

September 30, 2022

Via Email Only

Jill O. Gibson
Lynch Murphy McLane LLP
1120 NW Couch Street, Tenth Floor
Portland, OR 97209

Dear Jill:

This firm represents Andrea Salinas for Oregon (the “Campaign”). On the early morning of September 17, 2016, Oregon law enforcement arrested your client Michael Erickson and charged him with both DUII and Possession of Oxycodone—a class C felony at the time. (Ex. A.) In return for pleading guilty to the DUII charge, the district attorney agreed not to file the possession charge—but police records leave no doubt that law enforcement charged him with possession. In fact, Mr. Erickson stated, in his own words in the plea agreement, that the DA “has agreed to dismiss felony possession of controlled substance upon tender of guilty plea.” (Ex. B.). The Campaign’s television ad concerning these unfortunate circumstances cites and accurately describes the law enforcement report recording Mr. Erickson’s conduct and charges. Mr. Erickson’s refusal to take responsibility for his conduct is yet another example of his hypocrisy when it comes to public safety.

Given Mr. Erickson’s disagreement about the basic facts of his own history with law enforcement, it is important to begin by setting the record straight. The Oregon State Police’s DUII report records Mr. Erickson’s conduct the morning of September 17, 2016. (Ex. C.) The arresting officer saw Mr. Erickson “stumble[]” towards his truck. After starting his vehicle, Mr. Erickson could not stay in his lane. The arresting officer observed “the Ford swerve to the right, outside of his lane and partially into a designated street parking area. The Ford swerved back into the lane of travel causing the vehicle behind it to activate their brakes.” The officer activated his lights and pulled Mr. Erickson over.

After stopping Mr. Erickson, "Erickson exited the vehicle and walked back towards" the officer. The officer noted:

Erickson stood abnormally close to me, which in my experience is quite common with subjects who are under the influence of intoxicants; especially alcohol. Immediately I could detect **an overwhelming odor of alcohol coming from Erickson's breath** as I was informing him of my name, my employer, and that the conversation was recorded. I also informed Erickson the reason he was being stopped and he said "oh sorry about that." I noticed **Erickson's speech was slurred** and his eyes were bloodshot and watery. I asked Erickson if there was any reason for the violations I had observed and he told me "no." **Erickson was visibly intoxicated.** [Emphasis added.]

The officer arrested Mr. Erickson and transported him to the Hood River County Sheriff's Office. Mr. Erickson consented to a breath sample. But the officer noted that Mr. Erickson was either too intoxicated to follow instructions or intentionally attempted to obstruct the test: "On his first attempt, he failed to provide a proper breath sample initially and was blowing around the mouth piece even after I instructed him how to properly provide a sample multiple times. **Erickson was either so intoxicated he could not understand the simple instructions, or he was purposely trying to avoid providing a sample.**" (Emphasis added.) After the officer warned Mr. Erickson about the consequences of failing to follow law enforcement instructions, Mr. Erickson properly provided breath samples. The Intoxilyzer registered Mr. Erickson's blood alcohol content at more than 0.12%, nearly twice the legal limit.¹

The officer eventually transported Mr. Erickson to the Northern Oregon Regional Correctional Facilities (NORCOR). Deputies at NORCOR discovered Mr. Erickson was in possession of oxycodone without a prescription:

While Erickson was being booked in, NORCOR **deputies located an Oxycodone blister pack with one 5mg pill and one empty package from within Erickson's wallet.** I questioned Erickson about the narcotic and he told me **he did not have a prescription for Oxycodone** and he had gotten it from his wife, who is a nurse. The

¹ We further note that a Notice of 15% was filed on October 17, 2016 in Mr. Erickson's DUII docket.

Oxycodone was seized, photographed, and placed into evidence.
Erickson was lodged on the DUII and unlawful possession of Oxycodone. [Emphasis added.]

The deputies booked Mr. Erickson in NORCOR on charges of both DUII and unlawful possession of oxycodone. The Oregon State Police incident report provides a concise summary of the Mr. Erickson's arrest, booking, and charges:

On Saturday September 17th 2016 I stopped a vehicle after **watching the driver stumble to his truck** and get into the drivers' seat. I **observed the driver fail to drive within his lane multiple times** then fail to signal for a turn. **He admitted to drinking and an overwhelming odor of alcohol was present. He had bloodshot watery eyes, slurred speech, poor walk and balance, and poor finger dexterity.** He consented to field sobriety tests. I observed 6/6 clues on the HGN test, 5/8 clues on the walk and turn test, and ¾ clues on the one leg stand test. **The driver was arrested and later provided a breath sample of 0.12%.** He was transported to NORCOR and a **search of his wallet yielded a 5mg oxycodone pill which he stated he did not have a prescription** and had gotten it from his wife who was a nurse. **He was lodged on the DUII and unlawful possession of oxycodone.** [Emphasis added.] (Ex. A.)

