

APPENDIX TABLE OF CONTENTS

Order of the Supreme Court of Oregon Denying Petition for Review (November 8, 2018)	1a
Order of the Court of Appeals of the State of Oregon (July 25, 2018)	2a
Defendant’s Motion to Suppress Evidence and Memorandum of Law in Support (November 22, 2016)	3a
Affidavit in Support of Search Warrant and Search Warrant (May 9, 2016)	13a
Search Warrant (May 9, 2016)	25a
Excerpt from Trial Transcript— Oral Denial of Motion to Suppress Evidence (February 2, 2017)	28a
Hospital Consent Form (May 9, 2016)	31a

ORDER OF THE SUPREME COURT OF OREGON
DENYING PETITION FOR REVIEW
(NOVEMBER 8, 2018)

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,

*Plaintiff-Respondent,
Respondent on Review*

v.

ROBERT ALAN RIES,

*Defendant-Appellant
Petitioner on Review.*

Court of Appeals A164303

S066140

ORDER DENYING REVIEW

Upon consideration by the court,

The court has considered the petition for review
and orders that it be denied.

/s/ Martha L. Walters
Chief Justice, Supreme Court
11/8/2018 9:18 AM

C: Bear Wilner-Nugent
Joanna L. Jenkins

ORDER OF THE COURT OF APPEALS
OF THE STATE OF OREGON
(JULY 25, 2018)

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,

v.

ROBERT ALAN RIES,

Defendant-Appellant.

Washington County Circuit Court
16CR28846

A164303

Theodore E. SIMS, Judge

Argued and submitted on July 03, 2018.

Before: HADLOCK, Presiding Judge,
and DEHOOG, Judge, and AOYAGI, Judge.

Attorney for Appellant: Bear Wilner-Nugent.

Attorney for Respondent: Joanna L. Jenkins.

AFFIRMED WITHOUT OPINION

Designation of prevailing party and award of costs

Prevailing party: Respondent

☐ No costs allowed.

☐ Costs allowed, payable by

**DEFENDANT'S MOTION TO
SUPPRESS EVIDENCE AND
MEMORANDUM OF LAW IN SUPPORT
(NOVEMBER 22, 2016)**

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,

Plaintiff,

v.

ROBERT ALAN RIES,

Defendant.

Case No. 16CR28846

Defendant Robert Alan Ries, through counsel, respectfully moves the court for an order suppressing two samples of defendant's blood taken on May 9, 2016; the laboratory analysis of those blood samples; all statements that were obtained during the custodial interrogation of defendant on May 8 and 9, 2016 (including, but not limited to, defendant's refusal to take a breath test); and all derivative evidence. This motion is based on Article I, Sections 9, 11, and 12 of the Oregon Constitution; the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; the authorities cited in the following memorandum of law; and the evidence to be presented at the motion hearing.

Pursuant to UTCR 4.050(1), defendant requests oral argument and official court reporting services and estimates the time necessary for this hearing will not exceed two hours.

FACTS

On the night of May 8, 2016, Washington County Deputy Sheriff E. Maribel Camas was assigned to patrol the City of Cornelius. She was in uniform, displaying a badge and driving a marked patrol vehicle. At 10:37 p.m., dispatch told Deputy Camas that there had been a complaint of someone possibly driving under the influence in a Chevy Blazer with Oregon license plate 255GQU, heading east from Forest Grove into Cornelius.

Deputy Camas encountered the Blazer in question on Baseline Street near 345th Avenue. Deputy Camas activated the overhead lights on her vehicle. She saw the Blazer's right wheels cross into the bicycle lane. The Blazer, which was driving at around 25 miles per hour, did not pull over. Instead, it continued east on Baseline and accelerated to around 45 miles per hour. Deputy Camas activated her vehicle's siren and continued the pursuit.

Deputy Camas followed the Blazer into Hillsboro, observing its right wheels cross the line three more times as she did so. Because the Blazer did not stop for her lights and siren, she requested and received backup from both the Sheriff's Office and the Hillsboro Police. A chase ensued around the streets of Hillsboro at between 25 and 45 miles per hour. Ultimately, the law enforcement officers involved brought the chase to an end by deploying spike strips and repeatedly using a precision immobilization technique (PIT) maneuver.

