

COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT
2007-013333

RECOVERY LOCATION:
CONTAINER NUMBER: 8

CAR # FOR VIDEO:

CELL NUMBER:

SCENE PROCESSING

PROCESSED: BY:

PHOTOS:

PRINTS:

ADMINISTRATION

OFFICER1: WEAVER, DONALD

#: 001399 UNIT:

DATE: 10/21/2007

OFFICER2:

#: UNIT:

ROUTE : STATE PROSECUTOR

CLEARANCE : CLEARED BY ARRE EXCEPTION: ARREST ON PRIMARY

DATE: 10/20/2007

SUPERVISOR : WHITE, JOHN

#: 001059

NARRATIVE TYPED BY: HUSTEAD, ASHLEY R

ON: 10/21/2007

ATTACHMENTS:

RELATED REPORT NUMBERS:

INCIDENT NARRATIVE

SUSPECT ARRESTED FOR DRIVING WHILE INTOXICATED AFTER
DRIVING HIS VEHICLE INTO THE REAR OF ANOTHER VEHICLE.

NARRATIVE

#523197

On October 20, 2007 at approximately 9:47 p.m. Officers Rigsby and Cavener were dispatched to a three vehicle collision at the intersection of Green Meadows Road and Bethel Street. Sergeant Shelley Jones requested that I respond to the accident to render assistance. The officers responsible for investigating the accident had limited experience with investigating intoxicated drivers. At approximately 10:34pm, I arrived at the accident scene.

Upon my arrival, I observed three vehicles on Green Meadows Road that appeared to have collided with one another. It appeared that a Chevrolet Monte Carlo bearing Missouri license S19 had collided with the rear of another vehicle, which then collided with the rear of a third vehicle. For further information regarding the collision, please see the Missouri Standardized Accident Report compiled by Officer Rigsby.

I made contact with three men that were congregated near the stop sign, Dale Cramer, John Merritt, and Charles Graham. Cramer denied having consumed any alcohol and exhibited no signs of impairment. Merritt denied having consumed any alcohol and exhibited no signs of impairment. Graham, too, initially

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COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT

2007-013333

denied having consumed any alcohol. However, despite the fact that we were outdoors in relatively heavy winds, I detected a strong odor of alcoholic beverage on his breath.

I again asked Graham whether he had been drinking any alcohol. This time, Graham replied he had had "a few drinks" over the last two hours. He said he had been drinking Bud Light. I asked Graham "How many is a few?" Graham replied "that's it." Graham changed his answer again and later said he had drank two beers in the past two hours.

I performed the horizontal gaze nystagmus test on Graham. I clearly instructed him to refrain from moving his head from side to side. I began the test and Graham, despite my clear instructions, moved his head to follow my fingertip. I re-explained the test, and again clearly requested Graham not move his head. Again, despite my clear instructions, Graham moved his head. Graham was unable to follow simple instructions.

I asked Graham to place his hands on his chin. I have found through past experience that this often serves as a reminder to those performing the horizontal gaze nystagmus test that they are not to move their head. Graham's response to my instruction to place his hands on his chin was nonsensical. Graham explained he was unable to do what I had requested because he was "partially paralyzed." He also explained he had a "balance problem," and that he has what he described as a "paralyzation problem." He continued, explaining he was "not able to do a lot of things in terms of paralyzation." Graham's comments were patently absurd, as what I was requesting did not involve balance or any parts of his body except his head and arms. Graham slurred and mumbled when he spoke.

At this point, probable cause existed to believe that Graham was operating a motor vehicle while intoxicated, in violation of State law and municipal ordinance.

Only after I had explained the test four times did Graham follow my fingertip with his eyes and refrain from moving his head. I noticed the lack of smooth pursuit in both Graham's left and right eyes. I noticed distinct nystagmus at maximum deviation in both Graham's left and right eyes. I also noticed the onset of nystagmus prior to 45 degrees (parallel with Graham's shoulders) in both Graham's left and right eyes. Graham's eyes were red, watery, and bloodshot.

I explained to Graham that I was doubtful he had consumed only a few drinks. I explained that I believed he had either consumed much more alcohol than he claimed, or had used alcohol in conjunction with a controlled substance. Graham denied having used any drugs. I again asked Graham how much alcohol he had

COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT
2007-013333

consumed and he remained silent. I asked again, and he told me he was refusing to answer that question.

I told Graham he was under arrest and requested he move his wheelchair near my patrol car so he could seat himself in the back seat. Once he was in my patrol car I handcuffed his hands in front of him and fastened his seatbelt.

Officer Mike Cavener took possession of Graham's wheelchair, disassembled it, and transported it to the Columbia Police Department. I transported Graham to the Columbia Police Department for processing.

At the Columbia Police Department, while Graham and I were still in my patrol car, I asked Graham several routine booking questions. Graham continued to slur his speech and mumble.

I reassembled Graham's wheelchair. I removed the handcuffs from Graham's hands to enable him to remove himself from my patrol car. Graham successfully moved himself from my patrol car to his wheelchair. I guided Graham in his wheelchair into the booking room. Graham indicated that he had to use the restroom. I guided Graham into holding cell number one at approximately 11:08pm. The water in the toilet of the holding cell was clear. At approximately 11:16pm, I guided Graham from the holding cell to the breath test room. I noticed the water in the holding cell toilet was a medium yellow tint. Graham urinated in the holding cell toilet between 11:08pm and 11:14pm.

I read Graham the Implied Consent Statement from page two of the Alcohol Influence Report at 11:18 p.m. Graham reiterated that he wanted to speak with an attorney. I explained to Graham that he would have 20 minutes to use the telephone and contact whomever he chose. I allowed Graham to use his personal cellular telephone, I also offered him use of the telephone in the breath testing room.

At approximately 11:21pm, Graham noticed he had a bruise on his right forearm. He requested medical attention for his aching bruise. I promptly summoned paramedics.

Graham informed me his attorney, Robert A. Murray, was in the lobby of the Columbia Police Department. Graham requested to speak with Murray in person.

At approximately 11:32pm, I escorted Graham to an interview room near the front lobby of the Columbia Police Department. Boone Hospital Center Paramedics Alan Beard and Jeff Norman arrived to evaluate Graham's bruise. Paramedics conducted an evaluation of Graham in the interview room. Sergeant Jones, Murray, and I stood outside and watched. Graham complained his mouth was extremely dry. The paramedics informed Graham that he did in fact have a bruise on his arm

COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT
2007-013333

and that it may continue to ache for several days.

Graham began breathing extremely rapidly. Graham acted as if he was hyperventilating. Despite the fact that Graham was breathing very rapidly, Graham and Murray both requested that paramedics discontinue their evaluation so Graham and Murray could confer in private.

As soon as the door closed, Graham's breathing instantaneously returned to normal and he conversed with Murray without experiencing any further episodes of rapid breathing.

Graham and Murray conversed, in private, for twenty minutes. As soon as Graham exited the room, he demanded to be taken to a hospital. I asked Sergeant Jones to request the paramedics return and transport Graham to the hospital.

I escorted Graham back towards the booking area and informed him we would be returning to the breath testing room where I would again request a chemical test of his breath. He explained he needed medical attention and wanted to be transported to the hospital.

While waiting for the paramedics to arrive I escorted Graham back into the breath testing room in the booking area. At 12:00am (now October 21, 2007), I again read Graham the implied consent statement from page two of the Alcohol Influence Report. When asked whether he would submit to the requested chemical test of his breath, Graham explained, "I am not refusing anything, I need to go to the hospital." I explained to Graham that as soon as the paramedics arrive, he would be transported to the hospital.

During the course of the next few moments, I asked Graham no less than six times whether or not he would submit to the chemical test of his breath. I readied the Intoxilyzer 5000 to accept Graham's breath sample. I inserted a sterile mouthpiece into the Intoxilyzer 5000 air intake hose. Graham was seated only inches from the machine. Graham simply repeated over and over again, "I'm not refusing anything, I need medical attention." I cautioned Graham that his inaction constitutes a refusal under Missouri law. Graham remained steadfast and continued to say, "I'm not refusing anything, I need medical attention."

When the paramedics arrived, they removed Graham from his wheelchair and placed him on a gurney. They transported Graham to the University of Missouri Hospital at his request. We left the Columbia Police Department booking area at approximately 12:20 a.m. We arrived at the University of Missouri Hospital Emergency Room at approximately 12:26 a.m.

I sat in the examination room with Graham when he was evaluated by medical personnel. Graham's attending physician was Scott Schultz. He was also

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COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT

2007-C13333

treated at times by two or three different nurses, one of whom was identified as Nakeya Booth. The first time Schultz entered the room, he adressed Graham as Mr. Graham in a joyous and familar tone. He asked Graham whether Graham remembered him (Schultz); and he mentioned two places or events where the two had encountered one another previously.

Graham acknowledged that he needed to urinate. Graham urinated through a hose that was attached to his penis externally, into a plastic container. Due to where the chairs were situated in relation to the bed, I saw Graham urinate into the container through the hose.

While the medical personnel were doing nothing that required Graham's active involmment or participation, I again read Graham the Implied Consent Statement from page two of the Alcohol Influence Report. This time, I requested a chemical test of his blood. Dr. Schultz was present in the examination room when I read the Implied Consent statement no less than two times. Each time when asked if he would submit to the request of a chemical test of his blood Graham replied, "I am not doing anything until I talk with my attorney." I explained to Graham that I would not allow him to speak with anyone as he had ample opportunity to converse with Murray.

Schultz opined he believed it would be reasonable to allow Graham access to his attorney. I explained to Schultz that, while I appreciated his unsolicited legal advice, I was the sole police officer present at the scene, and was responsible for the care and custody of Graham, and I was also responsible for my own personal safety. I told Schultz I was unwilling to allow any person other than a police officer or employee of University Hospital to remain in the room with my prisoner and me. Schultz persisted and told me, regardless of my wishes, he was going to allow Murray into the room so Graham could consult with Murray. Faced with the certainty that Murray was going to be admitted into the room regardless of my concerns and objections, I told Schultz he could let Murray in the room for a brief consultation, but Murray would then thereafter have to leave.

Murray and Schultz spoke outside of the room for several minutes. Murray and Schultz returned to the room and Murray spoke with Graham in a whisper. Murray brought Graham a botle of water, which he partially drank.

I again read Graham the Implied Consent statement from page two of the Alcohol Influence Report and again requested he submit to a chemical test of his blood. This time, Graham replied he was "not refusing anything," but he was in the Emergency Room and needed medical care. I repeated the Implied Consent statement at least once and asked him at least three additional times whether he would submit to the request of a chemical test of his blood. Each time he explained he was "not refusing anything," but he needed medical care. I asked

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COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT

2007-013333

him several more times in rapid succession and pleaded with him to please answer me with either a yes or a no. He hastily replied, "No." I turned to Murray and confirmed he in fact heard Graham say "no" and affirmatively refuse to submit to the requested chemical test of his blood. Murray argued that this refusal was not relevant because it was his understanding the Graham had already refused a breath test.

Booth removed the near full plastic container of urine from the hose through which Graham urinated. I ordered Booth not to destroy the urine. I ordered her to place the container of urine on the counter in the examination room. There was a large amount of urine in the container. The urine was not going to be subjected to any medical testing as part of Graham's treatment. Even if it were, there was likely more than 12 ounces of urine in the container, undoubtedly a sufficient volume of urine was present to allow ample testing and still have plenty remaining.

I did not subject Graham to any invasive procedures, or any procedures whatsoever, in collecting and securing the urine.

Graham had no reasonable expectation of privacy in the urine that he voluntarily excreted into a container that was going to be discarded.

I had probable cause to believe the urine in the container constituted evidence of the crime of driving while intoxicated, and I had probable cause that the evidence was going to be removed and discarded by hospital staff if I did not immediately seize it. The urine would have long been destroyed in the several hours that it would have taken to secure a search warrant.

I had probable cause to believe the urine in the container constituted evidence of the crime of driving while intoxicated and I had probable cause to believe that the evidence was going to be destroyed by remaining at room temperature if I did not immediately seize it and preserve it by subjecting it to cold temperature. The evidence would have significantly deteriorated in the several hours it would have taken to secure a search warrant.

I had probable cause to believe the urine in the container constituted evidence of the crime of driving while intoxicated, and it was in plain view from my vantage point, seated lawfully in the examination room.

At one point Murray, Shultz, and all nurses left the examination room. I telephoned a co-worker and inquired as to the suitability of a urine sample for blood alcohol content examination. Graham was present in the room during my telephone conversation and was awake and alert.

Moments later, Murray returned to the room. Graham and Murray whispered to one

COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT

2007-013333

another. During their quiet conversation, both Murray and Graham turned their heads and glanced towards the plastic jug containing Graham's urine.

Murray left the room and appeared determined. I feared that Murray was going to contact Schultz and somehow arrange the removal of the urine.

Within seconds, I seized the urine in order to properly secure it and ensure its availability as evidence. I was approached by Booth, who had a look of fear on her face. She pled with me to return the urine to the room. She said, "You can't do that, Dr. Schultz just told me to go get the urine and throw it away." It appeared as if she were simply trying to obey a directive given by a superior. Based on her tone, her facial expression, and her mannerisms, I believe she did not intend to implicate Schultz in a crime or imply any wrongdoing, rather she simply wanted me to return the urine so she would not be punished.

Schultz, Murray, and an unknown female administrator (possibly named Danelle), entered the examination room with Graham and I. I was holding the container of Graham's urine, evidence I had properly seized pursuant to any one of several long recognized exceptions to the search warrant requirement of the Fourth Amendment. Schultz ordered me to turn my evidence over to him. I refused and started to explain the legal bases that justified my actions. Murray explained to me how I was only permitted to request two tests under Missouri Implied consent law and informed me my seizure of the evidence was therefore illegal. The female administrator sternly demanded that I return the urine immediately. With all three people simultaneously talking at me, including Schultz who was actually yelling at me, I offered absolutely no further explanation for my actions. I informed all present that I was a police officer, I was taking the urine, and that I would not be discussing it any further.

Schultz was angry. His fists were clenched and the muscles in his forearms were flexed. His voice got progressively louder. He began pointing his finger at me as he continued to yell at me and order me to relinquish custody of my evidence. He repeatedly informed me that I was not leaving the room with the evidence.

The female administrator demanded to speak with a sergeant. I telephone the sergeant's office and spoke with Sergeant Shouse-Jones. I asked her to have Sergeant Jones respond to the hospital. I informed those present that a sergeant was on the way as I turned to the door.

At one point, while Schultz was at the height of his frustration, he began to reach his hand out toward me. In a loud, clear, and stern voice, I commanded Schultz to back away from me. I threatened to arrest Schultz and anyone else that obstructed me. As I reached the door, I noticed that Murray had placed
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COLUMBIA POLICE DEPARTMENT

PAGE 14

COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT

2007-013333

himself in front of the door knob. I ordered him to move, he ignored me, and instead looked at Schultz. I again ordered him to move and he complied. Sergeant Shouse-Jones was still on the telephone listening to this conversation.

I exited the room and was confronted by two security guards at least one of whom ordered me to stop and to return my evidence. I ordered them to back away and they complied. As I entered the main portion of the emergency room, I was confronted by more security guards who also ordered me to return the urine to the room. As I walked to the exit I heard the female administrator yelling out for someone to call the University Police Department.