The incident report notes that Mr. Erickson was "Arrested; Charged" and it records that the police charged Mr. Erickson with "Possession of Oxycodone (Fel, C)" and "DUII - Alcohol (Misd, A)." My client cited this report in its ad concerning Mr. Erickson's conduct.

Given these unequivocal public records describing Mr. Erickson's dangerous conduct, charges, and arrest, I was surprised by your letters of September 26 and September 29, 2022. The Campaign's television ad concerning Mr. Erickson's conduct the morning of September 17, 2016 cites and accurately reflects the contents of Oregon State Police reports. Law enforcement officers recorded Mr. Erickson's blood alcohol at nearly twice the legal limit, discovered oxycodone in his possession, and booked him on charges of both possession of oxycodone and DUII. Mr. Erickson admitted to possessing oxycodone without a prescription and later, under a plea deal, pled guilty to DUII in exchange for dismissal of the possession charge. The Campaign's ad truthfully describes Mr. Erickson's conduct.

Your letter makes several inaccurate contentions. Mr. Erickson's contention that he was not charged with possession of oxycodone is the most shocking. In fact, **you admit in your September 26 letter that law enforcement accused Mr. Erickson of possession of oxycodone.** You wrote that "the case against Mr. Erickson involving his possession of a single oxycodone tablet . . . was dismissed." As noted above, Mr. Erickson also, in his own handwriting, admitted that he agreed to plead guilty to DUII to obtain a dismissal of the possession charge. He wrote that the DA "has agreed to dismiss felony possession of controlled substance upon tender of guilty plea." (Ex. B.)

Your subsequent contention, on September 29, that Mr. Erickson wasn't actually charged with possession stems from a basic misunderstanding of what the word "charge" means. It is true that under the terms of the plea deal the DA did not *file* the charge of possession of oxycodone. But a charge is a charge, whether or not the DA files it. According to Black's Law Dictionary, "charge" means "[t]o accuse (a person) of an offense <the police charged him with murder>." (11th ed. 2019). Oregon law enforcement did just that: They accused Mr. Erickson of possession of oxycodone. The incident report, cited in the Campaign's ad, states this unequivocally: Mr. Erickson was "Arrested; Charged" and the charges included possession of oxycodone. The fact that the DA didn't file the charge doesn't mean that police didn't make it. *See State v. Johnson*, 335 Or 511, 514 (2003) ("Two months later, as defendant was being released in the probation matter, Salem **police charged him** with the Thompson murder and booked him at the Marion County Jail." (Emphasis added)). Mr. Erickson was charged with possession of oxycodone.

Mr. Erickson's other contentions in your September 26 and 29 letters are equally wrong. The September 26 letter contends that the ad "shows an image of several lines of cocaine" and "Mr. Erickson was never charged with illegal possession of cocaine." This contention is wrong for myriad reasons, but most simply because it is based on your assumption that the ad shows an image of cocaine. Of course, oxycodone is frequently ingested nasally. *See, e.g.*, <https://www.justice.gov/archive/ndic/pubs/651/abuse.htm>. Your contention that the Campaign's ad mischaracterizes Mr. Erickson's blood alcohol content is also wrong. The ad states that Mr. Erickson "pled guilty to drunk driving at nearly twice the legal limit." As noted above, that statement accurately characterizes Mr. Erickson's blood alcohol content.

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Mr. Erickson's legal threats are empty and his hypocrisy troubling. Should Mr. Erickson pursue a frivolous legal claim, the Campaign will seek sanctions, economic damages, and its attorney fees.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Harry B. Wilson". The signature is fluid and cursive, with the first name "Harry" and last name "Wilson" being clearly distinguishable.

