach a final decision until the entire evaluation is complete. State v. Baity, 140 Wn.2d 1, 991 P.2d 1151 (2000).

Officer Michl did not reach a final decision that Mr.Hills was under the influence of or effected by marijuana because he failed to follow the 12-step protocol requirement. Officer Michl only pointed out that Mr.Hiills had bloodshot watery eyes. This is because Mr.Hills had just been informed that his dear friend was decease. As a trained Drug Recognition Expert officer Michl never cited to any known indicators after talking to Mr.Hills. For example, odor of marijuana in the car or on Mr.Hills' breath, marijuana debris in his mouth, green coating of his tongue, eyelid tremors, relaxed inhibitions, incomplete thought process. (See N.H.T.S.A pages 8-11 category cannabis (See Exh-E)

Motion For Relief-9

Officer Michl known or should have known as a DRE officer that THC is rapidly and extensively metabolized with very little THC being excreted unchanged from the body. THC is primarily metabolized to 11-hydroxy-THC. THC is then rapidly metabolized to the 11-nor-9-carboxy-THC (THC-COOH) which is not psychoactive. (See Exh-E) There was no direct evidence that Mr. Hills allegedly ran a red light. There were no witnesses' statements obtained at the scene of the accident by any officer that supported Mr. Hills ran a red light. Officer Michl was informed by Det. Belshay that alleged marijuana was found and since he could not reasonably determine Mr. Hills was under the influence he decided that he will just arrest Mr. Hills based on no evidence that Mr. Hills was at fault, but because Lindsey was not expected to survive the accident. Officer Michl told Mr. Hills that the law allowed him to proceed in this manner. RCW 46.20.308(3). (RP 10-9-at 43) (See Exh-C)

Officer Michl read the "special evidence warning" and Mr. Hills never signed it. (See Exh-F)

The former Implied Consent Statute RCW 46.20.308 did not define marijuana THC concentration as a DUI crime and section (3) permitted officer Michl to arrest Mr. Hills for vehicular homicide and taking his blood without his consent or the authority of law. Section five also authorized officer Michl to take Mr. Hills' blood even if he refused.

However, in light of Missouri v McNeely, 133 S.Ct. 1552 (April 17, 2013), the United States Supreme Court ruled that natural metabolism of alcohol in the blood stream do not present a per se exigency that justifies an exception to the Fourth Amendment search warrant requirement for nonconsensual blood testing in all drunk driving cases, and instead, exigency in

Motion For Relief-16

this context must be determined case by case in the totality of the circumstances, abrogating State v. Shriner, 751 N.W. 2d 538, State v. Bohling, 173 Wis.2d 529, 494 N.W.2d 399, and State v. Woolery, 116 Idaho 368, 775 P.2d 1210.

In the present case officer Michl was not confronted with an emergency, in which delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence specifically marijuana in Mr.Hills' system. The accident occurred around 12:05pm Mr.Hills was arrested at 1:30pm at Harborview Medical Hospital ten blocks away from the King County Courthouse,

A search warrant could have been obtained by officer Michl.

Officer Michl was not required to first obtain a search warrant because the former Implied Consent Statute "permitted" him to obtain a blood sample without Mr.Hills' consent or a search warrant.

The significant change in the law under the Implied Consent Statute RCW 46.20.308(3) now provide that if a person is arrested for vehicular homicide provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522 or if an individual is under arrest for the crime of driving under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested pursuant to a search warrant, a valid waiver of the warrant requirement, or when exigent circumstances exist. Section 5 now also requires "no test shall be given except as authorized by a search warrant. (See Exh-G)

Motion For Relief-11

Mr.Hills was not afforded these constitutional rights and based on the new change in the law; Mr.Hills' liberty is unlawfully restrained in violation of due process of law. Cody Money appears to be the first person in the State of Washington that had the new laws applied to his case. (See Exh- H)

The Washington State Constitution under Article I, sec. 7 provides: No person shall be disturbed in his private affairs, or his home invaded, without the authority of law.

"When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed." State v. Ladson, 138 Wn.2d 343,359, 979 P.2d 833 (1999); State v. Morales, 154 Wn.App 26, 225 P.3d 311 (2010); and Wong Sun v. US 371 U.S. 471, 83 S.Ct.407, 9 L.Ed.2d 441 (1963). The Fourth Amendment provides in relevant part that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause." United States v. Robinson, 414 U.S. 218,224, 94 S.Ct.467, 38 L.Ed.2d 427 (1973). Both principles applies to the type of search at issue in this present case; which involved a compelled physical intrusion beneath Mr.Hills' skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation. Such an invasion of his bodily integrity implicates an individual's "most personal and deep-rooted expectations of privacy." Winston v. Lee, 470 U.S. 753,760, 105 S.Ct. 1611, 84 L.Ed.2d 662 (1985) also see Skinner v. Railway Labor Executives' Assn, 489 U.S.602,616, 109 S.Ct.1402, 103 L.Ed.2d 639 (1989).

Motion For Relief-12

1 Washington Courts generally follow the
2
3 lead of the United States Supreme Court
4
5 when deciding whether to give retroactive
6
7 application to newly articulated principles
8
9 of law. State v. Evans, 154 Wn.2d 438, 114
10
11 P.3d 627 (2005); In re Pers. Restraint of
12
13 Markel, 154 Wn.2d 262, 268, 111 P.3d 249
14
15 (2005); Citing In re Pers. Restraint of Saive,
16
17 103 Wn.2d 322, 328, 692 P.2d 818 (1985).

18
19
20 Under this federal common law retroactivity
21
22 analysis: 1). A new rule for the conduct
23
24 of criminal prosecutions is to be applied
25
26

Motion For Relief-13

1 retroactively to all case, state or federal, pend-
2
3 ing on direct review or not yet final, with
4
5 no exception for cases in which the new rule
6
7 constitutes a clear break from the past.
8

9 2). A new rule will not be given
10
11 retroactive application to cases on collateral
12
13 review except where either: (a) the new
14
15 rule places certain kinds of primary
16
17 private individual conduct beyond the power
18
19 of the State to proscribe or (b) the rule
20
21 requires the observance of procedures
22
23 implicit in the concept of ordered liberty.
24
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26

Motion For Relief- 14

1 In re Pers. Restraint of St. Pierre, 118 Wn.2d 321,
2
3 326, 823 P.2d 492 (1992) (citing Griffith v.
4
5 Kentucky, 479 U.S. 314, 328, 107 S.Ct. 708,
6
7 93 L.Ed.2d 649 (1987) Teague v. Lane,
8
9 489 U.S. 288, 311, 109 S.Ct. 1060, 103 L.Ed.2d
10
11 334 (1989).

12
13
14 Beginning December 6, 2012 voters
15
16 passed Initiative Measure 502, which amended
17
18 RCW 46.20.308 to insert a per se THC
19
20 concentration in the implied consent warnings,
21
22 and to provide for administrative consequences
23
24 and hearings for drivers with certain
25
26

Motion For Relief - 15

1 THC concentrations. (see Wash. Prac. Vol 32 Ch. 24
2
3 Implied Consent Statute.) Effective September
4
5 28, 2013, amendments passed by the Legis-
6
7 lature under Engrossed Second Substitute
8
9 Senate Bill (ESSB) 5912.
10

11
12 This significant change in the law
13
14 apply retroactively to Mr. Hills case before
15
16 this court because, its implicit in the concept
17
18 of ordered liberty.
19

20 A new procedural rule will be applied
21
22 retroactively if it is "implicit in the
23
24 concept of ordered liberty," implicating
25
26

Motion For Relief -16

1 the fundamental fairness of the trial.

2
3 St. Pierre, 118 Wn.2d at 326, 823 P.2d 492.

4
5 (Citing Mackey v. United States, 401 U.S.,

6
7 667, 692-93, 91 S.Ct. 1160, 28 L.Ed. 2d 404

8
9 (1971), Officer Michl was permitted by

10
11 an unconstitutional statute (Implied consent)

12
13 to unlawfully obtain Mr. Hills's blood sample

14
15 without a search warrant, a valid waiver

16
17 of the warrant requirement, or when

18
19 exigent circumstances exist. RCW 42.20.

20
21 308(3). (see Exh-G)

22
23 "A rule that qualifies under this

24
25
26 Motion For Relief-17

1 exception must not only improve accuracy, but
2
3 also alter our understanding of the bedrock
4
5 procedural elements essential to the fair-
6
7 ness of a proceeding." Sawyer v. Smith,
8
9 497 U.S. 227, 242, 110 S.Ct. 2822, 111 L.Ed.2d
10
11 193 (1990) (quoting Teague, 489 U.S. at 311,
12
13 109 S.Ct. 1060, and Mackey, 401 U.S. at 693,
14
15 91 S.Ct. 1160)

16
17
18 The Legislature amended the Implied
19
20 Consent Statute in accordance with the U.S.
21
22 Supreme Court ruling and as a result, will
23
24 improve accuracy informing officer procedural
25
26

Motion For Relief-18

1 elements essential to the fairness of a
2
3 proceeding.

4
5 Mr. Hills did not waive his rights to the
6
7 unlawful intrusion of his blood sample; officer
8
9 Michel failed to obtain a search warrant;
10
11 exigent circumstances did not exist; and
12
13 RCW 42.20.308 was constitutionally invalid
14
15 on its face at the time of Mr. Hills
16
17 arrest because it permitted officer to ob-
18
19 tain his blood sample without a search
20
21 warrant rendering his conviction under RCW 42.61.
22
23 502 unlawful and must be vacated.
24
25
26

Motion For Relief - 19

VI. CONCLUSION

1) Mr. Hills asks this Honorable Court to grant this motion for relief / Petition.

2) Mr. Hills asks this Honorable Court to apply Missouri v. McNeely retroactively to his case and vacate the DUI charge

and remand for a new trial.

3) Mr. Hills asks this Honorable Court to grant any other relief it deems just and appropriate.

Edward J. Hills
Monroe Correction Center
MCC-P.O. Box 777
Monroe, WA 98272

Motion For Relief-20

EXHIBIT A

FILED
KING COUNTY, WASHINGTON

SEP 21 2007

CRIMINAL PRESIDING

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

EDWARD JAMES HILLS,

Defendant.

No. 07-1-03980-1 SEA

AMENDED INFORMATION

COUNT I

I, Daniel T. Satterberg, Acting Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse EDWARD JAMES HILLS of the crime of Vehicular Homicide, committed as follows:

That the defendant EDWARD JAMES HILLS in King County, Washington, on or about October 16, 2006, did drive a motor vehicle which proximately caused injury to Lindsey Austin, a person who died within three years on or about October 16, 2006, as a proximate result of the injury; and that at said time the defendant was operating the vehicle (a) while under the influence of intoxicating liquor, or any drug as defined in RCW 46.61.502 and (b) in a reckless manner and (c) with disregard for the safety of others;

Contrary to RCW 46.61.520(1)(a), 1(b) and 1(c), and against the peace and dignity of the State of Washington.

COUNT II

And I, Daniel T. Satterberg, Acting Prosecuting Attorney aforesaid further do accuse EDWARD JAMES HILLS of the crime of Vehicular Assault, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney
Daniel T. Satterberg, Acting Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

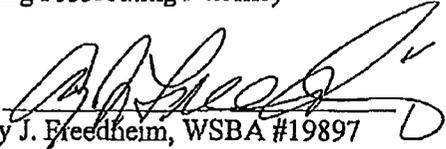
AMENDED INFORMATION - 1

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That the defendant EDWARD JAMES HILLS in King County, Washington, on or about October 16, 2006, did drive or operate a vehicle in a reckless manner and while under the influence of intoxicating liquor or any drugs, as defined by RCW 46.61.502, and did drive or operate a vehicle with disregard for the safety of others and caused substantial bodily harm to Steve Lafferry;

Contrary to RCW 46.61.522(1)(a), 1(b) and 1(c), and against the peace and dignity of the State of Washington.

NORM MALENG
Prosecuting Attorney
DANIEL T. SATTERBERG
Acting Prosecuting Attorney

By: 
Amy J. Freedheim, WSBA #19897
Senior Deputy Prosecuting Attorney

ORDER

THIS MATTER having come before this court upon the motion of the Prosecuting Attorney, good cause having been demonstrated, and the defendant not being prejudiced in any substantial right, the State of Washington is allowed to file an amended information herein.

DONE IN OPEN COURT this 21 day of ^{Sept.} June, 2007.

R. H. Kellogg

JUDGE

Presented by:

A. J. Freedheim
Amy J. Freedheim, WSBA #19897
Senior Deputy Prosecuting Attorney

EXHIBIT B

WASHINGTON STATE TOXICOLOGY LABORATORY

Barry K. Logan, PhD, DABFT
Washington State Toxicologist

FORENSIC LABORATORY SERVICES BUREAU
WASHINGTON STATE PATROL
2203 AIRPORT WAY S, SUITE 360
SEATTLE WA 98134-2027
PHONE (206) 262-6100 FAX (206) 262-6145

Ann Marie Gordon, MS
Laboratory Manager

STATE'S EXHIBIT 29

DUI Toxicology Report

ST 0607818

agency case #: 06-439504
attn: Karen Belshay
agency: SPD - Traffic Collision Investigations
610 Fifth Ave
POB 34986 Unit 683
Seattle WA 98124-4986

date received: 10-18-2006
date completed: 11-27-2006

| Last name | First name | Middle initial |
|-----------|------------|----------------|
| Hills | Edward | J |

sample blood
container vg
labeled y

BLOOD ETHANOL neg

BLOOD ANALYSES

| | | |
|-------------------|------|-------|
| THC | 1.6 | ng/mL |
| carboxy-THC | 16.6 | ng/mL |
| diazepam | 0.53 | mg/L |
| morphine | 0.01 | mg/L |
| nicotine/cotinine | pos | |
| caffeine | pos | |

URINE TEST RESULTS

not performed

When a sample is analyzed and a positive result is obtained, the sample is not returned to the sender. If a negative result is obtained, the sample will be returned to the sender. For more information, please contact the Toxicology Laboratory at the above contact number. AVOID THE NUCLEAR OPTION

COMMENTS

When a sample is analyzed and a positive result is obtained, the sample is not returned to the sender. If a negative result is obtained, the sample will be returned to the sender. For more information, please contact the Toxicology Laboratory at the above contact number. AVOID THE NUCLEAR OPTION


Justin L. Kinoy, Analyst
Blood Analyst Permit since 2005

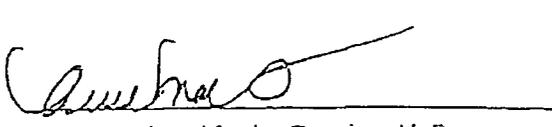

Ann Marie Gordon M.S.
Laboratory Manager

EXHIBIT C

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

COPY

3 -----
4 STATE OF WASHINGTON,)

5 vs.) No. 07-1-03980-1 SEA

6 EDWARD HILLS,) COA No. 60911-4-I

7 Defendant.)
8 -----

9 TRANSCRIPT OF PROCEEDINGS

10 ON APPEAL

RECEIVED

MAR 10 2008

Nielsen, Broman & Koch, PLLC

11 -----
12 Heard before the Honorable Judge Paris K. Kallas, at
13 King County Courthouse, 516 Third Avenue, Room E-847,
14 Seattle, Washington

15
16 APPEARANCES:

17
18 AMY FREEDHEIM, representing the State;

19 ERIC WESTON, representing the Defendant.
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22
23

24 DATE: October 9, 2007

25 REPORTED BY: Joanne Leatiota, RPR, CRR

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1 pretrial purposes only. I understand that's your
2 only copy. I will ask the bailiff to make you a
3 copy.

4 (State's Pretrial Exhibit 1 admitted.)

5 MS. FREEDHEIM: The State will call
6 Officer Michl to the stand.

7 **ERIC MICHL,**
8 being first duly sworn, the witness was called and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. FREEDHEIM:

12 Q. Could you please state your full name and your
13 occupation, please.

14 A. My name is Eric Michl, my last name is spelled
15 M-i-c-h-l. I am a Seattle police officer.

16 Q. How long have you been involved in law enforcement?

17 A. 27 and a half years.

18 Q. Apart from your training to be a police officer,
19 your general training to be a police officer, do
20 you have specialized training?