Defendant, the driver of the Blazer, initially failed to comply with the commands the officers gave him. He eventually got out of the Blazer, but faced officers when ordered to face away from them and put his hands on his knees when the officers ordered him to kneel. The officers did succeed in handcuffing and arresting defendant without further incident, however. A search of defendant's person incident to arrest yielded no relevant evidence. Deputies Camas and Hall conducted the remainder of the investigation.

At 10:55 p.m., Deputy Hall read defendant his *Miranda* rights from a card. The deputies asked defendant if he understood his rights. Defendant said that he did. Defendant immediately asked to call a lawyer. The deputies ignored defendant's unequivocal invocation of his right to counsel. Deputy Camas asked defendant a number of questions from a DUII investigation card. Defendant gave self-incriminating answers to those questions.

Deputy Camas could smell the odor of alcohol coming from defendant. She could also see that defendant's face was flushed and his eyes were red, bloodshot, and watery. Deputy Camas ran defendant's name through dispatch and discovered that defendant was on probation in Multnomah County for DUII. The conditions of defendant's probation prevented him from possessing or using alcohol or entering places where alcohol is sold and required him to use an ignition interlock device in any vehicle he was driving. There was no ignition interlock device in defendant's Blazer.

Deputy Hall drove defendant to the Washington County Jail in his patrol vehicle. Defendant again asked to speak with a lawyer. Deputy Hall ignored this request.

Deputy Camas joined Deputy Hall and defendant at the jail. She took defendant to the Intoxilyzer room. She asked defendant if he would consent to perform field sobriety tests. Defendant refused. Deputy Camas read defendant a *Rohrs* admonishment. Defendant again refused to perform the field sobriety tests. Defendant appeared to be drowsy.

Deputy Camas inspected defendant's mouth and, at 11:37 p.m., began the observation period required before administering an Intoxilyzer test. During the observation period, Deputy Camas read the Rights and Consequences section of an Implied Consent Combined Report to defendant. Defendant requested to speak with a lawyer a third time during this period. Deputy Camas ignored defendant's request.

Deputy Camas asked defendant if he would take a breath test. Defendant said, "I don't know what you're telling me." The deputy repeated her request. Defendant said, "No."

At some point between this breath test refusal and the end of defendant's interrogation by deputies, defendant asked to speak with a lawyer for a fourth and final time. Deputies Camas and Hall did not honor this request either.

Deputy Camas prepared the attached search warrant affidavit in order to obtain a warrant authorizing the collection of blood samples from defendant. She called the duty judge, Circuit Court Judge Andrew R. Erwin. Judge Erwin asked Deputy Camas to email him the affidavit. She did so. Judge Erwin called the deputy back and heard her swear to the affidavit's veracity at 2:23 a.m. on May 9. Judge Erwin then signed the attached warrant.

The warrant does not name defendant. Instead, it names one Cameron James Wilson of Wolf City, Texas, and authorizes the seizure of blood and urine samples from Mr. Wilson's body. The court never issued any warrant authorizing any person to search defendant's person or seize defendant's blood.

Deputies Camas and Hall took defendant to Tuality Hospital. A laboratory assistant collected two blood samples from defendant. Deputy Camas seized the samples as evidence and submitted them to the Oregon State Police crime laboratory.

The deputies returned defendant to the jail. There, still in the predawn hours of May 9, they asked defendant a number of additional questions about his drinking and driving. Defendant gave more self-incriminating answers.

ARGUMENT

I. The Court Should Suppress the Blood Draw Evidence Because the Warrant Commanded the Police to Seize Another Person's Blood, Not Defendant's Blood

Article I, section 9 of the Oregon Constitution provides:

No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

The Fourth Amendment to the United States Constitution provides:

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, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In this case, the warrant facially and flagrantly violates the particularity requirements of both constitutions. Because there was no valid warrant authorizing the seizure of blood samples from defendant's person and no warrant exception authorizes the seizure of such blood samples, the court should grant defendant's motion and suppress the blood samples and all derivative evidence (such as laboratory analysis of the samples).