Harry B. Wilson

Enclosures
1340469



Oregon State Police

Incident: SP16316264

Incident Details:

Incident Type: DUII - Alcohol

Incident Time: 09/17/2016 01:46 - 09/17/2016 05:00

Reported Time: 09/17/2016 01:46

Incident Location: EUGENE ST and SERPENTINE RD, HOOD RIVER OR USA (Beat: TDO, Region: ER)

Incident Status: Cleared by Arrest (OSP)

Summary: On Saturday September 17th 2016 I stopped a vehicle after watching the driver stumble to his truck and get into the driver's seat. I observed the driver fail to drive within his lane multiple times then fail to signal for a turn. He admitted to drinking and an overwhelming odor of alcohol was present. He had bloodshot watery eyes, slurred speech, poor walk and balance, and poor finger dexterity. He consented to field sobriety tests. I observed 6/6 clues on the HGN test, 5/8 clues on the walk and turn test, and 3/4 clues on the one leg stand test. The driver was arrested and later provided a breath sample of 0.12%. He was transported to NORCOR and a search of his wallet yielded a 5mg oxycodone pill which he stated he did not have a prescription and had gotten it from his wife who was a nurse. He was lodged on the DUII and unlawful possession of oxycodone.

Involved Offenders - Persons

Name: ERICKSON, MICHAEL KURTIS

Gender: Male

Classification: Arrested; Charged; Driver

DOB: [REDACTED]

DL: [REDACTED]

Address: [REDACTED]

Height: 6'5"

Weight: 240lb

Build:

Race: White

Hair Color: Gray or partially gray

Eye Color:

Arrest Report:

Author: #52231 FERRER, JACOB

Report Time: 09/17/2016 05:12

Entered By: #52231 FERRER, JACOB

Entered Time: 09/17/2016 05:12

Arrest Date/Time: 09/17/2016 01:59

Arresting Officer: #52231 FERRER, JACOB

Place Of Arrest: EUGENE ST and SERPENTINE RD, HOOD RIVER OR USA (Beat: TDO, Region: ER)

Apprehension Type: Probable cause - Felony; Probable cause - Misdemeanor

Warrant #:

Warrant Agency:

Remarks:

Charges/Pending Charges:

- **475.834 Possession of Oxycodone** (Fel, C); Status: Cleared by Arrest (OSP); Offense Date: 09/17/2016; Charge Date: 09/17/2016; Offense Location: EUGENE ST and SERPENTINE RD, HOOD RIVER OR USA (Beat: TDO, Region: ER)
- **813.010 DUII - Alcohol** (Misd, A); Status: Cleared by Arrest (OSP); Offense Date: 09/17/2016; Charge Date: 09/17/2016; Offense Location: EUGENE ST and SERPENTINE RD, HOOD RIVER OR USA (Beat: TDO, Region: ER)

Involved Property:

- Other: Prescription drugs / Evidence / [OXYCODONE]
- Police recording / Evidence / DASH CAM

Involved Vehicles:

- Other / FORD F15 2013 VIN:1FTFW1ET7DKD17141 / [Truck: Pickup] OR Reg #529GAS Colors: Blue / Blue

Involved Addresses:

- EUGENE ST / Incident address / HOOD RIVER, HOOD RIVER, Oregon, USA (Beat: TDO, Region: ER)

Involved Officers:

- Reporting Officer/Case Lead: FERRER, JACOB ALLEN / #52231 — THE DALLES PATROL
- Dispatcher/TC2: JONES, TERRI M / #18590 — DISPATCH

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR Hood River COUNTY

STATE OF OREGON,

Plaintiff,

Case No(s). 16-U1146303 and 16CR0135

v.

DA No. 16-667

Michael Kuris Erickson,
Defendant.

PETITION TO PLEAD GUILTY / NO CONTEST
AND WAIVER OF JURY OR COURT TRIAL

The defendant represents to the Court as follows:

1. My full true name is Michael K. Erickson,
but I also am known as (NA).

2. I am 53 years of age. I have gone to school through college, BA Science.
My physical and mental health is satisfactory. I am not under the influence of any drugs or intoxicants,
except -NA- none.

3. I understand my right to hire or have the Court appoint a lawyer to help me.

(a) I am represented by Tara Lawrence.

(b) I choose to give up my right to a lawyer; I will represent myself: NA (defendant's initials).

4. I have told my lawyer all the facts I know about the charge(s) against me. My lawyer has advised me of the nature of the charge(s), the defenses, if any, and any legal challenges that I have in this case. I am satisfied with the advice and help I have received from my lawyer.