21 A. I do.

22 Q. Can you tell us a little bit about your specialized
23 training.

24 A. It involves driving under the influence, or DUI,
25 and I have always had an interest in this kind of

1 work, and in addition to what I learned in basic
2 training to be a police officer. In November of
3 1987, I attended a three-day class with the
4 Bellevue Police Department and the Washington State
5 Criminal Justice Training Commission on field
6 sobriety testing, including the horizontal gaze
7 nystagmus test.

8 Following that, there was another class in 1996
9 on DUI law updates and field sobriety testing. In
10 1999, I attended a three-day class on standardized
11 field sobriety testing and drugs and impaired
12 driving. And then most recently, the drug
13 recognition expert program with Washington State
14 Patrol.

15 I also maintain my certification as a breath
16 test operator with the Washington state
17 toxicologist, which requires me to recertify every
18 three years.

19 Q. Are you a certified drug recognition expert
20 officer?

21 A. I am.

22 Q. And does that include training in recognizing the
23 effects of marijuana on a person's ability to
24 drive?

25 A. Yes.

1 Q. October 16th of 2006, how did you become involved
2 in the Edward Hills case?

3 A. I was contacted at home by the police radio
4 dispatcher.

5 Q. And do you recall what time that was?

6 A. Right around 12:30 p.m.

7 Q. And what were you asked to do?

8 A. I was asked to respond to a traffic collision scene
9 in the West Seattle area, it was Delridge Way
10 Southwest and Southwest Myrtle Street, where two
11 vehicles had collided, and one person was in very
12 serious condition.

13 Q. And so did you then respond to the collision site?

14 A. I did not. I actually had a radio conversation
15 with Officer Bruce Wint, who was already at the
16 scene.

17 Q. And where did you respond?

18 A. I actually went directly to Harborview Hospital
19 here in Seattle.

20 Q. And when you arrived at Harborview, approximately
21 what time did you arrive at Harborview?

22 A. Right around one o'clock p.m.¹¹

23 Q. And who did you contact when you got to Harborview?

24 A. Initially I met with the Seattle
25 firefighter/paramedic Randy Foy, who I know

1 personally, and I had a conversation with him. He
2 was actually at the scene of the collision.

3 Q. What did you learn about the collision from him?

4 A. He had transported the defendant, Mr. Hills, to the
5 hospital, but told me that his passenger --
6 Mr. Hills' passenger was in a condition where
7 trauma CPR was being administered, and she was not
8 expected to survive.

9 Q. And did you then have contact with Mr. Hills?

10 A. I did.

11 Q. Would you recognize him if you saw him again?

12 A. Yes. He's the gentleman seated at the defense
13 counsel table wearing a red shirt.

14 MS. FREEDHEIM: May the record reflect the
15 witness has identified the defendant in this case.

16 Q. Tell us, where did you have contact with the
17 defendant?

18 A. He was in the first treatment room to the right.
19 As you enter the emergency room, there's two
20 sliding doors that enter from what's called the
21 ramp into the emergency room itself, and he was in
22 the first treatment room across from the nurse's
23 station, to the right of those doors.

24 Q. And were there any other police officers with him
25 that you recall when you first encountered him?

1 A. Not that I could remember, no.

2 Q. And were there any signs of obvious injury or
3 trauma to the defendant that you saw?

4 A. I did not see any injuries to him, no.

5 Q. Can you tell us about your contact with him.

6 A. Well, he was restrained to a backboard and in a C
7 collar. This is a collar around his neck to
8 immobilize his body, although he was able to move
9 around a little bit. His arms were restrained at
10 his sides. And I approached him and informed him
11 he was under arrest and advised him of his
12 constitutional rights.

13 Q. When you told him that he was under arrest, did you
14 tell him what he was under arrest for?

15 A. Vehicular homicide and vehicular assault.

16 Q. What had you learned about the collision from
17 ~~→~~ Officer Wint?

18 A. → He informed me that Mr. Hills had failed to stop at
19 → a red signal, collided with another vehicle. His
20 passenger was not expected to survive. And there
21 were some things that he discovered at the scene
22 that concerned me. One was a citation in the car
23 for a DUI that had been issued about two years
24 previous, a large amount of cash, and -- if I can
25 refer to my statement to refresh my memory, if

1 that's okay.

2 Q. Do you have a copy of that?

3 A. I do.

4 Q. Okay.

5 A. And there was some literature about search and
6 seizure that he found also. Using this
7 information, along with Mr. Hills' identifying
8 information, his name and birth date, I conducted a
9 search of law enforcement records myself and
10 discovered that he had a conviction for VUCSA and
11 that there was an entry on his Department of
12 Licensing abstract for a blood breath test refusal,
13 which indicated to me that at some point he had
14 been arrested for DUI before.

15 Q. Were you aware of any drugs being found in his
16 vehicle at the crash scene?

17 A. ~~*~~ Yes. Before I arrived at the hospital, I received
18 a telephone call from Detective Belshay on my
19 cellular phone, and she informed me that some
20 marijuana had been discovered in the driver's door
21 handle of Mr. Hills' vehicle.

22 Q. Did you make any observations about the defendant
23 when you contacted him?

24 A. Yes. He had watery, bloodshot eyes.

25 Q. Why was that something that, based on your training

1 and experience, alerted you to something?

2 A. That's one of many signs that a person has been
3 using marijuana.

4 Q. What was his demeanor when you contacted him?

5 A. The best way I could describe it was indifferent,
6 or rather stoic or calm.

7 Q. Was he cooperative with questions that you asked
8 him?

9 A. He was.

10 Q. And did he track what you were asking him?

11 A. Yes.

12 Q. You said that you advised him of his Miranda
13 warnings?

14 A. I did.

15 Q. And did you do that from a card, or did you do that
16 from memory?

17 A. From a card I carry in my pocket.

18 Q. Can you tell us the rights that you read to the
19 defendant.

20 A. Yes. "You have the right to remain silent.
21 Anything you say can be used against you in a court
22 of law. You have the right at this time to talk to
23 a lawyer and have him present with you while you
24 are being questioned. If you cannot afford to hire
25 a lawyer, one will be appointed to represent you

1 before any questioning, if you wish. You can
2 decide at any time to exercise these rights and not
3 answer any questions or make any statements. You
4 have the right to counsel. If you aren't able to
5 pay for counsel, you are entitled to have one
6 provided without charge."

7 Q. Then did you ask him if he understood those rights?

8 A. Yes.

9 Q. And did he indicate whether or not he did?

10 A. He indicated to me that he did and then asked me if
11 he could ask me a question.

12 Q. What did he ask you?

13 A. He wanted me to explain in more detail why he was
14 being placed under arrest.

15 Q. And did you?

16 A. Yes, I did.

17 Q. Do you remember what you explained to him?

18 A. Referring to my police report, I told him I had
19 probable cause to arrest him for -- I am sorry, I
20 told him that his passenger was not expected to
21 survive since the injuries were so serious and that
22 the law permitted me to proceed in this manner and
23 that -- that was my response to his question.

24 Q. And what was his reaction to your telling him that
25 the passenger was not expected to survive?

1 A. There was not really much of a reaction. He was
2 rather indifferent or calm.

3 Q. Can you tell us what it is about marijuana
4 impairment in the overall circumstances that made
5 you believe that the defendant could be under the
6 influence or impaired by marijuana.

7 A. Well, the way the collision occurred is concerning,
8 because in my experience, as well as my training,
9 that people will typically disregard traffic
10 signals. They will be able to hold their vehicle
11 straight on a roadway, but they will miss some of
12 the important things occurring outside of the car,
13 like traffic control devices or other hazards that
14 present themselves in the roadway. And running a
15 red light actually is a classic sign of a person
16 who's impaired by marijuana.

17 Q. Did you know that marijuana -- or that cocaine had
18 also been found in the car during your contact with
19 him with?

lies

20 A. No, I had no idea whatsoever.

21 Q. And tell us, what is it about the fact that he had
22 a DUI citation at the scene or a prior suspected
23 DUI that led to your believing that he could
24 possibly be impaired for this particular offense?

25 A. Well, it would mean to me that he has a history of

1 this kind of conduct. That's one of many things
2 that I considered in making my decision.

3 Q. Is there any one particular factor that you looked
4 at, or was it the totality of it?

5 A. No, I looked at everything that was within my
6 knowledge at that time.

7 Q. You never saw him crying or being emotional after
8 you told him that his passenger was not expected to
9 survive?

10 A. No, I did not.

11 Q. And did he have any other conversation with you?

12 A. No.

13 Q. And did you have any other conversation or
14 questions with him?

15 A. No.

16 Q. Apart from your then getting -- I assume that you
17 then went on to get a legal blood draw from him? *

18 A. Right. I advised him of the special evidence
19 warning and obtained a blood sample that way.

20 Q. And he did not at any point ask for additional
21 tests?

22 A. No, he did not.

23 Q. And he was cooperative through the blood draw
24 procedure?

25 A. Yes, he was.

1 Q. Have you had any conversation with Mr. Hills since
2 October 16th?

3 A. No, I have not.

4 Q. And officer, do you recall, did you ever have any
5 contact that you recalled with Mr. Hills prior to
6 October 16th?

7 A. No.

8 MS. FREEDHEIM: I have no further
9 questions for Officer Michl.

10 THE COURT: Mr. Weston, we typically take
11 our afternoon break at this point. Do you have any
12 idea how long your questions will be?

13 MR. WESTON: I think it's going to be
14 somewhere in the ten- to 15-minute range.

15 THE COURT: Let's take our afternoon
16 recess, then. We'll be at recess for 15 minutes.
17 Thank you.

18 (Afternoon recess was taken.)

19 MS. FREEDHEIM: Your Honor, the State
20 would like to reopen direct with Officer Michl.

21 THE COURT: You may.

22 CONTINUED DIRECT EXAMINATION

23 BY MS. FREEDHEIM:

24 Q. Officer, over the recess did you have an
25 opportunity to review your statement in this case?

1 A. I did.

2 Q. And was there any conversation that you had with
3 the defendant about the drug marijuana?

4 A. Yes.

5 Q. And can you tell us about that conversation.

6 A. I was waiting for the nurse to find an access point
7 to draw his blood, and we had a conversation where
8 I asked him some questions. And he told me that he
9 last used marijuana the previous night, had not
10 used any alcohol for several days, and knew about
11 the VUCSA conviction, but he couldn't tell me when
12 or for what substance he was in possession of, and
13 that he had not used any other drugs.

14 Q. Anything else?

15 A. He said that he believed he had the green signal at
16 the intersection.

17 MS. FREEDHEIM: I have no further
18 questions.

19 THE COURT: Mr. Weston.

20 MR. WESTON: Thank you. Your Honor, I
21 apologize. My ten to 15 minutes, after thinking
22 about it and talking with Mr. Palmer who was here,
23 it's much better used in the case in chief than at
24 this hearing.

25 THE COURT: Fair enough.

1 MR. WESTON: I didn't want to waste
2 Officer Michl's time, but I heard they had
3 reopening. But I do have one quick question or a
4 set of questions.

5 CROSS EXAMINATION

6 BY MR. WESTON:

7 Q. The blood draw, did that actually come out of
8 Mr. Hills' body?

9 A. Well, the blood did, but it was through an IV
10 access already installed before I arrived at the
11 hospital.

12 Q. What else was hooked up to that IV access at the
13 time?

14 A. There was a bag containing clear liquid. Typically
15 it's saline.

16 Q. Do you have any knowledge about what anything else,
17 if anything, was ever attached to that same access
18 line?

19 A. No. I mean I could -- I don't want to guess. I --
20 I would have a suspicion, I suppose, but I wasn't
21 there when that was installed, and I am not even
22 certain who did install it. It could have been the
23 fire department or the hospital itself.

24 — MR. WESTON: Thank you very much. I have
25 no further questions.

1 THE COURT: Ms. Freedheim.

2 REDIRECT EXAMINATION

3 BY MS. FREEDHEIM:

4 Q. Are you aware of any other therapeutic drugs that
5 were given to the defendant?

6 A. Personally I was not present, so -- I am aware of
7 something in his blood, I think, that was found,
8 but I wasn't there when that was administered.

9 MS. FREEDHEIM: I have no further
10 questions.

11 MR. WESTON: Nothing further. Thank you.

12 THE COURT: Thank you, officer, you may
13 step down. You are free to leave for now.

14 (Witness excused.)

15 THE COURT: Any additional evidence from
16 the State?

17 MS. FREEDHEIM: Nothing.

18 THE COURT: Before I ask if the defense
19 wishes to present evidence, let me advise Mr. Hills
20 of his rights.

21 Mr. Hills, the purpose of the hearings we have
22 had this afternoon is to determine whether any
23 statements you have made may be used in court and
24 whether any evidence will be suppressed.

25 You may testify at this pretrial hearing, but

1 you are not required to testify, if you do not wish
2 to. If you testify, you are subject to
3 cross-examination about the circumstances under
4 which you made the statements and any other matters
5 that may affect your believability as a witness.

6 If you testify at this pretrial hearing, you
7 still retain your right to remain silent at trial.
8 If you testify at this hearing, neither the fact
9 that you have testified nor the testimony you give
10 at this hearing will be mentioned to the jury,
11 unless you also decide to testify about these
12 subject matters at the trial.

13 MS. FREEDHEIM: Only for the 3.5 hearing
14 and not for the 3.6 hearing.

15 THE COURT: I don't know that that's
16 necessarily resolved in the case law, counsel.

17 MS. FREEDHEIM: Okay. Great minds can
18 differ on these things.

19 THE COURT: And even mediocre minds can
20 differ. I am not aware that that's been resolved
21 in the case law, and I tend to give it on both.
22 Thank you.

23 MR. WESTON: May I have just a minute?

24 THE COURT: Certainly.

25 (Off-the-record discussion between



OCT 16 11:26
STATEMENT FORM

| |
|--------------------------------|
| INCIDENT NUMBER 2006-439504 |
| UNIT FILE NUMBER |

| | | |
|---|--------------|--|
| DATE 10/16/2006 | TIME 2038 | PLACE Seattle Police Traffic Office |
| STATEMENT OF <input type="checkbox"/> COMPLAINANT <input type="checkbox"/> WITNESS <input type="checkbox"/> VICTIM <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OTHER | | |
| NAME (LAST, FIRST, M.I.) MICHL, Eric (-) #4494- Seattle Police Officer | | DOB |

I am Seattle Police Officer Eric Michl #4494, currently assigned to the Driving Under the Influence Squad. I have over 22 years of training and experience detecting, investigating, and arresting people for driving under the influence of alcohol and / or drugs. I am also trained and qualified as a Drug Recognition Expert by the Washington State Patrol and International Association of Chiefs of Police.

Tody at about 1230 hours I was contacted at home by Seattle Police Communications. I was directed to respond to a serious injury collision at Delridge Way SW and SW Orchard St. I spoke with Officer B. Wind via police radio and learned that a car had fail to stop at a red signal and collided with a truck. A passenger in the car was not expected to survive. All occpants were going to be transported to Harborview Hospital.

While I was enroutte to the hospital, Officer Wind reported that he identified the driver of the car as HILLS, Edward J. According to Officer Wind, Hills had a large amount of cash on his person, a copy of a DUI citation issued to him over two years ago, literature on search and seizure law, and the passenger with him was listed as a endangered missing person. I found Hills full name and birthdate on the the police radio record and by checking this information I discovered that Hills also had a previous VUCSA conviction and a breath / blood test refusal on his DOL abstract. Detective Karen Belshaw contacted me via cellular phone. She reported that Marijuana was found inside the drivers door handle of the vehicle Hills was driving.

I arrived at Harborview Hospital and met with Seattle Firefighter Paramedic Randy Foy. He said he transported Hills from the scene but also knew that trauma CPR was being perform on the passenger in Hills' vehicle. He did not believe she would survive. I concluded that based on all the information I had at this time, that I had probable cause to arrest Hills for Vehicular Assault, Vehcular Homicide, and DUI with serious injuy to another.