A. State Constitutional Analysis

The Supreme Court has explained that a "description in a warrant of the place to be searched satisfies the particularity requirement [of Article I, Section 9] if it permits the executing officer to locate with reasonable effort the premises to be searched." *State v. Trax*, 335 Or. 597, 603, 75 P.3d 440 (2003) (internal quotation marks omitted). Some mistakes in a warrant may be excused, such as a warrant that states the wrong first and middle names for a person whose blood is to be drawn but the right last name. *State v. Kauppi*, 277 Or. App. 485, ___ P.3d ___ (2016). What matters is whether "the description in the warrant, notwithstanding the mistakes and together with rea-

sonable efforts made by the executing officer to identify the premises, or person, to be searched, permitted the officer to determine the place, or person, to be searched. *State v. McDowell*, 211 Or. App. 341, 347, 155 P.3d 877 (2007) (citing *Trax*, 335 Or. at 609).” *Kauppi*, 277 Or. App. at 489.

Kauppi was as far as the Court of Appeals has ever gone in excusing a mistaken warrant for a blood draw. Defendant’s case exceeds the bounds drawn by *Kauppi*. Not only does the attached warrant issued by Judge Erwin name a totally different person—Cameron James Wilson instead of Robert Alan Ries—but it commands the searching officers to perform a different task—to seize blood and urine samples instead of just blood samples. The Supreme Court has insisted on scrupulous adherence to the Article I, Section 9 particularity requirement when justifying searches of persons. *See State v. Reid*, 319 Or. 65, 872 P.2d 416 (1994). This case falls short of that requirement. Because the state will not be able to save the resulting search through any warrant exception (and would bear the burden of proof in attempting to do so), the court should grant defendant’s motion.

B. Federal Constitutional Analysis

The Fourth Amendment’s particularity requirement is, if anything, stronger than the particularity requirement in Article I, Section 9 of the Oregon Constitution. As the Ninth Circuit has approvingly repeated, “[t]he particularity requirement of the fourth amendment prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” *United States v. Sedaghaty*, 728 F.3d

885, 913 (9th Cir. 2013), quoting *United States v. Heldt*, 668 F.2d 1238, 1266 (DC Cir. 1981); *see also Sedaghaty*, 728 F.3d at 926 (Tallman, J., concurring in part and dissenting in part) (“A particularized location is a requisite element for a reasonable search”). A reviewing court is to evaluate a search warrant under the Fourth Amendment’s particularity requirement by determining “whether the warrant describes the place to be searched with ‘sufficient particularity to enable law enforcement officers to locate and identify the premises with reasonable effort,’ and whether any reasonable probability exists that the officers may mistakenly search another premise. *United States v. Turner*, 770 F.2d 1508, 1510 (9th Cir. 1985).” *United States v. Mann*, 389 F.3d 869, 876 (9th Cir. 2004).

The warrant in this case fell short of that requirement. The warrant named a completely different person and did not name defendant. It also commanded the searching officers to perform a different task, to wit the taking of a urine sample, which impermissibly left matters to the officers’ discretion. The court should suppress the blood samples and their analysis under the Fourth Amendment as well.

II. The Court Should Suppress Defendant’s Statements Because the Police Ignored Defendant’s Repeated Requests to Speak with Counsel

Failure to heed a suspect’s unambiguous invocation of the right to counsel during custodial interrogation will result in the suppression of any post-invocation statements. *Edwards v. Arizona*, 451 U.S. 477, 484-485, 101 S.Ct 1880, 68 L.Ed.2d 378 (1981); *State v. Kell*, 303 Or. 89, 734 P.2d 334 (1987). Such a violation of a suspect’s right to speak to a lawyer before being inter-

rogated can be a basis for the suppression of physical evidence obtained as a result of the violation as well. *State v. Vondehn*, 348 Or. 462, 236 P.3d 691 (2010).

Defendant unequivocally asked to speak with a lawyer four times during his custodial interrogation by Deputies Camas and Hall. The deputies squarely refused to honor defendant's repeated requests. As basic a violation of defendant's constitutional rights to remain silent and to the assistance of counsel as occurred here does not require lengthy briefing to obtain relief. The state will be unable to meet its burden of proving that the officers respected Article I, sections 11 and 12 of the Oregon Constitution and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution when they continued to interrogate defendant after he asked to speak to a lawyer. As a result, whatever the court decides about the search warrant, the blood samples, and their laboratory analysis, the court should at a minimum suppress all defendant's statements following his arrest.

CONCLUSION

For the foregoing reasons, the court should grant defendant's motion and enter an order suppressing all unlawfully seized evidence, including two samples of defendant's blood taken on May 9, 2016, the laboratory analysis of those blood samples, all statements that were obtained during the custodial interrogation of defendant on May 8 and 9, 2016, and all derivative evidence.

App.12a

Respectfully submitted November 22, 2016.

/s/ Bear Wilner-Nugent

Bear Wilner-Nugent

OSB # 044549

Attorney for Defendant

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT
AND SEARCH WARRANT
(MAY 9, 2016)**

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR WASHINGTON COUNTY

STATE OF OREGON,
COUNTY OF WASHINGTON

v.

ROBERT ALAN RIES,

Before: Andrew R. ERWIN, Circuit Court Judge

Officer Introduction:

I, Deputy Maribel Camas, being duly sworn, do depose and say that I have been a police officer in the State of Oregon for one year and four months. That I hold a current Police certificate issued by the Department of Public Safety Standards and Training (DPSST). That I am currently employed by the Washington County Sheriff's Office. That my duties as a police officer include the enforcement of traffic laws including the investigation of alcohol and drug impaired driving cases. In addition I have had formal classroom training as well as informal refresher training on these subjects.

1. Location and Time of Vehicle Stop:

Incident Type	Vehicle Stop
---------------	--------------

App.14a

Date	05-08-2016
Time	2237 hours
Incident Location	Public Highway NE Lincoln St/NE 8th Ave, Hillsboro, OR 97123
City	Hillsboro
County	Washington
State	Oregon

2. Description of Suspect:

The suspect has been identified as and will be hereinafter referred to as the suspect:

Name	Ries, Robert Alan
Sex	M
Race	W
Date of Birth	08-12-1955
aka/Moniker	
Height	5'06"
Weight	155
Hair	Gray
Eyes	Haz
Street Address	5108 N Harvard St.
City	Portland
State	OR
Zip Code	97203

3. Description of Vehicle Suspect was Operating:

License Number	255GQU
Lic State	OR
Lic Type	PC
Vin	1GNET13H982255760
Veh Year	2008
Veh Make	Chevy
Veh Model	Trail Blazer

Veh Style	4DR
Veh Color	Tan

Narrative:

On 05/08/2016, I was working as a Patrol deputy assigned to the City of Cornelius. I was in uniform, displaying a badge and driving a marked patrol vehicle. At 2237 hours, I was dispatch to locate a possible DUII driver that was headed east bound from Forest Grove into Cornelius. I was advised that the vehicle was a Chevy Trail Blazer bearing license plate 255GQU. I located the vehicle on Baseline Street near 345th Avenue. I activated my overhead lights and saw the vehicle's right passenger side tire swerve into the bicycle lane. The suspect vehicle continued at approximately 25 miles per hour (MPH) and activated the right turn signal near Coastal Farm and Ranch located at 3865 Baseline St Cornelius, OR 97113.

The vehicle failed to yield, so I immediately activated my patrol siren. The vehicle suspect continued east, sped up to about 45MPH and swerved in and out of the bicycle lane three more times. The suspect vehicle then turned south on SW 17th Avenue in Hillsboro. Deputy Hall and I began pursuit of the suspect vehicle. I could see the suspect driver was a male and he kept looking toward the driver's side rearview mirror as he continued driving. The suspect vehicle varied speeds from 25-45MPH. The suspect vehicle turned north on SW Dennis Avenue without signaling and then turned east on Oak Street. Sergeant Blood from Hillsboro Police Department set up spike strips on Oak Street and SW 4th Avenue. The suspect vehicle impacted the spike strip and the front driver's side tire was blown out. The suspect vehicle did not

stop and sped up. The suspect vehicle then turned north bound on 5th Avenue without signaling. Traffic on SW 5th Avenue in Hillsboro runs south, so the suspect vehicle was driving the wrong way.

The suspect vehicle then turned east on Washington Street. The suspect vehicle made a wide turn onto oncoming traffic and continued driving on the wrong side of the street. There were no other vehicles on the road. Sergeant S. Thompson approved a pit maneuver. I attempted a pit of the suspect vehicle, but the vehicle swerved away from me when my patrol vehicle impacted. The suspect vehicle turned onto SW 6th Avenue without signaling. I re-position my patrol vehicle and attempted to pit the suspect vehicle a second time. My pit maneuver was unsuccessful again. The suspect vehicle sped up and turned east onto SW Lincoln Street. I attempted a third pit maneuver and was successful in stopping the suspect vehicle. I positioned my vehicle into a safe area and got out of my vehicle.

At this point, Sergeant Thompson, Deputy Hall, and several Hillsboro Police Officers were in position. Hillsboro Police Officer Taaca, gave the suspect driver commands, but the driver failed to comply. After several attempts, the suspect driver exited his vehicle, but still had a hard time following commands. The suspect faced officers when ordered to face away from them, he then put his hands on his knees when ordered to kneel.

At 2252 hours, suspect was detained and later identified as, Robert Alan Ries. Deputy Hall handcuffed Robert, checked the cuffs and double locked. Deputy Hall searched Robert and escorted him to the back of his patrol vehicle.

At 2255 hours, Deputy Hall read Robert his Miranda Warning from a prepared card. Robert was asked if he understood his rights and Robert said, "Yes."

I then asked Robert a series of questions from a prepared DUII Investigation card. The answers to the questions are as follows:

Q. Have you been drinking? Where? How much?

A. Yes. Gaston Bar. 3-4 Budweiser beers
(12 ounces each.)

Q. Do you feel any effects of the alcohol?

A. "I guess so."

Q. Have you been drinking since the accident?

A. No

Q. When did you last eat?

A. twenty minutes ago. Chicken strips

Q. Are you diabetic? Epileptic? Ill/Injured?
Disabled?

A. (diabetic) No. (epileptic) No. (Illness) Yes,
Protein C deficiency. (Injured) No. (Disability)
Old people problems.

Q. Are you taking medication?

A. No

Q. When did you last sleep? How Much?

A. Went to bed on 05/07/16 at 11PM or midnight.
Woke up on 05/08/2016 at 0700AM

Q. Do you wear eyeglasses/contacts?

A. No/No. Had lasik eye surgery, so does not need them.

Q. How far through school?

A. Did not understand the question. I asked if he graduated high school and he said, "Yes." I asked how many years he attended college and he said, "four."

Q. Any vehicle defects?

A. "Yes, my dog is in the car."

Q. Explain your driving.

A. "Yes, O-Oh."

During my interaction with Robert, I smelled a faint odor of an alcoholic beverage coming from his person. I also observed that Robert's face was flushed and his eyes were red, bloodshot and watery. While speaking with Robert the smell of alcohol became stronger. I checked Robert through dispatch and learned that Robert was on probation for DUII. The conditions of Robert's probation included no alcohol, no entry into places where alcohol is sold and also required an ignition interlock device (IID) to drive. I searched Robert's vehicle and did not find an (IID) in his vehicle.

Deputy Hall transported Robert to the Washington County Jail and I followed in my patrol vehicle. I arrived and escorted Robert into the Intoxilyzer room.

I asked Robert if he would consent to Standardized Field Sobriety Tests (SFST's) and he said, "No." I read Rohr's Admonishment to Robert. I asked Robert if he had any questions and he said, "No." I asked Robert again if he would consent to SFST's and he

said “I started to.” I asked Robert again if he would consent to SFST’s and he said “No.” Robert appeared very drowsy and kept falling asleep during my interaction with him.

At 2337 hours (Instrument time) I checked his mouth for any objects or obstructions. I did not find any obstructions, objects, vomit, or fluids in Robert’s mouth. I instructed Robert not to spit, burp, belch, vomit, or regurgitate until after the breath tests.

I read the Rights and Consequences, Section I, subsections (a-i) of the Implied Consent Combined Report, verbatim and in their entirety to Robert. At the conclusion, I asked him if he would consent to taking a breath test. Robert said, “I don’t know what you’re telling me.” I asked Robert again if he would consent to taking a breath test and he said, “No.”

At 2355 hours, I notified Sergeant Thompson about Robert’s refusal. I believe Robert drove while under the influence of Alcohol.

Evidence That the Suspect Was Driving the Involved Vehicle

That I have probable cause to believe the suspect was driving the suspect vehicle at the time of the vehicle stop because:

- I stopped the vehicle for fail to maintain lane, improper turn, failure to yield to an emergency vehicle, careless driving and reasonable suspicion for DUII.

Evidence of Impairment of Suspect By Alcohol:

I have probable cause to believe that the suspect was impaired to a noticeable or perceptible degree by

alcohol at the time of driving because: Robert admitted to drinking alcohol, he had an odor of an alcoholic beverage about his person and bloodshot, watery, red eyes. Robert also failed to yield to my patrol vehicle's lights and sirens for 2.7 miles.

Current Location of Suspect

I know that the suspect is currently at the location listed below. I know this because: I transported him to the below mentioned location.

Hospital	Tuality Hospital
Location	335 SE 8th Avenue
City	Hillsboro
County	Washington
State	Oregon

Blood Sample Request for Blood Alcohol Content (BAC):

Based upon my training and experience, I know that a sample of a suspect's blood will contain evidence of the level of intoxication of a suspect at the time of the incident. Furthermore, I know that more than one blood sample, taken about an hour apart, can be taken for analysis to determine the suspect's level of alcohol intoxication at the time of the incident. A second sample verifies the accuracy of the first and provides information about alcohol absorption and dissipation rates to determine the level of intoxication at the time of the incident. I am also aware that a person acting under the direction and control of a duly licensed physician is available to take those samples in a safe and medically acceptable manner. Since I know from my training and experience that an intoxicant in the blood of a living person dissipates with time, this

warrant needs to be executed as soon as possible and at any time of the day or night.

That based on your affiant's training and experience your affiant knows that the medically approved procedure used by hospitals and medical personnel to draw blood involves the insertion of a needle into a blood vessel and the removal of a quantity of blood. That I am further aware from training and experience that the area or site to be used is cleaned and prepped with a non-alcohol based swab, usually Betadine. That I am aware that these procedures are very commonly used in all hospitals, and by medical personnel. That the above-described procedures are not extremely painful nor do they involve any substantial risk or danger to the individual from whom the sample is being taken.

That based on your affiant's training and experience I know that if a person has consumed alcohol, that alcohol will be detectable in that person's blood for a period of time and that this time period will be affected by the amount of alcohol consumed, the time period over which the alcohol was consumed, the alcoholic content of the given beverage (by percent) consumed, the person's weight and a number of other factors such as when meals were eaten and how much food was consumed. That as a person begins to consume alcohol the level of alcohol in a person's blood will begin to rise and continue to rise until the person stops consuming any further alcohol. That I am aware that at the point that the person stops their consumption of alcohol the level of alcohol within their blood will continue to increase for approximately one hour until reaching that person's maximum blood alcohol level. That after this hour has elapsed the person's

blood alcohol level will then plateau and remain constant for approximately one hour more before the body begins to dissipate at an average level of .015 percent per hour. That due to the rate of dissipation it is necessary to obtain blood samples from the person as soon as possible in relation to the traffic incident to accurately establish a person's alcohol level at the original time of the vehicle operation.

That based on your affiant's training and experience I know that frequently the consumption of alcohol is a common factor in motor vehicle collisions and/or impaired driving performance. That the common effects of alcohol use in the body include lowered inhibitions, the loss of depth and time perception, the loss or diminished use of fine and major motor skills, and the diminished capability in thought process, judgment, and other mental functions. That your affiant knows that any of the above-described conditions are frequently contributing causes to motor vehicle collisions and/or impaired driving. That for this reason the level of alcohol in the body of a person involved in operating a motor vehicle is an important fact in determining causation and criminal liability.

Probable Cause

I have probable cause to believe, and do believe that the suspect committed the crimes of:

- ORS 813.010 DUII—Driving Under the Influence of Intoxicants (A Misdemeanor)

I have probable cause to believe, and do believe that:

- blood alcohol content level will be found in the blood located within the body of the suspect.

Prayers

That your affiant knows that the Oregon State Police Crime Laboratory, located at 13309 SE 84th Ave. Suite 200 Clackamas County, Oregon 97015 is licensed and authorized by the State of Oregon to analyze samples of blood for the presence and level of intoxicants in the suspect's blood system and to analyze a person's urine for the presence of controlled substances and/or pharmaceutical drugs. That your affiant knows that the Oregon State Police Crime Laboratory normally analyzes these blood and urine samples once a week and thus asks that a warrant allow ten (10) days for a return. Your affiant knows that privately contracted laboratories also have the ability to analyze a person's blood and urine samples, in a scientifically reliable manner, to determine the level of intoxicants. In the event that the Oregon State Police Crime Laboratory is unable to process the sample provided, your affiant will utilize a private lab to analyze the sample(s).

Therefore, your affiant prays that this court issue a search warrant commanding any police officer, with assistance of a duly licensed physician or a person acting under the direction of a duly licensed physician, to seize the objects of the search named below, and forensically test said objects.

- Withdraw two (2) samples of blood to determine the BAC of the suspect.
- Authorize the use of force to obtain the above checked biological samples.

App.24a

Sworn to over the phone

/s/Maribel Camas

Affiant/Officer Signature

Officer Name M. Camas

Officer DPPST No. 51141

SUBSCRIBED AND SWORN to before me this 9
day of May at 2:23 am

/s/ Andrew R. Erwin

Circuit Court Judge

**SEARCH WARRANT
(MAY 9, 2016)**

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR WASHINGTON COUNTY

STATE OF OREGON,
COUNTY OF WASHINGTON

v.

ROBERT ALAN RIES,

Before: Andrew R. ERWIN, Circuit Court Judge

IN THE NAME OF THE STATE OF OREGON TO
ANY POLICE OFFICER IN THE STATE OF
OREGON, GREETINGS:

You, or your agent or designee to include law enforcement and non law enforcement personnel are hereby commanded to enter the location listed below and to search, seize, analyze, and test evidence taken from the person of:

Name	Wilson, Cameron James
Sex	M
Race	B
Date of Birth	02/05/1987
aka/Moniker	
Height	506
Weight	200
Hair	N/A
Eyes	Bro

Street Address	616 S. Grand Ave Wolf City
City	Texas
State	TX
Zip Code	75496

Who is currently located and will remain at this location:

Hospital Tuality Hospital
Location 335 SE 8th Avenue
City Hillsboro
State Oregon

You are commanded to gather the below listed evidence with the assistance of a duly licensed physician, or a person acting under the direction or control of a duly licensed physician, or a person trained to withdraw blood from the human body, including but not limited to a paramedic, emergency medical technician (EMT), registered nurse or phlebotomist:

- Withdraw two (2) samples of blood to determine the BAC of the suspect
- Obtain one (1) sample of urine to determine if controlled substances and/or prescription or non-prescription pharmaceutical drugs are present.

You, or your agent or designee to include law enforcement and non law enforcement personnel are hereby commanded to enter the location described immediately below and search, seize, transport, analyze and test the hospital blood treatment sample taken from the above named person:

- To determine the blood alcohol content in the blood of the suspect.

- To determine if traces of controlled substances and/or prescription pharmaceutical drugs are present in the blood of the suspect.

Further, you and/or your agent or designee to include law enforcement and non law enforcement personnel are hereby commanded to search for, seize and then test, if necessary, evidence of or information concerning the commission of the crime(s) of:

- ORS 813.010 DUII—
Driving Under the Influence of Intoxicants
(A Misdemeanor)

contraband, the fruits of crime(s), or things otherwise criminally possessed concerning the commission of the crime(s) checked above; property that has been used, or is possessed for the purpose of being used, to conceal the commission of the crime(s) checked above; and any other physical evidence of the crime(s) checked above.

You are further commanded to make return of this warrant and an inventory of the items seized to me within ten (10) days after the execution of this warrant.

This warrant may be executed at any time of the day or night.

Pursuant to ORS 133.545(2), the Court finds that the above described item relates to a crime committed in Washington County, State of Oregon.

Issued over my hand on this 9 day of May 2016,
at 2:23 am

/s/ Andrew R. Erwin
Circuit Court Judge

**EXCERPT FROM TRIAL TRANSCRIPT
ORAL DENIAL OF MOTION
TO SUPPRESS EVIDENCE
(FEBRUARY 2, 2017)**

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,

Plaintiff-Respondent,

v.