5. I understand that I have the following rights at trial: (1) the right to have a jury or court trial; (2) the right to see, hear and cross-examine or question all witnesses who testify against me; (3) the right to remain silent about all facts of the case; (4) the right to subpoena witnesses and evidence; (5) the right to have the jury told, if I decide not to present any evidence, that it cannot hold that decision against me as an indication of guilt; (6) the right to have my lawyer assist me; (7) the right to testify; (8) the right to have the jury told, if I decide not to testify, that it cannot hold that decision against me as an indication of guilt; and (9) the right to require the prosecutor to prove my guilt and all sentence enhancement facts including consecutive sentences beyond a reasonable doubt.

6. I understand that I give up all of the rights listed in paragraph 5 when I plead either "Guilty" or "No Contest." I understand that I give up: (1) any defenses I may have to the charge(s); (2) objections to evidence concerning my guilt; (3) challenges to the accusatory instrument; and (4) the right to have proven beyond a reasonable doubt any sentence enhancement facts including consecutive sentences. I understand the right to appeal my conviction is limited; I may appeal only if I can make a colorable showing of error in the disposition of my case or a colorable claim of error in the proceeding.

7. I understand, and by signing this petition have notice, that if I enter a plea of guilty or no contest to an offense involving domestic violence, as defined in ORS 135.230, and I am convicted of the offense, it may be unlawful for me to possess, receive, ship, transport or purchase a FIREARM, including a rifle, pistol, or revolver, or AMMUNITION pursuant to federal law under 18 U.S.C. 922(g)(9), and/or other provision of federal or state law, and that a criminal conviction, plea of guilty or no contest plea may also negatively affect my ability to serve in the Armed Forces of the United States as defined in ORS 348.282 or to be employed in law enforcement. If I have any questions about this potential consequence, I know I should consult an attorney.

8. I understand that if I reside outside of this State and enter a plea of guilty or no contest to an offense and I am convicted and given a sentence with a term of probation, a deferred sentence, or post prison supervision, that I may be subject to the Interstate Compact on Adult Offender Supervision and cannot return to my State of residence until I have applied for permission to return as required by the Compact.

9. I understand that if a sentence of probation is imposed that I will be required to comply with the general conditions of probation and any special conditions imposed by the court.

10. I know that this plea can affect probation or parole and any hearing I may have regarding probation or parole. If probation or parole is revoked, I know that the rest of the sentence of incarceration in each of those cases could be imposed and executed, and could be added to any sentence in this case.

11. I understand that I will be required to provide a blood or buccal sample if convicted of a felony, murder, aggravated murder, or certain misdemeanors.

12. I have notice, pursuant to ORS 135.385, that if I am not a United States citizen, my plea of guilty or no contest may result in my deportation from the USA, or denial of naturalization, or exclusion from future admission to the United States.

13. I know that a No Contest Plea will result in a conviction to the charge(s) listed in Paragraph 15.

14. I know that when I plead "Guilty" or "No Contest" to the charge(s) in paragraph 15, the maximum possible sentence is 1 year(s) in (prison) (jail), and a fine with assessments totaling \$ 6,250⁰⁰ —, including a mandatory fine of \$ 1,000⁰⁰. I also know that the Court can impose a minimum sentence of two days in jail or 80 hours community service. Further I know that these maximum and minimum sentences can be added to sentences in these other cases: NA -

15. I plead Guilty / No Contest to the charge(s) of (identify the count no., charge and grid block for each offense):

Driving under the influence of intoxicants.

Finally, I know that my driver's license (can) (will) (cannot) be suspended or revoked for 90 days.

16. I understand that I might ((will not)) be sentenced as a dangerous offender, which could increase each sentence to a maximum of 30 years, with a 15 year minimum.

17. I have been told that if my crime involved my use or threatened use of a firearm, I (can) (will) receive a mandatory minimum sentence without parole or work release for a period of NA

18. I declare that no government agents have made any threats or promises to me to make me enter this plea other than the District Attorney's recommendation set forth in Paragraph 19, except: No threats or promises.

The DAA has agreed to dismiss felony possession of involved substance upon tender of guilty plea.

19. I know that the sentence is up to the Court to decide. The District Attorney may provide reports or other information if requested by the Court. I understand that the District Attorney will make the following recommendation to the Court about my sentence or about other pending charges. This recommendation is (X) is not () made pursuant to ORS 135.432 (2):

DAA dismiss felony possession of C.S. upon guilty plea. Recused & endangering another person and the violations.