At 1320 hours I met with Hills in the emergency room. Stephen Santaella RN was also present and trying to find a site on Hills body to draw blood from. I informed Hills that he was under arrest for Vehicular Assault and DUI with serious bodily injury to another. I advised Hills of his constitutional rights from a card I carry for that purpose. Hills told me that he understood and wanted to ask me a question. Hills asked me to explain in mor detail why he was being arrested. I told Hills that his passenger was not expected to survive and since the injuries were so serious, that the law permitted me to proceed in this manner. I noticed that Hills had watery and bloodshot eyes.

At 1323 hours I advised Hills of the Special Evidence Warning. Hills was not able to sign it because he was restrained to a backboard and in a C-collar. His hands were also restrained. I asked Hills if he would voluntarily submit to the blood test. Hills said he would.

While waiting for the nurse to find an access point, I questioned Hills and learned from him the following; Hills said he believed he had the green signal. He last used Marijuana last night and had not had any alcohol for several days. He admitted to having a VUCSA conviction but did not remember what it was he was in possession of. He said he had not used any other drugs.

| | | | |
|--|----------------------------|--------|-------------------|
| WITNESS | X | | |
| WITNESS | STATEMENT TAKEN BY Self | SERIAL | UNIT |
| TRANSCRIBED BY (Taped / Translated Statements) | SERIAL | UNIT | SUPERVISOR SERIAL |



SEATTLE
POLICE
DEPARTMENT

STATEMENT FORM

| |
|--------------------------------|
| INCIDENT NUMBER 2006-439504 |
| UNIT FILE NUMBER |

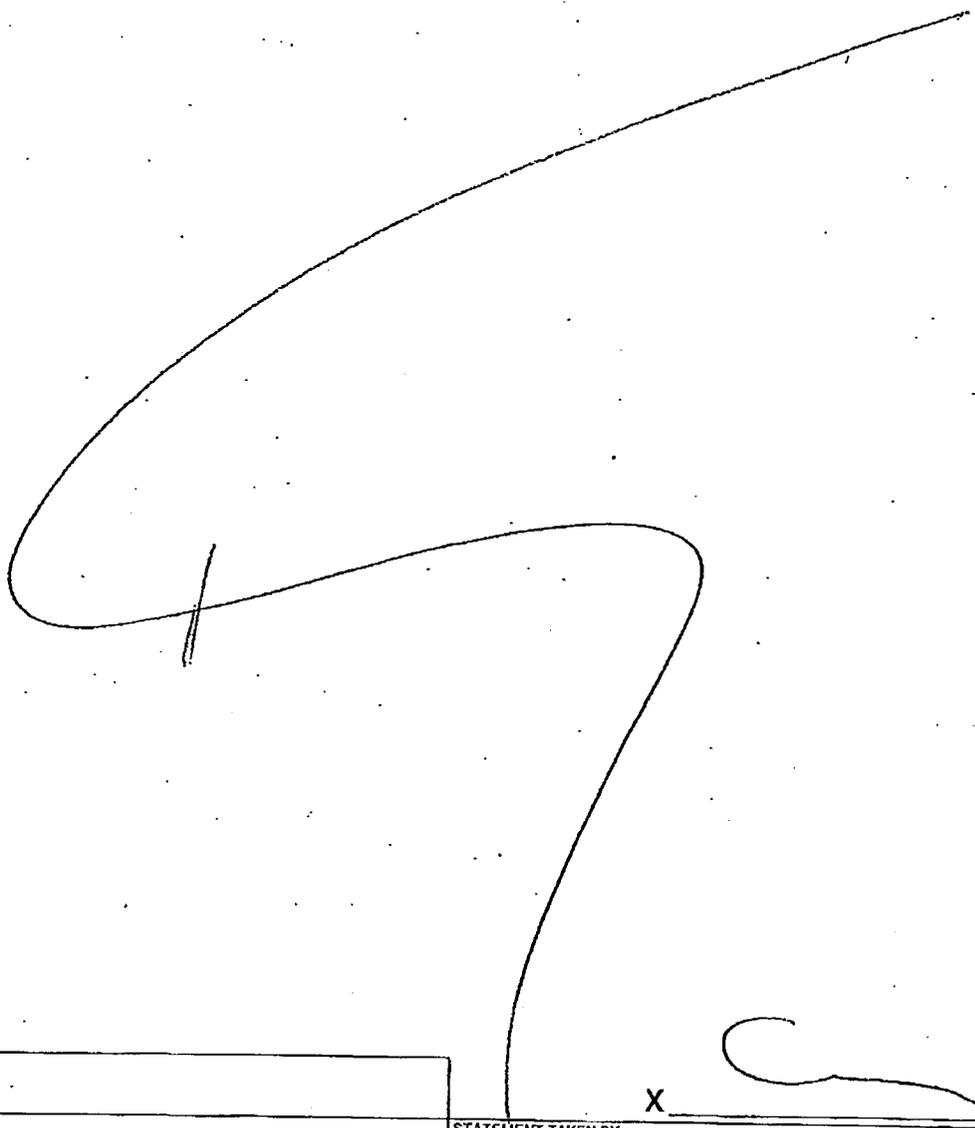
| | | |
|--------------------|--------------|--|
| DATE 10/16/2006 | TIME 2038 | PLACE Seattle Police Traffic Office |
|--------------------|--------------|--|

| | | | | | |
|--------------|-------------|---------|--------|---------|-------|
| STATEMENT OF | COMPLAINANT | WITNESS | VICTIM | OFFICER | OTHER |
|--------------|-------------|---------|--------|---------|-------|

| | |
|---|-----|
| NAME (LAST, FIRST, M.I.) MICHL, Eric (-) #4494- Seattle Police Officer | DOB |
|---|-----|

The nurse was not able to located an access site for a blood draw. Instead he used the IV already installed in Hills left arm. I watched as the nurse prepared the IV access with Iodine and then insert a syringe. The nurse drew blood from Hills and then transferred it into the two blood sample tubes I provided from my blood sample kit. I checked each tube and them to contain a small amount of white powder. I completed the label on each tube and initialed them along with the nurse. I sealed the tubes back in the blood kit and released Hills to Officer Chin. I identified the nurse by his photograhpic Harborview identification tag.

I took the blood kit to the evidence unit, sealed it in a paper bag and handed it over to Officer M. Jongma.



| |
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| WITNESS |
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| WITNESS |
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| | | |
|----------------------------|--------|------|
| STATEMENT TAKEN BY Self | SERIAL | UNIT |
|----------------------------|--------|------|

| | | | | |
|--|--------|------|------------|--------|
| TRANSCRIBED BY (Taped / Translated Statements) | SERIAL | UNIT | SUPERVISOR | SERIAL |
|--|--------|------|------------|--------|

EXHIBIT D

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3 -----
4 STATE OF WASHINGTON,)

5 vs.)

No. 07-1-03980-1 SEA

6 EDWARD HILLS,)

COA No. 60911-4-I

7 Defendant.)
8 -----

9 TRANSCRIPT OF PROCEEDINGS

10 ON APPEAL
11 -----

12 Heard before the Honorable Judge Paris K. Kallas, at
13 King County Courthouse, 516 Third Avenue, Room E-847,
14 Seattle, Washington
15

16 APPEARANCES:

17
18 AMY FREEDHEIM, representing the State;

19 ERIC WESTON, representing the Defendant.
20
21
22
23

24 DATE: October 17, 2007

25 REPORTED BY: Joanne Leatiota, RPR, CRR

1 Seattle, Washington; Wednesday, October 17, 2007

2 MORNING SESSION - 9:12 A.M.

3 --oOo--

4 THE COURT: We are here for the court's
5 findings and conclusions following a bench trial.
6 I make the following findings of fact. On October
7 16, 2006, defendant Edward Hills drove a car, a
8 silver Ford Taurus. 19-year-old Lindsey Austin was
9 his front seat passenger. As the driver, the
10 defendant was involved in a collision at Delridge
11 Way Southeast and Southwest Orchard Street in
12 Seattle, Washington.

13 The collision took place at approximately noon.
14 Exhibits 23 and 24 show the gouge marks that reveal
15 the location of the "maximum engagement" of the
16 defendant's car and Steven Lafferry's truck.

17 There is no evidence before the court that
18 Steven Lafferry contributed in any way to the
19 collision. There is no evidence he consumed either
20 alcohol or drugs. Instead, the court finds that
21 the collision was caused by the defendant running
22 the red light.

23 I make this finding on numerous grounds.

24 Mr. Lafferry testified he had the green light.

25 I find he is a credible witness, and I accept his

1 testimony. In addition, Victoria Tang, P.J.
2 Redmond, and Ethel Dreher testified that the
3 defendant ran the red light after coming to a
4 complete stop at the red light.

5 Tang said it was "shocking," Redmond testified
6 it was "sudden," and Dreher testified the defendant
7 "took off through the red light." Their testimony
8 as drivers and as occupants of cars also waiting
9 for the red light is credible.

10 It is more credible than the testimony of
11 Darnice Madison, who was not in a similar position
12 to be viewing the traffic lights. In addition, Ms.
13 Madison's testimony is internally inconsistent and
14 contradicted by Ebony Nearing, who testified the
15 young women were on the bus at the time of the
16 collision.

17 In addition, Ms. Madison's family-like
18 relationship with the defendant presents a bias
19 that further lessens her credibility. For example,
20 Darnice Madison testified she did not recognize the
21 defendant as one of the occupants of the car and
22 learned of his involvement only later. Ebony
23 Nearing, however, contradicted this, testifying
24 that Darnice instantly recognized the defendant and
25 made cell phone calls to report the events.

1 For these reasons, I find the collision was
2 caused by the defendant running the red light.

3 I also find that at the time of the driving, he
4 was under the influence of marijuana and impaired
5 by his consumption of marijuana. This finding
6 rests on several grounds. The blood draw was taken
7 at Harborview Hospital at 1:38 p.m. on October
8 16th. Subsequent testing revealed, among other
9 things, the presence of THC and carboxy THC.

10 Regarding the blood draw, the evidence shows it
11 was done properly with a properly packaged vial
12 for -- actually, two properly packaged vials. And
13 although they were drawn from an IV rather than the
14 vein, there is no evidence to suggest contamination
15 or anything less than valid, reliable test results.

16 The forensic toxicologist, Justin Knoy,
17 testified about the significance of these results.
18 The THC level was 1.6 nanograms per milliliter, the
19 carboxy THC was 16.6 nanograms per milliliter.

20 Mr. Knoy has some specialized training and
21 knowledge regarding the effects of marijuana on the
22 body, although he candidly acknowledged the limits
23 of his expertise. Based on how the body processes
24 THC and the fact that THC was still in the
25 defendant's blood, Mr. Knoy opined that the

1 defendant smoked marijuana within three to four
2 hours of the blood draw.

3 He testified to a reasonable degree of
4 scientific certainty that the defendant's THC level
5 was higher a few hours before the blood draw, even
6 though he could not with a reasonable degree of
7 scientific certainty state the precise level of THC
8 at the time of driving.

9 In addition, based on the carboxy THC levels,
10 Knoy opined that Mr. Hills was an infrequent user,
11 and therefore, the effects of the marijuana
12 impairment would be more pronounced.

13 Finally, Mr. Knoy testified, based on his
14 training and experience, as to the effects of
15 marijuana on the body, in particular, how it
16 creates an impaired ability to drive a car. The
17 main impact is the distortion of time and space and
18 the delayed reaction time. There is also a
19 resulting impaired coordination and decreased
20 vigilance.

21 In sum, his testimony provides a basis for the
22 court to find that the consumption adversely
23 impairs a person's ability to perform complex,
24 divided attention tasks involved in driving.

25 In addition to the blood test and Mr. Knoy's

1 testimony, Officer Michl's testimony also provides
2 a basis for the court to find that the defendant
3 was under the influence of and impaired by
4 marijuana consumption. His eyes were bloodshot and
5 watery at Harborview Hospital. This is consistent
6 with marijuana consumption. I recognize there are
7 other possible explanations, but in this particular
8 case, there is no factual basis for drawing any
9 other inference.

10 Finally, the facts of the collision also
11 establish the defendant's impairment. I recognize
12 that sober drivers run red lights, but the evidence
13 before the court also establishes that drivers
14 under the influence of marijuana run red lights as
15 a result of that consumption. This finding is
16 based on Officer Michl's training and experience
17 and his opinion. His training and experience is
18 extensive, and I find he is a credible expert when
19 rendering this opinion.

20 In addition, the evidence regarding the gouge
21 marks shows that Mr. Lafferry took evasive action,
22 i.e., braking, but the defendant did not. The
23 failure to brake is also evidence of impairment.

24 This evidence establishes that the defendant's
25 ability to drive his car was lessened to an

1 appreciable degree, and for these reasons, the
2 court finds that at the time of driving, the
3 defendant was under the influence of marijuana and
4 impaired by his consumption of marijuana.

5 In addition, I find he intentionally drove the
6 car while impaired and drove it with a young
7 teenage passenger in his car. His conduct was rash
8 and heedless, and it shows an indifference to the
9 consequences. It was reckless with a disregard for
10 the safety of others.

11 I also find the defendant's driving proximately
12 caused injury to Steven Lafferry. His injuries
13 constitute substantial bodily harm, as that term is
14 defined by statute. As a result of the collision
15 caused by the defendant's driving, Mr. Lafferry
16 suffered a fracture in his right ankle. He
17 continues to suffer from soft tissue injury to the
18 neck, which has resulted in a limited ongoing
19 ability to turn his neck.

20 The defendant's driving also proximately caused
21 injuries to Lindsey Austin, and those injuries
22 caused her death on October 16th, 2006.

23 Dr. Brian Mazrim, an associate medical examiner
24 for King County, described the extensive and fatal
25 injuries suffered by Lindsey, including multiple

1 rib fractures, fractured right collarbone,
2 lacerated descending aorta, lacerations to the
3 liver and the spleen. He described why these
4 injuries, especially to the aorta and liver, were
5 fatal. I adopt his testimony.

6 He concluded that Lindsey's death was caused "by
7 multiple rib fractures and the lacerations of the
8 aorta, lungs, liver and other viscera due to the
9 blunt force injury sustained in the collision."

10 He also expressly ruled out that Lindsey was in
11 any way injured by aid provided to her. He found
12 no evidence of a spinal cord injury.

13 For these reasons regarding count one, the
14 charge of vehicular homicide, I find that the State
15 has met its burden of proving the following
16 essential elements beyond a reasonable doubt: That
17 on or about October 16th, 2006, Edward Hills drove
18 a motor vehicle, that the defendant's driving
19 proximately caused injury to Lindsey Austin, that
20 at the time of causing the injury, the defendant
21 was driving the motor vehicle while under the
22 influence of drugs, and in a reckless manner and
23 with disregard for the safety of others, that
24 Lindsey Austin died within three years as a
25 proximate result of those injuries, and that the

1 defendant's act occurred in the state of
2 Washington.

3 For these reasons, I find Mr. Hills guilty of
4 vehicular homicide as charged in count one.

5 Regarding count two, the charge of vehicular
6 assault, I find that the State has carried its
7 burden of proving the following elements beyond a
8 reasonable doubt: That on or about October 16th,
9 2006, Mr. Hills drove a vehicle, that the
10 defendant's driving proximately caused substantial
11 bodily harm to Steven Lafferry, that at the time
12 the defendant drove the vehicle in a reckless
13 manner, and he was under the influence of drugs,
14 and he drove the vehicle with a disregard for the
15 safety of others, and that the act occurred in the
16 state of Washington.

17 For this reason, I find the defendant guilty of
18 the crime of vehicular assault as charged in count
19 two.

20 Any questions from counsel regarding the court's
21 findings and conclusions?

22 MS. FREEDHEIM: Not from the State, your
23 Honor.

24 MR. WESTON: No, your Honor, thank you.

25 THE COURT: Counsel, I will have you

1 schedule sentencing with the sentencing
2 coordinator, and that will be Mr. Hills' notice of
3 the sentencing, and counsel can alert the victims
4 and the victim's family members of the sentencing
5 date. We are at recess. Thank you.