ROBERT ALAN RIES,

Defendant-Appellant.

Washington County
No. 16CR28846
COA No. A164303

COURT'S FINDINGS

THE COURT: No. Thank you very much for that presentation.

Let me kind of work it through backwards. First of all, on the Exhibit 2, the consent form, the defendant is testifying that he thought he was giving consent only as part of the HIPAA process and not authorizing the results to be given—to be taken for the benefit of or given to the State. That's clearly at odds with the form that was

signed. This is not a HIPAA form, and the fact that defendant is referring to that paperwork by the acronym is an indication that he's generally familiar with the concept, the reason and purpose for the existence of those forms. This is clearly not a HIPAA form. This says, within less than half an inch of his signature, that he voluntarily consents to the examination and release of results to the police.

So I don't find that under these circumstances that he was under any sort of State coercion to sign this form, he did so voluntarily at the request of a hospital employee, and I think that probably resolves the question itself.

But just for the record, I understand the defendant's concerns about the lack of particularity considering that the wrong name was used on the warrant as opposed to the affidavit accompanying it. But as a practical matter, the whole purpose of having any kind of particularity or other identification requirement is simply so that everyone knows who or what you're talking about.

In this case, there is not legitimate concern raised by anyone nor could there be, that the subject of the affidavit and the warrant was Mr. Ries. So I think elevating form over substance would not serve the interests of justice in this case. And I think the warrant was validly issued, executed, and did intend to name this defendant and that the draw was—could have been taken under the authority of the warrant, although it wasn't necessarily because there was consent.

On the issue of the voluntary—sorry—of the statements made by defendant in response to questions by the police officer, I think it's very clear this defendant is generally aware of his rights, and even he did not testify that he was coerced in responding to those questions.

As to the “he said/she said” aspect of credibility, while it's certainly true that enough months have passed that an argument can and was well-made that Deputy Hall might have less than a perfectly accurate independent recollection of what happened, that argument certainly doesn't pertain to Deputy Camas who did make an extensive and contemporaneous report on this, and clearly was in a better position to accurately recall the facts than a gentleman who is pretty much acknowledging that he's got an alcohol problem and was under the—I mean, had been drinking the night in question. So in a dispute between a witness who's been drinking versus an officer who hasn't at 2 o'clock in the morning or thereabouts, credibility falls pretty clearly on the State's side.

And I'm going to find that he was properly Mirandized, that his statements made in response to questions were made voluntarily, and I am not going to suppress those.

MR. WILNER-NUGENT: Thank you, Your Honor. In view of the Court's rulings, I would like to have a recess to consult with my client about his options before we proceed any further if that's all right.

**HOSPITAL CONSENT FORM
(MAY 9, 2016)**

TUALITY HEALTHCARE
The right care. Right here.

Bodily Substance/Medical Examination Seizure

Patient: (Last) Ries (First) Robert
(MI) A.
(DOB) 08/12/1955
Officer Involved: M Camas
Badge # 51141
Agency: Wash Co Sheriff
Item of Seizure:

- Blood Draw to test for intoxicants
- Alcohol
- Case # 57-161290933
- Other (X-ray, etc.) Providone iodine used

Patient Consent Section

Conscious Patient

I voluntarily consent to the above-indicated examination and release the results or substances to the above-indicated police officer.

Yo consentio, voluntariamente, en los exámenes mencionados arriba y en dar los resultados o sustancias al policia mencionado arriba.

Patient's Signature

/s/ Robert Ries

Hosp. Staff Signature

/s/ Trinity Herr

Date 05/09/16

Time 03:02

**Statement of Physician, Registered Nurse, Clinical
Laboratory Technologist, Laboratory Technician and
Release of Evidence Section**

On (date) 05/09/16 at (time) 0306 I performed the
above indicated examination on the above indicated
patient at the request of Officer M Camas

- Procedure Performed By: /s/ T. Herr #47341
- Tuality Community Hospital

The above indicated evidence was presented to
the following person at (Time) 0306, on (Date): 05/09/16

Receiver:

/s/ M. Camas

Presenter:

/s/ T. Herr

Agency: Wash Co Sheriff

Facility: TCH Hillsboro