20. I agree that if I withdraw or if a court later reverses, vacates, or sets aside my plea of "Guilty" or "No Contest" in this case, the court will reinstate any charge(s) that were dismissed in return for my plea and the district attorney no longer will be bound by any promises made to me in exchange for my plea. If the court reinstates the charge(s), I waive the statute of limitations and any statutory or constitutional speedy trial or double jeopardy rights applicable to the dismissed charges.

21-A. I plead Guilty because, in Hood River County, Oregon, I did the following:

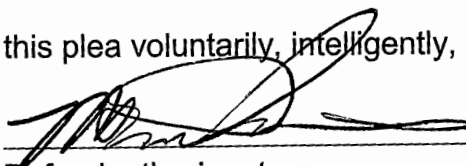
on Sept 17, 2016, I consumed alcohol and drove my vehicle while under the influence of alcohol and failed the breath test because I was impaired.

21-B. I plead No Contest because I understand that a jury or judge could find me guilty of the charge(s), so I prefer to accept the plea offer (defendant's initials: _____)

22. I am signing this plea petition and entering this plea voluntarily, intelligently, and knowingly.

12/29/16

Date



Defendant's signature

Verified Correct Copy of Original 1/4/2017.

CERTIFICATE OF INTERPRETER

I, NA, do hereby certify as follows:

- 1) I truly interpreted this petition for Defendant in _____.
- 2) The interpretation was done in the presence of Defendant's attorney.
- 3) I believe that Defendant understood the translation.
- 4) I believe that Defendant's plea is offered freely, voluntarily and knowingly.

Date

Interpreter's signature

CERTIFICATE OF COUNSEL

I am the lawyer for the defendant and I certify:

1. I have read and explained fully to the defendant the allegations contained in the accusatory instrument(s). I believe the defendant understands the charges and all possible defenses to them. I have explained the alternatives and the trial strategies to the defendant. I have explained to the defendant all of the sentencing consequences of entering this plea.
2. I have explained to the defendant the maximum and minimum penalties that could be imposed for each charge and for all charges together and provided a copy of the general conditions of probation if a probation sentence is to be imposed.
3. The plea(s) offered by the defendant is (are) justified by my understanding of the facts related to me.
4. To the best of my knowledge and belief, the declarations made by the defendant in the foregoing petition are true and accurate.
5. To the best of my knowledge, the defendant's decision to enter this plea is made voluntarily, intelligently, and knowingly. I recommend that the Court accept the plea.

I have signed this certificate in the presence of the defendant and after full discussion of its contents with the defendant.

12/29/16
(Date)

[Signature]
(Lawyer's Signature)

990581
(Bar No.)

ORDER

IT IS HEREBY ORDERED that Defendant's plea of GUILTY/NO CONTEST is accepted/acknowledged.

Done in open Court on this 29th day of December, 2016.

[Signature]
Circuit Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF Hood River

Defendant: Michael kurtis Erickson

Case Number(s): 16V1146303 and 16CR61355

NOTICE OF THE RIGHT TO APPEAL AND THE PROCEDURES TO PROTECT THAT RIGHT

You and your attorney must sign this form and return it to the Court before you leave today.

- I) You have 30 days within which to file a Notice of Appeal. The 30 days begins to run the day the judgment is entered into the Court's register.
- II) Your right to appeal may be limited depending on the circumstances of your case. For example:
- A) If you have been sentenced based on a plea of guilty or no contest, you may appeal only if you are able to make a colorable showing that the sentence either exceeds the maximum allowable by law or is unconstitutionally cruel or unusual.
- B) If you have been convicted of a felony committed on or after November 1, 1989, you may appeal only if you are able to make a colorable claim of error in a proceeding if the appeal is from a proceeding in which: 1) you were sentenced based on a guilty or no contest plea; 2) your probation was revoked or extended, you had a new condition of probation imposed, or your suspended sentence was revoked; or 3) you have been resentenced after an appeal or post-conviction relief proceeding.
- III) If you are unable to afford an attorney to represent you on appeal, you may be eligible to have one appointed. You may request that the court appoint one for you or you may have your attorney transmit a request to the office of public defense services.

You must do the following if you want to appeal:

1. A signed, original Notice of Appeal, with proof of service, must be filed with the Clerk of the Oregon Court of Appeals within 30 days of the date the appealable judgment or order is entered into the register.
2. A copy of your Notice of Appeal must be served on the Hood River County District Attorney.
3. A copy of your Notice must be filed with the Hood River County Circuit Court Reporter if you want a transcript of your proceedings.
4. A copy of your Notice of Appeal must be served on the Clerk of the Hood River County Circuit Court.