6 (Proceedings adjourned at 9:25 a.m.)
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EXHIBIT E

For the SUPERIOR COURT OF THE STATE OF Washington
FOR THE COUNTY OF KING

Edward J. Hills,

Petitioner,

Case No.: 07-1-03980-1 SEA

DECLARATION OF
ROBERT M. JULIEN, MD, PH.D

Pursuant to standard Court procedures, I, Robert Julien, MD, PhD, do hereby declare as follows:

1. I write this declaration on behalf of the petitioner in the above-referenced case, at his behest.
2. I received my M.S. and Ph.D. in Pharmacology from the University of Washington and my Medical Degree from the University of California at Irvine. My many research articles focus on the psychopharmacology of sedative and antiepileptic drugs. Previously an Associate Professor of Pharmacology and Anesthesiology at the Oregon Health Sciences University, I am retired from the active practice of medical anesthesiology at Providence St. Vincent Hospital in Portland Oregon. I have published the 12th edition of my psychopharmacology textbook *A Primer of Drug Action* (Worth Publishers, 2011). With 38 years of continuous publication, *A Primer of Drug Action* is regarded as a definitive textbook of psychopharmacology, covering both psychotherapeutic agents as well as substances of abuse. I lecture widely on psychopharmacology and I have been court qualified on many occasions. My Curriculum Vitae is attached as Exhibit A.
3. Many of the above-described trials have involved charges of Driving Under the Influence of Intoxicants (DUII). Much of my expert testimony in those trials focused on issues relating to the smoking of marijuana and the significance of blood concentrations of tetrahydrocannabinol (THC). I have been found qualified to testify as an expert on such

matters in Washington and Oregon courts on many occasions, including courts in King County Washington.

4. I have been asked by Mr. Edward Hills to review and comment upon particular testimonies by a purported prosecutor's expert regarding the effect of an identified amount of THC in Mr. Hills' blood as it relates to psychomotor impairment. I reviewed those materials in arriving at the conclusions set forth herein. From those materials, I gleaned the following facts:

A. In a bench trial on October 17, 2007, it was noted that Mr. Hill allegedly ran a red light, striking a vehicle driven by Steven Lafferry and resulting in the death of a passenger (Lindsey Austin) in Mr. Hills' vehicle. Subsequent laboratory testing of a sample of Mr. Hills' blood revealed a THC concentration of 1.6 nanograms per milliliter (ng/ml) and a carboxy-THC concentration of 16.6 ng/ml.

B. The State's expert, Justin Knoy, testified that Mr. Hills had smoked marijuana within three to four hours of the blood draw, that Mr. Hills was an infrequent smoker, was therefore more susceptible to adverse psychomotor effects of THC, and therefore was experiencing adverse effects of THC on Mr. Hills ability to operate a motor vehicle.

C. This testimony by Mr. Knoy compelled the court to convict Mr. Hills of vehicular homicide for driving while under the influence of drugs, namely THC.

D. In the absence of opposing testimony, Mr. Knoy was allowed to testify on a broad range of THC effects, both therapeutic and toxic without discussion of dose-related effects as well as effects seen at the reported concentration of 1.6 ng/ml.

E. Mr. Knoy was even allowed to claim that the effects of THC on psychomotor impairment persists "for several hours after the THC has left the bloodstream" (transcript testimony, page 58).

F. Mr. Knoy testified that research was being done to study the effects of THC at low concentrations on driving ability. No citations or manuscripts were offered. This was particularly unfortunate since a 2004 manuscript was readily available and known to the Washington State Toxicology laboratory. This manuscript by Ramaekers and coworkers (Dose related risk of motor vehicle crashes after cannabis use) that there is no relationship between low concentrations of THC and driver culpability. Impairment occurs only at higher concentrations of THC.

G. Indeed, because of this relative lack of impairment at low doses, the State of Washington has recently implemented legislation setting an upper limit of 5 ng/ml of active THC as evidence of lack of impairment. Such fact could not be determined from the testimony of Mr. Knoy.

5. In defense of Mr. Knoy, he did testify that using a non-verified back-extrapolation of THC levels at the time of the accident to be between two and five ng/ml (transcript, page 61).

6. Mr. Knoy testified that this (presumably upper level of 5 ng/ml) "would be similar to the 0.8 grams% of alcohol.

7. This estimate would be within the recently established limits for THC blood concentrations and driving impairment.

8. Finally, Mr. Knoy ended his testimony by stating that the report 1.6 ng/ml blood concentration was consistent with the impairing effects of marijuana. This statement was

untrue, inconsistent with the known pharmacology of THC, inconsistent with current law, and a biased opinion for the State.

9. Finally, with a Master's Degree in Forensic Chemistry, Mr. Knoy is not a physician, but he has been certified by the laboratory in which he is employed to have been authorized to perform laboratory testing for the presence of drugs in biological fluids. At the time of testimony, Mr. Knoy was certified as a Forensic Scientist II.. His primary post-degree training was at the 40-hour (1-week) Borkenstein course on the effects of drugs and behavior. Dr. Julien has over 40 years of training, research, writing, and education in psychopharmacology as well as 25 years experience as a physician trained in anesthesiology.

10. In trial testimony, to my knowledge there was no expert testimony from defense experts regarding the effects of low levels of THC on driving behaviors.

11. Such omission undermined the fairness of Mr. Hills' trial and provided for no balanced testimony to assist the judge in making an objective, scientifically balanced opinion.

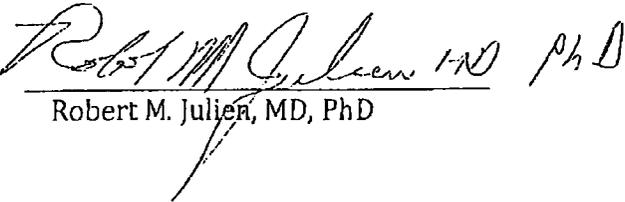
12. The opinions expressed by me herein constitute my conclusions to a degree of medical certainty, based on information commonly relied upon by experts in my field. My opinions and conclusions are within the scope of my expertise, and result from my scientific, technical, or other specialized knowledge that would have assisted petitioner's jury in understanding evidence and issues relating to marijuana use, the significance of a 1.6 mg/ml blood concentration, and psychomotor impairment at that level. I am qualified to provide such testimony, which is based upon sufficient facts or data commonly relied upon by experts in my field and is the product of reliable scientific principles and methods.

According to the standards of my profession and specialty, I have applied appropriate scientific principles and methods reliably to the facts of this case. The principles relied upon by me are supported by published literature, peer review, utilization of appropriate error rates, and acceptability in the relevant scientific community.

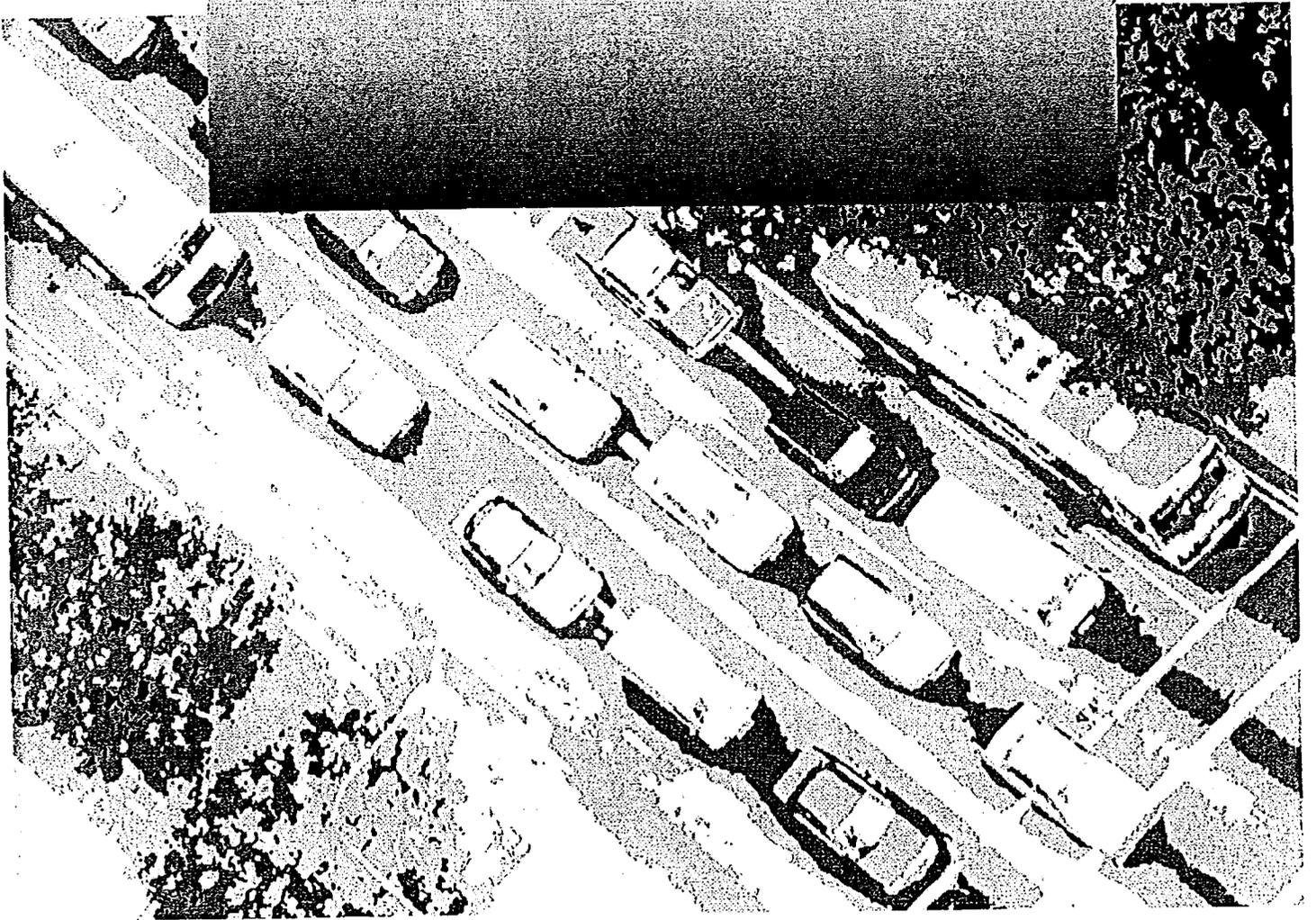
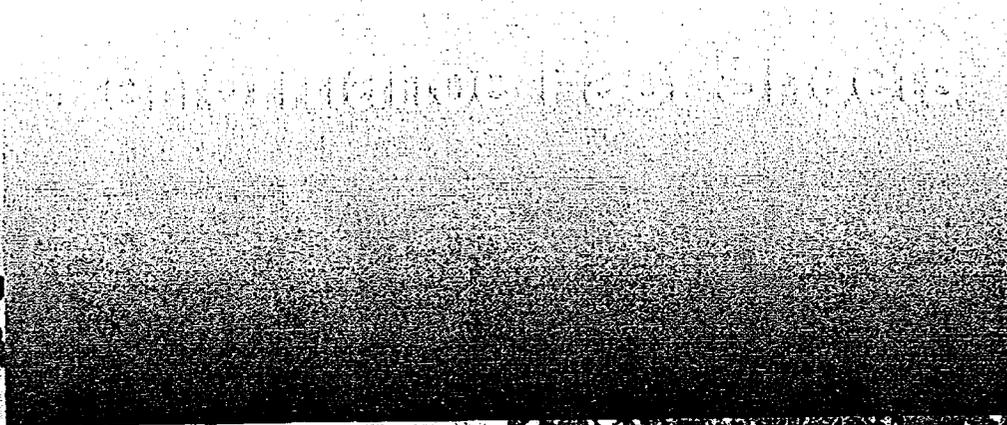
13. I was a resident of Oregon and am retired from practicing medical anesthesiology in the State of Oregon at the time of petitioner's criminal trial. If I had been called to testify on petitioner's behalf at trial, I would have been available and would have testified consistent with my statements herein. Even if a scheduling conflict existed between my calendar and the trial court's docketing schedule, it is my experience that such conflicts are easily resolved and that I would have been able to testify. Even if I had not been available to testify, other similarly qualified experts would have been available to provide similar testimony.

14. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

Dated: February 25, 2013.


Robert M. Julien, MD, PhD

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION



Technical Report Documentation Page

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| 15. Supplementary Notes The following toxicologists made significant contributions to both the drafting and review of the Fact Sheets: Michael Corbett Ph.D., Laurel Farrell MS., Marilyn Huestis Ph.D., Wayne Jeffrey MS, and Jan Raemakers, Ph.D. James F. Frank Ph.D. served as the NHTSA Contracting Officer's Technical Representative. | | | |
| 16. Abstract A panel of international experts on drug-impaired driving met in Seattle during August 2000 to review developments in the field of drugs and human performance over the last 10 years; to identify the specific effects that both illicit and prescription drugs have on driving; and to develop guidance for others when dealing with drug-impaired driving problems. Delegates represented the fields of psychopharmacology, behavioral psychology, drug chemistry, forensic toxicology, medicine, and law enforcement experts trained in the recognition of drug effects on drivers in the field. These Fact Sheets represent the conclusions of the Panel and include the state of current scientific knowledge in the area of drugs and human performance for the 16 drugs selected for evaluation. The selected drugs include over-the-counter medications such as dextromethorphan and diphenhydramine; prescription medications such as carisoprodol, diazepam and zolpidem; and abused and/or illegal drugs such as cocaine, GHB, ketamine, LSD, marijuana, methadone, methamphetamine, MDMA, morphine, PCP and toluene. Keyword continuation: illicit and licit drugs and traffic safety, drugs and driving, drug-impaired driving. | | | |
| 17. Key Words Carisoprodol, cocaine, dextromethorphan, diazepam, diphenhydramine, GHB, ketamine, LSD, marijuana, methadone, methamphetamine, MDMA, morphine, PCP, toluene, zolpidem, | | 18. Distribution Statement | |
| 19. Security Classif. (of this report) none | 20. Security Classif. (of this page) none | 21. No. of Pages 100 | 22. Price |

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Cannabis / Marijuana (Δ^9 -Tetrahydrocannabinol, THC)

Marijuana is a green or gray mixture of dried shredded flowers and leaves of the hemp plant *Cannabis sativa*. Hashish consists of resinous secretions of the cannabis plant. Dronabinol (synthetic THC) is a light yellow resinous oil.

Synonyms: Cannabis, marijuana, pot, reefer, buds, grass, weed, dope, ganja, herb, boom, gangster, Mary Jane, sinsemilla, shit, joint, hash, hash oil, blow, blunt, green, kilobricks, Thai sticks; Marinol®

Source: Cannabis contains chemicals called cannabinoids, including cannabinal, cannabidiol, cannabinolic acids, cannabigerol, cannabichromene, and several isomers of tetrahydrocannabinol (THC). One of these isomers, Δ^9 -THC, is believed to be responsible for most of the characteristic psychoactive effects of cannabis. Marijuana refers to the leaves and flowering tops of the cannabis plant; the buds are often preferred because of their higher THC content. Hashish consists of the THC-rich resinous secretions of the plant, which are collected, dried, compressed and smoked. Hashish oil is produced by extracting the cannabinoids from plant material with a solvent. In the U. S. , marijuana, hashish and hashish oil are Schedule I controlled substances. Dronabinol (Marinol®) is a Schedule III controlled substance and is available in strengths of 2.5, 5 or 10 mg in round, soft gelatin capsules.

Drug Class: *Cannabis/Marijuana:* spectrum of behavioral effects is unique, preventing classification of the drug as a stimulant, sedative, tranquilizer, or hallucinogen.
Dronabinol: appetite stimulant, antiemetic.

Medical and Recreational Uses: *Medicinal:* Indicated for the treatment of anorexia associated with weight loss in patients with AIDS, and to treat mild to moderate nausea and vomiting associated with cancer chemotherapy. *Recreational:* Marijuana is used for its mood altering effects, euphoria, and relaxation. Marijuana is the most commonly used illicit drug throughout the world.

Potency, Purity and Dose: THC is the major psychoactive constituent of cannabis. Potency is dependent on THC concentration and is usually expressed as %THC per dry weight of material. Average THC concentration in marijuana is 1-5%, hashish 5-15%, and hashish oil $\geq 20\%$. The form of marijuana known as *sinsemilla* is derived from the unpollinated female cannabis plant and is preferred for its high THC content (up to 17% THC). Recreational doses are highly variable and users often titer their own dose. A single intake of smoke from a pipe or joint is called a hit (approximately 1/20th of a gram). The lower the potency or THC content the more hits are needed to achieve the desired effects; 1-3 hits of high potency sinsemilla is typically enough to produce the desired effects. In terms of its psychoactive effect, a drop or two of hash oil on a cigarette is equal to a single "joint" of marijuana. Medicinally, the initial starting dose of Marinol® is 2.5 mg, twice daily.

Route of Administration: Marijuana is usually smoked as a cigarette ('joint') or in a pipe or bong. Hollowed out cigars packed with marijuana are also common and are called

Joints and blunts are often laced with adulterants including PCP or crack cocaine. Joints can also be dipped in liquid PCP or in codeine cough syrup. Marijuana is also orally ingested.

Pharmacodynamics: THC binds to cannabinoid receptors and interferes with important endogenous cannabinoid neurotransmitter systems. Receptor distribution correlates with brain areas involved in physiological, psychomotor and cognitive effects. Correspondingly, THC produces alterations in motor behavior, perception, cognition, memory, learning, endocrine function, food intake, and regulation of body temperature.

Pharmacokinetics: Absorption is slower following the oral route of administration with lower, more delayed peak THC levels. Bioavailability is reduced following oral ingestion due to extensive first pass metabolism. Smoking marijuana results in rapid absorption with peak THC plasma concentrations occurring prior to the end of smoking. Concentrations vary depending on the potency of marijuana and the manner in which the drug is smoked, however, peak plasma concentrations of 100-200 ng/mL are routinely encountered. Plasma THC concentrations generally fall below 5 ng/mL less than 3 hours after smoking. THC is highly lipid soluble, and plasma and urinary elimination half-lives are best estimated at 3-4 days, where the rate-limiting step is the slow redistribution to plasma of THC sequestered in the tissues. Shorter half-lives are generally reported due to limited collection intervals and less sensitive analytical methods. Plasma THC concentrations in occasional users rapidly fall below limits of quantitation within 8 to 12 h. THC is rapidly and extensively metabolized with very little THC being excreted unchanged from the body. THC is primarily metabolized to 11-hydroxy-THC which has equipotent psychoactivity. The 11-hydroxy-THC is then rapidly metabolized to the 11-nor-9-carboxy-THC (THC-COOH) which is not psychoactive. A majority of THC is excreted via the feces (~65%) with approximately 30% of the THC being eliminated in the urine as conjugated glucuronic acids and free THC hydroxylated metabolites.

Molecular Interactions / Receptor Chemistry: THC is metabolized via cytochrome P450 2C9, 2C11, and 3A isoenzymes. Potential inhibitors of these isoenzymes could decrease the rate of THC elimination if administered concurrently, while potential inducers could increase the rate of elimination.

Blood to Plasma Concentration Ratio: 0.55

Interpretation of Blood Concentrations: It is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects. Concentrations of parent drug and metabolite are very dependent on pattern of use as well as dose. THC concentrations typically peak during the act of smoking, while peak 11-OH THC concentrations occur approximately 9-23 minutes after the start of smoking. Concentrations of both analytes decline rapidly and are often < 5 ng/mL at 3 hours. Significant THC concentrations (7 to 18 ng/mL) are noted following even a single puff or hit of a marijuana cigarette. Peak plasma THC concentrations ranged from 46-188 ng/mL in 6 subjects after they smoked 8.8 mg THC over 10 minutes. Chronic users can have mean plasma levels of THC-COOH of 45 ng/mL, 12 hours after use; corresponding

THC levels are, however, less than 1 ng/mL. Following oral administration, THC concentrations peak at 1-3 hours and are lower than after smoking. Dronabinol and THC-COOH are present in equal concentrations in plasma and concentrations peak at approximately 2-4 hours after dosing.

It is inadvisable to try and predict effects based on blood THC concentrations alone, and currently impossible to predict specific effects based on THC-COOH concentrations. It is possible for a person to be affected by marijuana use with concentrations of THC in their blood below the limit of detection of the method. Mathematical models have been developed to estimate the time of marijuana exposure within a 95% confidence interval. Knowing the elapsed time from marijuana exposure can then be used to predict impairment in concurrent cognitive and psychomotor effects based on data in the published literature.

Interpretation of Urine Test Results: Detection of total THC metabolites in urine, primarily THC-COOH-glucuronide, only indicates prior THC exposure. Detection time is well past the window of intoxication and impairment. Published excretion data from controlled clinical studies may provide a reference for evaluating urine cannabinoid concentrations; however, these data are generally reflective of occasional marijuana use rather than heavy, chronic marijuana exposure. It can take as long as 4 hours for THC-COOH to appear in the urine at concentrations sufficient to trigger an immunoassay (at 50ng/mL) following smoking. Positive test results generally indicate use within 1-3 days; however, the detection window could be significantly longer following heavy, chronic, use. Following single doses of Marinol®, low levels of dronabinol metabolites have been detected for more than 5 weeks in urine. Low concentrations of THC have also been measured in over-the-counter hemp oil products – consumption of these products may produce positive urine cannabinoid test results.

Effects: Pharmacological effects of marijuana vary with dose, route of administration, experience of user, vulnerability to psychoactive effects, and setting of use.

Psychological: At recreational doses, effects include relaxation, euphoria, relaxed inhibitions, sense of well-being, disorientation, altered time and space perception, lack of concentration, impaired learning and memory, alterations in thought formation and expression, drowsiness, sedation, mood changes such as panic reactions and paranoia, and a more vivid sense of taste, sight, smell, and hearing. Stronger doses intensify reactions and may cause fluctuating emotions, flights of fragmentary thoughts with disturbed associations, a dulling of attention despite an illusion of heightened insight, image distortion, and psychosis.

Physiological: The most frequent effects include increased heart rate, reddening of the eyes, dry mouth and throat, increased appetite, and vasodilatation.

Side Effect Profile: Fatigue, paranoia, possible psychosis, memory problems, depersonalization, mood alterations, urinary retention, constipation, decreased motor coordination, lethargy, slurred speech, and dizziness. Impaired health including lung damage, behavioral changes, and reproductive, cardiovascular and immunological effects have been associated with regular marijuana use. Regular and chronic marijuana smokers may have many of the same respiratory problems that tobacco smokers have (daily cough

and phlegm, symptoms of chronic bronchitis), as the amount of tar inhaled and the level of carbon monoxide absorbed by marijuana smokers is 3 to 5 times greater than among tobacco smokers. Smoking marijuana while shooting up cocaine has the potential to cause severe increases in heart rate and blood pressure.

Duration of Effects: Effects from smoking cannabis products are felt within minutes and reach their peak in 10-30 minutes. Typical marijuana smokers experience a high that lasts approximately 2 hours. Most behavioral and physiological effects return to baseline levels within 3-5 hours after drug use, although some investigators have demonstrated residual effects in specific behaviors up to 24 hours, such as complex divided attention tasks. Psychomotor impairment can persist after the perceived high has dissipated. In long term users, even after periods of abstinence, selective attention (ability to filter out irrelevant information) has been shown to be adversely affected with increasing duration of use, and speed of information processing has been shown to be impaired with increasing frequency of use. Dronabinol has an onset of 30-60 minutes, peak effects occur at 2-4 hours, and it can stimulate the appetite for up to 24 hours.

Tolerance, Dependence and Withdrawal Effect: Tolerance may develop to some pharmacological effects of dronabinol. Tolerance to many of the effects of marijuana may develop rapidly after only a few doses, but also disappears rapidly. Marijuana is addicting as it causes compulsive drug craving, seeking, and use, even in the face of negative health and social consequences. Additionally, animal studies suggests marijuana causes physical dependence. A withdrawal syndrome is commonly seen in chronic marijuana users following abrupt discontinuation. Symptoms include restlessness, irritability, mild agitation, hyperactivity, insomnia, nausea, cramping, decreased appetite, sweating, and increased dreaming.

Drug Interactions: Cocaine and amphetamines may lead to increased hypertension, tachycardia and possible cardiotoxicity. Benzodiazepines, barbiturates, ethanol, opioids, antihistamines, muscle relaxants and other CNS depressants increase drowsiness and CNS depression. When taken concurrently with alcohol, marijuana is more likely to be a traffic safety risk factor than when consumed alone.

Performance Effects: The short term effects of marijuana use include problems with memory and learning, distorted perception, difficulty in thinking and problem-solving, and loss of coordination. Heavy users may have increased difficulty sustaining attention, shifting attention to meet the demands of changes in the environment, and in registering, processing and using information. In general, laboratory performance studies indicate that sensory functions are not highly impaired, but perceptual functions are significantly affected. The ability to concentrate and maintain attention are decreased during marijuana use, and impairment of hand-eye coordination is dose-related over a wide range of dosages. Impairment in retention time and tracking, subjective sleepiness, distortion of time and distance, vigilance, and loss of coordination in divided attention tasks have been reported. Note however, that subjects can often "pull themselves together" to concentrate on simple tasks for brief periods of time. Significant performance impairments are

usually observed for at least 1-2 hours following marijuana use, and residual effects have been reported up to 24 hours.

Effects on Driving: The drug manufacturer suggests that patients receiving treatment with Marinol® should be specifically warned not to drive until it is established that they are able to tolerate the drug and perform such tasks safely. Epidemiology data from road traffic arrests and fatalities indicate that after alcohol, marijuana is the most frequently detected psychoactive substance among driving populations. Marijuana has been shown to impair performance on driving simulator tasks and on open and closed driving courses for up to approximately 3 hours. Decreased car handling performance, increased reaction times, impaired time and distance estimation, inability to maintain headway, lateral travel, subjective sleepiness, motor incoordination, and impaired sustained vigilance have all been reported. Some drivers may actually be able to improve performance for brief periods by overcompensating for self-perceived impairment. The greater the demands placed on the driver, however, the more critical the likely impairment. Marijuana may particularly impair monotonous and prolonged driving. Decision times to evaluate situations and determine appropriate responses increase. Mixing alcohol and marijuana may dramatically produce effects greater than either drug on its own.

DEC Category: Cannabis

DEC Profile: Horizontal gaze nystagmus not present; vertical gaze nystagmus not present; lack of convergence present; pupil size normal to dilated; reaction to light normal to slow; pulse rate elevated; blood pressure elevated; body temperature normal to elevated. Other characteristic indicators may include odor of marijuana in car or on subject's breath, marijuana debris in mouth, green coating of tongue, bloodshot eyes, body and eyelid tremors, relaxed inhibitions, incomplete thought process, and poor performance on field sobriety tests.

Panel's Assessment of Driving Risks: Low doses of THC moderately impair cognitive and psychomotor tasks associated with driving, while severe driving impairment is observed with high doses, chronic use and in combination with low doses of alcohol. The more difficult and unpredictable the task, the more likely marijuana will impair performance.

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- Baselt RC. *Drug effects on psychomotor performance*. Biomedical Publications, Foster City, CA; pp 403-415;2001.

EXHIBIT F

SEATTLE POLICE DEPARTMENT
INSTRUCTIONS FOR ALL BLOOD DRAWS

(check each procedure)

Felony Arrests-Mandatory Blood Draws (Vehicular Homicide / Vehicular Assault)

- Establish probable cause for Vehicular Homicide or Vehicular Assault.
- Advise the suspect he/she is under arrest for Vehicular Homicide or Vehicular Assault. Advise the suspect of their Miranda Rights.
- Read the suspect the Special Evidence Warning.
- This is a mandatory blood draw; proceed to the blood draw procedures below.

Misdemeanor Arrests (DUI / Physical Control)

- Advise the suspect he/she is under arrest for DUI or Physical Control. Advise the suspect of their Miranda Rights and Implied Consent Warnings for blood. (Advise even if suspect is unconscious)
- If the suspect consents, proceed to the blood draw procedures below. If the suspect refuses, proceed as you would in a breath test refusal case.

Note: The arresting officer should complete all of the paperwork, including citing the suspect for DUI/Physical Control offenses. A T.C.I.S. Detective will ensure the blood sample is analyzed and submit the report.

Voluntary Blood/Urine/Breath

- Complete the *Voluntary Blood/Urine/Breath* section on the bottom of the form.
- If the subject submits to a voluntary blood draw, proceed to blood draw procedures below.

Blood Draw Procedures

- Refer the doctor or nurse to the instructions on reverse side regarding use of antiseptics.
- Use only the vials from an SPD Blood Kit. Check each vial for a gray stopper, as well as the expiration date on the label and "white powder" inside the vial. Check these items before giving the vials to the person drawing the blood sample for you. *Be sure to document this information in an Incident Report Narrative and your Officer Statement, if required.*
- Obtain 5cc of blood per vial, getting two vials of blood if possible. **NOTE: OFFICER MUST BE PRESENT DURING THE ENTIRE TIME THE SAMPLE IS BEING OBTAINED.**

DATE: 10/16/06 TIME: 1330

- Put the suspect's name, SIN, present date and your initials/serial # on the LABEL of each vial. Have the person taking the sample initial the LABEL on each vial.
- Place the blood vials back in the plastic bag from which they came, and seal the bag across the top with 2" Permacel evidence tape. Place the plastic bag with the vials back in the Styrofoam container. Tape the Styrofoam container closed using 2" Permacel evidence tape. Mark the container across the top with the suspect's name, date of birth, present date, the SIN and your initials/serial #.
- Fill out hospital staff information boxes including the name, address and phone number of the person who took the blood sample. Print this information clearly.
- Submit the sealed blood kit and a copy of the SPD Blood Draw form to the Evidence Unit.

SEATTLE POLICE DEPARTMENT
BLOOD DRAW FORM

CASE NUMBER
06-439804



SPECIAL EVIDENCE WARNING

WARNING! YOU ARE UNDER ARREST FOR:

- VEHICULAR HOMICIDE
VEHICULAR ASSAULT
- DUI ARREST RESULTING FROM AN ACCIDENT
WITH SERIOUS BODILY INJURY TO ANOTHER

A test of your blood or breath will be administered to determine the concentration of alcohol and/or any drug in your blood; however, I must advise you that because of the nature of the arrest, according to the law, a blood or breath test may be administered without your consent, and that you have the right to additional tests administered by a qualified person of your own choosing.

I have read the above statement to the subject

I have read or have had read to me the above statement

E. MICHL
OFFICER'S SIGNATURE

EDWARD J. HILLS
SUBJECT'S PRINTED NAME

1016.06, 1323
DATE / TIME

LOCATION(s)

UNABLE
SUBJECT'S SIGNATURE

IMPLIED CONSENT WARNING FOR BLOOD

WARNING! YOU ARE UNDER ARREST FOR:

- RCW 46.61.502 or RCW 46.61.504: Driving or being in actual physical control of a motor vehicle while under the influence of Intoxicating liquor and/or drugs.
- RCW 46.61.503: Being under 21 years of age and driving or being in actual physical control of a motor vehicle after consuming alcohol.

Further, you are now being asked to submit to a test of your blood to determine alcohol concentration or the presence of any drug where: (A) you are incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample; or (B) you are being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility; or (C) the officer has reasonable grounds to believe you are under the influence of any drug. You have the right to refuse this blood test. You have the right to have additional tests administered by any qualified person of your choosing.

If you refuse to take this test, your driver's license, permit, or privilege to drive will be revoked or denied by the Department of Licensing for at least one year, and your refusal to take this test may be used in a criminal trial.

