



Hazard Police Department

Investigation:

DUI Arrest of Parma Lee Mullins

Investigator:

Major James East



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To: Chief Minor Allen
From: Major James East
Date: 21 June 2016
Re: DUI arrest of Parma Lee Mullins by Officer Steve Everidge

Introduction

On or about March 21, 2016, Parma Lee Mullins, along with her son Lance Mullins, came to the Hazard Police Department to obtain a complaint form regarding a DUI arrest by Patrolman Steve Everidge. Chief Minor Allen gave Ms. Mullins the complaint form. On or about 23 March 2016, Chief Minor Allen requested that I check into the matter of a DUI arrest of Parma Lee Mullins from 2015. Chief Allen had become aware of various citizens contacting him and the City of Hazard concerning this arrest as well as attending a City Commissioners meeting in January 2016, when Ms. Mullins and others appeared and addressed certain concerns to the City Commission regarding the arrest. I started pulling supporting documents and obtaining training materials regarding DUI detection at this time. On 28 April 2016, Parma Lee Mullins, along with son Andrew Mullins, dropped off an official Complaint, see Exhibit 1, to Chief Minor Allen and Deputy Chief Joe Engle. Chief Allen assigned the investigation to me at that time.

Pursuant to Section 1, Administrative, Chapter 15 of the City's Police Policy and Procedures Manual, and in accordance with the Policeman's Bill of Rights, KRS 15.520, I began by securing a written statement from Officer Everidge on or about April 29, 2016 regarding his recollection of certain of the events. On May 12, 2016, I conducted a personal interview of Ms. Parma Lee Mullins at her church facility. She was accompanied by her friend, Linda Feltner. Following her interview, I contacted Patrolman Everidge and conducted a personal interview of him on May 13, 2016. I was also subsequently able to obtain a written statement from Patrolman Alex Hall on May 14, 2016, since he was accompanying Patrolman Steve Everidge on the patrol during the observation of Parma Lee Mullins and eventual arrest. Patrolman Hall is currently attending the Kentucky Department of Criminal Justice Training and was an observer and witness only during the traffic stop.

Upon my assignment to the investigation, I undertook the following additional steps:

- 1) Secured and reviewed copies of the Complaint, Officer Everidge's statement, Citation N361309, Lab results, Materials from the Kentucky Department of Criminal Justice Training (DOCJT), Standard Field Sobriety Test (SFST) and DUI Detection Summary from DOCJT, the National Highway Transportation and Safety Administration (NHTSA) validation of SFST shown from research materials on its website at www.nhtsa.gov, a Letter to the Editor from Parma Lee Mullins and a video copy of the City Commissioners' meeting in January 2016.
- 2) Reviewed the Hazard Police Department Policy and Procedure Manual relating to Investigations, Laws of Arrest and Traffic Law Enforcement.
- 3) Reviewed course materials from DOCJT regarding DUI Detection for the suspicion of violations of KRS 189A.010.
- 4) Reviewed Officer Everidge's personnel file and the results of his DUI training and testing at DOCJT.
- 5) Researched information regarding Horizontal Gaze Nystagmus and other SFST's reliability as an indicator of DUI.
- 6) Reviewed the applicable legal standards of probable cause for effecting arrest in cases of DUI.

Statement of the Facts

According to Citation N361309 and Officer Steve Everidge's written statement and interview, the incident took place while Officer Everidge was on routine patrol on December 21, 2015 at 9:27PM on Kentucky Highway 15 near the northern end of the Hazard's Johnny Cox Bypass.

Kentucky Highway 15 North/South is a major thoroughfare in the City limits of Hazard Kentucky. The highway section where Ms. Mullins was first observed is a four lane highway that opens up to 5 lanes (including the center turn lane). There is a red light traffic control device at the end of the Bypass and another red light just prior to the entrance to Perry Park Road and the Ernest Sparkman Highway 15 Bridge. Just after the first northbound red light, the 4 lanes are separated by a concrete raised median. It transitions into a center turn lane creating the fifth lane. After the second red light just before the Bridge, Highway 15 turns back into a four lane road with another raised concrete median. See the aerial photo and the illustrations attached as Exhibits 2 and 3A, B, C, D and E. The traffic count on the section of highway from the first red light to just prior to the Combs Road Exit is one of the heaviest traffic volumes in the Jackson Division of the Kentucky Department of Highways, and the two red light intersections are well known areas in which a high number of accidents, including accidents involving serious physical injury and/or death can occur. According to the Kentucky Office of

Highway safety, the traffic count for KY Hwy 15 at mile-point marker 13.4 was recorded in 2015 as 25,506. See Exhibit 4.

Ms. Mullins had left her home in Walkertown and entered Kentucky Highway 15 north at the red light intersection in front of the Combs Motel. Officer Everidge first observed Ms. Mullins vehicle in the left or inner northbound lane of KY Hwy 15 stopped at the red light near the Double Kwik gasoline station and market while he and police recruit Alex Hall were in the right or outside lane of KY Hwy 15 stopped at the same red light. See Exhibit 3A. Officer Everidge stated that after traveling a short distance (from the red light to approximately where the center concrete median ends to the north), he observed Ms. Mullins's vehicle swerve suddenly across the center turn lane and into the oncoming southbound lane of traffic on KY Hwy 15. See Exhibit 3B. He observed her continue in that southbound lane until she nearly encountered a southbound vehicle traveling in the same lane occupied by Ms. Mullins. According to Officer Everidge's observations, Ms. Mullins swerved back into the center turn lane to avert a head on collision. See Exhibit 3C. In her own statement and interview, Ms. Mullins conceded that she was having difficulty driving her vehicle in the rain and fog, and that her defroster was not working properly. She indicated in her interview that she "could not see" through the windshield at the pertinent point in time. She conceded that she "knew" that she crossed over into the other lane of traffic because she "couldn't see." She indicated that she felt her car "drop down" or dip down, that she traveled for a bit in that position before she could get back over to her lane of travel. There is no apparent dip in the roadway at this point, but it is possible that Ms. Mullins felt her car pass over a part of the concrete median or drop into the storm drain at the end of that median. A photo of the roadway, and a close up photograph of the median and the storm drain are attached as Exhibits 5 and 6. After the near miss with oncoming traffic, Officer Everidge then observed a second car pass by Ms. Mullins in the outside southbound lane. He observed Ms. Mullins car continue traveling in the center turn lane until that lane ended just short of the Bridge when she then veered slightly left toward the southbound lanes again. It initially appeared to Officer Everidge that she might cross the Highway 15 Bridge near the entrance to Perry County Park in the wrong lane of traffic, but she made an abrupt and sharp turn to the right and got back into the inner northbound lane of travel (KY Hwy 15 North). Ms. Mullins corroborated a portion of Officer Everidge's observations regarding her erratic movements when she conceded in her interview that she turned right in an attempt to get back in the correct lane of traffic at or near the asphalt plant building as she saw lights at the end of the bridge. See Exhibit 3D. However, Ms. Mullins also denied during her interview that she got completely over into the oncoming lanes of travel. It is unclear how she could be certain she did not fully enter the southbound lanes since she said in her Complaint that "I couldn't make out the dividing lines." Officer Everidge indicated that as soon as she got back into the correct lane of travel he initiated his emergency equipment.

Officer Everidge intended to conduct the traffic stop near the Combs road exit. However, despite activation of his lights, Ms. Mullins failed to respond and failed to immediately stop but continued traveling until she was finally pulled over around the end of the merge lane from the Combs Road entrance on KY Hwy 15 North. See Exhibit 3E. The area where the traffic stop occurred has an approximate 2% grade on the shoulder of the road. The area that the Standardized Field Sobriety Tests were administered has a primary

surface of asphalt with a little roadside gravel on top. See Photos which are attached as Exhibits 7 through 10. Upon contact with the driver, Ms. Mullins, Officer Everidge first exited his vehicle, approached her and asked for her license and proof of insurance. After obtaining her license, Officer Everidge then asked Ms. Mullins why she had been traveling on the wrong side of the road. According to Officer Everidge, she replied she was not aware that she was on the wrong side of the road because it was raining and foggy. Officer Everidge then said that Ms. Mullins stated her defroster may not have been working correctly and she could not see the lines of the road very good.

Based upon the erratic driving which he had observed and her failure to respond when he initiated his emergency lights, Officer Everidge determined that he should check for evidence of driver impairment. According to Officer Everidge's written statement, he asked Ms. Mullins if she had drunk any alcoholic beverages or taken any prescription medication. She indicated that she did not drink. The officer next advised her that he did not want to get her outside in the rain to conduct SFST's unless absolutely necessary. He was given permission from her to administer a quick test inside the vehicle. In order to conduct the test, it was necessary for him to shine his flashlight into Ms. Mullins' eyes. Officer Everidge then administered the Horizontal Gaze Nystagmus (HGN) test to her inside the car while he was standing outside the car. He felt that further testing would not be necessary if she showed no clues of intoxication. However, after administering the HGN test, Officer Everidge stated that nystagmus was both present and apparent and that further testing needed to be conducted in order to determine whether an arrest should be made for operating under the influence. It was also noted by Officer Everidge in his Citation, see Exhibit 11, that he observed that Ms. Mullins pupils remained pinpoint even with the absence of light (when he was not shining the flashlight toward her eyes) which is a secondary indication of intoxication. Officer Everidge states that at this point he informed Ms. Mullins that she showed clues of having some type of drugs or alcohol in her body based on that test. Officer Everidge then asked Ms. Mullins to exit the car to continue SFST's on the shoulder of the road. Once outside of the vehicle, Officer Everidge proceeded to question Ms. Mullins to see if she takes any prescribed medication, has diabetes or if she felt dizzy. Ms. Mullins advised Officer Everidge that she took medication for arthritis, but she did not have diabetes and she did not feel dizzy. During my personal interview of Ms. Mullins, she corroborated the fact that Officer Everidge had asked these questions, but she recalled that she had told Officer Everidge that she did not take any medication for arthritis except maybe Tylenol occasionally. According to Officer Everidge's statement, he asked Ms. Mullins what type of medication she took for her arthritis, and she stated she did not know.

Officer Everidge then proceeded to conduct the SFST's. The first test Everidge conducted outside of the vehicle was to repeat the HGN test which was previously conducted inside the vehicle. During this second test, Everidge noted in his Citation and written statement that Ms. Mullins showed clues of intoxication during lack of smooth pursuit, at maximum deviation and onset prior to 45 degrees which are three basic elements of the test. The significance of these findings is addressed in my analysis of the facts at pages 8-12. Officer Everidge then proceeded to conduct the one legged stand test, and he noted that Ms. Mullins was unable to maintain balance longer than 4 seconds, that she lifted her arms during the test and that she also failed to follow instructions given to her because she did not count out loud while the test was conducted. According to the

interview with Recruit Alex Hall, who was present with Officer Everidge, Ms. Mullins used her other foot to catch herself from falling several times during the one legged stand. Officer Everidge then conducted the walk and turn test. He stated in the Citation that during the administration of the walk and turn test Ms. Mullins did not walk heel to toe and lost balance multiple times as she walked. Recruit Hall also recalled that Ms. Mullins appeared very unsteady on her feet and had a very difficult time keeping her balance during both the one legged stand and walk and turn tests. Based upon the SFTS, his personal observations of her erratic driving, including driving considerable distance on the wrong side of the road and her being unable to identify what medications she may have taken, Officer Everidge indicated to me that he believed in good faith that probable cause to arrest for DUI had been established. Officer Everidge then took Ms. Mullins to Hazard ARH Regional Medical Center where he read implied consent and obtained a blood sample that was forwarded to the Kentucky State Police Lab for analysis.

After securing the blood sample, Officer Everidge then transported Ms. Mullins to the Kentucky River Regional Jail detention facility where he completed paperwork to charge her with the following offenses: KRS 189A.010(5)(a) Operating a motor vehicle under the influence of alcohol/drugs/etc.; and KRS 189.290 Careless driving. A copy of each of these offenses as they appear in the Kentucky Revised Statutes is attached as Exhibits 12 and 13, respectively. She was admitted to the care and custody of the detention facility staff at that location, and Officer Everidge then returned to his regular patrol duties.

On or about March 21, 2016, Ms. Mullins filed her Complaint in which she claims that she was falsely arrested for DUI and called for Officer Everidge's termination.

The blood tests were not completed by the State testing laboratories until April 12, 2016. The Hazard Police Department subsequently received the results of the blood test conducted on Ms. Mullins. According to the results obtained from the state laboratory, no reportable ethanol (alcohol) and no drugs were identified within the "current test panel" for which testing is routinely made at the time of the test. A copy of the test results is attached as Exhibit 14.

On April 21, 2016 after receipt of the clean test result, the Perry District Court dismissed with prejudice both the DUI charge and the careless driving charge. A copy of the disposition is attached as Exhibit 15.

Analysis

The primary questions presented by the Complaint are (1) whether Officer Everidge's conduct complied with Hazard Police Department policy and procedure; and (2) whether Officer Everidge had a valid basis to stop Ms. Mullins and administer the SFTS and to arrest her on the charges of reckless driving and DUI. Based upon my analysis, I am persuaded that Officer Everidge did comply with policy and procedure and had a valid basis to stop and arrest Ms. Mullins as noted below.

Compliance with Hazard Police Policy and Procedure

In the course of my investigation, I reviewed applicable portions of the Hazard Police Policy and Procedure manual for sections relating to the laws of arrest, traffic law enforcement and investigations. My investigation revealed that the stop, interview, deportment and subsequent arrest of Ms. Mullins were consistent with the specific policy requirements in Section 3, Investigations, Chapter 1 Investigation Overview, Section 2, Operations, Chapters 1 Laws of Arrest and 8 Traffic Law Enforcement. See Exhibit 16. The Policy Manual does not address specific directions on administration of SFST's but the Department relies upon each officer's training received from DOCJT.

Officer Everidge was required by policy to act with legal authority and have probable cause to arrest. See my analysis of probable cause below. He must have a valid basis for an arrest if the offense is for a misdemeanor offense, and KRS 189A.010 DUI involving a motor vehicle qualifies both for an arrest and for a warrantless arrest. The Officer issued a Kentucky Uniform Citation which the policy authorizes during traffic law enforcement whenever a violator jeopardizes the safe and efficient flow of vehicular and pedestrian traffic. The Complaint does not allege specific violations of procedural rights at the time of the arrest or during blood testing or while booking Ms. Mullins into the detention facility, and I found no violations of policy or procedure involving procedural due process rights.

Legal Standard of Probable Cause

There is a well known saying that a police officer's role is not to be the "judge and jury." It is only the duty of a police officer to determine whether "probable cause" exists prior to making an arrest. Arrest without probable cause violates the Fourth Amendment. See *Beck v. Ohio*, 379 U.S. 89 (1964); *Klein v. Long*, 275 F.3d 544, 550 (6th Cir. 2001). A police officer's threshold for making an arrest is not proof beyond a reasonable doubt. See *United States v. Jones*, 641 F.2d 425, 429 (6th Cir. 1981) (stating that probable cause does not require "proof beyond a reasonable doubt," but simply evidence to establish that it is "more likely than not" that a crime has been committed). The Supreme Court has further defined "probable cause" as the "facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979). Probable cause requires only the probability of criminal activity, not some type of "prima facie" showing. See *Illinois v. Gates*, 462 U.S. 213, 235 (1983); see also *Criss v. City of Kent*, 867 F.2d 259, 262 (6th Cir. 1988) (same). "[P]robable cause determinations involve an examination of all facts and circumstances within an officer's knowledge at the time of an arrest." *Estate of Dietrich v. Burrows*, 167 F.3d 1007, 1012 (6th Cir. 1999) (citing *Carroll v. United States*, 267 U.S. 132, 162 (1925)). **Under the Constitution's standard for making arrests, the ultimate innocence of the person arrested is irrelevant to the determination of whether probable cause existed.** See *id.* (holding that a police officer who arrests someone with probable cause is not later liable for false arrest because the subject was proved innocent); cf. *Baker v. McCollan*, 443 U.S. 137, 145 (1979) ("**The Constitution does not guarantee that only the guilty will be arrested.**"). See also *Pierson v. Ray*, 386 U.S. 547, 555 (1967) (stating that "[a] policeman's lot is not so

unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does”); see also Restatement, Second, Torts § 121 (1965); 1 Harper & James, *The Law of Torts* § 3.18, at 277—278 (1956).

Determination of Probable Cause to Make a DUI Arrest

A police officer can stop a citizen (including a traffic stop) at any time based upon reasonable suspicion that a violation may be occurring. See *Terry v. Ohio*, 392 U.S. 1 (1968) (“...the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”). Traffic stops are considered brief investigatory detentions which are permissible under the Constitution. *Florida v. Royer*, 460 U.S. 491 (1983). In fact, the requirements for a lawful investigatory stop are met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. *Brendlin v. California*, 551 U.S. 249, 255, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007).

All police officers within the Commonwealth of Kentucky receive mandatory training in law enforcement at the Kentucky Department for Criminal Justice Training (DOCJT). This training includes coursework in legal standards of probable cause and procedures for effecting arrests and includes specific training in the conduct of arrests involving possible DUI’s. Officer Everidge attended the DOCJT training following his initial hire in January 9, 2001. He successfully completed all of the required coursework, including training in the conduct of DUI arrests.

In order to determine if a person has probable cause to arrest for a DUI arrest, several elements must be considered as prescribed by the training that Officer Everidge received while at DOCJT. See DOCJT’s DUI Detection Summary which is attached as Exhibit 17. The training material at DOCJT is primarily based upon research generated by the National Highway Traffic and Safety Administration (NHTSA) as relating to Standardized Field Sobriety Testing (SFST). I will summarize the instructional guidance on conducting SFST’s briefly below.

DUI detection is separated into 3 phases, with Phase 1 being while the vehicle is in motion. During this phase, the Officer must use his discretion to determine whether to stop the vehicle or wait to gather more evidence. During this observation period, the officer is looking for certain and specific clues that would raise an officer’s suspicion of driver impairment. There are approximately 20 clues that an officer may observe that would cause an officer to become aware that the driver may be impaired. The presence of these clues lead to predictability that a driver may be impaired. While one observation of a single clue may be enough to raise reasonable suspicion, Officer Everidge observed 5 visual cues that caused him concern about Ms. Mullins that night: 1) Almost striking another car, 2) Weaving or Swerving, 3) Tires on Center or Lane Marker, 4) Driving into Opposing or Crossing traffic and 5) Turning abruptly or illegally. According to NHTSA guidance, visual clues alone may not necessarily be sufficient to determine DUI, but

Officer Everidge's reasonable suspicion based upon these five visual cues was sufficient to warrant further investigation of Ms. Mullins and an investigatory stop.

Phase 2 of DUI detection involves personal contact between the officer and the driver. During this phase, the officer must use discretion to determine whether to have the offender exit the vehicle for testing to determine impairment. During an interview with the driver, the officer must look for certain and specific clues using the officer's sense of sight, smell and hearing. Officer Everidge extended the courtesy to Ms. Mullins of conducting an abbreviated Horizontal Gaze Nystagmus (HGN) test while she remained in her vehicle in an effort to avoid getting her out in the rain. However, Officer Everidge observed nystagmus present during the brief test and determined that further testing was required. Once the decision was made to have Mullins exit the vehicle, Officer Everidge then continued to Phase 3 of DUI detection which is to perform a multi-dimensional test.

In the administration of Phase 3 SFST's, an officer should first determine whether the driver has any medical impairment. Officer Everidge asked Mullins if she had diabetes or she had any specific medical conditions that she was receiving or needed treatment for, and, except for arthritis, she answered that she did not. Officer Everidge said that he asked her about medications for her arthritis, and he says she was unable to advise him of what medications she had been prescribed. There are some differences between the versions of this portion of the encounter between Ms. Mullins and Officer Everidge regarding her statements on medications, but Ms. Mullins admitted in her Complaint that she was "absolutely terrified" by now which may have affected her recollections of the event. If Officer Everidge had any reason to suspect that Ms. Mullins was taking unspecified prescription medications, then there was a possibility that some such medication or even drug interactions could have explained her erratic driving and could have contributed to the Officer making a determination of driver impairment. The officer next should observe the pupil size of the driver's eyes. In this instance, Officer Everidge observed that Mullins had pin point pupils that were not reactive to light. This means that her pupils did not respond normally to light when the Officer's flashlight was alternately shone toward her eyes and then pointed away. This is significant because that secondary factor alone is indicative of an intoxicating influence in a high percentage of cases. After making these initial observations, Officer Everidge began to conduct the SFST. The first SFST is the Horizontal Gaze Nystagmus test (HGN). Although Officer Everidge had conducted this test while Ms. Mullins was inside her vehicle, he repeated it now under traditional field conditions. HGN is defined as an involuntary jerking of the eye that is most often caused by drugs (illegal or prescription) or alcohol. According to NHTSA, the presence of naturally occurring nystagmus unattributable to alcohol or drug use will not affect the outcome of a full battery of SFST's when conducted correctly. HGN is the most reliable field sobriety test, especially when used in combination with other observances and tests. The probability of a person being impaired with four clues present during HGN testing is 77% according to NHTSA and other testing research.

When administering the HGN test, the officer first introduces a stimulus such as a pen or traditionally an index finger as a focal point for the eyes. The officer keeps the stimulus between 12 to 15 inches from the subject's eyes. The officer then checks for nystagmus which, if the eyes begin jerking without movement of the stimulus, is known as "resting nystagmus." The officer will take precautions as this sign will indicate a high dosage of

alcohol or certain other drugs such as PCP. The officer then checks the eyes for equal tracking ability two times. Beginning at a starting point, the officer moves the stimulus to a point beyond one shoulder then back across to the outside of the other shoulder at a speed of approximately 2 seconds from the nose to the outside, 2 seconds on the return and two seconds to the other side and two seconds on that return. One complete pass of the stimulus pen or finger will take about 8 seconds or 16 total seconds when checking each eye twice. The sole purpose of this evaluation is to ensure that both eyes are following the stimulus. If one eye is following but the other is not, it is possible the person has a medical condition, head injury or even a glass eye.

The HGN test officer uses the same administrative procedures each time they administer the HGN, in the same order. If the subject wears glasses, the officer has them remove the glasses for the test. The subject does not need to focus on the stimulus, only follow it. If the subject is wearing any type of hat, they are asked to remove it. Shading of the eyes makes nystagmus more difficult to see. The officer verbally instructs the person to stand with their feet together and their arms at their side while conducting the HGN.

There were three primary tests performed during the administration of the HGN test for Ms. Mullins which showed positive clues for an intoxicant being present; (a) lack of smooth pursuit, (b) distinct nystagmus at maximum deviation, and (c) onset prior to 45 degrees. While checking for lack of smooth pursuit, the test is conducted in the same manner as the Officer's observation of equal tracking. The only difference is that the officer is now looking into the driver's eyes to see if each eye pursues smoothly. If nystagmus is present, it will appear as if the eye is trying to "catch up" to the stimulus. Officer Everidge reported his observation in the Citation that Ms. Mullins's eyes showed uneven pursuit. Next the officer will administer the distinct nystagmus at maximum deviation test. In this test the officer is looking to see if there is any jerking of the eye when it is held at the maximum distance from center. The stimulus should be positioned for view beyond the shoulder and the eye should be turned until there is no white showing between the colored iris of the eyeball and the furthest corner of the eye facing the stimulus. The stimulus should be held at this point for at least four seconds. The reason for holding at maximum deviation for at least four seconds is because in fifty percent (50%) of the population, nystagmus can be seen for a few seconds even when no alcohol or drugs have been consumed. This naturally occurring nystagmus will dissipate after two to three seconds. The jerkiness must be distinct and sustained for the minimum four second period. Additionally, it is acceptable to hold the stimulus for greater than the standard four seconds to ensure the jerkiness is seen. Officer Everidge reported in the Citation that Ms. Mullins displayed nystagmus at maximum deviation. The last element of the HGN test which resulted in a positive finding for Ms. Mullins is called onset prior to 45 degrees. When administering this test, the officer is looking to see if the eye begins to jerk prior to the onset of a 45 degree angle from the starting point which is directly in front of the subject. The stimulus must be moved slowly, for a full four seconds, until the onset is detected. Once detected, the officer stops to ensure the jerking continues. If the jerking continues, he/she returns at normal speed to the starting point and then continues to check the other eye. Officer Everidge reported in the Citation that nystagmus was present in Ms. Mullins during this test as well.

During the administration of each of these tests, the officer is looking for clues. The maximum number of clues in each eye is three, and the total number of clues for both eyes is six. There are thus two clues potentially for lack of smooth pursuit, two clues potentially for maximum deviation and two clues for onset prior to 45 degrees for a total of six clues. The original research from NHTSA shows that if four or more clues are present that the test is 77% accurate for impairment. Ms. Mullins showed a total of six (6) clues present during the testing conducted by Officer Everidge. Since Officer Everidge had also noted that Mullins had pinpoint pupils even without light present, he had greater reason to believe that she was driving impaired.

The second field test administered during Phase 3 is the Walk and Turn test. The Walk and Turn test is a balance test and also considered a psychophysical and divided attention test. The test is intentionally issued in two stages, the instruction stage and the walking stage. Both stages are essential as evidence of observed impairment often comes to light during one or both stages. The tasks require the subject to divide attention among mental tasks and physical tasks. The mental tasks include comprehension of verbal instructions, processing information, and recall of memory. The physical tasks include balance and coordination. The officer starts to observe for clues during the instruction stage. If the subject cannot keep balance or starts too soon prior to finishing the instructions, the officer notes that as a clue. During the walking stage, the officer is looking for clues as well, such as: stops walking, fails to touch heel to toe, steps off a line, raises his arms, turns improperly or takes the wrong number of steps. The officer may observe different behaviors when the subject performs the test. Research has demonstrated that the behaviors are more likely to be observed if the subject is intoxicated. During the instruction stage, the subject is asked to put his right heel in front of his left toe while listening to the instructions. Typically, the person who is intoxicated can only do one of these things. They may be able to listen to the instructions but not maintain balance or vice versa. After the instruction stage, the subject is asked if he understands the instructions and then is asked to perform the test with no further instruction given. During this test, if a DUI suspect exhibits at least two clues of a possible eight clues, there is a 68% probability of a blood alcohol content above .10 according to NHTSA research and a 79% probability of a blood alcohol content above .08 according to DOCJT instructional materials. Officer Everidge stated in his post arrest narrative that during Ms. Mullins's walk and turn test she did not walk heel to toe, and she lost balance multiple times. Recruit Hall also said in his written statement that Ms. Mullins appeared during both tests very unsteady on her feet and had a very difficult time keeping her balance. NHTSA places no mandatory restrictions on the age of subjects who may be subject to the walk and turn test, but DOCJT instructional materials caution that individuals over age 65 whose ability to balance is affected should not be given this test. While Ms. Mullins is over age 65, she reported no physical impairment to Officer Everidge other than arthritis, and she did not indicate that she was unable to walk or perform the other tasks necessary to function in the test. It should be noted that Ms. Mullins also showed clues of impairment during other aspects of SFST even if the walk and turn test should be discounted or disregarded.

The last test given during stage 3 is the One-legged stand. Again, this is a divided attention test administered in two stages-the balance stage and the count stage. The subject is instructed to stand with heels together, arms at side, and to refrain from

beginning the test until told to commence. The subject is also instructed to raise one leg, keep his eyes on the elevated foot and to count out loud. After the instructions are given, the subject begins holding one leg approximately 6 inches off the ground with foot pointed out. While keeping their leg straight, and keeping their eyes on the elevated foot, and holding that position, they count out loud: one thousand one, one thousand two and so forth until told to stop. They are then asked if they understand the instructions. If the response is “yes,” the subject is told to begin the test with no further instructions to be given. The officer starts clocking 30 seconds as soon as the subject raises his leg. During this period, the officer is looking for clues that include not counting out loud, putting foot down, raising arms or stopping prior to being told to stop. Research shows that a person who is intoxicated may be able to maintain balance for up to 25 seconds, but seldom as long as 30 seconds according to DOCJT instructional materials. DOCJT’s research also shows that a person showing 2 or more clues has an 83% probability of a blood alcohol content above .08. According to Officer Everidge’s post arrest narrative, Ms. Mullins showed 3 clues because she was unable to maintain balance for the prescribed time period, she lifted her arms during the test and she failed to follow instructions by not counting during this test. Recruit Hall also noted in his written statement that Ms. Mullins had to use her other foot to catch herself from falling several times during the one legged stand.

The instructional materials used by DOCJT in the training of Kentucky police officers are substantiated by independent research conducted by the NHTSA. Beginning in 1975, NHTSA sponsored research that led to the development of standardized methods for police officers to use when evaluating motorists who are suspected of Driving While Impaired. In 1981, law enforcement officers from across the United States began using NHTS’s battery of testing to help make arrest decisions at and above legal impairment levels. In recent years, Anacapa Sciences, Inc. of Santa Barbara, California conducted a study to validate the accuracy of the SFST battery to discriminate above or below intoxication levels. The SFST battery consisted of three administered and evaluated tests conducted in a standardized manner by law enforcement officers at roadside to assist them in making an arrest decision. These tests were the HGN, the Walk and Turn, and the One-Leg Stand. During these tests, officers observed and recorded clues which were considered to be indicators of impairment. The Officers administered a total of 298 SFST to various subjects. Only one case was eliminated from the analysis because the motorist refused all forms of testing. Estimates of an intoxication level for alcohol were determined to be accurate in 91% of the cases with positive findings in all three (HGN, Walk and Turn and One Legged Stand) tests or as high as 94% if explanations for some of the false positives were considered. Officers and prosecutors reported they found the SFST battery fully acceptable for field use to establish probable cause for DUI arrest. The results of SFST conducted by the Hazard Police Department have been comparable to those results which are reported in DOCJT instructional materials and as determined by the NHTSA. When the Hazard Police Department initially began its investigation of this incident following the public meeting before the City Commission, Chief Allen instructed me to research all DUI arrests in 2015 and report my findings to him. I found a total of 112 DUI charges had been made during the period. Of the 112 DUI charges, only 7 individuals were later found to have negative or “clean” drug or alcohol blood test results based on current drug testing standards and the current drug test panel. It is important to

note that a clean blood test is not definitive proof of lack of impairment because current tests search only for a particular panel of specific legal and illegal substances as a result of DUI arrests. Many other legal prescription drugs and some illegal drugs are not present in the current drug testing panel. Just by way of two examples, the current drug test panel does not include testing for Gabapentin (aka Neurotin) or Suboxone which are frequently used and currently highly abused prescription drugs in Eastern Kentucky.

All three SFST are tools to assist the officer in seeing visible signs of impairment. They are not pass/fail tests. The individual tests result in accurate assessment of intoxication in a majority of cases when considered independently, and the percentage of accuracy only increases when positive results in two or three of the tests are found. The SFST is part of the DUI determination, and SFST's help the officer to establish probable cause and aid the officer in the decision whether to arrest. However, as the various percentages of accuracy indicate, the results of SFST's are never a conclusive indicator of impairment. In fact, if a police officer conducts each of the tests perfectly, there will still remain a statistical probability that some percentage of drivers will be determined to be impaired but later found not to have intoxicating influences based upon accepted testing methodologies. In other words, drivers will be arrested who are later determined to be "not guilty." Until testing becomes instantaneous and 100% accurate, the most a police officer can do is to rely upon his training, accepted standards of testing, and make good faith judgments based on the totality of the circumstances in determining whether probable cause exists for an arrest. Exoneration of a defendant, whether by dismissal or by a jury verdict following a trial, does not automatically mean that a police officer acting in good faith made a "false arrest."

It is my conclusion that the combination of Officer Everidge's observation of Ms. Mullins' erratic driving, her pinpoint pupils, and the positive clues in all three SFST's all indicated a high probability that she was an impaired driver and either individually or in combination demonstrated that the Officer had valid reason to make an arrest for reckless driving and for DUI based upon his good faith belief that probable cause existed.

Summary

The Hazard Police Department takes very seriously its responsibility for enforcement of traffic laws, including its responsibility for making roads safer by removing impaired drivers from the highway. At the same time, the Police Department is committed to treating all citizens fairly and with courtesy whenever possible. For this reason, the Department actually commenced its investigation of this incident immediately following the public meeting before the City Commission and did not wait to review the matter until the citizen complaint was received.

I have attempted to conduct the most thorough investigation possible. I have interviewed or secured written statements from all of the participants and witnesses. I interviewed Ms. Mullins after reviewing her written statement to insure that she was given a full opportunity to supplement her statement with any new information or new recollection of events. The Department utilized its resources to re-create the scene and to generate representative photographic and other exhibits to depict the events based upon the statements and interviews of Officer Everidge since his perspective and what he observed is most determinative of his decision to make an arrest.

In evaluating the statements made by the participants, I did not purposely give less weight to Ms. Mullins statements when her statements conflicted with Officer Everidge's and Recruit Hall's statements, but I have noted that Ms. Mullins candidly admitted that she was unable to see clearly through her windshield and could not see the dividing lines on the highway. She also conceded that she crossed the median or lanes of travel even though she disagrees as to the extent to which her vehicle may have crossed the lines. I have also taken into account that Ms. Mullins conceded that she was "absolutely terrified" at points during the encounter. In evaluating Officer Everidge's exercise of his discretion, I have taken into account that Ms. Mullins has not alleged in her Complaint any evidence that Officer Everidge had any reason for malicious intent or ill will toward her and had no bad faith motive to treat her any differently than any other citizen on that night.

After investigating all statements, research documents and supporting training materials, I have concluded the following:

1. My investigation revealed that the stop, interview, deportment and subsequent arrest of Ms. Mullins were consistent with the specific policy requirements in the Hazard Police Department Policy and Procedures Manual. The Complaint does not allege specific violations of procedural rights at the time of the arrest or during blood testing or while booking Ms. Mullins into the detention facility, and I found no violations of policy or procedure involving procedural due process rights. The Policy Manual does not address specific directions on administration of SFST's but the Department relies upon each officer's training received from DOCJT. There is no indication that Officer Everidge's deportment during his encounter with Ms. Mullins violated any City policy. There is no report of any use of foul language or mistreatment. It is regrettable that weather conditions forced Ms. Mullins to undergo the SFST's in the rain, but weather conditions appear to have been a contributing factor to Ms. Mullins's erratic driving. Officer Everidge conducted an initial interview and test with Ms. Mullins inside her

vehicle as a matter of professional courtesy to keep her from getting wet. The SFST's conducted outside the vehicle could not have been postponed or conducted in any less intrusive manner once the officer had indications of the possibility of driver impairment.

2. All police officers within the Commonwealth of Kentucky, including Hazard Police officers, receive mandatory training in law enforcement at the DOCJT. This training includes specific training in the conduct of arrests involving possible DUI's. Officer Everidge successfully completed all of the required coursework, including training in the conduct of DUI arrests.

3. There is a common cliché that a police officer's role is not to be the "judge and jury." It is only the duty of a police officer to determine whether "probable cause" exists prior to making an arrest. A police officer's threshold for making an arrest is not proof beyond a reasonable doubt, but simply enough evidence to establish that it is "more likely than not" that a crime has been committed. Under the Constitution's standard for making arrests, the ultimate innocence of the person arrested is irrelevant to the determination of whether probable cause existed. Courts have found that a police officer who arrests someone with probable cause is not later liable for false arrest because the subject was proved innocent, and the Constitution does not guarantee that only the guilty will be arrested.

4. Officer Everidge was justified by observation of Ms. Mullins's erratic driving to make an investigatory stop. He then used techniques and methods of field sobriety testing which are established by DOCJT and substantiated by research conducted by NHTSA to determine whether "clues" existed to show that Ms. Mullins was driving while impaired. His duty was to make a determination of probable cause based upon his examination of all facts and circumstances within his knowledge at the time of the arrest. His investigation determined that sufficient "clues" of impairment existed under multiple sobriety tests which either viewed individually or collectively justified his decision to make the arrest. The presence of multiple clues in separate tests increased the likelihood that his assessment of impairment was accurate.

5. Field sobriety testing is a tool to assist the police officer in seeing visible signs of impairment. The individual tests result in accurate assessment of intoxication in a majority of cases when considered independently, and the percentage of accuracy only increases when positive results in two or three of the tests are found. However, even if a police officer conducts each of the tests perfectly, there will still remain a statistical probability that some percentage of drivers will be determined to be impaired but later found not to have intoxicating influences based upon accepted testing methodologies. In other words, drivers will be arrested who are later determined to be "not guilty." Until testing becomes instantaneous and 100% accurate, the most a police officer can do is to rely upon his training, accepted standards of testing, and make good faith judgments based on the totality of the circumstances in determining whether probable cause exists for an arrest. Exoneration of a defendant, whether by dismissal or by a jury verdict following a trial, does not automatically mean that a police officer acting in good faith made a "false arrest."

6. The historical results of SFST conducted by the Hazard Police Department have been comparable to those results which are reported in DOCJT instructional

materials and as determined by the NHTSA. Of 112 DUI charges in 2015, only 7 individuals were later found to have negative or clean drug or alcohol blood test results based on current drug testing standards and the current drug test panel. Even a clean blood test is not definitive proof of lack of impairment because current tests search only for a particular panel of specific legal and illegal substances as a result of DUI arrests.

7. Even though the historical results of SFST administration have not been substandard, the Hazard Police Department is committed to a process of continuous improvement in its professional performance. Earlier this year as Police Chief you directed that each Hazard police officer who received a “clean” or negative blood test result following a DUI arrest in 2015 will return to DOCJT for retraining in the administration of SFST’s. Officer Everidge successfully completed retraining on June 10, 2016. The remaining officers have either completed retraining or are scheduled to receive such retraining at this time.

This report constitutes my recommendation that no disciplinary action be taken toward Officer Everidge based upon the Complaint received from Ms. Mullins relating to the incident in question. As the Department Head, and as Police Chief, you will in turn make your own recommendation and report the same to the City Manager Grady Varney. Any determination to impose discipline made by the City Manager may be appealed by Officer Everidge to the full Board of Commissioners. Pursuant to Section 1, Chapter 15, Internal Affairs of the City’s Police Policy and Procedures Manual, Officer Steve Everidge should be notified of any action taken in response to the written complain. Ms. Mullins should be advised of the disposition of her complaint and advised of her legal rights.

Thank you for your time,

Major James East
Hazard Police Department



HAZARD POLICE DEPARTMENT

COMPLAINT FORM



The Hazard Police Department will investigate any reasonable allegation of misconduct by any of its members upon receipt of this form, properly executed and signed. Facilitation of prompt and accurate investigations make the use of this form a necessary prerequisite to the investigation of a complaint. Be assured that the department does not condone misconduct by any of its members and will take appropriate action, where indicated by investigation, against any member found to be guilty of such misconduct.

PERSON MAKING COMPLAINT

Name Barbara Lee Mullins Phone (606) 439-1103

Address 224 Morris Street
Hazard, Ky. 41701

LOCATION OF OCCURRENCE Kentucky Highway 15

Date/Time December 21, 2015 9:15 P.M.

DEPARTMENT MEMBER INVOLVED

Name Steven Everidge Badge No. 18

Description of member(s) if name is not-known.

Race _____ Sex M Age 40 Hgt. 6'4" Wgt. 200 Dress (Uniform/Plainclothes) ✓

Identifying characteristics Light skin, red-blond hair, some Bald.

DESCRIPTION OF INCIDENT (include specific allegations)

I am a 69 year old widow of Iral Rutown, Ky. My
late husband was Tommy Mullins I was born and
raised here. I have arthritis in my body. I left
my home on December 21 to purchase peanut butter.
(Use additional page if necessary)

DESCRIPTION OF INCIDENT (Continued)

It was raining hard and very foggy. As I turned off North Main into the left lane of Highway 15N my defroster wasn't working properly. I did adjust it and turned my Brights on. I couldn't make out the dividing lines. I was so frightened! As I was crossing the bridge by the entrance of Perry Co. Park I saw "blue lights" behind me flashing. I'd ~~never~~ never ever had a ticket. Two Hazard Patrolmen pulled me over. I was absolutely terrified by now!

I told one patrolman I couldn't see. He then asked for my driver's license. He looked at my driver's license and then shined a flashlight in my eyes. My heart was racing! I told the patrolman that I did not drink, drug or smoke! He then told me "just by looking in my eyes" You are either under the

AFFIRMATION

I, Barbara Lee Mullins, do hereby affirm that the foregoing information provided by me is true and complete to the best of my knowledge and belief. I understand that any false, misleading, or untrue statements, accusations, or allegations herein made by me in relation to this complaint, either orally, or in writing, to any person or persons investigating this complaint may subject me to civil and/or criminal prosecution.

I realize that it may become necessary to the investigation of this complaint for me to meet with a member or members of the Hazard Police Department to discuss this complaint, either in the presence or absence of the accused member(s), at the discretion of the Department. I accept the premise that if action of the Hazard City Commission is a result of my complaint, my testimony before the Council may be necessary and I hereby agree to make myself available for such proceeding if requested to do so.

Complainant's Signature

Barbara Lee Mullins

Date

March 21, 2016

influence of alcohol or drugs. I'm going to have to arrest you! I asked him to take me home if he thought that! I'm an innocent person. His answer to me was "I don't know you". But, I'm not going to put hand cuffs on you. I was shaking and so terrified! He told me to "get out of that car." Now, in the pouring rain. I'm going to do a sobriety test and breathalyzer test on you. He did do a sobriety test. But he did not do a breathalyzer test. He did the sobriety test on a hill, gravel under my feet in the pouring rain. My head was drenched and so were my feet and legs. I was shaking and hurting, all over my body. I was traumatized. Then he told me "I'm taking you to jail!" I was taken to the RRH for blood work. The results were he back in a few months. I had my own labs run and all came back negative.

I was falsely arrested for DWI and Careless driving.

This patrolman had no compassion. His oath is to serve and protect not to commit elder abuse. This patrolman,

S. Everidge shouldn't wear a badge for the City of Hayward. I'm asking for his resignation or "Fire Him". This is not to be swept under the rug.

Darma Lee Mullins

I want to Thank My Soul through this most difficult experience in my life. I was traumatized enough I sure didn't need to see the inside of a jail detox.

COMPLAINT RECEIPT

The Hazard Police Department hereby acknowledges the receipt of a complaint filed against one of its members on (Date) 4/28/16 By (Name of the Complainant) PARMA Lee Mullins

Your complaint will be brought to the attention of the Chief of Police and will be assigned to a special investigator to gather all the facts. Once the investigator has filed a report, the Chief of Police will carefully review it, and a final disposition will be made.

A representative of the Hazard Police Department will notify you as to the final disposition of your complaint, usually within a period of thirty (30) days from the date shown below.

Complaint Received by JAMES EAST Date 4/28/16

DEPARTMENT USE ONLY

Incident # _____

Complaint Received by JAMES EAST Date/Time 4/28/16

How was complaint received? IN PERSON

Assigned to JAMES EAST Date 4/28/16

DISPOSITION

4/28/16 - ASSIGNED TO MAJOR JAMES EAST
* SEE ATTACHED INVESTIGATION

Complaint disposition letter sent:

Date _____ Signature _____

Google Maps



Imagery ©2016 Google, Map data ©2016 Google 200 ft

3A

KY HWY 15

HWY 15 Bypass

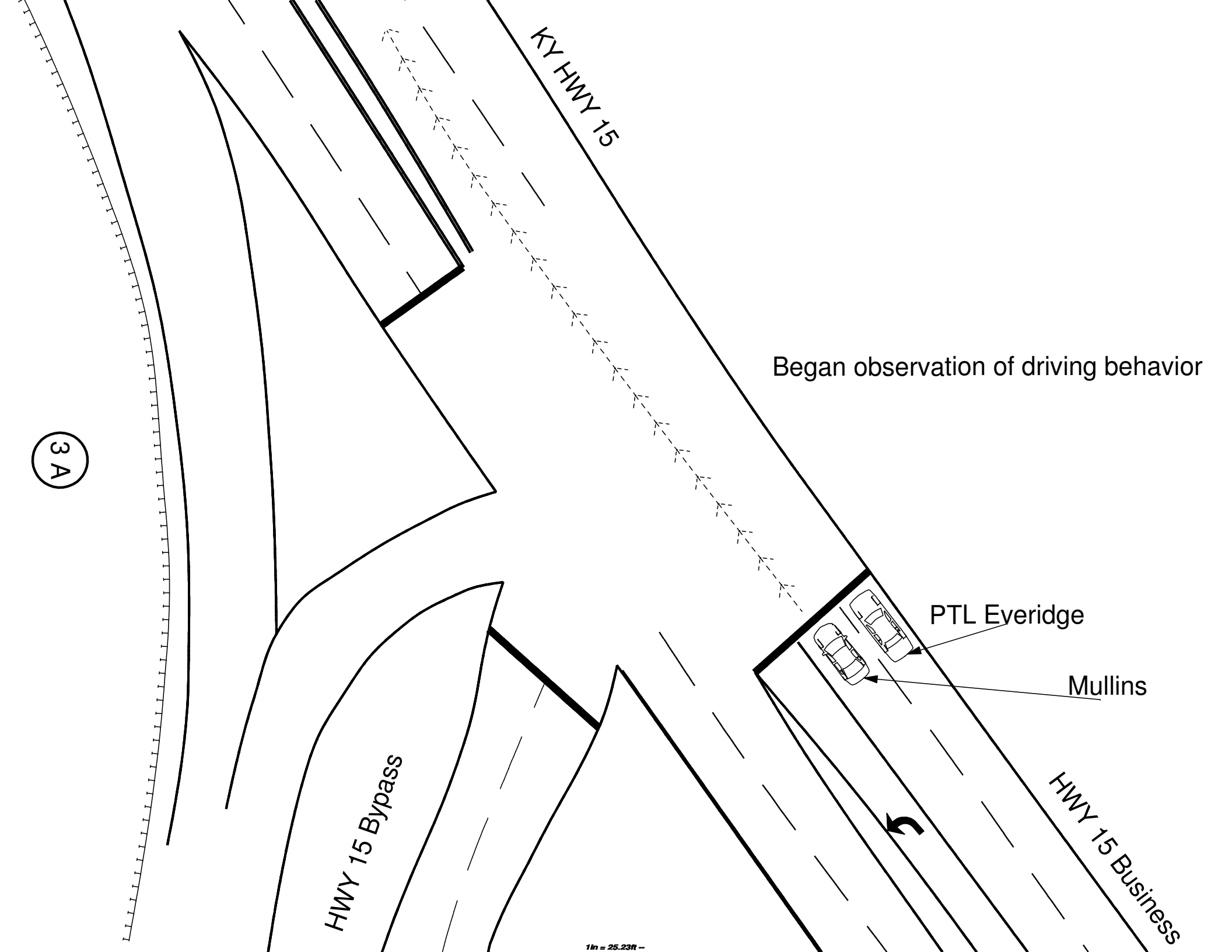
Began observation of driving behavior

PTL Eyeridge

Mullins

HWY 15 Business

1 in = 25.23 ft





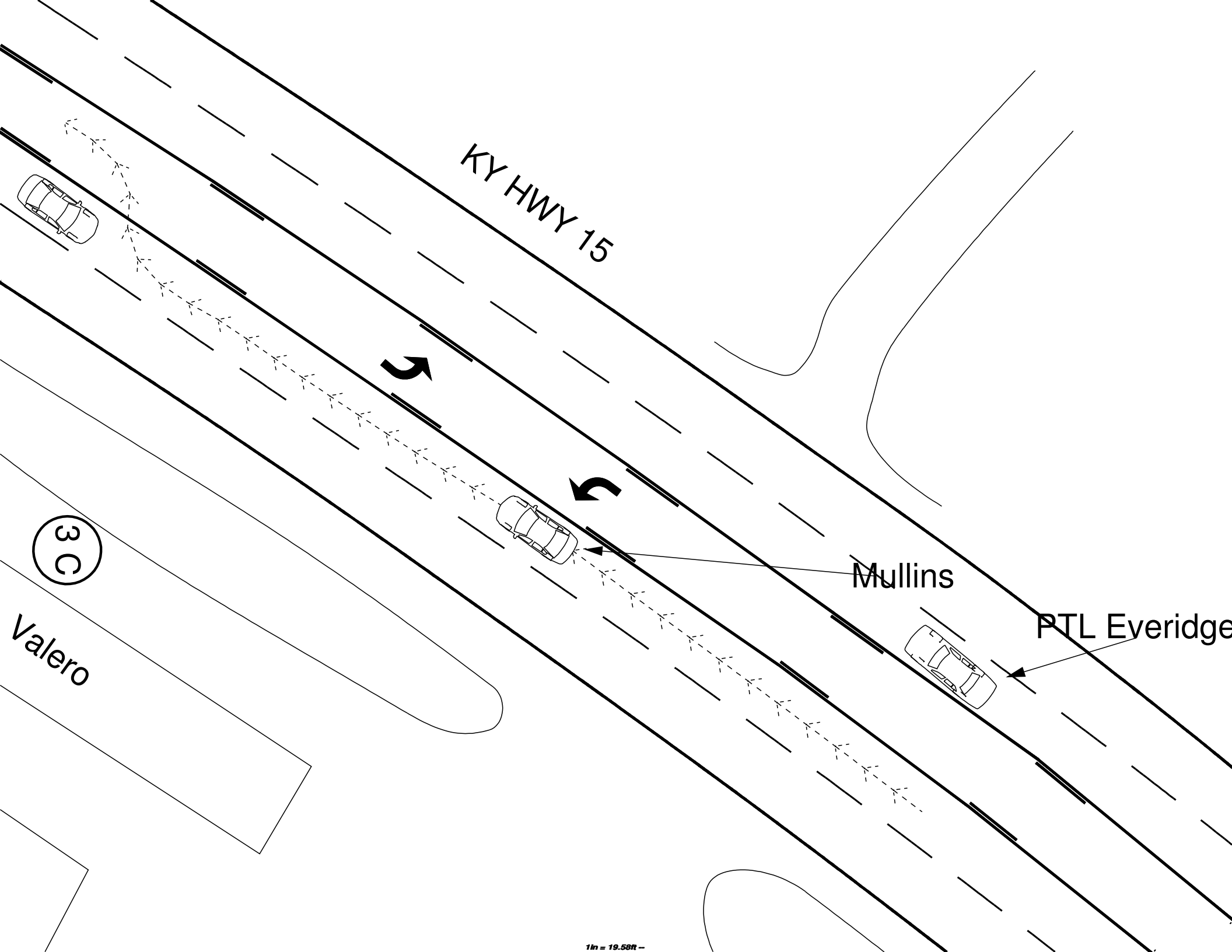
3B

KY HWY 15

Mullins

PTL Everidge

Double Kwik Mart



KY HWY 15

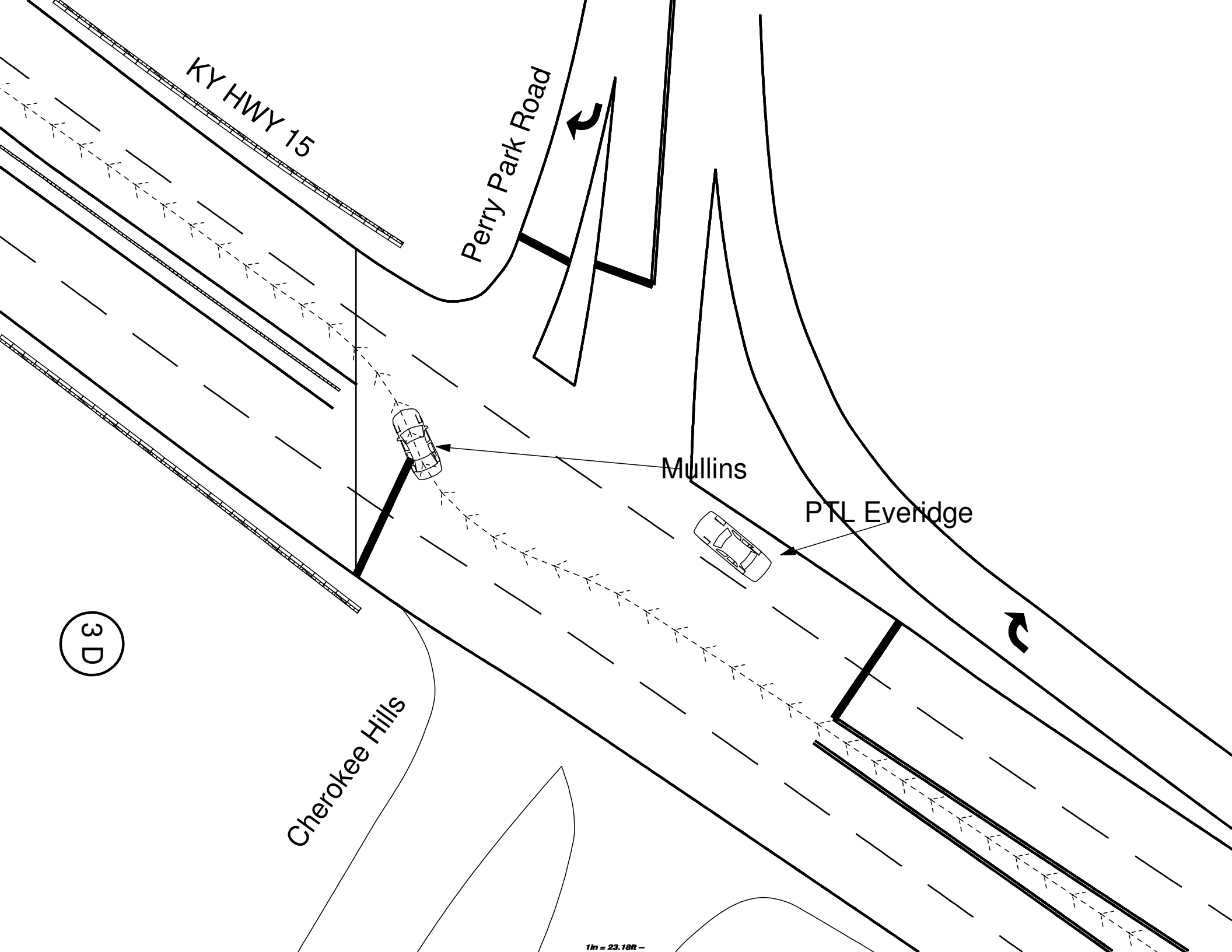
Mullins

PTL Everidge



Valero

1 in = 19.58 ft



KY HWY 15

Perry Park Road

Cherokee Hills

Mullins

PTL Everidge

3D

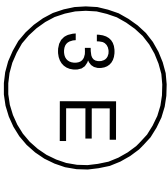
1 in = 23.18 ft

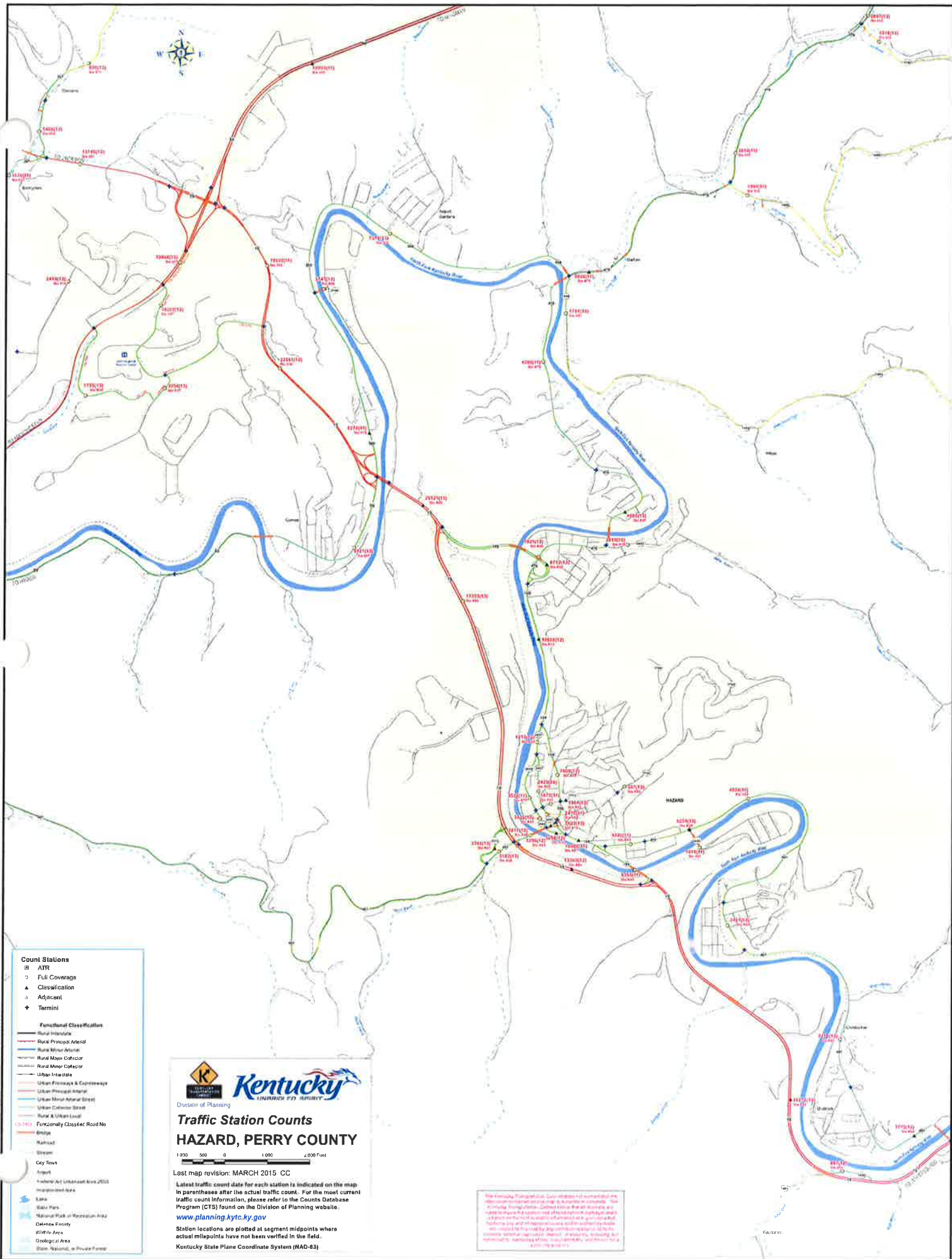
Traffic Stop Location

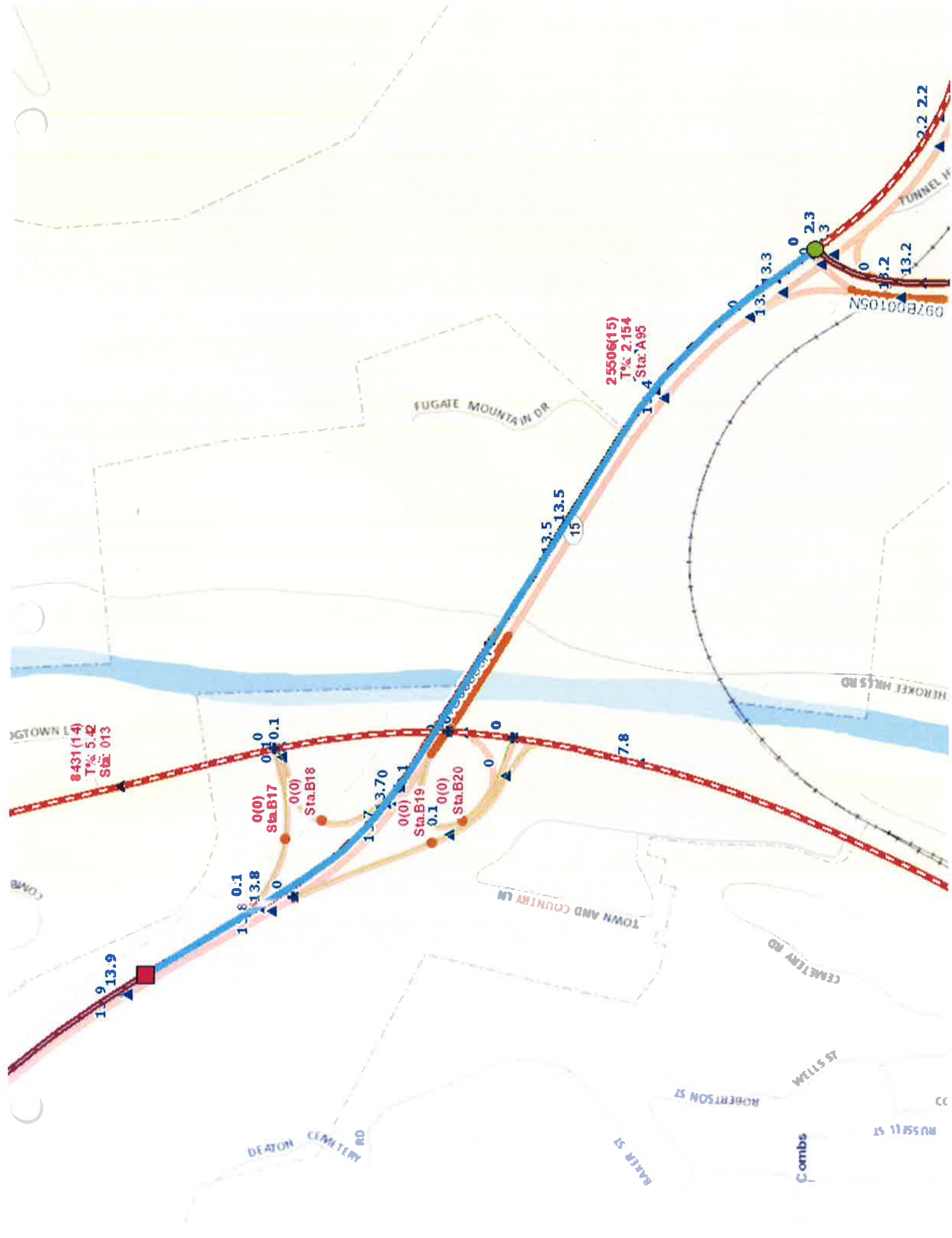
Mullins

PTL Everidge

KY HWY 15





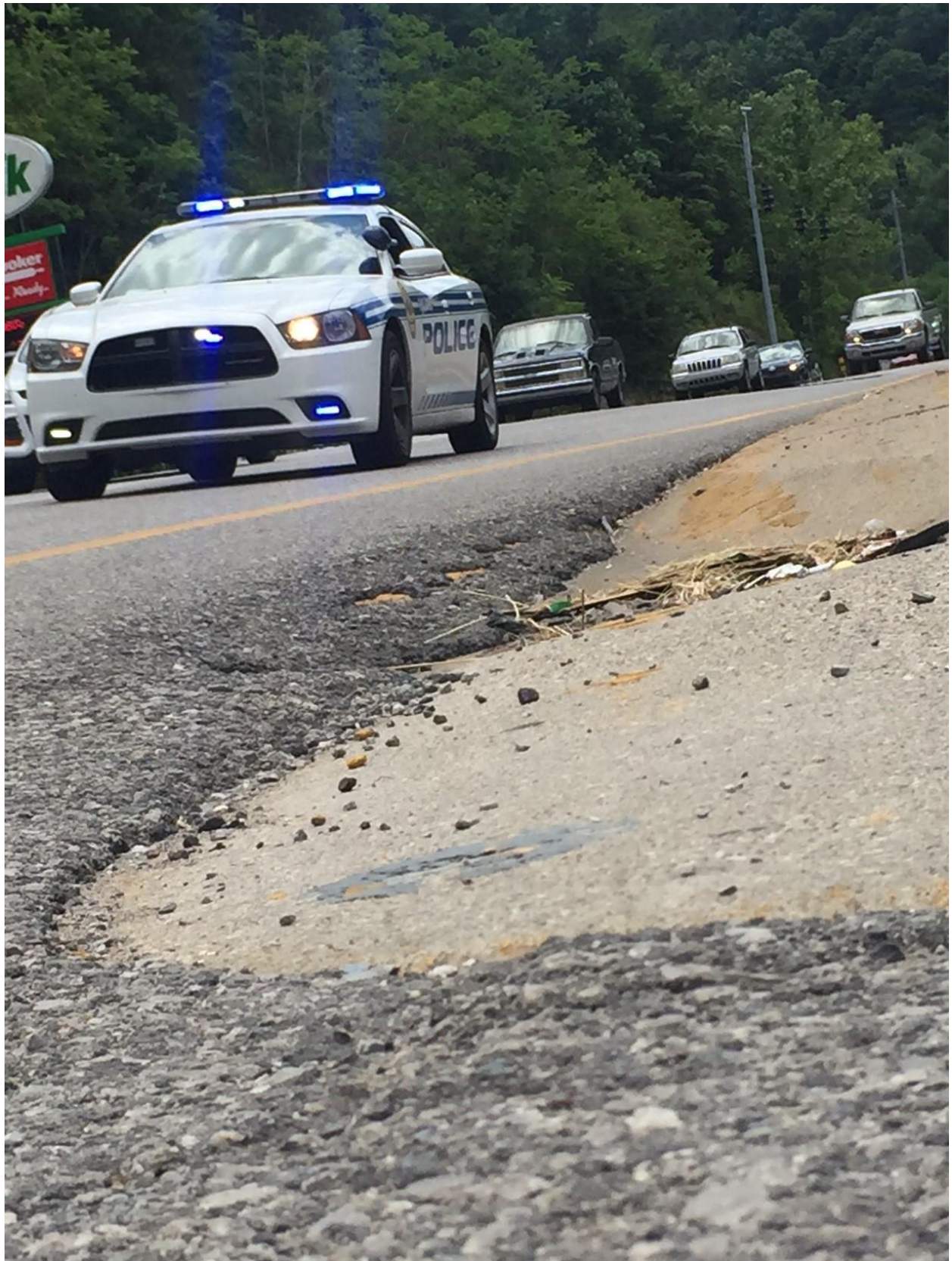




Kentucky Highway 15 North- End of raised concrete median

Kentucky Highway 15 North- End of raised median closeup





Kentucky Highway 15 North close up raised median



Kentucky Highway 15 North- area of traffic stop



Kentucky Highway 15 North- alternate view of traffic stop



Kentucky Highway 15 North- surface at area of traffic stop



Kentucky Highway 15 North- close up of surface at traffic stop

UNIFORM CITATION

KSP 206 (REV 2/1/06)

COURT 2
POLICE

OFFENDER / VIOLATOR	AGENCY <u>Hazard Police Dept</u>										ORI: <u>KY 0970100</u>									
	NAME (L-F-M) <u>Mullins</u> <u>Parma</u> <u>Lee</u>										ATTN: <input type="checkbox"/> HOME PHONE									
	ALIAS										EMERGENCY PHONE									
	ADDRESS (RFD/STREET/APT. NO., ETC.) <u>224 Morris St</u>										KENTUCKY RESIDENT STATUS <input checked="" type="checkbox"/> FULL TIME <input type="checkbox"/> PART TIME <input type="checkbox"/> NON RESIDENT									
VEHICLE	CITY <u>Hazard</u> STATE <u>KY</u> ZIP <u>41701</u>										MARITAL STATUS									
	I.D. TYPE/STATE <u>KY</u> I.D. NUMBER <u>M92103 075</u> S.S. NUMBER										VICTIM'S RELATIONSHIP TO OFFENDER									
	DATE OF BIRTH <u>12/15/46</u> SEX <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AM. INDIAN OR ALASKAN <input type="checkbox"/> ASIAN										ETHNIC ORIGIN <input type="checkbox"/> HISPANIC <input checked="" type="checkbox"/> NON HISPANIC									
	PLACE OF EMPLOYMENT / OCCUPATION CITY STATE										HEIGHT WEIGHT HAIR COLOR EYE COLOR									
DATE / TIME	VEH. MAKE <u>Chrysler</u> VEH. TYPE <u>01</u> VEH. YEAR <u>2015</u> COLOR TOP/BOTTOM <u>white</u>										ALCOHOL/DRUG INVOLVEMENT (SPECIFY) <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> UNK									
	REG. STATE <u>KY</u> REG. YEAR <u>2016</u> REGISTRATION NO. <u>263 TH5</u>										VEHICLE IDENTIFIERS MPH IN MPH ZONE VOL. KEY									
	VIOLATION DATE <u>12/21/15</u> VIOLATION TIME <u>21:27</u> EXACT LOCATION OF VIOLATION / ARREST <u>KY Hwy 15</u>										B.A. RESULTS									
	DATE OF ARREST <u>12/21/15</u> TIME OF ARREST <u>21:47</u> MILES <u>A</u> DIRECTION <u>+</u> CITY <u>Hazard</u> 09701										COUNTY OF VIOLATION <u>preilly 097</u> SECTOR									
CHARGE(S)	VIOLATION CODE <u>02108</u> ASCF <u>189A.010(5A)</u> CHARGES <u>1</u> PLEA <u>1</u> FIND-ING <u>1</u> FINAL VIOLATION CODE <u>1</u> DISP.N. CODE <u>1</u> FINE <u>1</u> COSTS <u>1</u> FEE <u>1</u> JAIL / PRISON <u>1</u> PROB. TIME <u>1</u>										VIOLATION CODE <u>00136</u> ASCF <u>189.290</u> CHARGES <u>2</u> PLEA <u>2</u> FIND-ING <u>2</u> FINAL VIOLATION CODE <u>2</u> DISP.N. CODE <u>2</u> FINE <u>2</u> COSTS <u>2</u> FEE <u>2</u> JAIL / PRISON <u>2</u> PROB. TIME <u>2</u>									
	VIOLATION CODE <u>00136</u> ASCF <u>189.290</u> CHARGES <u>3</u> PLEA <u>3</u> FIND-ING <u>3</u> FINAL VIOLATION CODE <u>3</u> DISP.N. CODE <u>3</u> FINE <u>3</u> COSTS <u>3</u> FEE <u>3</u> JAIL / PRISON <u>3</u> PROB. TIME <u>3</u>										VIOLATION CODE <u>00136</u> ASCF <u>189.290</u> CHARGES <u>4</u> PLEA <u>4</u> FIND-ING <u>4</u> FINAL VIOLATION CODE <u>4</u> DISP.N. CODE <u>4</u> FINE <u>4</u> COSTS <u>4</u> FEE <u>4</u> JAIL / PRISON <u>4</u> PROB. TIME <u>4</u>									
	VIOLATION CODE <u>00136</u> ASCF <u>189.290</u> CHARGES <u>4</u> PLEA <u>4</u> FIND-ING <u>4</u> FINAL VIOLATION CODE <u>4</u> DISP.N. CODE <u>4</u> FINE <u>4</u> COSTS <u>4</u> FEE <u>4</u> JAIL / PRISON <u>4</u> PROB. TIME <u>4</u>										VIOLATION CODE <u>00136</u> ASCF <u>189.290</u> CHARGES <u>4</u> PLEA <u>4</u> FIND-ING <u>4</u> FINAL VIOLATION CODE <u>4</u> DISP.N. CODE <u>4</u> FINE <u>4</u> COSTS <u>4</u> FEE <u>4</u> JAIL / PRISON <u>4</u> PROB. TIME <u>4</u>									
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COURT	COURT DATE <u>12/21/15</u> COURT TIME <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM PAYABLE <input type="checkbox"/> COURT <input checked="" type="checkbox"/> COURT LOCATION <u>District</u>										COURT CASE NO. DISP.N. DATE TRIAL <input type="checkbox"/> B <input type="checkbox"/> J <input type="checkbox"/> N CLERKS INITIALS									
	COURT DATE <u>12/21/15</u> COURT TIME <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM PAYABLE <input type="checkbox"/> COURT <input checked="" type="checkbox"/> COURT LOCATION <u>District</u>										COURT CASE NO. DISP.N. DATE TRIAL <input type="checkbox"/> B <input type="checkbox"/> J <input type="checkbox"/> N CLERKS INITIALS									
POST-ARREST COMPLAINT	POST-ARREST COMPLAINT <u>Blood test / Breath test / Urine test</u>																			
	<u>1) 170 per MTR Vph / Inflm Alc / Drugs / ETC 1st</u>																			
	<u>2) careless Driving</u>																			
	<u>Officer observed vehicle swerve into oncoming lane and travel approximately 100 yards then cross back over into correct lane. Officer administered Field Sobriety test to operator. HGN showed clues of inebriation. Nocturnal at max deviation and for 45 seconds. Pupils stayed at 4mm. Pinpoint even out of the light. Unable to maintain balance longer than four seconds. Lifted arms during test did not count on one leg stand. Walk and turn did not walk heel to toe. Lost balance as she walked multiple times. Had impaired consent at testing sight. She took blood test and it is sent to KSP lab.</u>																			
CDL	CDL LICENSE <input type="checkbox"/> No <input type="checkbox"/> Yes										PLACARDED HAZARDOUS VEHICLE <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes									
	COMMERCIAL VEHICLE <input type="checkbox"/> No <input type="checkbox"/> Yes										CDL CLASS <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C									
CASE	NAME OF WITNESS ADDRESS CITY/STATE										NAME OF WITNESS ADDRESS									
	CASE NO. 1										CASE NO. 2									
	CASE NO. 3										CASE NO. 4									
	CARRIED FOR UCR BY CONTRIBUTOR: <input checked="" type="checkbox"/> OTHER AGENCY: <input type="checkbox"/> SPECIFY										<input type="checkbox"/> IN-CAR VIDEO <input type="checkbox"/> FINGER PRINTS <input type="checkbox"/> PHOTOS EVIDENCE HELD									
CASE	OFFICER'S SIGNATURE <u>X [Signature]</u> BADGE / I.D. NUMBER <u>18</u> ASSIGNMENT <u>city</u>										OFFICER'S SIGNATURE <u>X [Signature]</u> BADGE / I.D. NUMBER <u>18</u> ASSIGNMENT <u>city</u>									
	OFFICER'S SIGNATURE <u>X [Signature]</u> BADGE / I.D. NUMBER <u>18</u> ASSIGNMENT <u>city</u>										OFFICER'S SIGNATURE <u>X [Signature]</u> BADGE / I.D. NUMBER <u>18</u> ASSIGNMENT <u>city</u>									

YEAR 15
CONTROL NUMBER N361309
TYPE 1

189A.010 Operating motor vehicle with alcohol concentration of or above 0.08, or of or above 0.02 for persons under age twenty-one, or while under the influence of alcohol, a controlled substance, or other substance which impairs driving ability prohibited -- Admissibility of alcohol concentration test results -- Presumptions -- Penalties -- Aggravating circumstances.

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (b) While under the influence of alcohol;
 - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
 - (d) While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (e) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
 - (f) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).
- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or (f) of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or (e) of this section.
- (3) In any prosecution for a violation of subsection (1)(b) or (e) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:
 - (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
 - (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered,

together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (e) of this section.

- (4) (a) Except as provided in paragraph (b) of this subsection, the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- (b) A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.
- (5) Any person who violates the provisions of paragraph (a), (b), (c), (d), or (e) of subsection (1) of this section shall:
 - (a) For the first offense within a ten (10) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release;
 - (b) For the second offense within a ten (10) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release;
 - (c) For a third offense within a ten (10) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which

term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release;

- (d) For a fourth or subsequent offense within a ten (10) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release; and
 - (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state or jurisdiction, for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(f) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- (6) Any person who violates the provisions of subsection (1)(f) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).
 - (7) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.08 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (5) of this section.
 - (8) For a second or third offense within a ten (10) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
 - (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
 - (10) In determining the ten (10) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
 - (11) For purposes of this section, aggravating circumstances are any one (1) or more of the following:
 - (a) Operating a motor vehicle in excess of thirty (30) miles per hour above

- the speed limit;
- (b) Operating a motor vehicle in the wrong direction on a limited access highway;
 - (c) Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;
 - (d) Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is 0.15 or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;
 - (e) Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and
 - (f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.
- (12) The substances applicable to a prosecution under subsection (1)(d) of this section are:
- (a) Any Schedule I controlled substance except marijuana;
 - (b) Alprazolam;
 - (c) Amphetamine;
 - (d) Buprenorphine;
 - (e) Butalbital;
 - (f) Carisoprodol;
 - (g) Cocaine;
 - (h) Diazepam;
 - (i) Hydrocodone;
 - (j) Meprobamate;
 - (k) Methadone;
 - (l) Methamphetamine;
 - (m) Oxycodone;
 - (n) Promethazine;
 - (o) Propoxyphene; and
 - (p) Zolpidem.

Effective: April 9, 2016

History: Amended 2016 Ky. Acts ch. 85, sec. 1, effective April 9, 2016. -- Amended 2010 Ky. Acts ch. 149, sec. 17, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 183, sec. 19, effective August 1, 2002. -- Amended 2000 Ky. Acts ch. 467, sec. 2, effective October 1, 2000. -- Amended 1998 Ky. Acts ch. 124, sec. 8, effective July 15, 1998; and ch. 606, sec. 171, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 198, sec. 1, effective October 10, 1996. -- Amended 1991 (1st Extra. Sess.) Ky. Acts ch. 15, sec. 2, effective July 1, 1991. -- Created 1984 Ky. Acts ch. 165, sec. 1, effective July 13, 1984.

Legislative Research Commission Note (4/9/2016). 2016 Ky. Acts ch. 85, sec. 10 provided that that Act shall be known as the Brianna Taylor Act. This statute was amended in Section 1 of that Act.

189.290 Operator of vehicle to drive carefully.

- (1) The operator of any vehicle upon a highway shall operate the vehicle in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles upon the highway.
- (2) No person shall willfully operate any vehicle on any highway in such a manner as to injure the highway.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 2739g-33, 2739g-35.



Southeastern Laboratory Branch
1001 W. 5th Street
London, KY 40741
Telephone #: (606) 877-1464
Fax #: (606) 878-0643

LABORATORY# 15-S-05638 REPORT 1
CITATION# N361309
COUNTY: Perry
RE: Parma Lee Mullins
AGENCY: Hazard Police Department

INVESTIGATING OFFICER: S. Everidge

REPORT OF LABORATORY EXAMINATION

SAMPLE COLLECTION INFORMATION:

Date/Time Taken: 12/21/15 22:15 hrs
Collector: Kayla Slone
Collection Facility: Hazard ARH

MATERIALS SUBMITTED:

Blood: X Urine: Other:

EXAMINATION REQUESTED:

Alcohol: X Drugs:

RESULTS AND CONCLUSIONS:

Alcohol Content of Blood: No reportable ethanol detected.

DISPOSITION:

Sample has been forwarded to the Central Forensic Laboratory, Toxicology Section for further analysis.

A handwritten signature in cursive script that reads "Brittney S. Givens".

Brittney S. Givens

Forensic Scientist Specialist II

Date of Completion: 1/13/16

TOXALCO.RPT Version 01

Effective Date 09/16/2011

Authority: KSP Laboratory System Director



Central Laboratory Branch
100 Sower Blvd. Suite 102
Frankfort, KY 40601
Telephone #: (502) 564-5230
Fax #: (502) 564-4821

LABORATORY# 15-S-05638 REPORT 2
CITATION# N361309
COUNTY: Perry
RE: Parma Lee Mullins
AGENCY: Hazard Police Department
INVESTIGATING OFFICER: S. Everidge

REPORT OF LABORATORY EXAMINATION

SAMPLE COLLECTION INFORMATION:

Date/Time Taken: 12/21/15 22:15 hrs
Collector: Kayla Slone
Collection Facility: Hazard ARH

MATERIALS SUBMITTED:

Blood: X Urine: Other:

EXAMINATION REQUESTED:

Alcohol: Drugs: X

RESULTS AND CONCLUSIONS:

Drug content of Blood: No drugs identified within the current test panel.

DISPOSITION:

The evidence will be held at the laboratory for one hundred and twenty (120) calendar days from the date of this report after which time it will be destroyed.

A handwritten signature in cursive script, reading "Chad E. Norfleet".

Date of Completion: 4/12/16

Chad E. Norfleet

Forensic Scientist Specialist II

REPORT OF LABORATORY EXAMINATION

Drugs In Current Test Panel

6-Monacetylmorphine	Tramadol
7-Aminoclonazepam	Trazodone
Alpha-hydroxyalprazolam	Zolpidem
Alprazolam	
Amphetamine	
Benzoyllecgonine	
Buprenorphine	
Butalbital	
Cannabinoids	
Delta-9-THC	
11-Nor-Carboxy THC	
Carisoprodol	
Clonazepam	
Cocaine	
Codeine	
Cyclobenzaprine	
Dextromethorphan	
Diazepam	
Diphenhydramine	
Estazolam	
Fentanyl	
Hydrocodone	
Hydromorphone	
Ketamine	
Lorazepam	
Meperidine	
Meprobamate	
Methadone	
Methamphetamine	
Methylenedioxyamphetamine (MDA)	
Methylenedioxymethamphetamine (MDMA)	
Morphine	
Nordiazepam	
Oxazepam	
Oxycodone	
Oxymorphone	
Phencyclidine (PCP)	
Phenobarbital	
Temazepam	

Measurement Uncertainty calculations are based on a 95% confidence level.

COMMONWEALTH OF KENTUCKY
PERRY DISTRICT COURT
CASE NO.: 15-T-03121

COMMONWEALTH OF KENTUCKY

VS.

Parma Lee Mullins

MOTION

Comes the Commonwealth and moves the following charge(s)

1) DUI 1st 2) Careless Driving

1. ☒ Dismissed - With Warning () Proof Provided ()
2. ☐ Amended to _____
3. ☐ the Defendant be permitted to attend State Traffic School in lieu of fine.
4. ☐ Diversion for _____ months on condition no further violations.
5. ☒ Other KSP lab reports attached.

Lonell W. Williams

PERRY COUNTY ATTORNEY

ORDER

IT IS HEREBY ORDERED, upon motion of the County Attorney, that the above case be and is hereby :

1. ☒ The Commonwealth's Motion is OVERRULED () GRANTED (☒)
2. ☒ Dismissed (with) without prejudice.
3. ☐ Amended to _____
4. ☐ The Defendant is referred to State Traffic School in lieu of fine.
5. ☐ Diversion for _____ months. Reset _____ for dismissal if no further violations.
6. ☐ Costs and/or fine _____
7. ☐ Other _____

This 20th day of April, 2016.

R. M. McMonahan
JUDGE, PERRY DISTRICT COURT
Ret. Judge

FILED
COST PAID
DATE
CHARLES IRA PATTERSON
PERRY CIRCUIT AND DISTRICT CLERK
PLAINTIFF
DEFENDANT
COMMONS
D.C.



KENTUCKY
COURT OF JUSTICE

15-T-03121

COMMONWEALTH VS. MULLINS, PARMA LEE

PERRY DISTRICT COURT

Filed on 12/22/2015 as TRAFFIC with HON. LEIGH ANNE STEPHENS

**** NOT AN OFFICIAL COURT RECORD ****

Parties

MULLINS, PARMA LEE as DEFENDANT / RESPONDENT

15-T-03121

DOB: 12/15/1946 DLN: M92103075 OPERATOR'S LICENSE - KENTUCKY Race: W Sex: F

Bail Bonds

SURETY for \$500.00 set on 12/22/2015 and posted on 12/22/2015
random drug tests, no ill use of alc or cont sub, all sch court

Address

224 MORRIS STREET
HAZARD KY 41701

EVERIDGE, STEVE, HPD, as COMPLAINING WITNESS

Address

HAZARD POLICE DEPARTMENT
600 HIGH STREET
HAZARD KY 41701

OFFICE OF PUBLIC ADVOCACY as ATTORNEY-PUBLIC ADVOCATE

Address

470 MAIN ST.
HAZARD KY 41701

Charges

15-T-03121

OP MV UNDER/INFLUENCE OF ALCOHOL/DRUGS, ETC. .08 1ST OFF - 189A.010(5)(A)

CHARGE 1 ORIGINAL 0021080

Charged on 12/21/2015 by citation 5N3613091-1

888: Blood Test Pending

CARELESS DRIVING - 189.290

CHARGE 2 ORIGINAL 0001360

Charged on 12/21/2015 by citation 5N3613091-2

Documents

15-T-03121

NOTICE OF HEARING filed on 02/16/2016

NOTICE OF HEARING filed on 01/21/2016

Events

15-T-03121

PRETRIAL CONFERENCE scheduled for 07/26/2016 09:05 AM in room ***** with HON. LEIGH ANNE STEPHENS
INFORMAL

PRETRIAL CONFERENCE scheduled for 07/26/2016 01:00 PM in room: ***** with HON. LEIGH ANNE STEPHENS

ARRAIGNMENT scheduled for 03/21/2016 09:01 AM in room ***** with HON. LEIGH ANNE STEPHENS
SCHED DATE: 01/25/2016 Sched Date: 02/15/2016

Images

15-T-03121

There are no images found for this case.

*** End of Case Number : 15-T-03121 ***



Southeastern Laboratory Branch
1001 W. 5th Street
London, KY 40741
Telephone #: (606) 877-1464
Fax #: (606) 878-0643

LABORATORY# 15-S-05638 REPORT 1
CITATION# N361309
COUNTY: Perry
RE: Parma Lee Mullins
AGENCY: Hazard Police Department

INVESTIGATING OFFICER: S. Everidge

REPORT OF LABORATORY EXAMINATION

SAMPLE COLLECTION INFORMATION:

Date/Time Taken: 12/21/15 22:15 hrs
Collector: Kayla Stone
Collection Facility: Hazard ARH

MATERIALS SUBMITTED:

Blood: X Urine: Other:

EXAMINATION REQUESTED:

Alcohol: X Drugs:

RESULTS AND CONCLUSIONS:

Alcohol Content of Blood: No reportable ethanol detected.

DISPOSITION:

Sample has been forwarded to the Central Forensic Laboratory, Toxicology Section for further analysis.

Brittney S. Givens

Brittney S. Givens

Forensic Scientist Specialist II

Date of Completion: 1/13/16

OXALCO.RPT Version 01

Effective Date 09/16/2011

Authority: KSP Laboratory System Director



Central Laboratory Branch
100 Sower Blvd. Suite 102
Frankfort, KY 40601
Telephone #: (502) 564-5230
Fax #: (502) 564-4821

LABORATORY# 15-S-05638 REPORT 2
CITATION# N361309
COUNTY: Perry
RE: Parma Lee Mullins
AGENCY: Hazard Police Department
INVESTIGATING OFFICER: S. Everidge

REPORT OF LABORATORY EXAMINATION

SAMPLE COLLECTION INFORMATION:

Date/Time Taken: 12/21/15 22:15 hrs
Collector: Kayla Slone
Collection Facility: Hazard ARH

MATERIALS SUBMITTED:

Blood: X Urine: Other:

EXAMINATION REQUESTED:

Alcohol: Drugs: X

RESULTS AND CONCLUSIONS:

Drug content of Blood: No drugs identified within the current test panel.

DISPOSITION:

The evidence will be held at the laboratory for one hundred and twenty (120) calendar days from the date of this report after which time it will be destroyed.

A handwritten signature in cursive script, reading "Chad E. Norfleet".

Date of Completion: 4/12/16

Chad E. Norfleet

Forensic Scientist Specialist II

**HAZARD POLICE DEPARTMENT
POLICIES AND PROCEDURES MANUAL
SECTION 2 OPERATIONS**

Issued: January 01, 2013
Supersedes: All Priors

Approved: Chief Minor Allen
References: [KACP standards: 1.2](#)

Chapter 1 – Laws of Arrest

PURPOSE

NOTE

This rule or regulation is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

PURPOSE

To define the authority of officers to arrest, and the mechanism for making arrests with and without a warrant.