We acknowledge that the information in this Notice of Right to Appeal was provided to the Defendant

on this 29 day of Dec., 2016

[Signature]
Defendant

[Signature]
Attorney for the Defendant

NA
~~Interpreter~~



OREGON STATE POLICE

DUII REPORT

Case#: SP16316264

Distribution: HOOD RIVER DA / OLCC

Refer to: 3077301846 & 3077301847

PHASE I: VEHICLE IN MOTION:

On Saturday September 17th 2016 I was on duty in uniform operating a patrol car within Hood River County, Oregon. At approximately 0142 hours I was traveling eastbound on Oak Street near the intersection of 4th street and observed a dark colored Ford pickup parked on the north side of Oak Street between 2nd and 3rd. The parking lights on the pickup flashed on momentarily which indicated to me that someone had unlocked the vehicle remotely using a key fob. Seconds later I saw a tall male, approximately 50 years of age, crossing the street from the Trillium Cafe. The male, later identified as Michael Erickson, appeared to have poor walk and balance and stumbled as he crossed the street. Erickson opened the driver's side door to the truck and got in. I saw the truck was bearing Oregon plates of 529GAS. I circled around the block, and pulled to the side of 3rd Street, facing Oak Street.

Seconds after I had pulled to the shoulder of the road, I saw the Ford traveling westbound on Oak Street. I drove onto Oak Street to follow the Ford and noted there was a passenger vehicle between the Ford and my vehicle. I was still able to view the Ford as I was approximately one block behind it. I saw the brake lights activate and the Ford swerve to the right, outside of his lane and partially into a designated street parking area. The Ford swerved back into the lane of travel causing the vehicle behind it to activate their brakes. At no point during this maneuver did Erickson activate a turn signal. Erickson made a left hand turn onto 6th street and appeared to roll through the stop sign at the intersection of 6th and State. Erickson continued on Serpentine road and crossed over the solid painted center line by approximately eight inches just prior to the intersection of Hazel Avenue. He then then made an un-signalized left hand turn on to Eugene Street.

PHASE II: PERSONAL CONTACT:

I activated my overhead emergency lights to initiate a traffic stop and the vehicle continued until it pulled into a residence on Eugene Street. Erickson opened the driver's side door, and then I saw the vehicle lurch forward slightly as he shifted the transmission into park. Erickson exited the vehicle and walked back towards me. Erickson stood abnormally close to me, which in my experience is quite common with subjects who are under the influence of intoxicants; especially alcohol. Immediately I could detect an overwhelming odor of alcohol coming from Erickson's breath as I was informing him of my name, my employer, and that the conversation was recorded. I also informed Erickson the reason he was being stopped and he said "oh sorry about that." I noticed Erickson's speech was slurred and his

eyes were bloodshot and watery. I asked Erickson if there was any reason for the violations I had observed and he told me "no." Erickson was visibly intoxicated.

I requested Erickson's driver's license and he began walking back towards his truck. As we were walking, he stated "no reason, just, you know, thought I was here. This was actually a little side road." His statement made no sense to me.

Erickson retrieved his driver's license and four middle aged adults exited the truck. Two females exited from the rear driver's side, directly in front of me, and both were obviously intoxicated. They had difficulty exiting the vehicle due to their poor dexterity and balance. Both stumbled as they walked into the house. One of the females, later identified as Erickson's wife, told him to "just get in the house." Her speech was extremely slurred. I asked Erickson where they were out at and he told me "oh we're at the wedding." I asked him where that was at and he told me "white...across the bridge." Erickson had his wallet in his hand and was removing stacks of cards and thumbing through them. He was having a difficult time accomplishing this due to his poor finger dexterity. Erickson would often have to make several attempts to move the top card to expose the one underneath. After removing almost all the cards from his wallet, he handed me an insurance card. I reminded him about his driver's license and he told me "one thing at a time." Erickson eventually was able to provide me with his Oregon driver's license and his vehicle registration.

I asked Erickson to walk back with me to my vehicle and asked him how much he had to drink tonight. Erickson told me he had two beers at the wedding. When I asked Erickson to tell me when his first and last drink was, he paused for several seconds, stared off into the distance and stated "an hour ago." I asked Erickson to tell me when his last drink was and he stated "an hour ago." I then asked him when his first drink was and he told me "three hours ago." Erickson estimated the time was 12:30 AM, the actual time was 1:50 AM. Erickson initially could not recall which bar they were at but he eventually told me he had his last drink at the Trillium Cafe.

