

CASE ASSIGNED TO
JUDGE DAVID G. MIRON
BRANCH I

State of Wisconsin

Circuit Court

Marinette County

STATE OF WISCONSIN

DA Case No 2009MR000287

Plaintiff

**CRIMINAL COMPLAINT
ISSUED BY DISTRICT ATTORNEY**

-vs-

RICHARD A. POWELL
700 MAIN STREET
MARINETTE, WI 54143
SEX/RACE: M/W
DOB: 04/08/1969

Case No 2009CF 40

Defendant

FILED

MAR 23 2009
LINDA L. DUMKE-MARQUARDT
CLERK OF COURTS
MARINETTE COUNTY, WI

Corrections Officer Rick Prince, Marinette County Sheriff's Department being first duly sworn, states that

Count 1: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Nicandro Rivas, age 17, by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(a), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years or both.

And the department shall revoke the defendant's operating privilege for five (5) years.

Count 2: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Nicandro Rivas, age 17, by the operation of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(b), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years.

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Count 3: HOMICIDE BY NEGLIGENT OPERATION OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009 in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of Nicandro Rivas age 12 by the negligent operation of a vehicle, contrary to sec. 940.10(1) 939.50(3)(g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

And the Department shall revoke the defendant's operating privilege for one (1) year and shall order the defendant to submit alcohol assessment and if necessary to comply with treatment as a condition of reinstatement.

Count 4: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of Karen Rivas age 15 by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(a) 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years.

Count 5: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of Karen Rivas, age 15 by the operation of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(b), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years.

Count 6: HOMICIDE BY NEGLIGENT OPERATION OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of Karen Rivas age 15 by the negligent operation of a vehicle, contrary to sec. 940.10(1) 939.50(3)(g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

And the Department shall revoke the defendant's operating privilege for one (1) year and shall order the defendant to submit alcohol assessment and if necessary to comply with treatment as a condition of reinstatement.

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Count 7: HOMICIDE-INTOX.USE/VEHICLE-UNBORN CHILD

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of an unborn child in the body of Karen Rivas by the operation or handling of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(c), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both.

Count 8: HOMICIDE-USE VEHICLE/BAC-UNBORN CHILD

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of an unborn child in the body of Karen Rivas by the operation or handling of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(d), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both.

Count 9: HOMICIDE-NEG. OPERATE VEH.-UNBORN CHILD

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of an unborn child in the body of Karen Rivas, contrary to sec. 940.10(2), 939.50(3)(g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

Count 10: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Elina Rivas, age 16, by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(a), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years.

Count 11: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Elina Rivas, age 16, by the operation of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(b), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than twenty five (25) years, or both.

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And the department shall revoke the defendant's operating privilege for five (5) years

Count 12: HOMICIDE BY NEGLIGENT OPERATION OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin did cause the death of Elina Rivas age 16 by the negligent operation of a vehicle, contrary to sec. 940.10(1) 939.50(3)(g) Wis Stats a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000) or imprisoned not more than ten (10) years, or both

And the Department shall revoke the defendant's operating privilege for one (1) year and shall order the defendant to submit alcohol assessment and if necessary, to comply with treatment as a condition of reinstatement

Count 13: HOMICIDE-INTOX. USE/VEHICLE-UNBORN CHILD

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of an unborn child in the body of Elina Rivas by the operation or handling of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(c) 939.50(3)(d) Wis Stats a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years or both

Count 14: HOMICIDE-USE VEHICLE/BAC-UNBORN CHILD

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of an unborn child in the body of Elina Rivas by the operation or handling of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(d) 939.50(3)(d) Wis Stats a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both

Count 15: HOMICIDE-NEG. OPERATE VEH.-UNBORN CHILD

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of an unborn child in the body of Elina Rivas contrary to sec. 940.10(2) 939.50(3)(g) Wis Stats, a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years or both

Count 16: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County Wisconsin, did cause the death of Nancy Rivas age 19 by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(a) 939.50(3)(d) Wis Stats a Class D Felony, and upon conviction may be

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fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years or both

And the department shall revoke the defendant's operating privilege for five (5) years

Count 17: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Nancy Rivas, age 19, by the operation of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(b), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both

And the department shall revoke the defendant's operating privilege for five (5) years

Count 18: HOMICIDE BY NEGLIGENT OPERATION OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Nancy Rivas, age 19, by the negligent operation of a vehicle, contrary to sec. 940.10(1), 939.50(3)(g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000) or imprisoned not more than ten (10) years, or both

And the Department shall revoke the defendant's operating privilege for one (1) year and shall order the defendant to submit alcohol assessment and if necessary to comply with treatment as a condition of reinstatement

Count 19: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Joel Rivas, age 44, by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 940.09(1)(a), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000) or imprisoned not more than twenty five (25) years, or both

And the department shall revoke the defendant's operating privilege for five (5) years

Count 20: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Sunday January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Joel Rivas, age 44, by the operation of a vehicle while having a prohibited alcohol concentration, contrary to sec. 940.09(1)(b), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may

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be fined not more than One Hundred Thousand Dollars (\$100 000) or imprisoned not more than twenty five (25) years or both

And the department shall revoke the defendant's operating privilege for five (5) years

Count 21: HOMICIDE BY NEGLIGENT OPERATION OF A VEHICLE

The above-named defendant on or about Sunday, January 18, 2009, in the Town of Peshtigo, Marinette County, Wisconsin, did cause the death of Joel Rivas, age 44, by the negligent operation of a vehicle, contrary to sec. 940.10(1), 939.50(3)(g) Wis. Stats. a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25 000) or imprisoned not more than ten (10) years, or both

And the Department shall revoke the defendant's operating privilege for one (1) year and shall order the defendant to submit alcohol assessment and if necessary to comply with treatment as a condition of reinstatement

PROBABLE CAUSE: Corrections Officer Rick Prince, your complainant Marinette County Sheriff's Department, states that his information is based upon the records and files of the City of Marinette Police Department Marinette County Sheriff's Department Wisconsin State Patrol and Wisconsin State Laboratory of Hygiene Your complainant has relied upon those records and files in the past and has found them to be both true and reliable Those records and files indicate the following

According to the report of Deputy Lesperance of the Marinette County Sheriff's Department, on Sunday January 18 2009 at approximately 7:45 p.m., he and other officers, fire and rescue personnel, were dispatched to a two vehicle crash on U.S. 41 at Country Meadows Road in the Town of Peshtigo Marinette County, Wisconsin

At this location, U.S. 41 is a four-lane highway with two northbound lanes and two southbound lanes. There is a median between those lanes and County Meadows Road intersects U.S. 41. County Meadows Road has an opening between the north and southbound lanes of U.S. 41 and a person may drive across the U.S. highway and onto a frontage road on the west side of the highway

According to the reports when officers arrived there was a heavily damaged KIA passenger vehicle in the northbound lanes, with the driver's side facing southbound. The doors for the KIA on the driver's side of the vehicle were gone. The roof of the vehicle was peeled back

There was a pick-up truck backwards in the ditch on the south side of the road and north of the KIA. To the south of the pick-up truck is a Taco Bell/Shell Gas Station convenience store

Officers observed three people in the KIA. There was a man in the driver's seat. A driver's license was discovered and it identified the man as Joel Rivas. There were two

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women in the vehicle. Discovered in the snow bank in the median near the vehicle were a boy and girl. All five of these people had no pulse and were pronounced dead at the scene by Coroner George Smith.

According to a statement obtained from Joshua Danay, he was pumping gas into his vehicle at the Shell Station. He watched the white KIA pull up to the stop sign for Country Meadows Road at U.S. 41 on the south side of the highway. He saw the white KIA pull onto the highway and it was struck broadside by the pick-up truck, now in the ditch.

Joshua Danay stated that he had been in the military and learned life-saving training. He ran to the truck which had come to rest in the ditch. He observed a man in the truck who was alive. He then went to the car and observed three people. He attempted to get a pulse from each of them and was unable to do so.

Your complainant believes the statements of Joshua Danay to be both true and reliable since they are based on his personal knowledge, information, and beliefs.

According to the report of Officer Slavinski of the City of Marinette Police Department, he was on duty and dispatched to the crash. Upon arrival, he exited his squad car. He observed that Officer Kopatz of his Department was on the scene near the white KIA. He observed a man getting out of the truck in the ditch, which was north of the KIA. He went up to that truck and spoke with the man who was subsequently identified as the defendant, Richard Powell. He asked the defendant if he was alright and the defendant mumbled something about how he may be alright. Officer Slavinski asked the defendant if there was anyone else in his truck and the defendant stated no. Officer Slavinski directed the defendant to a group of people on the scene who were with Officer Cate of his Department. He went to the pick-up truck and looked and saw no passengers. He looked in the snow around the truck and could see no indication that there was anyone in the pick-up truck other than the defendant.

According to the report of Trooper Conover of the Wisconsin State Patrol, he was on duty and dispatched to the crash. His report states that a light snow was falling and had been for several hours, and the roads were snow and ice-covered and very slippery.

When he arrived upon the scene, he spoke with Deputy Lesperance. He observed Rescue Squad personnel walking with a man from the accident scene to an ambulance. He observed that the man appeared to be unsteady on his feet and needed assistance to maintain his balance. As the man walked past him, Trooper Conover could smell the odor of intoxicants coming from him. He was advised that the man was the defendant.

Arrangements were made for an accident reconstruction team to come to the scene and assist, and to reroute traffic. Trooper Conover walked through the crash scene. He observed that the car had pulled out into the path of the truck from Country Meadows Road. The truck had been northbound and struck the car on the driver's side. The passenger compartment of the car had been torn open and the top was rolled open. He

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looked at the truck and observed it had sustained heavy front-end damage. Upon close inspection it appeared that there was human tissue attached to the front of the truck. The truck had two tow hooks on it and was identified as a 1999 GMC pick-up truck.

Trooper Conover again spoke with Deputy Lesperance. They learned that the defendant was being taken by ambulance to Bay Area Medical Center. Trooper Conover followed the ambulance to that facility. Trooper Conover entered the facility and went into the Emergency Room. He observed the defendant on a gurney in an exam room and several medical personnel were checking on him. Trooper Conover observed the only signs of injury were a cut on the defendant's right wrist and a cut/bruise to his left eye/forehead area. Trooper Conover introduced himself and asked the defendant for his driver's license. The defendant produced a wallet and began looking for a license. Trooper Conover continued speaking with the defendant and observed that his eyes were bloodshot and glassy, that his speech was slurred, and he had a heavy odor of intoxicants on his breath. Trooper Conover asked the defendant if he had been drinking and the defendant stated yes. The defendant handed Trooper Conover a Wisconsin photo driver's license which identified him as the defendant.

Trooper Conover formed the opinion that the defendant was under the influence of an intoxicant. He told the defendant that he was arresting him for same. He requested that the defendant submit to an evidentiary test of his blood and the defendant agreed. Blood was drawn from the defendant by medical personnel and forwarded to the Medical Toxicology Section of the State Laboratory of Hygiene. A Report of Analysis has been received and is attached hereto and is herein incorporated by reference.

After medical personnel had cleared the defendant for transport to the jail, Trooper Conover told the defendant that the occupants of the car had all died. The defendant grinned and asked what he had to do with the crash. He stated he was driving down the road and they pulled out in front of him. The defendant stated it's their fault.

Other people, including the defendant's wife, were in the room. The defendant stated he thought this was all "bullshit" and it was not his problem. The defendant stated he "couldn't have stopped even if he wanted to."

The defendant was transported to the Marinette County Sheriff's Department Jail and lodged. According to the report of Detective O'Neill on Monday, January 19, 2009, he met with the defendant, advised him of his constitutional rights, and the defendant waived them.

The defendant stated that he had been at a bar on Flame Road. Your complainant knows that Flame Road is located off U.S. 41, slightly more than 1 mile south of the crash scene at Country Meadows Road.

The defendant stated that his wife was tending bar there and that she had started about 10:00 a.m. He stated that while he was at the bar, he drank about 10 mugs of beer and

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had 2 Jack Daniels and Cokes. He stated he had a cheeseburger at about 12:30 or 1:00 p.m. and that he left for home at about 7:15 p.m.

The defendant stated he was alone in his truck driving north on U.S. 41 heading to Marinette home. He stated he was changing radio stations and when he looked up "POW", the crash occurred.

The defendant stated that he had no time to react in any way to the collision. The defendant stated that he was in the northbound travel lane when the collision occurred and there were no other vehicles in the area that interfered with his driving. The defendant stated that he was not aware of any performance problems with his vehicle and that he was not wearing a seatbelt. The defendant was asked his opinion as to whether or not he was intoxicated at the time of the collision and the defendant stated he was a little intoxicated.

Your complainant believes the statements of the defendant to the extent they incriminate him to be both true and reliable since they are made against his penal interests.

According to the reports, Coroner George Smith directed that the five deceased people be taken to St. Vincent's Hospital for autopsies. Deputy Tonn followed the funeral director vehicle procession to that facility where the bodies were placed under lock and key.

According to the report of Detective Baldwin of the Marinette County Sheriff's Department, on Monday, January 19, 2009, he was directed to St. Vincent's Hospital to meet with Coroner George Smith. At approximately 11:00 a.m., Detective Baldwin met with Coroner George Smith. They then met with a woman who identified herself as Cindy Rivas and several other family members. They went to a private room inside the hospital. Cindy Rivas stated that Joel Rivas was her father. She stated that on Sunday earlier in the day, Joel and the other family members were at her home in Green Bay. She stated that they had a cleaning business and were departing for Marinette to clean the Aurora Medical Clinic located there. She told Detective Baldwin and Coroner Smith who had left to clean the facility. She and other family members provided identifying information for them. She stated that five individuals had left for Marinette. She described the clothing they were wearing, names, and tattoos, as well as other identifying information for them. Through these descriptions and Detective Baldwin's attendance at the subsequent autopsy, the five victims were identified as Nicandro Rivas, age 12; Karen Rivas, age 15; Elna Rivas, age 16; Nancy Rivas, age 19; and Joel Rivas, age 44.

Detective Baldwin and Coroner Smith left the Rivas family and met with Dr. Mark Witeck, a medical doctor who is a Forensic Pathologist. He performed autopsies on the five bodies. Examination reports have been received concerning those autopsies. During the autopsies, Detective Baldwin confirmed the identities of the five victims.

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Dr. Witeck performed an autopsy on the body of Nicandro Rivas. It is his opinion based upon his examination that Nicandro Rivas died as a result of multiple injuries received in the motor vehicle crash.

Dr. Witeck performed an autopsy on the body of Karen Rivas. During the autopsy he discovered that Karen Rivas was pregnant. He further observed that the unborn child had significant injuries to its head. He concluded that Karen Rivas died of multiple injuries due to a motor vehicle crash. He also concluded that there was no evidence of significant natural disease which caused or contributed to the death of the unborn child.

Dr. Witeck performed an autopsy on the body of Elina Rivas. During the autopsy he discovered that she was pregnant. He concluded that there was no evidence of significant natural disease which caused or contributed to the death of the unborn child. He also concluded that Elina Rivas died of multiple injuries due to the motor vehicle crash.

Dr. Witeck did an autopsy on the body of Nancy Rivas. He concluded that she died of multiple injuries due to a motor vehicle crash.

Dr. Witeck performed an autopsy on the body of Joel Rivas. He concluded that Joel Rivas died as a result of multiple injuries from a motor vehicle crash.

According to the reports, the speed limit on U.S. 41 at Country Meadows Road, where this crash occurred, is 45 miles per hour. Approximately 500 feet to the south of the crash site, the speed limit changes from 55 miles per hour to 45 miles per hour. There is a cautionary sign further south advising motorists that the speed limit changes to 45 miles per hour. Your complainant knows from his personal knowledge that the speed limit on U.S. 41 is 55 miles per hour from Flame Road northbound to where it changes to 45 miles per hour south of Country Meadows Road. Your complainant also knows from his personal knowledge that the most direct route for Mr. Powell to get from the tavern on Flame Road to the crash site is by driving a short distance down Flame Road and turning northbound onto U.S. 41.

According to the reports, Trooper Timothy Austin was one of the officers who responded to the crash scene. He is an accredited reconstruction specialist assigned to the Technical Reconstruction Unit of the Wisconsin State Patrol. He and other officers photographed and took measurements at the crash scene prior to the vehicles being moved.

Trooper Austin subsequently reconstructed the crash. Based on his reconstruction, Trooper Austin states to a high degree of scientific certainty that the speed of the defendant's pick-up truck at the time of impact with Mr. Rivas' vehicle is between 77 and 81 miles per hour.

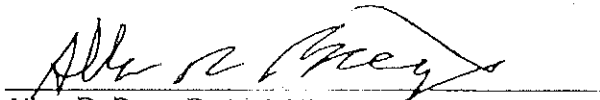
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Your complainant believes the statements of Cindy Rivas and her family members, Dr Witeck, and Trooper Austin to be both true and reliable since they are based upon their personal knowledge, information, and beliefs

Subscribed and sworn to before me,
and approved for filing on
This 20 day of March, 2009



Corrections Officer Rick Prince
Complainant



Allen R. Brey, District Attorney
State Bar No 1002056
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143
/mp