I secured the evidence in my patrol car trunk and returned to supervise my prisoner. Sergeant Jones arrived shortly thereafter and met with Schultz, the female administrator, and MUPD Sergeant Fish and discussed the current situation. I later heard portions of the conversation, which were recorded. During the conversation, Schultz characterized Graham as intoxicated, Schultz admitted to having reached his arm out toward me, and Schultz admitted the urine was not going to be tested, rather it was going to be destroyed. For further information regarding Sergeant Jones' conversation with Schultz and the female administrator, and for information regarding the recording, please see her supplementary report.

Sergeant Jones agreed to accept custody of Graham. She stayed with Graham while I left the hospital and returned to the Columbia Police Department.

At approximately 2:11am, I collected two sample containers of the urine, packaged the sample bottles, and secured them in the evidence room freezer. I discarded the remaining urine in a urinal in the men's locker room.

I completed a search warrant application. I requested a search warrant for Mr. Graham's blood, as I had probable cause to believe it contained an unknown amount of alcohol and drugs, evidence of the crime of driving while intoxicated.

I read the search warrant affidavit to Captain Steve Monticelli over the telephone. He orally approved the search warrant application. I responded to the residence of Assistant Prosecuting Attorney Jim Gray, who reviewed and approved the search warrant application. I responded to the residence of Judge Daniels. She issued a search warrant commanding me, or any other officer in the state of Missouri, to seize Charles Graham to obtain a blood sample from him at the University Hospital.

I returned to the University Hospital with the search warrant. I made a copy of the search warrant and provided it to Graham. Booth, as ordered by Judge Daniels, drew Graham's blood. The blood draw was completed at 3:50 a.m. Booth
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COLUMBIA POLICE DEPARTMENT

PAGE 15

COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT
2007-013333

collected two vials of Graham's blood. She provided me with packaging materials of the anaseptic wipe, and the venipuncture device she used.

Sergeant Jones seized the water bottle Murray brought to Graham. I collected a sample of the liquid in the water bottle.

I arranged to transport Graham directly to the Boone County Sheriff's Department for his comfort, as I had realized the rear of my patrol vehicle was less than comfortable for a paralyzed person to enter and exit. Graham returned himself to the rear seat of my patrol car. We returned briefly to the Columbia Police Department, where I collected Graham's remaining personal property, which was secured in a locker, and his wheelchair. I transported Graham to the Boone County Jail.

At the Boone County Jail I fingerprinted Graham. Boone County Sheriff's Corrections officers photographed Graham. I issued Graham two summonses to court: Operating a motor vehicle while in an intoxicated/drugged condition, in violation of RSMO 577.010 (\$500 bond); and operating a motor vehicle in a careless and imprudent manner by failing to maintain a proper lookout and colliding with another motor vehicle, in violation of RSMO 304.012.

I seized Graham's driver license and provided Graham with Missouri DOR form 4323, a notification of revocation of his license.

I returned to the Columbia Police Department and secured all of the items I seized as evidence. The vials of blood and water sample were secured in the evidence refridgerator. The urine was already secured in the freezer. The medical supply packaging materials, the printout from the Intoxilyzer 5000 evidencing Graham's refusal, and the now-empty water bottle were submitted to evidence as well.

I compiled a statement of probable cause and forwarded it to the State Prosecuting Attorney's Office.

I requested the digital video files from my patrol car recording system be retained as evidence. The files capture Graham's arrest, his slurred speech, and his nonsensical comments at the scene of the accident.

I requested and obtained digital video files on CD that capture Graham's movements and actions within the Columbia Police Department. The files capture Graham's behavior in the breath testing room including his refusal to submit to breath testing.

I arranged for the blood, the urine, and the water sample to be tested at the Saint Louis University Forensic Toxicology Laboratory. I requested the blood

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COLUMBIA POLICE DEPARTMENT

OFFENSE REPORT

2007-013333

and urine be tested both for the presence of controlled substances and for blood alcohol content. I requested the water sample be tested for alcohol content.

I intend to file the original search warrant and the return with the Boone County Circuit Clerk.

SUPPLEMENTAL REPORTS FOR THIS OFFENSE

WEAVER, DONALD
REPORTING OFFICER

WHITE, JOHN
SUPERVISOR