If you do submit to this test and the test is administered, then your driver's license, permit, or privilege to drive will be suspended, revoked, or denied by the Department of Licensing for at least 90 days if you are age 21 or over and the test indicates the alcohol concentration of your blood is 0.08 or more.

If you do submit to this test and the test is administered, then your driver's license, permit, or privilege to drive will be suspended, revoked, or denied by the Department of Licensing for at least 90 days if you are under age 21 and the test indicates the alcohol concentration of your blood is 0.02 or more, or if you are under age 21 and are in violation of RCW 46.61.502, driving under the influence, or RCW 46.61.504, physical control of a vehicle under the influence.

I have read or have had read to me the above statement(s).

OFFICER'S SIGNATURE

SUBJECT'S SIGNATURE

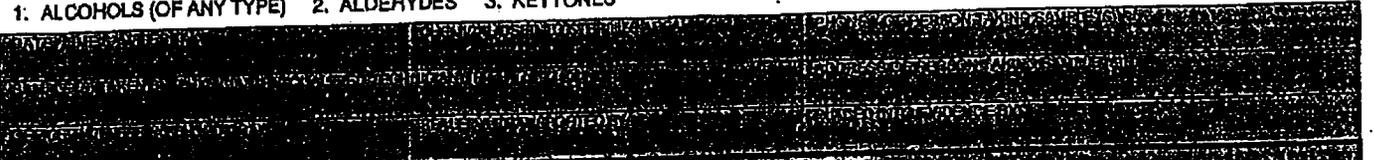
DATE / TIME LOCATION(s)

WILL YOU NOW SUBMIT TO A BLOOD TEST?

- YES NO
- YES NO

Did subject express any confusion regarding implied consent warnings? If so, explain in narrative

ATTENTION MEDICAL STAFF
INSTRUCTIONS REGARDING USE OF ANTISEPTIC IN OBTAINING BLOOD SAMPLE, DO NOT USE:
1. ALCOHOLS (OF ANY TYPE) 2. ALDEHYDES 3. KEYTONES



VOLUNTARY BLOOD/URINE/BREATH

This authorizes Officer _____ serial # _____ of the Seattle Police Department to take a sample of my blood and/or urine and/or breath to test for alcohol and/or any drug content. This is given freely and voluntarily without threats, promise, or duress of any kind and may be used in a court of law. I also realize that I have the right to additional tests administered by a physician, qualified technician, chemist, registered nurse, or other qualified person of my choosing.

OFFICER'S SIGNATURE

SUBJECT'S SIGNATURE

DATE TIME LOCATION

EXHIBIT G

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912

Passed Legislature - 2013 2nd Special Session
State of Washington 63rd Legislature 2013 2nd Special Session
By Senate Ways & Means (originally sponsored by Senators Padden,
Kline, and Conway; by request of Governor Inslee)
READ FIRST TIME 06/03/13.

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912

Chapter 35, Laws of 2013
63rd Legislature
2013 2nd Special Session

CRIMES--DRIVING UNDER THE INFLUENCE

EFFECTIVE DATE: 09/28/13 - Except for sections 27, 28, and 30 through 32, which become effective 01/01/14.

Passed by the Senate June 26, 2013
YEAS 46 NAYS 0

BRAD OWEN
President of the Senate
Passed by the House June 27, 2013
YEAS 92 NAYS 0

FRANK CHOPP
Speaker of the House of Representatives

Approved July 18, 2013, 10:27 a.m.

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912 as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN
Secretary

FILED
July 18, 2013

Secretary of State
State of Washington

1 AN ACT Relating to driving under the influence of intoxicating
2 liquor or drugs; amending RCW 2.28.175, 3.66.067, 3.66.068, 3.50.320,
3 3.50.330, 35.20.255, 9.94A.525, 43.43.395, 46.25.090, 46.25.110,
4 46.25.120, 46.68.340, 9.94A.501, 46.61.5249, 46.20.270, 46.61.5056,
5 46.20.720, 46.20.385, 10.05.140, and 4.24.545; reenacting and amending
6 RCW 46.61.5055, 10.31.100, 46.20.308, and 9.94A.535; adding a new
7 section to chapter 10.21 RCW; adding new sections to chapter 36.28A
8 RCW; adding a new section to chapter 43.43 RCW; creating new sections;
9 prescribing penalties; making appropriations; providing an effective
10 date; and providing expiration dates.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12 NEW SECTION. Sec. 1. A new section is added to chapter 10.21 RCW
13 to read as follows:

14 (1) When any person charged with or arrested for a violation of RCW
15 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has
16 a prior offense as defined in RCW 46.61.5055 and the current offense
17 involves alcohol, is released from custody before arraignment or trial
18 on bail or personal recognizance, the court authorizing the release
19 shall require, as a condition of release, that person to (a) have a

1 functioning ignition interlock device installed on all motor vehicles
2 operated by the person, with proof of installation filed with the court
3 by the person or the certified interlock provider within five business
4 days of the date of release from custody or as soon thereafter as
5 determined by the court based on availability within the jurisdiction;
6 or (b) comply with 24/7 sobriety program monitoring, as defined in
7 section 26 of this act; or both.

8 (2) Upon acquittal or dismissal of all pending or current charges
9 relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or
10 46.61.522, or equivalent local ordinance, the court shall authorize
11 removal of the ignition interlock device and lift any requirement to
12 comply with electronic alcohol/drug monitoring imposed under subsection
13 (1) of this section. Nothing in this section limits the authority of
14 the court or department under RCW 46.20.720.

15 Sec. 2. RCW 2.28.175 and 2013 c 257 s 6 are each amended to read
16 as follows:

- 17 (1) Jurisdictions and municipalities may establish and operate DUI
18 courts. Municipalities may enter into cooperative agreements with
19 counties or other municipalities that have DUI courts to provide DUI
20 court services.
21 (2) For the purposes of this section, "DUI court" means a court
22 that has special calendars or dockets designed to achieve a reduction
23 in recidivism of impaired driving among nonviolent, alcohol abusing
24 offenders, whether adult or juvenile, by increasing their likelihood
25 for successful rehabilitation through early, continuous, and intense
26 judicially supervised treatment; mandatory periodic testing for alcohol
27 use and, if applicable, drug use; and the use of appropriate sanctions
28 and other rehabilitation services.
29 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
30 DUI court program must first:

31 (i) Exhaust all federal funding that is available to support the
32 operations of its DUI court and associated services; and

33 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
34 for DUI court programs with local cash or in-kind resources. Moneys
35 allocated by the state must be used to supplement, not supplant, other
36 federal, state, and local funds for DUI court operations and associated

1 services. However, until June 30, 2014, no match is required for state
2 moneys expended for the administrative and overhead costs associated
3 with the operation of a DUI court established as of January 1, 2011.

4 (b) Any jurisdiction that establishes a DUI court pursuant to this
5 section shall establish minimum requirements for the participation of
6 offenders in the program. The DUI court may adopt local requirements
7 that are more stringent than the minimum. The minimum requirements
8 are:

- 9 (i) The offender would benefit from alcohol treatment;
10 (ii) The offender has not previously been convicted of a serious
11 violent offense or sex offense as defined in RCW 9.94A.030, vehicular
12 homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or
13 an equivalent out-of-state offense; and
14 (iii) Without regard to whether proof of any of these elements is
15 required to convict, the offender is not currently charged with or
16 convicted of an offense:

- 17 (A) That is a sex offense;
18 (B) That is a serious violent offense;
19 (C) That is vehicular homicide or vehicular assault;
20 (D) During which the defendant used a firearm; or
21 (E) During which the defendant caused substantial or great bodily
22 harm or death to another person.

23 Sec. 3. RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as
24 follows:

25 After a conviction, the court may impose sentence by suspending all
26 or a portion of the defendant's sentence or by deferring the sentence
27 of the defendant and may place the defendant on probation for a period
28 of no longer than two years and prescribe the conditions thereof. A
29 defendant who has been sentenced, or whose sentence has been deferred,
30 and who then fails to appear for any hearing to address the defendant's
31 compliance with the terms of probation when ordered to do so by the
32 court, shall have the term of probation tolled until such time as the
33 defendant makes his or her presence known to the court on the record.
34 During the time of the deferral, the court may, for good cause shown,
35 permit a defendant to withdraw the plea of guilty and to enter a plea
36 of not guilty, and the court may dismiss the charges. A court shall
37 not defer sentence for an offense sentenced under RCW 46.61.505.

1 **NEW SECTION. Sec. 34.** (1) Any funding provided during the 2013-
 2 2015 biennium for the ignition interlock program at the Washington
 3 state patrol that is in addition to any funding identified in chapter
 4 306, Laws of 2013 (omnibus transportation appropriations act) may only
 5 be used to provide field officers to work directly with manufacturers,
 6 service centers, technicians, and participants in the program. This
 7 may include up to one full-time equivalent noncommissioned staff to
 8 provide administrative support for the program. Any funding provided
 9 as identified in this section must be used to supplement and not
 10 supplant other funds being used to fund the ignition interlock program.
 11 (2) This section expires July 1, 2015.

12 **NEW SECTION. Sec. 35.** A new section is added to chapter 43.43 RCW
 13 to read as follows:
 14 (1) Any officer conducting field inspections of ignition interlock
 15 devices under the ignition interlock program shall report violations by
 16 program participants to the court.

17 (2) The Washington state patrol may not be held liable for any
 18 damages resulting from any act or omission in conducting activities
 19 under the ignition interlock program, other than acts or omissions
 20 constituting gross negligence or willful or wanton misconduct.

21 **Sec. 36.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
 22 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
 23 to read as follows:

24 (1) Any person who operates a motor vehicle within this state is
 25 deemed to have given consent, subject to the provisions of RCW
 26 46.61.506, to a test or tests of his or her breath (~~or blood~~) for the
 27 purpose of determining the alcohol concentration, THC concentration, or
 28 presence of any drug in his or her breath (~~or blood~~) if arrested for
 29 any offense where, at the time of the arrest, the arresting officer has
 30 reasonable grounds to believe the person had been driving or was in
 31 actual physical control of a motor vehicle while under the influence of
 32 intoxicating liquor or any drug or was in violation of RCW 46.61.503.
 33 Neither consent nor this section precludes a police officer from
 34 obtaining a search warrant for a person's breath or blood.

35 (2) The test or tests of breath shall be administered at the
 36 direction of a law enforcement officer having reasonable grounds to

1 believe the person to have been driving or in actual physical control
 2 of a motor vehicle within this state while under the influence of
 3 intoxicating liquor or any drug or the person to have been driving or
 4 in actual physical control of a motor vehicle while having alcohol or
 5 THC in a concentration in violation of RCW 46.61.503 in his or her
 6 system and being under the age of twenty-one. (~~However, in these
 7 instances where the person is incapable due to physical injury or
 8 physical incapacity or other physical limitations of providing a
 9 breath sample or where the person is being treated in a hospital or
 10 clinic, doctors or other emergency medical vehicle attendants or other
 11 similar facility or where the officer has reasonable grounds to believe
 12 that the person is under the influence of a drug, a blood test shall be
 13 administered by a qualified person as provided in RCW 46.61.506(f)(1).~~)
 14 The officer shall inform the person of his or her right to refuse the
 15 breath (~~or blood~~) test, and of his or her right to have additional
 16 tests administered by any qualified person of his or her choosing as
 17 provided in RCW 46.61.506. The officer shall warn the driver, in
 18 substantially the following language, that:

19 (a) If the driver refuses to take the test, the driver's license,
 20 permit, or privilege to drive will be revoked or denied for at least
 21 one year; and

22 (b) If the driver refuses to take the test, the driver's refusal to
 23 take the test may be used in a criminal trial; and

24 (c) If the driver submits to the test and the test is administered,
 25 the driver's license, permit, or privilege to drive will be suspended,
 26 revoked, or denied for at least ninety days if:

27 (i) The driver is age twenty-one or over and the test indicates
 28 either that the alcohol concentration of the driver's breath (~~or
 29 blood~~) is 0.08 or more or that the THC concentration of the driver's
 30 blood is 5.00 or more; or

31 (ii) The driver is under age twenty-one and the test indicates
 32 either that the alcohol concentration of the driver's breath (~~or
 33 blood~~) is 0.02 or more or that the THC concentration of the driver's
 34 blood is above 0.00; or

35 (iii) The driver is under age twenty-one and the driver is in
 36 violation of RCW 46.61.502 or 46.61.504; and

37 (d) If the driver's license, permit, or privilege to drive is

1 suspended, revoked, or denied the driver may be eligible to immediately
2 apply for an ignition interlock driver's license.

3 (3) Except as provided in this section, the test administered shall
4 be of the breath only. If an individual is unconscious or is under
5 arrest for the crime of felony driving under the influence of
6 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical
7 control of a motor vehicle while under the influence of intoxicating
8 liquor or any drug under RCW 46.61.504(6), vehicular homicide as
9 provided in RCW 46.61.520, or vehicular assault as provided in RCW
10 46.61.522, or if an individual is under arrest for the crime of driving
11 while under the influence of intoxicating liquor or drugs as provided
12 in RCW 46.61.502, which arrest results from an accident in which there
13 has been serious bodily injury to another person, a breath or blood
14 test may be administered without the consent of the individual so
15 arrested pursuant to a search warrant, a valid waiver of the warrant
16 requirement, or when exigent circumstances exist.

17 (4) ~~(Any person who is dead, unconscious, or who is otherwise in
18 a condition rendering him or her incapable of refusal, shall be deemed
19 not to have withdrawn the consent provided by subsection (1) of this
20 section and the test of tests may be administered, subject to the
21 provisions of RCW 46.61.506, and the person shall be deemed to have
22 received the warnings required under subsection (2) of this section.)~~
23 (5) If, following his or her arrest and receipt of warnings under
24 subsection (2) of this section, the person arrested refuses upon the
25 request of a law enforcement officer to submit to a test or tests of
26 his or her breath ~~(or blood)~~, no test shall be given except as
27 authorized ~~(under subsection (3) of this section)~~ by a search
28 warrant.

29 (6) If, after arrest and after the other applicable
30 conditions and requirements of this section have been satisfied, a test
31 or tests of the person's blood or breath is administered and the test
32 results indicate that the alcohol concentration of the person's breath
33 or blood is 0.08 or more, or the THC concentration of the person's
34 blood is 5.00 or more, if the person is age twenty-one or over, or that
35 the alcohol concentration of the person's breath or blood is 0.02 or
36 more, or the THC concentration of the person's blood is above 0.00, if
37 the person is under the age of twenty-one, or the person refuses to
38 submit to a test, the arresting officer or other law enforcement

1 officer at whose direction any test has been given, or the department,
2 where applicable, if the arrest results in a test of the person's
3 blood, shall:

4 (a) Serve notice in writing on the person on behalf of the
5 department of its intention to suspend, revoke, or deny the person's
6 license, permit, or privilege to drive as required by subsection
7 ((477)) (6) of this section;

8 (b) Serve notice in writing on the person on behalf of the
9 department of his or her right to a hearing, specifying the steps he or
10 she must take to obtain a hearing as provided by subsection ((477)) (7)
11 of this section and that the person waives the right to a hearing if he
12 or she receives an ignition interlock driver's license;

13 (c) ~~(Have the person's Washington state driver's license or permit
14 to drive, if any, in a manner authorized by the department)~~

15 (477) Serve notice in writing that the ~~((marked))~~ license or
16 permit, if any, is a temporary license that is valid for sixty days
17 from the date of arrest or from the date notice has been given in the
18 event notice is given by the department following a blood test, or
19 until the suspension, revocation, or denial of the person's license,
20 permit, or privilege to drive is sustained at a hearing pursuant to
21 subsection ((477)) (7) of this section, whichever occurs first. No
22 temporary license is valid to any greater degree than the license or
23 permit that it replaces; and

24 ((477)) (d) Immediately notify the department of the arrest and
25 transmit to the department within seventy-two hours, except as delayed
26 as the result of a blood test, a sworn report or report under a
27 declaration authorized by RCW 9A.72.085 that states:

28 (i) That the officer had reasonable grounds to believe the arrested
29 person had been driving or was in actual physical control of a motor
30 vehicle within this state while under the influence of intoxicating
31 liquor or drugs, or both, or was under the age of twenty-one years and
32 had been driving or was in actual physical control of a motor vehicle
33 while having an alcohol or THC concentration in violation of RCW
34 46.61.503;

35 (ii) That after receipt of the warnings required by subsection (2)
36 of this section the person refused to submit to a test of his or her
37 ~~(breath or)~~ breath, or a test was administered and the results
38 indicated that the alcohol concentration of the person's breath or

1 is otherwise eligible for licensing. For the purposes of this section,
 2 the scope of the hearing shall cover the issues of whether a law
 3 enforcement officer had reasonable grounds to believe the person had
 4 been driving or was in actual physical control of a motor vehicle
 5 within this state while under the influence of intoxicating liquor or
 6 any drug or had been driving or was in actual physical control of a
 7 motor vehicle within this state while having alcohol in his or her
 8 system in a concentration of 0.02 or more, or THC in his or her system
 9 in a concentration above 0.00, if the person was under the age of
 10 twenty-one, whether the person was placed under arrest, and (a) whether
 11 the person refused to submit to the test or tests upon request of the
 12 officer after having been informed that such refusal would result in
 13 the revocation of the person's license, permit, or privilege to drive,
 14 or (b) if a test or tests were administered, whether the applicable
 15 requirements of this section were satisfied before the administration
 16 of the test or tests, whether the person submitted to the test or
 17 tests, or whether a test was administered without express consent as
 18 permitted under this section, and whether the test or tests indicated
 19 that the alcohol concentration of the person's breath or blood was 0.08
 20 or more, or the THC concentration of the person's blood was 5.00 or
 21 more, if the person was age twenty-one or over at the time of the
 22 arrest, or that the alcohol concentration of the person's breath or
 23 blood was 0.02 or more, or the THC concentration of the person's blood
 24 was above 0.00, if the person was under the age of twenty-one at the
 25 time of the arrest. The sworn report or report under a declaration
 26 authorized by RCW 9A.72.085 submitted by a law enforcement officer is
 27 prima facie evidence that the officer had reasonable grounds to believe
 28 the person had been driving or was in actual physical control of a
 29 motor vehicle within this state while under the influence of
 30 intoxicating liquor or drugs, or both, or the person had been driving
 31 or was in actual physical control of a motor vehicle within this state
 32 while having alcohol in his or her system in a concentration of 0.02 or
 33 more, or THC in his or her system in a concentration above 0.00, and
 34 was under the age of twenty-one and that the officer complied with the
 35 requirements of this section.
 36 A hearing officer shall conduct the hearing, may issue subpoenas
 37 for the attendance of witnesses and the production of documents, and
 38 shall administer oaths to witnesses. The hearing officer shall not

1 blood was 0.08 or more, or the THC concentration of the person's blood
 2 was 5.00 or more, if the person is age twenty-one or over, or that the
 3 alcohol concentration of the person's breath or blood was 0.02 or more,
 4 or the THC concentration of the person's blood was above 0.00, if the
 5 person is under the age of twenty-one; and
 6 (iii) Any other information that the director may require by rule.
 7 ((477)) (5) The department of licensing, upon the receipt of a
 8 sworn report or report under a declaration authorized by RCW 9A.72.085
 9 under subsection ((46777)) (5)(d) of this section, shall suspend,
 10 revoke, or deny the person's license, permit, or privilege to drive or
 11 any nonresident operating privilege, as provided in RCW 46.20.3101,
 12 such suspension, revocation, or denial to be effective beginning sixty
 13 days from the date of arrest or from the date notice has been given in
 14 the event notice is given by the department following a blood test, or
 15 when sustained at a hearing pursuant to subsection ((477)) (7) of this
 16 section, whichever occurs first.
 17 ((497)) (7) A person receiving notification under subsection
 18 ((467)) (5)(b) of this section may, within twenty days after the notice
 19 has been given, request in writing a formal hearing before the
 20 department. The person shall pay a fee of three hundred seventy-five
 21 dollars as part of the request. If the request is mailed, it must be
 22 postmarked within twenty days after receipt of the notification. Upon
 23 timely receipt of such a request for a formal hearing, including
 24 receipt of the required three hundred seventy-five dollar fee, the
 25 department shall afford the person an opportunity for a hearing. The
 26 department may waive the required three hundred seventy-five dollar fee
 27 if the person is an indigent as defined in RCW 10.101.010. Except as
 28 otherwise provided in this section, the hearing is subject to and shall
 29 be scheduled and conducted in accordance with RCW 46.20.329 and
 30 46.20.332. The hearing shall be conducted in the county of the arrest,
 31 except that all or part of the hearing may, at the discretion of the
 32 department, be conducted by telephone or other electronic means. The
 33 hearing shall be held within sixty days following the arrest or
 34 following the date notice has been given in the event notice is given
 35 by the department following a blood test, unless otherwise agreed to by
 36 the department and the person, in which case the action by the
 37 department shall be stayed, and any valid temporary license marked
 38 under subsection ((46777)) (5) of this section extended, if the person

1 office with the other papers in the case. The court shall state the
 2 reasons for the decision. If judicial relief is sought for a stay or
 3 other temporary remedy from the department's action, the court shall
 4 not grant such relief unless the court finds that the appellant is
 5 likely to prevail in the appeal and that without a stay the appellant
 6 will suffer irreparable injury. If the court stays the suspension,
 7 revocation, or denial it may impose conditions on such stay.
 8 ((47)) 191(a) If a person whose driver's license, permit, or
 9 privilege to drive has been or will be suspended, revoked, or denied
 10 under subsection ((47)) 161 of this section, other than as a result of
 11 a breath ((test)) test refusal, and who has not committed an
 12 offense for which he or she was granted a deferred prosecution under
 13 chapter 10.05 RCW, petitions a court for a deferred prosecution on
 14 criminal charges arising out of the arrest for which action has been or
 15 will be taken under subsection ((47)) 161 of this section, or notifies
 16 the department under subsection ((47)) 161 of this section, or notifies
 17 prosecution, then the license suspension or revocation shall be stayed
 18 pending entry of the deferred prosecution. The stay shall not be
 19 longer than one hundred fifty days after the date charges are filed, or
 20 two years after the date of the arrest, whichever time period is
 21 shorter. If the court stays the suspension, revocation, or denial, it
 22 may impose conditions on such stay. If the person is otherwise
 23 eligible for licensing, the department shall issue a temporary license,
 24 or extend any valid temporary license ((marked)) under subsection
 25 ((47)) 151 of this section, for the period of the stay. If a deferred
 26 prosecution treatment plan is not recommended in the report made under
 27 RCW 10.05.050, or if treatment is rejected by the court, or if the
 28 person declines to accept an offered treatment plan, or if the person
 29 violates any condition imposed by the court, then the court shall
 30 immediately direct the department to cancel the stay and any temporary
 31 marked license or extension of a temporary license issued under this
 32 subsection.
 33 (b) A suspension, revocation, or denial imposed under this section,
 34 other than as a result of a breath ((test)) test refusal, shall be
 35 stayed if the person is accepted for deferred prosecution as provided
 36 in chapter 10.05 RCW for the incident upon which the suspension,
 37 revocation, or denial is based. If the deferred prosecution is

1 Issue a subpoena for the attendance of a witness at the request of the
 2 person unless the request is accompanied by the fee required by RCW
 3 5.56.010 for a witness in district court. The sworn report or report
 4 under a declaration authorized by RCW 9A.72.085 of the law enforcement
 5 officer and any other evidence accompanying the report shall be
 6 admissible without further evidentiary foundation and the
 7 certifications authorized by the criminal rules for courts of limited
 8 jurisdiction shall be admissible without further evidentiary
 9 foundation. The person may be represented by counsel, may question
 10 witnesses, may present evidence, and may testify. The department shall
 11 order that the suspension, revocation, or denial either be rescinded or
 12 sustained.
 13 ((47)) 181 If the suspension, revocation, or denial is sustained
 14 after such a hearing, the person whose license, privilege, or permit is
 15 suspended, revoked, or denied has the right to file a petition in the
 16 superior court of the county of arrest to review the final order of
 17 revocation by the department in the same manner as an appeal from a
 18 decision of a court of limited jurisdiction. Notice of appeal must be
 19 filed within thirty days after the date the final order is served or
 20 the right to appeal is waived. Notwithstanding RCW 46.20.334, RAJ
 21 1.1, or other statutes or rules referencing de novo review, the appeal
 22 shall be limited to a review of the record of the administrative
 23 hearing. The appellant must pay the costs associated with obtaining
 24 the record of the hearing before the hearing officer. The filing of
 25 the appeal does not stay the effective date of the suspension,
 26 revocation, or denial. A petition filed under this subsection must
 27 include the petitioner's grounds for requesting review. Upon granting
 28 petitioner's request for review, the court shall review the
 29 department's final order of suspension, revocation, or denial as
 30 expeditiously as possible. The review must be limited to a
 31 determination of whether the department has committed any errors of
 32 law. The superior court shall accept those factual determinations
 33 supported by substantial evidence in the record: (a) That were
 34 expressly made by the department; or (b) that may reasonably be
 35 inferred from the final order of the department. The superior court
 36 may reverse, affirm, or modify the decision of the department or remand
 37 the case back to the department for further proceedings. The decision
 38 of the superior court must be in writing and filed in the clerk's

1 terminated, the stay shall be lifted and the suspension, revocation, or
 2 denial reinstated. If the deferred prosecution is completed, the stay
 3 shall be lifted and the suspension, revocation, or denial canceled.
 4 (c) The provisions of (b) of this subsection relating to a stay of
 5 a suspension, revocation, or denial do not apply to the suspension,
 6 suspension, revocation, or denial of a person's commercial
 7 revocation, denial, or disqualification of a person's commercial
 8 driver's license or privilege to operate a commercial motor vehicle.
 9 ((+)) (10) When it has been finally determined under the
 10 procedures of this section that a nonresident's privilege to operate a
 11 motor vehicle in this state has been suspended, revoked, or denied, the
 12 department shall give information in writing of the action taken to the
 13 motor vehicle administrator of the state of the person's residence and
 14 of any state in which he or she has a license.

15 **Sec. 37.** RCW 9.94A.535 and 2013 c 256 s 2 and 2013 c 64 s 26 are
 16 each reenacted and amended to read as follows:

17 The court may impose a sentence outside the standard sentence range
 18 for an offense if it finds, considering the purpose of this chapter,
 19 that there are substantial and compelling reasons justifying an
 20 exceptional sentence. Facts supporting aggravated sentences, other
 21 than the fact of a prior conviction, shall be determined pursuant to
 22 the provisions of RCW 9.94A.537.

23 Whenever a sentence outside the standard sentence range is imposed,
 24 the court shall set forth the reasons for its decision in written
 25 findings of fact and conclusions of law. A sentence outside the
 26 standard sentence range shall be a determinate sentence.

27 If the sentencing court finds that an exceptional sentence outside
 28 the standard sentence range should be imposed, the sentence is subject
 29 to review only as provided for in RCW 9.94A.585(4).

30 A departure from the standards in RCW 9.94A.589 (1) and (2)
 31 governing whether sentences are to be served consecutively or
 32 concurrently is an exceptional sentence subject to the limitations in
 33 this section, and may be appealed by the offender or the state as set
 34 forth in RCW 9.94A.585 (2) through (6).

35 (1) Mitigating Circumstances - Court to Consider
 36 The court may impose an exceptional sentence below the standard

1 range if it finds that mitigating circumstances are established by a
 2 preponderance of the evidence. The following are illustrative only and
 3 are not intended to be exclusive reasons for exceptional sentences.

4 (a) To a significant degree, the victim was an initiator, willing
 5 participant, aggressor, or provoker of the incident.
 6 (b) Before detection, the defendant compensated, or made a good
 7 faith effort to compensate, the victim of the criminal conduct for any
 8 damage or injury sustained.

9 (c) The defendant committed the crime under duress, coercion,
 10 threat, or compulsion insufficient to constitute a complete defense but
 11 which significantly affected his or her conduct.

12 (d) The defendant, with no apparent predisposition to do so, was
 13 induced by others to participate in the crime.

14 (e) The defendant's capacity to appreciate the wrongfulness of his
 15 or her conduct, or to conform his or her conduct to the requirements of
 16 the law, was significantly impaired. Voluntary use of drugs or alcohol
 17 is excluded.

18 (f) The offense was principally accomplished by another person and
 19 the defendant manifested extreme caution or sincere concern for the
 20 safety or well-being of the victim.

21 (g) The operation of the multiple offense policy of RCW 9.94A.589
 22 results in a presumptive sentence that is clearly excessive in light of
 23 the purpose of this chapter, as expressed in RCW 9.94A.010.

24 (h) The defendant or the defendant's children suffered a continuing
 25 pattern of physical or sexual abuse by the victim of the offense and
 26 the offense is a response to that abuse.

27 (i) The defendant was making a good faith effort to obtain or
 28 provide medical assistance for someone who is experiencing a drug-
 29 related overdose.

30 (j) The current offense involved domestic violence, as defined in
 31 RCW 10.99.020, and the defendant suffered a continuing pattern of
 32 coercion, control, or abuse by the victim of the offense and the
 33 offense is a response to that coercion, control, or abuse.

34 (2) Aggravating Circumstances - Considered and Imposed by the Court
 35 The trial court may impose an aggravated exceptional sentence
 36 without a finding of fact by a jury under the following circumstances:

37 (a) The defendant and the state both stipulate that justice is best
 38 served by the imposition of an exceptional sentence outside the

1 standard range, and the court finds the exceptional sentence to be
 2 consistent with and in furtherance of the interests of justice and the
 3 purposes of the sentencing reform act.
 4 (b) The defendant's prior unscored misdemeanor or prior unscored
 5 foreign criminal history results in a presumptive sentence that is
 6 clearly too lenient in light of the purpose of this chapter, as
 7 expressed in RCW 9.94A.010.
 8 (c) The defendant has committed multiple current offenses and the
 9 defendant's high offender score results in some of the current offenses
 10 going unpunished.
 11 (d) The failure to consider the defendant's prior criminal history
 12 which was omitted from the offender score calculation pursuant to RCW
 13 9.94A.525 results in a presumptive sentence that is clearly too
 14 lenient.
 15 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
 16 the Court
 17 Except for circumstances listed in subsection (2) of this section,
 18 the following circumstances are an exclusive list of factors that can
 19 support a sentence above the standard range. Such facts should be
 20 determined by procedures specified in RCW 9.94A.537.
 21 (a) The defendant's conduct during the commission of the current
 22 offense manifested deliberate cruelty to the victim.
 23 (b) The defendant knew or should have known that the victim of the
 24 current offense was particularly vulnerable or incapable of resistance.
 25 (c) The current offense was a violent offense, and the defendant
 26 knew that the victim of the current offense was pregnant.
 27 (d) The current offense was a major economic offense or series of
 28 offenses, so identified by a consideration of any of the following
 29 factors:
 30 (i) The current offense involved multiple victims or multiple
 31 incidents per victim;
 32 (ii) The current offense involved attempted or actual monetary loss
 33 substantially greater than typical for the offense;
 34 (iii) The current offense involved a high degree of sophistication
 35 or planning or occurred over a lengthy period of time; or
 36 (iv) The defendant used his or her position of trust, confidence,
 37 or fiduciary responsibility to facilitate the commission of the current
 38 offense.