PHASE III: PRE-ARREST SCREENING:

Interview and Medical Questions:

I asked Erickson if he would be willing to perform some field sobriety tests to make sure he was OK to be driving and Erickson said "yep." I requested Erickson stand by several trash cans while I repositioned my vehicle to capture the tests on my camera. He did not respond to my first two requests and finally on my third he complied.

Erickson told me he had two 16oz IPA style beers within the last three hours and had dinner at 9PM. The following tests were conducted on a flat, dry, concrete surface. There was no wind, no debris on the ground and it was approximately 65°F. Erickson was wearing a long sleeve shirt, slacks, and shoes.

	Y	N	Comments:
Medical questions asked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Are you sick or injured?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Pertinent medical conditions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Previous head injuries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

Balance problems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Speech problems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Hearing problems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Do you wear contacts or glasses?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Medications – what dose and when?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Standardized Field Sobriety Tests (SFSTs):

SFST Admonishment (State V. Rohrs): ☐
 SFSTs refused ☐

Horizontal Gaze Nystagmus (HGN):

When asked if the instructions were understood, the driver stated, he understood. The test was administered and the following clue(s) were observed:

	Y	N
Equal pupil size:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Resting nystagmus:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Equal tracking	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	L	R
Lack of smooth pursuit:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Distinct and sustained nystagmus at maximum deviation:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Onset of nystagmus prior to 45 degrees:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Vertical gaze nystagmus:	<input type="checkbox"/>	<input type="checkbox"/>

Comments: I explained the test to Erickson and he told me he understood. Erickson's pupils were equal in size, tracked evenly, and he did not have resting nystagmus. Erickson had a difficult time following instructions and would not keep his head still. I had to remind him several times to stop moving his head. In both eyes, I detected lack of smooth, distinct and sustained nystagmus, and onset of nystagmus at approximately thirty five degrees. I did not detect vertical nystagmus.

Walk and Turn (WAT):

When asked if the instructions were understood, the driver stated, he understood. The test was administered and the following clue(s) were observed:

	Y	N	Comments:
Steps out of instruction position:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Starts too soon:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Misses heel-to-toe:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Steps off line:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Raises arms:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stops walking:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Incorrect number of steps:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Improper turn:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments: I next directed Erickson to stand where I was pointing my flashlight beam. Erickson stood still and stated "I appreciate you doing this sir." Erickson then stated something which I could not understand due to his slurred speech. I again asked Erickson to stand where I was pointing my flashlight beam and he again made an unintelligible statement as he walked.

When I asked Erickson to get into the starting position, he stood with his right foot in front of his left foot, but he was not touching heel to toe and his right foot was offset by approximately three inches to the toe of his left foot. As I was explaining the test to Erickson, he stepped out of position and put his hands in his pockets while I finished my instructions and demonstration. Erickson stated he had no questions so I asked him to begin.

OUT: Erickson took eleven steps out, stepping offline on his third and fourth step. Erickson performed an improper turn by picking up both feet and turning in the opposite direction, failing to take a series of small steps around either foot. Erickson stumbled as he turned.

BACK: Erickson took ten steps back, raising his left arm approximately ten inches from his side. At no point during this test did Erickson count his steps aloud.

One Leg Stand (OLS):

When asked if the instructions were understood, the driver stated, he understood. The test was administered and the following clue(s) were observed:

	Y	N	Comments:
Sways while balancing:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Raises arms for balance:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Puts foot down:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Hops while balancing:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

Comments: I explained the test to Erickson and he told me he had watched this performed test before. I told him I would demonstrate and explain it to him so he fully understood the test before I would ask him to begin. After I did so, Erickson stated he had no questions so I asked him to begin.

Erickson lifted his left foot and began counting "one...two...three...etc." Erickson immediately raised both arms twelve inches from either side and held them there during the test. On Erickson's count of nine, he put his foot down. I reminded Erickson that I would be telling him to stop the test and he told me that he thought he was only supposed to count to four. I reminded Erickson that he had put his foot down on his count of 'nine.' Erickson stated counting again and set his foot down after two seconds and again at his count of twelve. Erickson had a significant sway. Erickson asked me "you said four?" At

that point thirty seconds had elapsed and I told Erickson the test was over. As I was writing my observations into my notebook, Erickson stated "I appreciate this."