POLICY

It shall be the policy of the Hazard Police Department to exercise critical judgment in making arrests in accordance with the laws of the Commonwealth.

DEFINITIONS

A. Arrest

[KRS 431.025\(2\)](#) states that an arrest is made by placing the person being arrested in restraint, or, by his submission to the custody of the person making an arrest. The law enforcement officer has normally made an arrest when he takes the person into police custody and control, with the intent to hold him on a criminal charge.

- B. **“In his presence”** means that the officer is using one of his/her five senses and does not rely on witness accounts.

PROCEDURES - ARREST IN GENERAL

A. Jurisdiction

The Chief of Police and all members of the police force in cities of the 3rd class shall possess all of the common law and statutory powers of constables and sheriffs. They may exercise those powers, including the power of arrest for offenses against the state, anywhere in the county in which the city is located, but shall not be required to police any territory outside of the city limits.

[KRS 95.019](#)

B. Requirements of a Legal Arrest

The general requirements for an arrest are:

1. The officer must act with legal authority and have **probable cause to arrest; and**
2. The officer must intend to arrest the person, that is, intend to hold him on a criminal charge; **and**
3. The officer must take the person into custody and control; **and**
4. The elements of KRS 431.015 dictate that an arrest is a legal option; **and**
5. The arrested person must be advised that he is being arrested and why. There are some exceptions:

The courts usually require no such notice where:

- a. Officer reasonably believes giving notice would endanger the life of the officer or other innocent persons.
- b. Reason for arrest is obvious (such as arrest of an armed robber after hot pursuit);

- c. Person is incapable of understanding (such as too drunk, or unconscious).

C. Use of Force to Arrest – (See Operations Manual Chapter 2 – Use of Force)

D. KRS 431.015 – Enforcement of Misdemeanor/Violation Offenses

1. a. KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b) and (c) of this subsection, a peace officer shall issue a citation instead of making an arrest for a misdemeanor committed in his or her presence, if there are reasonable ground to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
 - b. A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:
 - (1) A violation of KRS Chapter 508 (assault and related offenses), 510 (sexual offenses), or 527 (offenses relating to firearms and weapons) or KRS 189A.010 (DUI);
 - (2) An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
 - (3) An offense in which the defendant refuses to follow the peace officer's reasonable instructions
 - c. A peace officer shall make and arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.
2. A peace officer may issue a citation instead of making an arrest for violation committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charge is a violation of:
 - a. [KRS 189.290](#) - Reckless driving
 - b. [KRS 189.393](#) - Failure to comply with traffic officer's signal
 - c. [KRS 189.520](#) - DUI involving vehicle other than motor vehicle

- d. [KRS 189.580](#) - Leaving scene of an accident
- e. [KRS 511.080](#) - Criminal trespass – third degree
- f. [KRS 525.070](#) - Harassment
- g. [KRS 189.223](#) - Measuring or weighing vehicle by police officer
- h. [KRS 281.600](#) - Federal motor carrier safety regulations
- i. [KRS 189A.010](#) - DUI, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e)
- j. [KRS 235.240](#) - Operating a boat while under the influence

E. Other Instances When an Arrest May Not be Made

- 1. Voters, in all cases except treason, felony, breach of surety of the peace, or violation of election laws, shall be privileged from arrest during their attendance at elections, and while they are going to and returning there from.
- 2. All members of the General Assembly shall, in all cases except treason, felony, breach of surety of the peace, be privileged from arrest returning from the same; and from a speech or debate in either House they shall not be questioned in any other place.
- 3. No arrest of Kentucky National Guardsmen while at, or going to or from, a place of active service (except for a felony.)
- 4. When the arrest warrant limits the time of the arrest (quite rare).
- 5. Statute of limitations.

In Kentucky, the government has one (1) year within which to start prosecution against someone for a misdemeanor or violation.

Therefore, it would be improper to arrest someone without a warrant for a misdemeanor or violation when more than one (1) year has gone by since the offense was committed.

There is **no** statute of limitations for felony charges.

E. Arrest Without a Warrant

1. A peace officer, who has probable cause, may make an arrest without a warrant for a felony or misdemeanor committed in his presence and cited under KRS 431.015. He may not arrest without a warrant for a misdemeanor committed outside of his presence except for:
 - a. KRS 433.236(3) - Shoplifting – Theft By Unlawful Taking
 - b. KRS 431.005(2) - Assault Fourth Degree in a domestic situation
 - c. KRS 189A.010 - DUI involving a motor vehicle
or
KRS 281A.210 - DUI involving a commercial motor vehicle.
 - d. Violation of Contempt of a Pre-Trial Order.
 - e. Violation of an Emergency Protection Order or Domestic Violence
Order. (EPO/DVO)
2. An officer may arrest for a felony on a probable cause without a warrant even though the felony occurred outside his presence.

F. Arrest with a Warrant

1. A warrant shall be issued by a judge. ([RCr 1.06\(a\)](#) defines “judge” to include any justice, judge, or district court trial commissioner in the Kentucky Court system.) If all circuit judges, district judges and trial commissioners are absent from the county, the circuit clerk may issue warrants prepared by the Commonwealth’s Attorney or County Attorney.
See [RCr 2.02](#) and [RCr 2.04](#)

A warrant is not issued unless there is first a criminal complaint that establishes probable cause to believe an offense has been committed and the defendant committed it. The complaint is a written statement of the essential facts constituting the offense charged. The complaint is made under oath and is signed by the complaining party before a judge or before another person authorized by a judge.

See [RCr 2.05](#) and [RCr 2.04](#)

A warrant may also be issued by a judge for Failure to Appear.
See KRS 431.015(3).

2. Warrant Requirements – [RCr 2.06\(1\)](#)

- a. Must be based on a complaint ([RCr 2.04](#)), on an indictment or information ([RCr 6.52](#)).
- b. Must be in written form and in the name of the Commonwealth.
- c. Must state the date issued and the court to which it is returnable.
- d. Must name or describe the offense charged and the county in which it allegedly occurred.
- e. Must specify the name of the defendant, or any name or description by which he is identified with reasonable certainty.
- f. Must specify the name of the complaining party or parties.
- g. Must be directed to all peace officers in the Commonwealth and direct that the defendant be arrested and brought before the court to which the warrant is returnable.
- h. Must be signed by the issuing officer and state his title.

3. Defective warrant, etc. – [RCr 2.08](#)

When a warrant (including summons or citations) is found to be defective because of its form, the person arrested (summoned or cited) is not to be discharged. Instead, the warrant (summons or citation) may be amended to correct the defect.

4. Execution (service) and return

An arrest warrant may be executed (served) by any peace officer. ([RCr 2.10.](#)) [KRS 431.420](#) does provide that any warrant issued by a

district court for an offense committed within a city shall be served by the police department of that city if the warrant is to be served in the city limits.

The officer need not have the warrant in his possession at the time of the arrest, but he must inform the defendant of the offense charged and the fact that a warrant has been issued ([RCr 2.10](#)). A copy of the warrant and the complaint pursuant to which it is issued shall be served on the arrested party at the time of the arrest or as soon thereafter as practicable. [RCr 2.06\(4\)](#). The officer executing the warrant shall return it, and the complaint, to the court to which it was returnable within a reasonable time after executing it. [RCr 2.12\(1\)](#).

Once the warrant is served on the arrested person, the officer will fill out a Kentucky Uniform Citation. (For properly coding of the citation, refer to the Kentucky Uniform Citation Manual.)

5. Warrant on indictment or information

The procedures that apply to an arrest warrant issued on a complaint also apply to an arrest warrant issued on an indictment or information, except that the warrant is issued by the court clerk (as directed by the court upon the request of the prosecutor). [RCr 6.52](#)

G. Arrest Outside of Officer's Jurisdiction

1. Pursuit to make an arrest:

- a. A peace officer in actual pursuit may continue such pursuit across corporate (i.e. city) or county lines for the purpose of making an arrest. [KRS 431.045](#). If a person has been lawfully arrested and escapes, or is rescued, the person he escapes from may immediately pursue and retake him in any part of the Commonwealth, and he may be joined in the pursuit and recaptured by peace officers in the immediate area or vicinity. [KRS 431.055](#). See OM I-5, this Manual.

If the arrest is made in a county other than the one in which the warrant was issued, and the arrested person is not taken as commanded in the warrant, he shall be taken before a judge of the county in which the arrest was made, who shall admit him to bail for his appearance before the proper judge. If the offense is ineligible for bail or the person cannot post bail, he shall be committed to jail and within a reasonable time taken to the county where the warrant was issued, by a peace officer of the issuing county. [RCr 3.02](#). When the person is arrested without

a warrant for an offense committed in another county, such as after pursuit, the same procedure is followed as when a warrant is issued.

- b. Whether an officer in hot pursuit into another state takes his peace officer's authority (such as power of arrest) with him across the state line depends on the law in the other state. Kentucky has no statute granting fresh pursuit authority to out-of-state officers. Therefore, officers pursuing into Kentucky have no more authority than a private citizen. As for Kentucky officers, the following states have laws that permit officers in fresh pursuit to enter and arrest on a **felony** charge: Indiana, Ohio, Tennessee, and West Virginia. Missouri and Virginia have similar laws, but they apply only if the other state reciprocates (grants the same authority to their officers). Since Kentucky does not have such a law, Kentucky officers pursuing into Missouri or Virginia have no peace officer powers. Illinois permits officers to enter and arrest for a **felony or a misdemeanor**.

2. Arrest powers while assisting in another county

Under [KRS 431.007](#), a full time police officer of a city, county, or urban-county government can retain his full arrest powers (county-wide except for sixth class city officers) in another county provided:

- a. His department meets the requirements of [KRS 15.440](#) (the incentive pay program); and
- b. His services are **officially** requested by a law enforcement agency in such county; and
- c. These services are not related to any labor dispute or strike.

These added powers will be in effect while he is in that County for the duration of the matter for which he was requested.

H. Defendant's Rights at the Time of Arrest

- 1. The suspect who is arrested by a peace officer has the following rights:

- a. To be informed of the officer's intention to arrest and of the offense charged. [KRS 431.025](#)
 - b. To be free from unnecessary force or violence being used by the arresting officer. [KRS 431.025](#)
 - c. To contact an attorney. [RCr 2.14](#)
 - d. To be taken before a judge without unnecessary delay. [RCr 3.02](#).
(In actual practice, the officer will take the defendant to jail. It then becomes the responsibility of the pre-trial release system to get the defendant before a judge.)
 - e. To have basic fairness or "due process of law" in police treatment of him. This is to be adhered to any time the officer is dealing with a person. Whether it be temporary detention, booking, questioning, etc.
2. A suspect who has been arrested is now legally in police "custody." Therefore, if officers wish to interrogate him as to the involvement in the crime charged, they must advise him of his rights (commonly called the "Miranda" rights) before interrogating him.
 3. After advising him of his rights, the officer should ask additional questions to make certain he understands and wishes to waive the rights before questioning. The officer may ask the following questions:
 - a. Do you understand each of these rights that I have explained to you?
 - b. With these rights in mind, do you wish to talk to us now?

If the suspect knowingly waives these rights (without coercion or trickery) and agrees to answer questions or make a statement, the officer may then interrogate him. It is preferable that any waiver of rights obtained from a suspect:

- a. Be in writing;
- b. Be signed by the subject;
- c. Show the notice of Miranda rights have been given along with the date and time;

- d. Show that the subject knows these rights and knowingly waives them.
- e. Be witnessed by at least two (2) officers.

I. Arresting Sixteen (16) or Seventeen (17) Year-Old Traffic Violator(s)

Juvenile court does not have jurisdiction over a sixteen (16) or seventeen (17) year-old charged with a moving motor vehicle offense – criminal court does. The officer should arrest or cite these persons the same as he would an adult. Refer to policy and procedure on juveniles (OM 1-9).

J. Recording Arrest on Kentucky Uniform Citation Form

1. [KRS 431.450\(4\)](#) requires officers to fill out a Uniform Citation form anytime they arrest someone. By doing this, the officer is not citing the person to appear in court, he is merely making a record of the arrest. A copy of the citation is then used to provide input to the statewide Criminal History Record Information System, and serves as a post arrest complaint.
2. When an arrestee refuses to take the breath-test for a DUI arrest, this must be noted **CONSPICUOUSLY** on the arrest form in the narrative section.
3. Evidence shall be processed as required (**See OM Chapter 5, this manual.**)

HAZARD POLICE DEPARTMENT POLICIES AND PROCEDURES MANUAL

SECTION 2 OPERATIONS

Issued: January 01, 2013
Supersedes: All Priors

Approved: Chief Minor Allen
References: [KACP standards: 22.1, 22.3, 22.4, 22.5 & 22.6](#)

Chapter 8 – Traffic Law Enforcement

PURPOSE:

The purpose of this general order is to prescribe procedures for traffic law enforcement, preventative patrol, proactive enforcement, and relationships with motorists, pedestrians, and the courts.

POLICY

It shall be the policy of the Hazard Police Department to take appropriate action when traffic violations occur, with an intent to prevent accidents and injury.

PROCEDURE – GENERAL

1. Types of Enforcement Actions:

a. Warnings:

Officers may issue verbal or written warnings to a violator at their discretion.

b. Kentucky Uniform Citation (KUC):

A KUC should be issued to a violator who jeopardizes the safe and efficient flow of vehicular and pedestrian traffic, including hazardous moving violations or operating unsafe and improperly equipped vehicles.

The Kentucky Uniform Citation will be completed whenever a motorist is to be charged with a motor vehicle violation. Officers shall advise drivers of the following information:

1. Court appearance schedule.
2. Whether court appearance by the motorist is mandatory.
3. Whether the motorist may be allowed to prepay the fine before the court and enter a guilty plea.
4. Any other information necessary before release of the motorist.

c. Physical Arrest:

Officers may make a physical arrest, if they feel such a step is necessary, as long as the arrest is in compliance with Kentucky Revised Statutes.

PROCEDURES – TRAFFIC LAW ENFORCEMENT PRACTICES – GENERAL

1. Traffic Violator/Officer Relations

a. Followed in all traffic stops

1. Be alert at all times for the unexpected
2. Be absolutely certain the observations of the traffic violation were accurate.
3. Present a professional image in dress, grooming, language, bearing, and emotional stability.
4. Be prepared for the contact by having the necessary equipment and forms, if they are to be used, immediately available.

b. Before making a vehicle stop

1. Maintain a reasonable distance between the vehicle and the police unit.
2. Locate a safe spot to stop the vehicle.
3. Activate the emergency lights and, when necessary, siren to signal the vehicle to stop.
4. Advise the dispatcher of the intention to stop the particular vehicle, giving:
 - a. Vehicle's license tag number and/or other description when necessary.
 - b. Location of the stop.
5. Officer should position the police vehicle approximately one-half ($\frac{1}{2}$) to one (1) car length behind the violator's vehicle. The police vehicle shall be positioned so that it will offer the officer some protection from approaching traffic. This position shall be two feet (2') outside and to the left of the violator's vehicle. This position provides maximum safety to the violator, the officer, and all other traffic.

c. Stopping the Vehicle

When stopping a vehicle in which the vehicle is deemed to present a hazard to the officer's safety, in addition to the above:

1. Request a backup unit and calculate the stop so that the backup unit is in the immediate area before the actual stop.
2. Position the unit's auxiliary lights (spotlight and takedown lights) on the occupant(s) of the vehicle when applicable.
3. When necessary, use the unit's public address system to give the occupant(s) of the vehicle instructions.

d. Hazards

1. On multi-lane roadways, the officer should insure the safety of the violator during the lane changes by gradually changing from lane to lane with the violator until the right side of the roadway is reached.
2. Should the violator stop abruptly in the wrong lane or in another undesirable location, the officer shall direct him to move to a safer location. Officers shall use the public address system to instruct violators to move to a safer location. If the officer's oral directions and gestures are misunderstood, the officer shall quickly leave the patrol vehicle and instruct the violator.

e. Approaching the Violator

The following steps in stopping and approaching a traffic violator are intended to provide maximum safety for the officer, the violator, and other users of the roadway. Varying conditions regarding the engineering of the particular traffic way, the urgency to stop the violator (drinking driver), and the existing volume of traffic may require adjusting or altering the recommended procedure.

Under ideal conditions, follow these procedures, if possible:

1. The officer shall leave the patrol vehicle and be continuously alert for any suspicious movement or actions on the part of the violator or other occupants in the violator's vehicle.
2. The officer shall approach from the rear of the violator's car, looking into the rear seat and stop behind the trailing edge of the left front door. This position shall be maintained if there are only occupants in the front seat of the vehicle. From this position, the officer can communicate with the violator, keeping him in a slightly awkward position and at the same time keep all occupants of the vehicle in view.
3. In cases where the violator's car has occupants in both the front and rear seats, the officer should approach to the leading edge of the left rear door, alert for any unusual actions on the part of the occupants and choosing a path so the door cannot be used as a weapon against the officer. From this position, the officer can communicate with the violator and keep all occupants in view.
4. In traffic stops made by a two-officer (2) patrol vehicle, the passenger officer shall handle all radio communications, write all notes and messages related from the communications center, and during the traffic stop, shall leave the vehicle and act as an observer and cover for his fellow officer. At no time shall the two (2) officers approach the violator together.

5. At night, officers shall exercise caution in selecting an appropriate place for the traffic stop, signaling the violator, and positioning the police vehicle. After the stop, the headlights shall be on low beam for the safety of oncoming traffic, and emergency bar lights and emergency flashers in use on the patrol vehicle (as well as during the day).

f. Communicating with the Violator

In transacting his business with the violator, the officer shall:

1. Greet the violator courteously with an appropriate title.
2. Inform the violator what traffic law he has violated and the intended enforcement action; the violator should not be kept in suspense.
3. Ask for the violator's driver's license, insurance card, and vehicle registration, and accept only these forms. If the driver offers money, the officer shall refuse the money and advise the driver of the illegality of the offer.
4. If the driver has no driver's license, obtain another document of identification.
5. Allow the driver to discuss the violation. Do not argue, berate, belittle, or otherwise orally abuse the violator.
6. Complete the forms required for the enforcement action (citation or written warning) taken or exercise a verbal warning, if appropriate.
7. Explain to the violator exactly what he is supposed to do in response to the action taken and how this action will affect him.
8. If the enforcement action requires a court appearance, make sure the violator knows where and when to appear. Explain any alternatives to the violator, but do not predict the actions of the court.
9. Be alert to any emotional stress exhibited by the driver. If stress is present, the instructions may have to be repeated or the violator may need to calm down before resuming driving.

g. Conducting the Transaction

1. Return the violator's driver's license, registration, insurance card, and a copy of the warning.
2. Release the defendant after he is given a copy of the citation.
3. Assist the violator in safely re-entering the traffic flow.

2. Stopping a Known or Suspected Felon

Special procedures shall be used in vehicle stops when the occupants are known to be armed and dangerous. When a vehicle driven by a known or suspected felon is located by an officer, he will notify the dispatcher immediately of his location and give a thorough description of the vehicle and its occupants. The officer will keep the suspect vehicle in view and request sufficient assistance in making the stop.

The officer will keep support units informed of the location and direction of travel to aid their approach with minimal use of emergency equipment. The suspect vehicle will not be stopped unless absolutely necessary until adequate support is available and in position. Circumstances may, however, dictate a one-officer felony vehicle stop.

The following procedures will be used in effecting the stop:

- a. The officer will attempt to stop the suspect vehicle in a location, which presents the least amount of danger to the officer and the public.
- b. When conditions are appropriate and support units available, the officer will move into position at the rear of the suspect vehicle.
- c. The officer will signal the violator to stop, using all emergency equipment to warn other traffic.
- d. The officer will attempt to stop the violator on the extreme right side of the road.
- e. If the violator is known to be armed and dangerous, the officer will have his weapon easily accessible and ready for immediate use.
- f. When the suspect vehicle begins to stop, the officer will turn off the siren and turn on the public address system.
- g. The officer will park the police vehicle so that it provides maximum protection and cover.
- h. At night, the officer shall focus all lights on the interior of the suspect vehicle.
- i. The officer will leave the police vehicle quickly but remain behind the door and accessible to the public address system microphone.

- j. The officer making the stop is in command and will direct each occupant, using the public address system, to get out of the vehicle and into the appropriate search position, as follows:
 - 1. First, once suspects are stopped, the officer shall order the driver to shut off the motor and drop the keys on the ground outside his door.
 - 2. Next, the officer shall order occupants to place their hands, palms up, on the ceiling of the vehicle.
 - 3. Officers shall then order occupants to exit the vehicle on the driver's side only, one at a time.
 - 4. Occupants will then be ordered to lie face down on the ground.
- k. If a public address system is not available, the officer will give voice commands if they can be heard; if this fails, the officer will cautiously approach the vehicle, keeping all occupants in view, to a point where he can be heard.
- l. To reduce confusion, the officer will instruct support officers, as appropriate, and will be the only officer to direct the suspects.
- m. The support officers will cover the arresting officer and remain on the curbside of the vehicle until all occupants are in the search position.
- n. Officers will exercise extreme caution not to get within each other's line of fire.
- o. When all occupants have been removed from the vehicle, the support officers shall move to cover the arresting officer while the persons are handcuffed and then searched.
- p. Arrestees will be handcuffed and searched before transportation.

3. Persons Charged with Revoked/Suspended Operator's License

- a. The Kentucky Uniform Citation (KUC) may be issued when an officer has stopped a vehicle and identified the driver as driving with a revoked or suspended operator's license (KRS 186.620), however, it is the policy of this Department to arrest for these violations.
- b. An officer who sees a person driving who is known to be under suspension or revocation may swear out a warrant if not able to stop the violator.

4. Speed Enforcement

An officer shall uniformly enforce speed laws within Hazard, Kentucky city limits. Procedures for the enforcement of laws applying to speed will vary in accordance with the type of equipment used.

a. Pacing

The officer shall follow the vehicle being paced at a constant interval for an adequate distance normally two (2) or more city blocks, to obtain a speedometer reading.

b. Radar

Radar shall be applied where vehicle speed is a hazard to other motorists or pedestrians. The following guidelines govern the use of radar, which will always be operated in compliance with manufacturer's instructions. All departmental radar units meet current NHTSA standards.

1. The radar unit must be properly installed in the vehicle and connected to the appropriate power supply.
2. Operators must thoroughly understand the effective range of the radar unit so observations can support the speed meter readings.
3. The operator should choose an appropriate location in which to run radar.
4. The radar unit shall be properly calibrated to insure accuracy in checking speed. The operator must follow the manufacturer's recommended specific methods of checking calibration without exception. Any problems with the operation of radar units or apparent malfunction shall be promptly reported to the operations commander.
5. Officers shall be trained by a KLEC approved radar training course before enforcement actions can be administered by evidence gather through the use of radar.

5. In court, officers must establish the following elements of radar speed:

- a. The time, place, and location of the vehicle, the identity of the operator, the speed of the vehicle, and the visual and radar speed check.
- b. Officer qualifications and training in use of radar.
- c. Proper operation of radar unit
- d. The unit was tested for accuracy before use and after use by an approved method.
- e. Identification of the vehicle.
- f. Speed limit in the zone in which officer was operating and where the signs were posted.

6. The operations commander is responsible for the proper care and upkeep, maintenance, calibration of radar units, maintenance of records, and that appropriate certificates are on file in the Hazard Police Department records room.

HAZARD POLICE DEPARTMENT POLICIES AND PROCEDURES MANUAL

SECTION 3 INVESTIGATIONS

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17.5,

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References: KACP standards:

17.6 & 17.7

Chapter 1 – Investigations Overview

PURPOSE

To establish guidelines for the general conduct of preliminary and follow-up investigations.

POLICY

The preliminary purpose of a police investigation is to collect facts leading to the identification, arrest, and conviction of an offender, and to organize and present the facts for a successful prosecution. The single most important criterion which determines a successful investigation is the officer's obtaining and handling information supplied by a victim or witness after the crime. The Police Department expects officers to treat investigations as a skill developed through training and experience, a skill that demands intelligence, logic, and discipline.

PROCEDURE -- PRELIMINARY INVESTIGATIONS

1. General

The preliminary investigation begins when the first officer arrives at the scene of a crime (or a citizen requests assistance in a telephone call) and continues through postponement of the investigation until detectives can intervene assuming that postponement will not jeopardize the investigation.

2. A preliminary investigation consists of, but is not limited to, the following activities:
 - a. Provide aid to the injured.
 - b. Protect the crime scene to ensure evidence is not lost or contaminated.
 - c. Determine if an offense has actually been committed, and if so, the exact nature of the offense.

- d. Determine the identity of the suspect or suspects and effect an arrest if it can be accomplished either at the scene or through immediate pursuit.
- e. Furnish other field units with descriptions, method and direction of flight of suspects, and other relevant information concerning wanted suspect of suspects or vehicles.
- f. Obtain complete identification of all witnesses.
- g. Determine in detail the exact circumstances of the offense.
- h. Arrange for the collection of evidence.
- i. Legally obtain written statements from victim, witnesses, and from the suspects.
- j. Decide the necessity of some degree of follow-up surveillance of the crime scene.
- k. Accurately and completely record all pertinent information on the prescribed report forms.

3. Follow-up (KACP 17.5)

The initial stages of most preliminary investigations, including crime scene processing, will be conducted by patrol officers. In certain serious crimes as defined in Section IV, investigators will be called, will respond, and will assume responsibility for completion of investigation.

4. Supervisory Responsibilities

The watch supervisor or the commanding officer on duty shall ensure that an adequate and complete preliminary investigation has been made and then will review, screen, and approve the officer's report. Screening should include review of facts to ensure all essential information indicating a criminal act is included, along with legibility, clarity, and completeness. Supervisors shall review, approve, and sign crime reports.

5. Crime Scene Control

Officers shall limit access to crime scenes to those persons immediately and directly connected with the investigation. Investigating officers shall apply this rule to other officers of the division, of other agencies, or members of the community irregardless of rank or position.

6. Suspension of Cases

A patrol officer making an initial report of a crime will indicate in the report whether or not the case should be suspended. The officer will notify the reporting party of his/her decision to suspend the case. The reviewing supervisor will endorse or deny this recommendation. Such a recommendation shall be based on the following:

- a. Availability of witnesses.
- b. Naming of a suspect.
- c. Information about suspect's location.
- d. Information about suspect's description.
- e. Information about suspect's identification.
- f. Information about suspect's vehicle.
- g. Information about traceable property.
- h. Information about significant modus operandi.
- i. Information about significant physical evidence.
- j. Presence of evidence technician who indicates that good physical evidence is present.
- k. A judgment by the patrol officer that there is enough information available that, with a reasonable investment of investigative effort, the probability of case solution is high.
- l. A judgment by the patrol officer that there is sufficient information available to conclude that no one other than the suspect could have committed the crime.

PROCEDURES: INVESTIGATIONS ASSIGNMENTS (KACP 17.5)

1. Homicides, rapes, and commercial robberies, major disasters, hostage situations, bombings, and kidnappings will be followed up by the department detective or designated investigator. In the absence of the department detective, patrol officers (or their supervisors) shall conduct the entire investigation preliminary and follow-up. Occasionally cases may be assigned to the department detective by the Chief of Police, depending upon the circumstances.

2. Occasionally, additional investigation will be required at the end of the watch by the assigned officer. In such cases, the assigned officer's immediate supervisor will determine whether the investigation should be discontinued until the assigned officer's next tour of duty or continued by the investigating officer, or an officer on the relieving watch.
3. Except in cases where the investigation would be jeopardized by its temporary discontinuance, IT SHALL REMAIN THE RESPONSIBILITY OF THE ASSIGNED OFFICER.
4. A supplemental report must be prepared by each officer who works on the case, but not necessarily for each occasion he/she works on it. The investigator will maintain a file to ascertain that supplemental reports are submitted as required.
5. On major offenses, supervisors shall ensure that each officer who responds submits a supplement detailing what that officer saw and heard as it pertains to the offense.
6. A follow-up investigation consists of, but is not limited to, the following activities:

For a non-criminal case:

- a. Interviewing complaints and witnesses.
- b. Locating missing persons.
- c. Determining if information or suspicious activity related to criminal activity.
- d. Distributing information to the proper persons or agencies.
- e. Locating lost property and returning same to the owner.
- f. Investigating deaths, overdoses, suicides and injuries to determine if a crime was committed.
- g. Making necessary notifications, conducting necessary inspections, etc.
- h. Recording information obtained.

For a criminal case:

- i. Reviewing and analyzing reports of preliminary investigations.
- j. Recording information obtained during follow-up investigations.
- k. Reviewing divisional records for investigative leads.

- l. Seeking additional information (from other officers, informants, contacts in the community, other investigators/agencies, etc.).
- m. Interviewing victims and witnesses.
- n. Interrogating suspects.
- o. Arranging for the dissemination of information as appropriate.
- p. Planning, organizing, and conducting searches.
- q. Collecting physical evidence.
- r. Recovering stolen property.
- s. Arranging for the analysis and evaluation of evidence.
- t. Reviewing results from laboratory examinations.
- u. Identifying and apprehending the offender.
- v. Checking for suspect's criminal history.
- w. Determining if other crimes may have been committed by the suspect.
- x.. Consulting with the Perry County Attorney's or the Commonwealth Attorney's offices in preparing cases for court presentation and assisting in the prosecution thereof.
- y. Notifying victims and witnesses when their presence is required in court.
- z. Attendance to testify in court.
- aa. Plan, organize, obtain warrants for, and conduct searches.
- bb. Arrange for polygraph examinations, if necessary.

SOURCES OF INFORMATION

1. General

Informant - By definition, an informant is a person who provides information. A citizen giving an officer information about neighborhood activities is an informant. An arrested person who provides information about other participants in a crime is an informant. A cooperative individual who provides information about who

committed a particular crime and who receives money from an officer as payment is an informant.

2. Informants

Information is available from many sources, e.g., concerned citizens who wish to remain anonymous, criminals who have first-hand knowledge of illegal activity, and relatives or friends of those involved in criminal activities. These sources should be kept in mind when conducting investigations and related interviews. Officers are cautioned to determine the motivation of people who provide information in order to evaluate it.

- a. Informants when used in any investigation should be documented. Consideration of information from informants and an examination of the reliability and credibility should be accomplished through the criminal investigations section and on a case by case basis with county or commonwealth attorneys.
- b. Requests for money to pay informants will be handled case by case in accord with confidential fund procedures. The Police Department may budget some funds through the year which are administered and distributed by the criminal investigations section supervisor. A request for funds to be paid to an informant will be submitted to the CIS supervisor and the CIS supervisor will forward the request up the chain of command, ultimately the Chief of Police shall make the final decision.

No cash disbursements shall issue without a detailed accounting by the requesting officer of the merits of the informant's information and the viability of the particular investigation. Money delivered to an officer or informant will be receipted with proper signatures in accord with the division's applicable policy.

- c. Informant confidentiality will be maintained. Officers will not discuss cases involving informants with anyone not participating on the case.

3. Developing informants

- a. An officer shall develop a variety of information sources or informants. In many cases, information will flow as a result of friendly, courteous conversations and questioning, by building rapport, by providing efficient police response, and just by listening and talking.
- b. For purposes of this policy, an informant is defined as someone who provides useful information concerning criminal activity including vice, organized crime, or intelligence and who expects some kind of return. Return is defined as payment in money, assisting the prosecution, or the satisfaction of a personal need to contribute to the improvement of the neighborhood.

- c. In developing informants, officers shall ensure confidentiality of informant identities and transactions but will observe the lawful accountability.

4. Identity of informants

- a. Each officer who wishes to develop and use an informant is to be paid from the criminal investigations confidential fund must advise the criminal investigations section supervisor as to the identity of the informant and the scope of the proposed investigation.
- b. A file will be maintained bearing the informant's name, social security number and, if needed, a photograph and fingerprints of the informant. Any payments made to the informant will be noted by a receipt of payment and the information or work that had been given. These files shall be stored in the evidence room by the evidence and property room custodian.
- c. The Hazard Police Department seldom uses juvenile informants. However, if use is indicated, this type of informant must have the approval of the criminal investigations supervisor, the chief of police, the county or commonwealth attorney, and submit to the division's procedure for such use.
- d. Once an informant file has been prepared, all future references to the informant in any reports will be by number or code name only. Informant's name will not be used.
- e. The CIS supervisor is responsible for keeping the informant file up to date. The officer simply requests the file from evidence and property room custodian, places the additional information within, and returns it.
- f. Informant files can be retained indefinitely, but the officers are encouraged to keep only active informants on file.
- g. Officers may retain their own duplicate files, but will be responsible for file security.

5. Use of police informants

- a. Police officers will not make any deals with people concerning charging, pleading, or sentencing. Police officers may, however, consult with the commonwealth attorney and the county attorney regarding these matters.
- b. Informant information may become the basis for a variety of legal and police processes. The officers should carefully consider the possibilities of being required to identify an informant in a courtroom, possibly placing that informant in jeopardy.

- c. Informants as participants in offenses must be willing to testify in court.
- d. Officers shall deal with informants very carefully and with circumspection, particularly with those of a different sex or those whose sexual preferences may make an investigation susceptible to compromise.
- e. Use of juvenile informants is particularly sensitive. Officers must follow division policy closely.
- f. The CIS supervisor can provide information on the availability of funds to pay informants.
- g. Specific guidelines exist through case law regarding the legal use of informants. The following points are offered to help officers judge the usefulness of their informants:
 - 1. If possible, corroborate informant's tips through independent investigation.
 - 2. If informant's tips form probable cause to arrest or search, the officer involved must be prepared to justify to the court why the informant is credible and his information reliable.

6. Interviews and Interrogations

a. Field Interviews:

Field interviews are a productive tool and source of information for the Police Department. They should be used only in the pursuit of legitimate goals of the division and not to harass citizens. When used properly they can discourage criminal activity, identify suspects, and add intelligence information to the files of known criminals.

b. Victim-Witness Interviews:

- 1. The trauma/stress to which the victim of witness has been subjected should be considered and the interview conducted in such a manner as to reduce stress and minimize further problems.
- 2. The age, physical limitations, and credibility of witnesses should also be considered.

c. Interrogation of Suspects:

Interrogations to obtain investigative leads can be very useful, but all constitutional precautions must be taken and recorded if the interrogation is to be used in court later. Detailed notes or a recorded tape should be made of

the interrogation for court use giving time, date, location, officers present, waiver of rights, and time interrogation ended.

Statements obtained during an interrogation must not be based on coercion, promises, delays in arraignment, or deprivation of counsel. In order to use a statement in court, a suspect should be advised of his Miranda rights, (if in custody) and the officer must be able to demonstrate that the suspect understood those rights. Juvenile victims, witnesses, and suspects must be given the same constitutional protection as adults. The following additional safeguards should be followed:

1. Parents or guardians shall be notified whenever a juvenile is interrogated, taken into custody, or charged.
 - a. Parents do not have to be present during an interrogation of a Juvenile.
 - b. Miranda warnings must be given before talking to or taking a Juvenile into custody.
2. The number of officers engaged in the interrogation should be kept to a minimum. The interrogation should be short.
3. A brief explanation of the juvenile justice system and divisional procedures should be provided.

7. Collection, preservation, and use of physical evidence

Officers must realize that physical evidence is of major importance in all cases, particularly those without witnesses. The successful prosecution of a case often hinges on the quality of the physical evidence collected and preserved.

- a. All officers are responsible for the preservation of evidence, and for maintaining and documenting the chain of custody of all evidence that is in their charge.

RELATIONSHIP WITH COMMONWEALTH ATTORNEY

1. All personnel are required to make appointments in advance, be on time, have subject for discussion ready, and keep conversations brief.
2. In every contested case, misdemeanor or felony, the officer involved will make an appointment with the commonwealth attorney or his/her assistant to discuss the case before trial. Normally, if the return date of a case is put off, this is an indication that the case will be contested.

3. During an investigation (or during planning for arrest or pretrial stages), any questions of law or criminal procedure will be addressed to the commonwealth attorney or assistant. Questions on police procedures will be addressed to the CIS supervisor or to the Chief of Police.
4. Any criminal cases referred to the commonwealth attorney which result either in a decision of declined to prosecute or dismissed due to divisional mishandling must be carefully reviewed by the commonwealth attorney. The commonwealth attorney has been asked to call such cases to the attention of the Chief of Police.

ORGANIZED/VICE CRIMES AND POLICE INTELLIGENCE INFORMATION AND COMPLAINTS

1. Officers may receive information on or complaints regarding organized crime, vice, or matters of law enforcement intelligence demanding investigation. Organized crime and vice activities and areas of police intelligence interest may include any of the following:
 - a. Corruption, extortion, bribery.
 - b. Illegal sale and distribution of liquor, tobacco, firearms, or controlled substances.
 - c. Prostitution, pornography.
 - d. Gambling.
 - e. Theft/fencing rings.
 - f. Loan sharking or labor racketeering.
 - g. Terrorism, subversive activities, civil disorders.
2. Officers receiving such information will prepare an incident/information report which should include the following information:
 - a. Type of illegal/suspected activity, location, names and addresses of suspects involved and information concerning the activities.
 - b. If complainant: name, address, and telephone number.

3. Initially, the reporting officer will conduct no preliminary or follow-up investigation, but will personally contact the commanding officer and the chief of police concerning the reported information.
 - a. The chief of police, commanding officer, and/or CIS supervisor will confer on the case with appropriate state, federal, or local law enforcement agencies.

DISPOSITION OF CASES

1. The CIS supervisor shall maintain files of all cases assigned to or taken up by the section. All case files will be appropriately labeled with the date of incident, name of victim, name of suspect or arrested person.
 - a. The file shall contain a copy of the original incident report, any supplementary reports, statements, reports of disposition of any property stolen, confiscated, recovered, or otherwise pertinent to the case, plus arrest reports, and anything else the investigator deems pertinent.
2. When the investigation is complete, the investigator shall close the case under (and include in the file a statement giving reason) one of the following labels:
 - a. Cleared - an arrest has been made in this case.
 - b. Exceptional Clearance - the identity and addresses or exact location of the culprit is known and sufficient evidence to obtain a warrant exists. However, due to some reason outside the control of the police, no arrest will be made. Examples: complainant will not prosecute; commonwealth attorney will not prosecute; perpetrator is dead; subject arrested by another jurisdiction and no charges will be placed by the division.
 - c. False Report - the reporting party lied in order to mislead the police concerning the incident. Do not confuse unfounded and false report. It is a violation of the law to deliberately make a false report. An unfounded report is usually made in the belief that the offense actually occurred, but, in fact, did not.
 - d. Suspended - all leads have been exhausted. No further investigation is possible or practical until new leads develop.
 - e. Unfounded - the offense did not really occur in the first place, although at the time of the original report, it was believed to have occurred. If the investigation has exhausted all leads, yet the possibility remains that new facts may come to light given future inquiry, the case shall remain open.

DUI Detection Summary

Phase I: Vehicle in Motion

- **Task 1 - Initial observation of the vehicle.**
 - **Decision - Should I stop the vehicle?**
 - Possible outcomes: Yes, No or Wait (gather more evidence).
- Task 2- Observation of the stop.

Phase II: Personal Contact

- **Task 1: Interview and observations of the driver.**
 - Decision - Should I have the driver exit the vehicle?
 - Possible outcomes: Yes, No or Wait (gather more evidence).
- Task 2: Observation of the exit (and walk)

Phase III: Standardized Field Sobriety Test (SFST)

1. Horizontal Gaze Nystagmus (HGN) Test
2. Walk and Turn Test
3. One Leg Stand Test
 - Perform all SFST as demonstrated in class and during practical exercises.
 - Follow instructions on the Standard Field Sobriety Test Sheet.

Medical Impairment - Prior to administering HGN to a potential DUI subject, we must rule out possible medical impairment. Should signs of medical impairment be recognized it may be advisable to not administer the remaining SFSTs. For instance, a glass eye or a victim of an auto crash may show these conditions.

- **Check pupil size** - Move in slightly towards the subject (remembering officer safety) to ensure the size of the pupils are the same in one eye as in the other. If one pupil is larger than the other this is indicative of a medical disorder or injury to the head.
- **Check for Resting Nystagmus** - If, when looking at the eyes without moving the stimulus, the eyes begin jerking, this is known as resting nystagmus. Take precautions as this indicates a high dosage of alcohol or certain other drugs, such as PCP.

- Check for Equal Tracking Ability (2X) - Beginning at the starting point, move the stimulus to a point beyond the shoulders, back across to the outside of the other shoulder at a speed of approximately 2 seconds from the nose to the outside, 2 seconds on the return and two seconds to the other side and 2 seconds on that return. One complete pass will be about 8 seconds; 16 total seconds when checking each eye twice. The sole purpose of this evaluation is to ensure both eyes are following the stimulus. If one eye is following but the other is not, it is possible the person has a medical condition, a head injury or a glass eye.

1. Horizontal Gaze Nystagmus (HGN)

Officers are to use the following administrative procedures each time they administer the HGN, in the same order:

- Eyeglasses: if the person wears glasses, have them remove them for this test. The subject does not need to be able to focus on the stimulus, only follow it.
- If the subject is wearing any type of brimmed hat, either remove it or turn it around so as not to shade the eyes. Shading the eyes makes nystagmus more difficult to see.
- Be sure to hold your stimulus in your non-weapon hand.

Three indicators of HGN:

1. Lack of Smooth Pursuit

- This occurs when the eyes fail to smoothly follow the stimulus as it is being moved from side to side horizontally. When the eyes are pursuing smoothly it is similar to a marble rolling down a piece of glass. When the eyes are not following smoothly it is similar to a marble rolling down rough sandpaper. You will notice some jerking as the eyes attempt to catch up to the stimulus.
 - Many students become confused when they practice equal tracking and smooth pursuit. We administer both of them in the same manner. The difference is we are looking to see if the eyes track in the first case. In the second case we know the eyes track, now we want to see if they pursue smoothly. Thus, two different objectives, even though they are both administered in the same manner.

2. Distinct Nystagmus at Maximum Deviation

- Here we are looking to see if there is any jerking of the eye when it is held at the maximum distance from the center. The stimulus should be beyond the shoulder and there should be no white showing between the eyeball and the furthest point or maximum deviation. The stimulus will be held at that point for at least four seconds.
- The reason for holding at maximum deviation for at least four seconds is because in fifty percent of the population, nystagmus can be seen for a few seconds, even when no alcohol or drugs have been consumed. This naturally occurring nystagmus will dissipate after two-three seconds.
- The jerkiness must be distinct and sustained for the minimum four second period. Additionally, it is perfectly acceptable to hold the stimulus for 5, 6, 7, 8 and 9 seconds or more to ensure the jerkiness is seen. At the same time, if the stimulus is held for too long (about 30 seconds) then a concept known as fatigue nystagmus will set in and the jerking of the eyeballs will be seen.

3. Onset of Nystagmus Prior to 45 Degrees

- When administering this test, the administrator is looking to see if the eye begins jerking prior to the onset of a 45 degree angle from the starting point (in front of the nose) to the angle of onset. The stimulus should be moved slowly, for a full four seconds, until the onset is detected. Once detected, stop to ensure the jerking continues. If the jerking continues, return at normal speed to the starting point and then continue to check the right eye. Note: if jerking stops when detected prior to 45 degrees, continue out to the 45 degree angle.
- The 45 degree angle is usually at the tip of the shoulder. Another way to determine if the 45 degree angle is present is to measure the distance from the stimulus to the nose, then the distance from the starting point to the 45 degree angle will be the equal distance as this. For instance, if the stimulus is 12 inches from the nose, then the stimulus will be moved horizontally 12 inches. If the stimulus is 14 inches from the nose, then move 14 inches from the starting point. Also, there should be white showing from the eye to the side closest to the ear.

Total the Clues - There is a potential one clue for each eye. There are thus two clues potentially for lack of smooth pursuit, two clues for jerkiness at maximum deviation and two clues for onset prior to 45 degrees. Thus, there are six clues maximum for the HGN.

- 4 clues indicate a BAC .080 or over.
- 6 clues indicate a BAC .10 or over.

Perform all SFST as demonstrated in class and during practical exercises.

Follow instructions on the Standard Field Sobriety Test Sheet.

The Walk and Turn test and the One Leg Stand field sobriety tests are balance tests. They are also considered Psychophysical tests and Divided Attention tests.

These tests require the suspect to divide attention among mental tasks and physical tasks. The mental tasks include comprehension of verbal instructions; processing of information; and recall of memory. The physical tasks include balance and coordination.

Qualifying Question:

Prior to starting the W&T the following question should be asked:

"Is there anything that would prevent you from taking a balance test?"

Ask this question in this manner. Do not suggest an answer within the question, i.e., "There's no reason you can't take a balance test is there?"

This would be a leading question.

2. Walk and Turn - A divided attention test.

- Two stages:
 - Instruction stage
 - Walking stage

Both stages are essential parts of the test. Important evidence of impairment often comes to light during both stages.

Walk and Turn Clues:

- Instruction Stage:
 1. Cannot keep balance
 2. Starts too soon

- **Walking Stage:**
 - S - Stops walking**
 - H - Fails to touch Heel to Toe**
 - O - Steps Off Line**
 - R - Raises Arms (Over 6 inches from side)**
 - T - Turns Improperly**
 - S - Wrong number of Steps**

The acronym SHORTS will assist in learning the eight clues possible in the Walk and Turn test.

You may observe a number of different behaviors when a suspect performs this test. Research however, has demonstrated that the behaviors listed below are the most likely to be observed with a BAC of 0.08 or more. Look for the following clues each time this test is given:

Cannot keep balance while listening to the instructions. Two tasks are required at the beginning of this test. The suspect must balance heel-to-toe on the line and at the same time, listen carefully to the instructions. Typically, the person who is intoxicated can do only one of these things. He or she may listen to the instructions, but not keep balance.

Record this clue if the suspect does not maintain the heel-to-toe position throughout the instructions. If the suspect were to come out of the instruction phase stance, have him to retain the stance. Do not record this clue if the suspect sways or used the arms to balance but maintains the heel-to-toe position. This clue is recorded only if the feet actually break apart.

If the suspect begins to walk before the instructions are finished, record this as a clue. The intoxicated person may keep balance, but not listen to the instructions. Since you specifically instructed the suspect not to start walking "until I tell you to begin", record this clue if the suspect does not wait.

Record the following clues if observed while suspect is performing the walking stage:

- Suspect stops while walking to steady himself or pauses to regain his balance. Do not record this as a clue if he is merely walking slowly.

- Suspect's failure to touch heel-to-toe, going in either direction while walking. You must only count this as a clue if the suspect leaves a space of one-half inch or more between heel and toe. This requires a certain amount of subjective opinion on the part of the testing officer. Some other parts of these tests require subjective opinion as well.
- Suspect steps off the line. Record this as a clue only if the suspect steps entirely off the line.
- Suspect using arms to balance. If the suspect raises one or both arms from the sides six inches or more.
- It is often possible to note two of these clues simultaneously.
- Suspect takes incorrect number of steps. Record this as a clue if the suspect takes either more or fewer than nine steps in either direction. It is the number of steps that the suspect physically takes that matters here. Mistakes in the verbal count do not justify recording this clue.
- Suspect loses balance during the turn, such as staggering or stumbling.
- Suspect turns in any way other than the way that you demonstrated, such as:
 - Failure to keep the front foot on the line during the turn and removing both feet from the line
 - Turning in the wrong direction or backwards.
 - Pivoting in one movement rather than taking a series of small steps, etc. (Two or more steps is considered a "series" of small steps).
- Should the suspect have difficulty with this test (for example, steps off line), have the suspect continue the test from the point of difficulty, not from the beginning. This test tends to lose its sensitivity if it is repeated several times.
- If the suspect cannot keep his balance to the point that the officer feels that the safety of the suspect is now in question, the test should be terminated. This could happen at any time during the test, either in the instruction phase or the walking phase.
- The test can be terminated if the suspect cannot safely complete it. For example: The suspect falls or nearly falls; The suspect gets into a "leg-lock" position (legs crossed, unable to move).
- The test should be stopped if unsafe for the suspect. If the suspect cannot do the test, record the observed clues and document the reason for not completing the test. Be prepared to explain in court why the suspect could not complete the test.
- If a DUI suspect exhibits at least two clues of the possible eight clues, there is a 79 percent probability that the suspect's BAC is above .08.

Officer Positioning:

Right-handed officers (those whose weapon is carried on the right side) – To provide a reactionary gap for officer safety, stand at least 6 feet away at a 45 degree angle. As you read the instructions, turn your head, not your body, toward the suspect. In other words, do not stand directly facing the suspect.

You must always be to the suspect's right, with your weapon facing away from the suspect. Never turn your back to the suspect.

When demonstrating the turn you must take 3 steps and turn on your left foot and the first right foot step will be "one" on the return (Demonstrate).

Left-handed officers (those whose weapon is carried on the left side) - stand at least 6 feet away at a 45 degree angle to the suspect. As you read the instructions, turn your head, not your body, toward the suspect. In other words, do not stand directly facing the suspect.

You should always be to the suspect's left, with your weapon facing away from the suspect. Never turn your back to the suspect.

When demonstrating the turn you should take 4 steps and turn on your right foot and the first left foot step will be "one" on the return (Demonstrate).

Officer should remain motionless while the suspect performs the test.

Excessive motion will make it more difficult for the suspect to perform, even if sober.

Test Conditions

Walk and turn requires a hard, dry, level non-slippery surface with sufficient room for the suspect to complete nine heel-to-toe steps. A straight line must be clearly visible on the surface. If no line is available, it is possible to conduct the test by directing the suspect to walk in a straight line parallel with a curb, guardrail, etc. Conditions must be such that the suspect would be in no danger if he/she were to fall.

Some people have difficulty with balance even when sober. People more than: 65 years of age; Over 50 pounds overweight; With physical impairments that affect their ability to balance should not be given this test.

Individuals wearing heels more than 2" high should be given the opportunity to remove their shoes if they choose to.

Perform all SFST as demonstrated in class and during practical exercises.

Follow instructions on the Standard Field Sobriety Test Sheet.

One Leg Stand: A Divided Attention Test

Use the same officer position as the W&T test.

There are two stages:

- The instructions stage (no possible clues during the Instructions Stage)
- The count stage

One Leg Stand Test Clues:

P - Puts foot down

U - Uses arms for balance

S - Sways while balancing

H - Hops

The officer should start the thirty seconds as soon as the suspect raises his/her leg to the proper position. Some suspects will look at their leg or look straight ahead without counting after raising their leg. Remind them how to correctly perform the test. However, the 30 second time period has already begun once the suspect has lifted his foot to the 6 inch position, not after the suspect starts counting.

Time is critical for this test. Research has shown that a person with a BAC of 0.08 can maintain his/her balance for up to 25 seconds, but seldom as long as 30 seconds. It makes no difference how fast or slow the suspect counts. You must closely observe the time and terminate the test at thirty seconds.

Researchers however, have found that those behaviors listed below are the most likely to be observed in someone with a BAC of .08 or higher. Look for the following clues each time the test is given:

- Suspect puts the foot down before thirty seconds elapse. If the suspect's foot touches the ground, have the suspect raise it and continue counting until told to stop.
- Suspect using the arm or arms to balance. The suspect moves the arms six inches or more from the side of the body in order to keep balance.
- Suspect keeps one foot off of the ground, but hops on the anchor foot in order to keep balance.

- **Suspect Sways While Balancing.** This refers to a distinct, noticeable side-to-side or front-to-back movement of the elevated foot or of the suspect's body. Does not include slight tremors of the foot or body.

Record a failure to complete the test if the subject demonstrates that he/she cannot do the test. For example, the suspect falls or nearly falls.

The suspect may be told at any time to stop counting for their safety or inability to properly perform the test.

Be prepared to explain in court why the suspect could not complete the test.

If an individual produces two or more clues or fails to complete the one-leg stand, there is a good chance the alcohol concentration is 0.08 or higher, so your decision point on this test is two clues.

Using that criterion, you will correctly classify about 83% of the people you test as to whether their alcohol concentration level is at or above .080.

For both of the two balance tests, even if a clue shows up more than once, each clue is counted only once (maximum 8 clues).

Remember, the three SFSTs are all tools to assist you in seeing visible signs of impairment. They are not pass/fail tests.

The three SFSTs, along with the PBT, are all field sobriety tests. Their role in DUI detection is to help establish probable cause, aid in the arrest decision, and help you decide which evidential test you should request.