1 (e) The current offense was a major violation of the Uniform
 2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
 3 trafficking in controlled substances, which was more onerous than the
 4 typical offense of its statutory definition: The presence of ANY of
 5 the following may identify a current offense as a major VUCSA:
 6 (i) The current offense involved at least three separate
 7 transactions in which controlled substances were sold, transferred, or
 8 possessed with intent to do so;
 9 (ii) The current offense involved an attempted or actual sale or
 10 transfer of controlled substances in quantities substantially larger
 11 than for personal use;
 12 (iii) The current offense involved the manufacture of controlled
 13 substances for use by other parties;
 14 (iv) The circumstances of the current offense reveal the offender
 15 to have occupied a high position in the drug distribution hierarchy;
 16 (v) The current offense involved a high degree of sophistication or
 17 planning, occurred over a lengthy period of time, or involved a broad
 18 geographic area of disbursement; or
 19 (vi) The offender used his or her position or status to facilitate
 20 the commission of the current offense, including positions of trust,
 21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
 22 other medical professional).
 23 (f) The current offense included a finding of sexual motivation
 24 pursuant to RCW 9.94A.835.
 25 (g) The offense was part of an ongoing pattern of sexual abuse of
 26 the same victim under the age of eighteen years manifested by multiple
 27 incidents over a prolonged period of time.
 28 (h) The current offense involved domestic violence, as defined in
 29 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or
 30 more of the following was present:
 31 (i) The offense was part of an ongoing pattern of psychological,
 32 physical, or sexual abuse of a victim or multiple victims manifested by
 33 multiple incidents over a prolonged period of time;
 34 (ii) The offense occurred within sight or sound of the victim's or
 35 the offender's minor children under the age of eighteen years; or
 36 (iii) The offender's conduct during the commission of the current
 37 offense manifested deliberate cruelty or intimidation of the victim.

1 (i) The offense resulted in the pregnancy of a child victim of
2 reba.
3 (j) The defendant knew that the victim of the current offense was
4 a youth who was not residing with a legal custodian and the defendant
5 established or promoted the relationship for the primary purpose of
6 victimization.
7 (k) The offense was committed with the intent to obstruct or impair
8 human or animal health care or agricultural or forestry research or
9 commercial production.
10 (l) The current offense is trafficking in the first degree or
11 trafficking in the second degree and any victim was a minor at the time
12 of the offense.
13 (m) The offense involved a high degree of sophistication or
14 planning.
15 (n) The defendant used his or her position of trust, confidence, or
16 fiduciary responsibility to facilitate the commission of the current
17 offense.
18 (o) The defendant committed a current sex offense, has a history of
19 sex offenses, and is not amenable to treatment.
20 (p) The offense involved an invasion of the victim's privacy.
21 (q) The defendant demonstrated or displayed an egregious lack of
22 remorse.
23 (r) The offense involved a destructive and foreseeable impact on
24 persons other than the victim.
25 (s) The defendant committed the offense to obtain or maintain his
26 or her membership or to advance his or her position in the hierarchy of
27 an organization, association, or identifiable group.
28 (t) The defendant committed the current offense shortly after being
29 released from incarceration.
30 (u) The current offense is a burglary and the victim of the
31 burglary was present in the building or residence when the crime was
32 committed.
33 (v) The offense was committed against a law enforcement officer who
34 was performing his or her official duties at the time of the offense,
35 the offender knew that the victim was a law enforcement officer, and
36 the victim's status as a law enforcement officer is not an element of
37 the offense.

1 (w) The defendant committed the offense against a victim who was
2 acting as a good samaritan.
3 (x) The defendant committed the offense against a public official
4 or officer of the court in retaliation of the public official's
5 performance of his or her duty to the criminal justice system.
6 (y) The victim's injuries substantially exceed the level of bodily
7 harm necessary to satisfy the elements of the offense. This aggravator
8 is not an exception to RCW 9.94A.530(2).
9 (z)(i)(A) The current offense is theft in the first degree, theft
10 in the second degree, possession of stolen property in the first
11 degree, or possession of stolen property in the second degree; (B) the
12 stolen property involved is metal property; and (C) the property damage
13 to the victim caused in the course of the theft of metal property is
14 more than three times the value of the stolen metal property, or the
15 theft of the metal property creates a public hazard.
16 (ii) For purposes of this subsection, "metal property" means
17 commercial metal property, private metal property, or nonferrous metal
18 property, as defined in RCW 19.290.010.
19 (aa) The defendant committed the offense with the intent to
20 directly or indirectly cause any benefit, aggrandizement, gain, profit,
21 or other advantage to or for a criminal street gang as defined in RCW
22 9.94A.030, its reputation, influence, or membership.
23 (bb) The current offense involved paying to view, over the internet
24 in violation of RCW 9.68A.075, depictions of a minor engaged in an act
25 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
26 (g).
27 (cc) The offense was intentionally committed because the defendant
28 perceived the victim to be homeless, as defined in RCW 9.94A.030.
29 (dd) The current offense involved a felony crime against persons,
30 except for assault in the third degree pursuant to RCW 9A.36.031(1)(k),
31 that occurs in a courtroom, jury room, judge's chamber, or any waiting
32 area or corridor immediately adjacent to a courtroom, jury room, or
33 judge's chamber. This subsection shall apply only: (i) During the
34 times when a courtroom, jury room, or judge's chamber is being used for
35 judicial purposes during court proceedings; and (ii) if signage was
36 posted in compliance with section 3, chapter 256, Laws of 2013 at the
37 time of the offense.

1 (see) During the commission of the current offense, the defendant
 2 was driving in the opposite direction of the normal flow of traffic on
 3 a multiple lane highway, as defined by RCW 46.04.350, with a posted
 4 speed limit of forty-five miles per hour or greater.

5 **NEW SECTION. Sec. 38.** (1) The legislature finds that Washington
 6 state has one of the weakest driving under the influence felony laws
 7 (in noninjury cases) in the nation. Of the forty-five states that have
 8 felony driving under the influence laws for convictions, Washington
 9 state and North Dakota were the only states where a convicted driving
 10 under the influence offender in a noninjury crash could be charged with
 11 a felony starting on the fifth offense. This year, North Dakota
 12 changed its law making a fourth time driving under the influence
 13 offender a felon, leaving Washington state with the dubious distinction
 14 as the state with the greatest number of prior convictions required to
 15 constitute a driving under the influence felony. The legislature
 16 further notes that there have been several high profile driving under
 17 the influence fatalities in Washington state committed by offenders
 18 with multiple prior driving under the influence offenses on their
 19 record or while waiting to have their cases resolved pretrial. The
 20 Washington impaired driving work group is established to study
 21 effective strategies to reduce vehicle-related deaths and serious
 22 injuries that are a result of impaired driving incidents in Washington
 23 state.

24 (2) Members of the work group shall consist of the following
 25 members:

- 26 (a) One member from each of the two largest caucuses of the senate,
 27 appointed by the president of the senate;
 28 (b) One member from each of the two largest caucuses of the house
 29 of representatives, appointed by the speaker of the house of
 30 representatives;
 31 (c) The chief of the Washington state patrol, or the chief's
 32 designee;
 33 (d) The director of the liquor control board, or the director's
 34 designee;
 35 (e) The director of the department of licensing, or the director's
 36 designee;

- 1 (f) The secretary of the department of corrections, or the
 2 secretary's designee;
 3 (g) The secretary of the department of social and health services,
 4 or the secretary's designee;
 5 (h) One member representing the Washington traffic safety
 6 commission;
 7 (i) The executive director of the Washington association of
 8 sheriffs and police chiefs, or the executive director's designee;
 9 (j) One member representing the superior court judges' association;
 10 (k) One member representing the district and municipal court
 11 judges' association;
 12 (l) One member representing the Washington state association of
 13 counties;
 14 (m) One member representing the Washington association of
 15 prosecuting attorneys;
 16 (n) One member representing the Washington defender's association
 17 or the Washington association of criminal defense lawyers;
 18 (o) One member representing the Washington state association of
 19 drug court professionals;
 20 (p) One member representing the ignition interlock industry;
 21 (q) One member representing the Washington retail association;
 22 (r) One member representing the Washington state association of
 23 cities;
 24 (s) One member representing treatment providers;
 25 (t) One representative representing driving under the influence
 26 victim impact panels; and
 27 (u) Representatives, appointed by the governor, that shall include,
 28 but are not limited to:
 29 (i) City law enforcement;
 30 (ii) County law enforcement;
 31 (iii) Court administrators; and
 32 (iv) Driving under the influence victims or family members of a
 33 victim.
 34 (3) The Washington traffic safety commission shall convene the
 35 initial meeting of the work group and provide staff support.
 36 (4) Members of the work group shall select the chair of the work
 37 group.

1 (5) At a minimum, the work group shall research, review, and make
 2 recommendations on the following:
 3 (a) Lowering the minimum number of previous impaired driving
 4 convictions that must be counted before constituting and being
 5 punishable as a felony offense;
 6 (b) Providing effective strategies for reducing motor vehicle-
 7 related deaths and serious injuries due to impaired driving;
 8 (c) Increasing mandatory minimum penalties and fines for repeat
 9 offenders;
 10 (d) Promoting and monitoring the use of mandatory ignition
 11 interlocks;
 12 (e) The advantages and disadvantages of creating sobriety
 13 checkpoints;
 14 (f) Requiring mandatory arrests for a first offense for an impaired
 15 driving offense;
 16 (g) Increasing treatment and rehabilitation for repeat offenders;
 17 (h) Reviewing the penalties for refusing to take a breath or blood
 18 test for the purpose of determining the alcohol concentration or
 19 presence of any drugs;
 20 (i) Increasing funding for prevention, intervention, suppression,
 21 and prosecution of impaired driving offenses;
 22 (j) Prohibiting the sale of alcohol to offenders convicted of
 23 repeat impaired driving offenses;
 24 (k) Improving prosecution and encouraging prosecutors to
 25 aggressively enforce impaired driving laws;
 26 (l) Increasing the number of driving under the influence courts and
 27 court-related services;
 28 (m) Creating state and local impaired driving enforcement task
 29 forces to increase the visibility of enforcement;
 30 (n) Promoting education and prevention strategies; and
 31 (o) Encouraging private sector collaboration.
 32 (6) The work group shall compile its findings and recommendations
 33 into a final report and provide its report to the legislature and
 34 governor by December 1, 2013.
 35 (7) The work group shall function within existing resources and no
 36 specific budget may be provided to complete the study. The
 37 participants of the study group are encouraged to donate their time to
 38 offset any costs.

1 (8) This section expires January 1, 2014.
 2 NEW SECTION. Sec. 39. The sum of one hundred seventy-six thousand
 3 dollars of the state general fund for the fiscal year ending June 30,
 4 2014, and one hundred seventy-six thousand dollars of the state general
 5 fund for the fiscal year ending June 30, 2015, or as much thereof as
 6 may be necessary, are appropriated to the Washington traffic safety
 7 commission solely for the purposes of section 25 of this act.
 8 NEW SECTION. Sec. 40. The sum of two hundred seventy thousand
 9 dollars of the state general fund for the fiscal year ending June 30,
 10 2014, and three hundred sixty thousand dollars of the state general
 11 fund for the fiscal year ending June 30, 2015, or as much thereof as
 12 may be necessary, are appropriated to the Washington traffic safety
 13 commission solely for allocation to counties for the increased
 14 incarceration costs incurred as a result of mandatory arrest of repeat
 15 offenders under RCW 10.31.100(2)(d).
 16 NEW SECTION. Sec. 41. The sum of one million two hundred seventy
 17 thousand five hundred dollars of the general fund--state appropriation
 18 for the fiscal year ending June 30, 2014, and one million two hundred
 19 seventy thousand five hundred dollars of the general fund--state
 20 appropriation for the fiscal year ending June 30, 2015, are provided as
 21 a grant to the Washington association of prosecuting attorneys for
 22 funding up to eleven deputy prosecuting attorney positions focused upon
 23 rush filing charges against repeat DUI offenders. The new positions
 24 will be in addition to current resources and not supplant existing
 25 positions. The Washington association of prosecuting attorneys will
 26 provide a report by December 1, 2014, on the number of cases rush filed
 27 by the new positions and the overall effect on case processing within
 28 each jurisdiction.
 29 NEW SECTION. Sec. 42. The sum of one hundred thousand dollars of
 30 the state general fund for the fiscal year ending June 30, 2014, and
 31 one hundred twenty-two thousand dollars of the state general fund for
 32 the fiscal year ending June 30, 2015, or as much thereof as may be
 33 necessary, are appropriated to the department of corrections solely for
 34 the increased supervision of offenders under RCW 9.94A.501(4)(h).

1 NEW SECTION. Sec. 43. The sum of four hundred twenty-three
2 thousand dollars of the state general fund for the fiscal year ending
3 June 30, 2014, eight hundred fourteen thousand dollars of the state
4 general fund for the fiscal year ending June 30, 2015, and one million
5 four hundred seventy-eight thousand dollars of the state general fund
6 federal appropriation, or as much thereof as may be necessary, are
7 appropriated to the department of social and health services to provide
8 court ordered chemical dependency assessment and treatment services for
9 low-income or medicaid eligible repeat DUI offenders.

10 NEW SECTION. Sec. 44. Sections 27, 28, and 30 through 32 of this
11 act take effect January 1, 2014.

12 NEW SECTION. Sec. 45. Sections 23 through 32 of this act are each
13 added to chapter 36.28A RCW.

14 NEW SECTION. Sec. 46. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

Passed by the Senate June 26, 2013.

Passed by the House June 27, 2013.

Approved by the Governor July 18, 2013.

Filed in Office of Secretary of State July 18, 2013.

EXHIBIT H

thenewstribune.com

Saturday, January 4, 2014 • A7

ENDMCLAV

Ruling means man will go to jail, not prison

BY SARA JEAN GREEN
The Seattle Times

Evidence problems and an adverse ruling from the U.S. Supreme Court led to a plea agreement that is sending a 21-year-old Buckley man to jail instead of prison for running down a 16-year-old boy in October 2012 while under the influence of marijuana and oxycodone.

Cody Money, an electrician, was originally charged with felony vehicular homicide and faced time in prison in connection with the Oct. 31, 2012, death of Justin Relethford, who was struck while walking with his girlfriend on the shoulder of Highway 410 near Enumclaw, according to court records.

However, problems with the case led prosecutors to allow him to plead guilty to reckless driving, reckless endangerment and DUI — all gross misdemeanors — on Dec. 4, said Dan Donohoe, a spokesman for King County Prosecutor Dan Satterberg.

Donohoe explained that a state trooper trained as a drug-recognition expert evaluated Money and determined he was not impaired. Officials drew a sample of his blood anyway and found that he had nearly twice the legal level of THC, the psycho-active ingredient in marijuana, in his system. He also had taken oxycodone, a prescription narcotic pain killer.

The arresting officer did not obtain a warrant before drawing Money's blood, which was significant because the U.S. Supreme Court in a 5-4 ruling last April narrowed the circumstances in which law-enforcement officers can obtain blood samples without first obtaining a search warrant.

Donohoe said prosecutors determined the Supreme Court precedent applied in Money's case and that the blood evidence would not be admissible. Donohoe said prosecutors obtained the best result they felt they could under the circumstances.

After Money finishes serving his jail sentence, he will be required to serve six months on enhanced CCAP, a county program that requires participants to report daily and undergo random tests for drug and alcohol consumption. Money was also ordered to undergo drug and alcohol treatment, Donohoe said.

RELIGION CALENDAR

SATURDAY
WOMEN'S MINISTRIES Breakfast, fellowship and a program, 9-10:30 a.m. Saturdays, Living Word Lutheran Church/Shaw Road, 12115 Shaw Road E., Puyallup, 253-229-5353/253-445-4102. livingwordlutheranchurch.com.

KINGDOM SERVANT MINISTRIES - THE PROPHETIC PRAYER BREAKFAST - THE LAUNCH 10 a.m., C.L. Shearn/ignis, 3017 Ruston Way, Tacoma.

SUNDAY
WORSHIP AND COMMUNION 10 a.m. Sundays: St. Andrew's Episcopal Church, 7410 S. 12th St., Tacoma, 253-564-4402, saintandrewsepiacosta.org.

STUDY OF THE "LIFE AND TIMES OF MARTIN LUTHER" LED BY JAY THOMPSON 10:30 a.m.-noon Sundays, Living Word Lutheran Church, 14422 Meridian Ave. E., South Hill, 253-229-5353 or 253-445-4102. livingwordlutheranchurch.org.

WORSHIP WITH EPISCOPAL 10:30 a.m. Sundays, Christ Episcopal Church, 310 N. K St., Tacoma, www.christepi.org.