Additional Field Sobriety Tests or Evidence:

N/A

Custody and Post-Arrest Procedures:

Erickson told me he had two beers and a glass of wine. I informed Erickson that I did not feel he was safe to be operating a vehicle and he was arrested. I handcuffed him, checking for fit and double locked the cuffs. Erickson was advised of his Miranda rights and seated in my patrol car after being searched for weapons and means of escape. Erickson's possessions were placed on the front seat of my patrol car. Erickson asked that his brother Chad retrieve his phone from the pickup. I allowed them to speak for a period of time. After several minutes, Chad returned from inside the house with Erickson's cell phone. Chad demanded it be placed in the back seat with Erickson and I explained to him that all of Erickson's personal property was to be placed in the front seat as I had already searched his person and removed the items from his pockets. Chad was also visibly intoxicated; he was slurring his words and had an extremely strong odor of alcohol on his breath. He tried to tell me that Erickson's cell phone was on his person so it should stay there. I informed him that I had watched him retrieve the phone from inside the house and bring it out here. Chad started to argue with me and I told him that if he was going to be difficult I was just going to leave. Chad called me "a prick" so I got in my car and closed the door. Hood River City Police Officer Miller eventually was given the cell phone and handed it to me.

I transported Erickson to the Hood River County Sheriff's Office where he was read the implied consent rights and consequences. I asked Erickson if he would like to make a phone call and he told me he would like to speak to his attorney. Erickson was provided with his cell phone and I told him if he was able to connect with someone, I would exit the room as to provide him with privacy if he wished.

Erickson was not able to locate the number on his phone and complained that the room had no cell phone service. Erickson told me that he only had two bars and asked to go outside. I told Erickson he could get the phone number off of his cell phone and use the landline in the room but he stated he could not find the number in his phone. At one point Erickson received a phone call from his wife indicating to me that he had sufficient coverage to make and receive phone calls. Erickson was unable to locate the number on his phone and he asked that I "Google" the name of his attorney. I made multiple attempts to locate his attorney using search keywords provided to me by Erickson. I read back the results to Erickson from my tablet computer and Erickson told me none of the results were for his attorney. After approximately thirty minutes I told Erickson that we would begin the breath test process.

Erickson told me he could not make a decision without consulting his attorney. I explained to him that failing to provide a breath sample would be considered a refusal regardless of whether he was able to contact his attorney.

Eventually, I started the Intoxilyzer and told Erickson that if he did not provide a breath sample, it would be counted as a refusal. Erickson consented to a breath sample. On his first attempt, he failed to provide a proper breath sample initially and was blowing around the mouth piece even after I instructed

him how to properly provide a sample multiple times. Erickson was either so intoxicated he could not understand the simple instructions, or he was purposely trying to avoid providing a sample. He made multiple attempts before the machine registered a deficient sample. I warned Erickson that if the machine registered a deficient sample again, I would count it as a refusal.

After the warning, Erickson provided both breath samples without issue. Erickson's final BAC was 0.12%. His first breath sample at 0301 hours was 0.123% and his second at 0305 hours was 0.124%.

Erickson told me in essence that he believed the Intoxilyzer was wrong and he wanted to get a blood test. I told Erickson that I would be happy to take him to the hospital to have his blood drawn. I reminded him that it would be at his own expense and Erickson told me that would be fine.

I transported Erickson to the Providence hospital emergency room in Hood River and advised the staff of the situation. Erickson was informed they would perform a blood draw, but he would be required to pay approximately ninety dollars in cash within three days, prior to the hospital analyzing the blood. Erickson told me he had no cash and asked me to 'bring him an ATM.' I reminded him he would have three days to pay for it so he did not have to pay for it tonight. Erickson eventually appeared to understand, and had his blood drawn at approximately 0340 hours. Erickson was placed back in my vehicle and transported to NORCOR.

While Erickson was being booked in, NORCOR deputies located an Oxycodone blister pack with one 5mg pill and one empty package from within Erickson's wallet. I questioned Erickson about the narcotic and he told me he did not have a prescription for Oxycodone and he had gotten it from his wife, who is a nurse. The Oxycodone was seized, photographed, and placed into evidence. Erickson was lodged on the DUII and unlawful possession of Oxycodone. He was issued copies of the citations for the DUII and traffic violations, as well as the Intoxilyzer breath test report, implied consent paperwork, and a temporary driver's license.

Additional Information: