

E MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

CRUZ, JOSE ANTONIO  
Defendant

Case No. 08M-13429-33

Address

Social Security No.

Driver's License No.

Misdemeanor 5

Date of Birth

Felony

CRIMINAL COMPLAINT

I the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about 09/23/2008 in Kanawha County, West Virginia, in violation of W. Va. Code, 17C-15-02, 61-2-10b(c), 61-5-17, 17-5-2(a) the defendant did X SEE ATTACHED

I further state that this complaint is based on the following facts: X SEE ATTACHED

Continued on attached sheet?  yes  no

Complainant (who appears before magistrate):

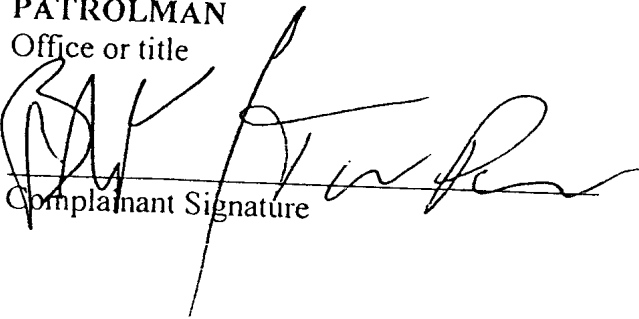
B.A. PASCHALL/T.E. PARSONS

Name  
4<sup>th</sup> Ave. & D St.  
South Charleston, WV 25303

Address  
304-744-6903

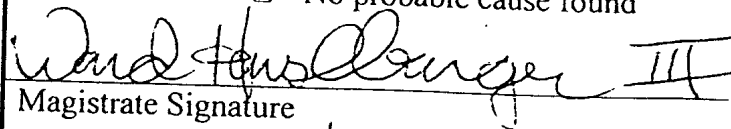
Telephone  
PATROLMAN

Office or title

  
Complainant Signature

On this complaint, sworn or affirmed before me and Signed this date by complainant in my presence, the item(s) checked below apply:

- Probable cause found
- Summons issued
- Warrant issued
- Warrantless arrest
- No probable cause found

  
Magistrate Signature

9/23/08  
Date

(Criminal Complaint Continued)

**STATUTORY LANGUAGE:**

**DRIVING UNDER THE INFLUENCE** – Driving a vehicle in this state while; a) under the influence of alcohol, or b) under the influence of any controlled substance, or c) under the influence of any other drug, or d) under the combined influence of alcohol and any controlled substance or any other drug, or e) has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight.  
(17C-5-2(a)) 1 day to 6 months and \$100 to \$500

**POLICE OFFICERS – BATTERY** – IF ANY PERSON UNLAWFULLY AND INTENTIONALLY MAKES PHYSICAL CONTACT OF AN INSULTING OR PROVOKING NATURE WITH A POLICE OFFICER, CONSERVATION OFFICER, COUNTY CORRECTIONAL OFFICER OR STATE CORRECTIONAL OFFICER ACTING IN HIS OR HER OFFICIAL CAPACITY OR UNLAWFULLY AND INTENTIONALLY CAUSES PHYSICAL HARM TO A POLICE OFFICER, CONSERVATION OFFICER, COUNTY CORRECTIONAL OFFICER OR STATE CORRECTIONAL OFFICER ACTING IN SUCH CAPACITY.

61-2-10b(c) MISDEMEANOR-COUNTY OR REGIONAL JAIL 48 HOURS TO 12 MONTHS AND/OR \$500. SECOND OFFENSE  
MISDEMEANOR-COUNTY OR REGIONAL JAIL 10 DAYS TO 12 MONTHS. THIRD OFFENSE-FELONY-1 TO 5  
YEARS AND/OR \$1000.

**OBSTRUCTING AN OFFICER** – ANY PERSON WHO BY THREATS, MENACES, ACTS OR OTHERWISE, SHALL FORCIBLY OR ILLEGALLY HINDER, OBSTRUCT, OR OPPOSE, OR ATTEMPT TO OBSTRUCT OR OPPOSE, OR SHALL COUNSEL, ADVISE OR INVITE OTHERS TO HINDER, OBSTRUCT, OR OPPOSE ANY OFFICER IN THIS STATE (WHETHER CIVIL OR MILITARY) IN THE LAWFUL EXERCISE OR DISCHARGE OF HIS OFFICIAL DUTY, IS OBSTRUCTING AN OFFICER.  
61-5-17 MISDEMEANOR - \$50 TO \$500 AND POSSIBLY UP TO 1 YEAR.

**FACTS:**

ON 9/23/08 WHILE ON PATROL IN AN UNMARKED VEHICLE PTLM. CA COOK OBSERVED A MAZDA 626 MAROON IN COLOR DRIVING ON RT 60 E/B @ 4800 BLOCK WV REG # 8LV659 WITH ITS HEADLIGHTS OFF. THE VEHICLE WAS STOPPED PER HIS REQUEST BY PTLM. DC JOHNSON AT RT 60 AND PARK AVENUE. THE ABOVE STREETS ARE IN SOUTH CHARLESTON, KANAWHA COUNTY, WV. UPON APPROACHING THE DRIVER PTLM. DC JOHNSON OBSERVED A STRONG SMELL OF ALCOHOL COMING FROM THE WINDOW OF THE VEHICLE. THE DRIVER WAS IDENTIFIED AS THE DEFENDANT JOSE A. CRUZ. THE DRIVER WAS ASKED OUT OF THE VEHICLE BY PTLM. PARSONS WHO ASKED THE DRIVER TO PERFORM FIELD SOBRIETY. WHILE SPEAKING WITH THE DEFENDANT PTLM. PARSONS OBSERVED AN ODOR OF ALCOHOLIC COMING FROM THE DEFENDANTS BREATH AND OBSERVED HE WAS UNSTEADY AND HAD SLURRED SPEECH. PTLM. PARSONS HAD THE DEFENDANT PERFORM THE THREE STANDARD FIELD SOBRIETY TESTS. BASED ON THE RESULTS OF WHICH PTLM. PARSONS ARRESTED THE DEFENDANT FOR DUI.

UPON BEING PUT INTO HANDCUFFS THE DEFENDANT BECAME VERY UNCOOPERATIVE. WHEN HE WAS PLACED INTO THE REAR OF PATROL VEHICLE 126 FOR TRANSPORT HE WOULD NOT KEEP HIS SEATBELT ON. UPON ARRIVAL AT THE STATION HE WAS ASKED TO WAIT ON THE HALLWAY BENCH WHILE OFFICERS PREPARED FOR PROCESSING. THE DEFENDANT REFUSED TO SIT DOWN AND SAID THAT WE WOULD HAVE TO 'MAKE HIM'. OFFICERS HAD TO PUSH THE DEFENDANT PHYSICALLY ONTO THE SEAT, OBSTRUCTING OFFICERS ATTEMPTS TO PREPARE FOR PROCESSING. DURING PROCESSING PTLM COOK WAS TAKING THE DEFENDANTS FINGER PRINTS WHILE PTLM. PARSONS WAS TYPING DATA INTO THE INTOXIMETERS 5000 MACHINE. PTLM. PARSONS WAS IN A CHAIR APPROX 4-5 FEET AWAY FROM THE FINGERPRINTING STATION. THE DEFENDANT SCOOTED THE 4 FEET TO PTLM PARSONS, AWAY FROM OFFICER

COOK, AND LIFTED HIS LEG AND PASSED GAS LOUDLY ON PTLM. PARSONS. THE DEFENDANT THEN FANNED THE AIR WITH HIS HAND IN FRONT OF HIS REAR ONTO PTLM. PARSONS THE GAS WAS VERY ODOROUS AND CREATED CONTACT OF AN INSULTING OR PROVOKING NATURE WITH PTLM. PARSONS. OFFICERS EXPLAINED TO THE DEFENDANT THE PROCESS FOR BLOWING INTO THE INTOXIMETER AND THE DEFENDANT DID NOT GIVE A SUFFICIENT SAMPLE. BEFORE 15 MINUTES COULD PASS FOR A 2<sup>ND</sup> ATTEMPT THE DEFENDANT SAID HE WAS HAVING PROBLEMS BREATHING DUE TO ASTHMAS. THE DEFENDANT WANTED TO BE TAKEN TO THE HOSPITAL AND MEDICS WERE CALLED. UPON ARRIVAL BY MEDICAL PERSONAL THE DEFENDANT WAS PLACED ON A COT AND INTO THE BACK OF AN AMBULANCE. THE DEFENDANT REFUSED TO COOPERATE WITH ANY MEDICAL TREATMENT THE MEDICS WANTED TO GIVE. IT WAS DECIDED TO PLACE THE DEFENDANT BACK INTO HANDCUFFS BECAUSE HE WAS STARTING TO BE INCOMPLIANT. THE DEFENDANT WAS TAKEN OUT OF THE AMBULANCE ON THE COT. OFFICERS ASKED FOR HIS HANDS SO THAT HE COULD BE HANDCUFFED AND THE DEFENDANT REFUSED. OFFICERS PULLED AT THE DEFENDANTS ARMS TO PLACE HIM INTO HANDCUFFS AND HE ACTIVELY RESISTED BY PULLING HIS ARMS AWAY, OBSTRUCTING OFFICERS ATTEMPTS TO GET HIM SECURED.

THE DEFENDANT IS CHARGED WITH DUI, DRIVING WITHOUT HEADLIGHTS, BATTERY ON A POLICE OFFICER, AND TWO COUNTS OF OBSTRUCTION.

TP  
WH 9/23/05

SCA -M310-2 / 11-93

White - return  
Green - defendant  
Yellow - file  
Pink - complainant  
Goldenrod - prosecutor

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

State of West Virginia

V.

08M 13429

Criminal Case Number(s): 08M 13430

CRUZ JOSE ANTONIO  
Defendant (Full Name)

08M 13431 -33

Driver's License No.

Social Security No.

Complaint Date: 09 / 23 /2008

Date of Birth

INITIAL APPEARANCE:  
RIGHTS STATEMENTS

A. GENERAL: EITHER MISDEMEANOR OR FELONY OR BOTH

1. The magistrate has informed me that I am charged with the offense(s) of OBSTRUCTING AN OFFICER 61-5-17 X2, BATTERY ON POLICE OFFICER 61-2-10b DUI 1ST OFFENSE 17C-5-2, DRIVING W/O HEADLIGHTS and that, if I am later found guilty, the possible penalties are (State mandatory minimum penalty, if any, and maximum penalty): **1 DAY TO 6 MONTHS 100-500 FINE UP TO 1 YEAR AND/OR UP TO \$500 X2 (OBST) 10 DAYS TO 12 MONTHS & FINE UP TO \$100 (BATTER ON POLICE)**

2. The magistrate has informed me that, if the W.Va. Code provides for a possible jail penalty, I have the right to be represented by an attorney at every further proceeding and that, if I qualify as being unable to afford to hire an attorney, one will be appointed to represent me. I understand that if I decide to represent myself, I cannot later claim that I was denied my right to be represented by an attorney.

DEFENDANT MUST INITIAL ONE OF THE FOLLOWING THREE CHOICES IF A JAIL PENALTY IS POSSIBLE:

- (a) I give up my right to have an attorney represent me.
- (b) I want to hire an attorney to represent me.
- (c) I want an attorney appointed to represent me.

I understand that, if I am found guilty, I might be required to reimburse the State for attorney fees even if a court- appointed or public-defender attorney is approved to represent me.

Date: 09 / 23 /2008

Defendant's Signature:  
(Page 1 of 2)



3. The magistrate has informed me that, except for any felony offense for which the penalty is life imprisonment, the magistrate may release me from custody while I am waiting for further proceedings on the charge(s) stated above if I am able to make bail generally as follows:

5000 or 10%

4. The magistrate has given me reasonable time and opportunity to talk with an attorney or with one relative or other person for the purpose of obtaining counsel or of arranging bail.

5. The magistrate has informed me that I do not have to make any statement to anyone other than the statements in this document and that any statement I do make may be used against me.

**B. MISDEMEANOR CHARGE(S) ONLY**

1. The magistrate has informed me that I have a right to plead not guilty; that I have a right to trial by a jury or by a magistrate without a jury; and that, if I plead guilty or no contest, I give up my right to a trial.

2. The magistrate has informed me that I have the right to demand a jury trial and that, if I want a jury trial, I must let the magistrate court know in writing no later than 20 days from the date of this initial appearance or, if I receive court-appointed counsel, 20 days from the date that an attorney is appointed. The magistrate has further informed me that if I demand a jury trial, then I may not withdraw my demand for a jury trial if the prosecuting attorney objects to the withdrawal. If I do not demand a jury trial within the 20-day period, I have also been informed that I give up my right to a jury trial, the magistrate will try my case without a jury and an appeal of a magistrate court conviction will not entitle me to a jury trial in circuit court. I understand as well that if I have a jury brought in, the jury fee will be assessed against me if I am convicted.

**C. FELONY CHARGE(S) ONLY**

1. The magistrate has informed me that, since I have been charged with a felony offense for which the penalty is life imprisonment, only the circuit court may grant and set bail.

2. The magistrate has informed me that, since I have been charged with a felony, I have the right to a preliminary hearing for a determination of whether any felony charge(s) should be bound over for possible presentation to a grand jury.

**DEFENDANT MUST INITIAL ONE OF THE FOLLOWING THREE CHOICES:**

(a) I want a preliminary hearing.

(b) I give up my right to a preliminary hearing.

(c) I or my attorney will inform the court whether I want a preliminary hearing.

I understand that failure to inform the court within 10 days if I am not free on bail or within 20 days if I am free on bail will mean that I do not want a preliminary hearing and that the felony charge(s) against me will be bound over for possible presentation to a grand jury.

Date: 09 / 23 /2008

Defendant's Signature:

I have informed the defendant personally of the applicable matters set out above. I find that any waiver of rights herein is made knowingly and voluntarily by the defendant. (Initial IF APPLICABLE) I certify that the defendant refused to initial and/or sign this document at the appropriate places.

Date: 09 / 23 /2008

Magistrate's Signature:

