

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CR 11-2432 MCA
)	
MARIA BUNDY,)	
)	
Defendant)	

**UNITED STATES’ MOTION *IN LIMINE* TO INTRODUCE EVIDENCE
OF DEFENDANT’S PRIOR DUI CONVICTION**

The United States of America hereby moves *in limine* for a pretrial order pursuant to Federal Rules of Evidence 404(b) permitting the United States to introduce evidence of defendant Maria Bundy’s 2009 conviction for driving under the influence of intoxicating liquor (hereinafter referred to as “DUI”), in violation of Title 14, subsection 707 of the Navajo Nation Code, an event which occurred prior to the motor vehicle accident at issue in this case. As grounds, the United States submits:

BACKGROUND

1. Maria Bundy was indicted by a federal grand jury has charged defendant Maria Bundy with second degree murder, involuntary manslaughter and assault resulting in serious bodily injury. The indictment charges the defendant with acting with malice aforethought based on the theory that after having been previously arrested, charged, and convicted of DUI, the defendant, who was aware of the dangers of driving while intoxicated, again drove under the influence in the accident that killed Larry Mark.

2. The evidence in this case indicates that on March 5, 2011, defendant drove a vehicle while heavily under the influence of alcohol. Her blood alcohol content was more than 3 times the legal limit. The Defendant lost control of the vehicle, causing a rollover accident during which Larry Mark was ejected from the vehicle and sustained injuries which led to his death. Less than two years prior to the accident at issue, in April 2009, defendant Bundy was arrested, charged, and convicted of DUI by the District Court of Shiprock, New Mexico. *See* Gov. Ex. 1(attached).

3. The United States intends to introduce evidence of the defendant's 2009 arrest, charge, and conviction for DUI, and therefore seeks a pretrial ruling allowing the admission of such evidence.

Malice element of Second Degree Murder

4. The defendant is charged with second degree murder, an essential element of which is malice aforethought. *See* 18 U.S.C.A. § 1111. The United States must prove the Defendant acted with malice, specifically in second degree murder cases in which a defendant killed another while driving under the influence of alcohol, the Tenth Circuit has required a showing that the defendant "engaged in conduct which is reckless and wanton, and a gross deviation from a reasonable standard of care, of such nature that a jury is warranted in inferring that defendant was aware of a serious risk of death or serious bodily harm." *United States v. Tan*, 254 F.3d 1204, 1207 (10th Cir. 2000) (quotations and citation omitted). The prosecution must show that the defendant "knew [her] conduct posed a serious risk of death or harm to himself or others, but did not care." *Id.*

5. The Tenth Circuit has previously allowed the government to introduce evidence of a defendant's prior criminal acts, specifically drunk driving convictions, to prove the malice component of second degree murder in alcohol-related vehicular homicide cases, where the admission of such evidence comports with certain requirements outlined below. *Id.* at 1211. On this point, the court has offered the rationale that, "someone who drives a vehicle after having been convicted of that offense knows *better than most* that his conduct is not illegal, but entails a substantial risk of harm to himself and others." *United States v. Leonard*, 439 F.3d 648, 651 (10th Cir. 2006) (citing *United States v. Tan*, 254 F.3d 1204 (10th Cir. 2000))(quotations omitted).

**Requirements for admissibility of evidence of a defendant's
prior criminal acts**

6. The Tenth Circuit has found that evidence of a defendant's prior criminal act is admissible if four requirements set forth by the United States Supreme Court in *Huddleston v. United States*, 485 U.S. 681 (1988), are met: (1) the evidence is offered for a proper purpose under Fed.R. Ev. 404(b); (2) the evidence is relevant under Fed. R. Evid. 401; (3) the probative value of the evidence is not substantially outweighed by its potential for unfair prejudice; and (4) the district court, upon request, instructs the jury to consider the evidence only for the purpose for which it was admitted. *United States v. Tan*, 254 F.3d 1204, 1207 (2000).

7. The *Tan* Court explained that the introduction of evidence must first meet the "narrow threshold" of Rule 404(b) before a balance of probative value versus possible prejudicial impact is conducted under Rule 403. The United States contends that all four *Huddleston* requirements are met with respect to evidence of defendant Maria Bundy's 2009 DUI conviction.

Evidence of defendant's prior DUI conviction is offered for a proper purpose under Rule 404(b)

8. Federal Rule of Evidence 404(b) provides that evidence of a defendant's "other crimes, wrongs, or acts" is admissible for the purposes of proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Fed. R. Evid. 404(b). The Tenth Circuit revealed in *Tan* that this is an "illustrative, not exhaustive" list, and held that "[p]rior drunk driving convictions offered to prove the malice component of a second degree murder charge resulting from an alcohol related vehicular homicide are offered for a proper purpose under Rule 404(b)." *Id.* at 1211.

9. In *Tan*, the district court's rejection of evidence of a defendant's multiple DUI convictions preceding an incident in which he killed one person and seriously injured another while driving under the influence was overturned. The Tenth Circuit found that had the prosecution been permitted to introduce evidence of the defendant's prior convictions, the jury could easily have inferred that defendant was well aware of the risks associated with drunk driving, but "does not care about the risk he poses to himself and others, since he continues to drink and drive," evidence which is strongly supportive of the malice component of second-degree murder. *Id.* at 1211. The court presumed that, "one who drives a vehicle while under the influence after having been convicted of that offense knows *better than most* that his conduct is not only illegal, but that it entails a substantial risk of harm to himself and others." *Id.* at 1210 (emphasis added)(citing *People v. Brogna*, 202 Cal.App3d 700(1988)). Evidence of the prior convictions was found to be offered as proof of the defendant's mental state during the accident in question, which qualified as a proper purpose under Rule 404(b). *Id.*

10. Multiple other circuits have conformed in finding evidence of a defendant's prior DUI convictions or arrests admissible under Rule 404(b) where it is offered to prove malice as an element of a second-degree murder charge resulting from intoxicated driving. In *United States v. New*, 491 F.3d 369 (8th Cir. 2007), the Eighth Circuit followed the logic of *Tan*. The court found that evidence of a defendant's two previous DUI convictions was properly admitted under Rule 404(b) to show that defendant was aware of and disregarded the risks associated with his behavior when he drove intoxicated and caused a single vehicle rollover, killing his two passengers.

11. The Ninth Circuit found that evidence of a defendant's prior DUI convictions was properly admitted under Rule 404(b) to prove the malice element of second degree murder, after defendant killed one person and injured another while driving under the influence of alcohol. *United States v. Loera*, 923 F.2d 275, 729 (9th Cir.1991); *see also United States v. Norris*, 649 F.Supp. 2d 968 (D. Az. 2009)(finding evidence of defendant's prior DUI conviction and multiple DUI arrests admissible under Rule 404(b) to prove malice in second degree murder case where defendant killed bicyclist while driving drunk); *United States v. Chippewa*, 141 F.3d 1180, 1998 WL 123150 (unpublished)(holding evidence of defendant's "multiple alcohol-related driving incidents" was properly admitted under 404(b) to prove malice aforethought element of second degree murder). Similarly, the Fourth Circuit found evidence of a defendant's prior DUI convictions was properly admitted "to establish that defendant had grounds to be aware of the risk his drinking and driving while intoxicated presented to others," where defendant killed one person while driving under the influence. *United States v. Fleming*, 739 F.2d 945 (4th Cir. 1984).

12. Maria Bundy, like the defendants in *Tan*, *Loera*, *Norris*, *Chippewa* and *Fleming*, is charged with second degree murder resulting from a vehicular homicide which occurred when she drove while extremely intoxicated. Also analogous to defendants in the precedent cases, defendant Maria Bundy has previously been convicted of driving while intoxicated, and punished for that crime just two years before her drunk driving led to the death of Larry Mark. Just as the defendants' prior convictions for the exact act which led to their second degree murder charges in the cases discussed above were found admissible under Rule 404(b) to prove malice, so too should defendant Bundy's prior DUI conviction be admissible to show she was fully aware of the risks and danger created by her heavily intoxicated driving on March 5, 2011.

13. The evidence the United States seeks to introduce goes directly toward the defendant's mental state at the time of the accident at issue, which relevant case law reveals is a proper purpose under Rule 404(b). Evidence of defendant Bundy's 2009 DUI conviction is telling of her mental state at the time of the accident: that she was fully aware of the risks of death or serious harm posed by her unlawful conduct. The fact that Maria Bundy had been previously arrested, charged and convicted of driving under the influence by the District Court of Shiprock, New Mexico, supports the conclusion that Bundy was not only aware of the risks drunk driving posed to herself and others, but that she blatantly disregarded those risks when she again chose to get behind the wheel before the accident which killed Larry Mark. This evidence falls directly within the realm of admissibility under *Tan*, and is thus offered by the United States for a proper purpose under Rule 404(b) to prove the malice element of second degree murder.

The evidence is more probative than prejudicial under Rule 403

14. Under Federal Rule of Evidence 403, evidence is admissible unless the probative value of

the evidence is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. The Tenth Circuit has emphasized that “unfair prejudice” means more than simply damaging a defendant’s position at trial, and only occurs where evidence “makes a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect adversely the jury’s attitude toward the defendant *wholly apart* from its judgment as to the guilt or innocence of the crime charged.” *Tan*, 254 F.3d at 1211-12 (emphasis in original)(citation and quotation omitted).

15. The Tenth Circuit has stated that a district court “has considerable discretion in performing the Rule 403 balancing test,” and has cautioned that exclusion of evidence under Rule 403 which is otherwise admissible is an “extraordinary remedy and should be used sparingly.” *Id.* In cases of a second degree murder charge resulting from a defendant’s driving while intoxicated, the Tenth Circuit has found that the probative value of evidence of prior DUI convictions increases where there is no other evidence from which malice can be inferred, and that evidence of prior DUI’s which is properly introduced to prove malice has “significant” probative value. *Id.* at 1210-12.

16. In *Tan*, the Tenth Circuit found that evidence of defendant’s prior DUI convictions held high probative value in the absence of any other conduct committed by the defendant “from which malice can be readily inferred” on the day of the accident which led to his second degree murder charge. *Id.* at 1212. The court found the evidence of prior DUI convictions passed the Rule 403 balancing test in that it was more probative on the element of malice than it was prejudicial, and was admissible under the rule. Similarly, in *Norris*, 649 F.Supp.2d 968 (D.Az. 2009), the court found that where a defendant was charged with second degree murder after driving drunk and killing one person, evidence of his “history of incidents related to drunk

driving” was directly relevant to proving malice, and therefore more probative than prejudicial. The court held that with a proper limiting instruction given to the jury, any risk of unfair prejudice would be minimized, and evidence of defendant’s criminal record would be properly admissible under Rule 403. *Id.* at 973.

17. In the instant case, like *Tan*, there is no other evidence from which the malice component of second degree murder can be inferred aside from defendant Bundy’s prior DUI conviction, and her excessive intoxication. The accident which killed Larry Mark was a single vehicle rollover, and the record indicates that there were no witnesses to the accident itself or the manner of defendant’s driving directly before the accident. Of the three individuals in the truck at the time of the rollover, Larry Mark is dead and both Maria Bundy and Roland Deale suffered brain injury and claims to have no recollection of the accident. Because there is no other available evidence or testimony with respect to the defendant’s mental state at the time of the rollover, her previous DUI conviction remains the only evidence from which malice can be inferred. Following the logic of *Tan*, this increases the probative value of the evidence of defendant’s prior acts greatly, thus outweighing the possibility for prejudice and rendering the evidence admissible under Rule 403. Additionally, the court may choose to provide a limiting instruction to the jury which, like it did in *Norris*, would protect against any risk of unfair prejudice as a result of the introduction of evidence of the prior conviction.

**Defendant’s prior DUI Conviction is relevant evidence
under Rule 401**

18. Federal Rule of Evidence 401 describes relevant evidence as that which has “any tendency to make the existence of any fact that is of consequence to the determination of the act more probable than it would be without the evidence.” Fed. R. Evid. 401. The Tenth Circuit has

characterized the rule as a “liberal standard” that establishes only a “minimal level of probability.” *United States v. Leonard*, 439 F.3d 648, 651 (10th Cir. 2006).

19. The Tenth Circuit has found evidence of a defendant’s driving record relevant to show malice aforethought when that defendant’s driving results in a second degree murder charge. *Leonard*, 439 F.3d 648 (2006). The defendant in that case objected to the prosecution’s introduction of evidence of his driving record, which included multiple citations for driving without a license, as the defendant had been when the accident in question occurred. The Tenth Circuit Court of Appeals upheld the district court’s finding that the evidence was relevant under Rule 401 and admissible because a jury could infer “that an individual with a record like Mr. Leonard’s ‘knows better than most’ that his conduct is illegal and unsafe, and continues to do so in defiance of that risk,” in support of the malice element of second degree murder. *Id.* at. 651. The court equated this case to *Tan*, finding that “citations for driving with a suspended license, like citations for drunk driving, convey to the malefactor our society’s considered view that the cited conduct is dangerous.” *Id.*

20. Evidence of defendant Maria Bundy’s prior DUI conviction is likewise relevant in the instant case. Similar to the driving citations received by the defendant in *Leonard*, evidence of Ms. Bundy’s 2009 DUI conviction is directly relevant to her state of mind at the time of the accident which killed Larry Mark in that it supports the fact that she actively disregarded the significant risks posed by her dangerous conduct, of which she was aware as a result of her previous conviction. In line with Rule 401, this evidence makes the existence of malice on the part of Maria Bundy, a “fact that is of consequence to the determination of the act,” more probable than not. The evidence of defendant’s prior DUI conviction thereby meets the standard for relevance, and is admissible under Rule 401 and established Tenth Circuit case law.

WHEREFORE, the United States respectfully requests that the Court enter a pretrial order allowing the United States to introduce evidence of the defendant Maria Bundy's 2009 DUI conviction.

Respectfully submitted,

KENNETH J. GONZALES
United States Attorney

Electronically filed on 12/13/12

KYLE T. NAYBACK

MARK T. BAKER

Assistant U.S. Attorney

P.O. Box 607

Albuquerque, New Mexico 87102

(505) 346-7274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 13th day of December, 2012, that a copy of the foregoing motion was filed with the Court's CM/ECF system, which is designed to automatically serve a copy of this document upon counsel for Defendant.

Electronically filed December 13, 2012

KYLE T. NAYBACK

Assistant United States Attorney

IN THE JUDICIAL DISTRICT OF THE NAVAJO NATION
JUDICIAL DISTRICT OF SHIPROCK, NEW MEXICO

THE NAVAJO NATION,
Plaintiff,

NO: SR-TR-1016-09-CR

COURT COPY

BEIJT WARBANI

BUNDY, MARIA

DOB: [REDACTED] 1971 SS# [REDACTED] 1972 C# [REDACTED]

Residence: [REDACTED]

Defendant.

TO THE NAVAJO POLICE DEPARTMENT

WHEREAS, on April 22, 2009, the above-named Defendant was sentenced to 90 days jail suspended to supervised probation; pay fine of \$300.00 due on July 22, 2009; attend DWI / VIP classes and 20 AA sessions for the offense of DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR in violation of Title 14, subsection 707 of the Navajo Nation Code.

- Defendant FAILED to pay fine of \$300.00 on July 22, 2009.
- Defendant FAILED to attend DWI / VIP classes and 20 AA sessions.

THEREFORE, YOU are hereby commanded to apprehend the said Defendant and bring him/her before this Court to answer said Order.

SO ORDERED this 4th day of August, 2009.

[Signature]
JUDGE, Shiprock District Court.

mj

[REDACTED]

Received this warrant on the _____ day of _____, 2009, and executed the same on the _____ day of _____, 2009 by arresting the Defendant at: _____

Date: _____

Police Officer/Badge #: _____

COURT COPY

PENGAD 800-631-6089
GOVERNMENT EXHIBIT
1

ENTERED
8/9/09

SHIPROCK

02-09-013121 4/20/2009

Administrative Gang Related
 Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

1. Log Number 02-09-013121	1a. Incident Number	1b. File Number CD-09-013678	1c. Case Number	2. UCR .21	DUI
3. Incident Type 5404 DUI - ALCOHOL		4. Dispatcher GC7448	5. Source P	6. District	7. Status CLOSED
8. Date Received 4/20/2009	8a. Rcvd 2300	8b. Disp 2313	8c. Arrv 0000	8d. CIRD 0018	9. Disposition A ARREST MADE

INCIDENT OCCURRED AT OR BETWEEN 8e. Earliest Date and Time 8f. Latest Date and Time

10. Location 0 SHIPROCK NM 8720	10a. Cross Street	10b. Intersection <input type="checkbox"/>
		10c. Gang Code

11. Premise Code	12. Business Name
------------------	-------------------

13. Modus Operandi Coding	VICTIM:
ENTRY:	PROPERTY
EXIT:	AREA:
METHOD:	TIME OF DAY:

14. Caller / Complainant Type N - Normal

15. Involved Persons	STREET ADDRESS	INVOL	DOB	SSN	R	S	PHONE
Arr DATE ARREST# PriCHG	DESCRIPTION	Chg	Add	CHG	DESCRIPTION	PL	Chg Vd
CHEE, LEONARD (SERGEANT) Hist: <input checked="" type="checkbox"/>	NAVAJO POLICE SHIPROCK DISTRICT SHIPROCK, NM 87420	WIT					
BENALLY, WILTON CC# [REDACTED] Hist: <input type="checkbox"/>	[REDACTED]	ARR	[REDACTED]			I	
LOTT, NORMAN JOHN Hist: <input type="checkbox"/>	[REDACTED]	ARR	[REDACTED]			I	
SLOAN, SAMUEL JR Hist: <input checked="" type="checkbox"/>	[REDACTED]	OFF					
BUNDY, MARIA Hist: <input type="checkbox"/>	[REDACTED]	ARR	[REDACTED]	1971		I	

16. Involved Vehicles	A/B	PLATE	STATE	PTYPE	INVOL	YEAR	MAKE	MODEL	COLOR	VIN
		AEL1101	AZ	4DSD	ARR	2004	FORD	TAU	GRY	1FAHP55UX4G109933

SHIPROCK

02-09-013121 4/20/2009

Administrative Gang Related
 Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

18. Citations	NAME	VIOL	PLATE	STATE	YEAR	MAKE	MODEL
SR42401	BUNDY, MARIA	DUI	AEL1101	AZ	2004	FORD	TAU
	ORDINANCES 1. 14-707	707	4.				
	2.		5.				
	3.						
SR42402	BUNDY, MARIA	FOLLOI	AEL1101	AZ	2004	FORD	TAU
	ORDINANCES 1. 14-308	308	4.				
	2.		5.				
	3.						

23. Units / Officers / Times	UNIT	OFC1	OFC2	UNIT	OFC1	OFC2	DIVN	SUPV
Unit 1	215	T 2014		Unit 3				
Unit 2	210	T 215		Unit 4				

26. Comments / Narratives

 CREATED BY / ON

 UPDATED BY / ON

 LOCK

SHIPROCK

02-09-013121 4/20/2009

Administrative Gang Related
 Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

Input: GC7446 04/20/2009 23:02:22 Edited: GC7446 04/20/2009 23:02:22
TWO VEHICLE ONE BLUE SEDAN / GREY SEDAN RACING AREA N-36 AT MILE POST 4.5.
CP LIVES IN A WHITE SINGLE WIDE TRLR WITH WHITE FENCE.

Input: GC7446 04/20/2009 23:04:36 Edited: GC7446 04/20/2009 23:04:36
94 TO 215

Input: GC7446 04/20/2009 23:13:16 Edited: GC7446 04/20/2009 23:13:16
CP CALLED BACK THE VEHICLE IS TRAVELING WEST BOUND

Input: GC7446 04/20/2009 23:17:03 Edited: GC7446 04/20/2009 23:17:03
215 WAS IT A BLUE FORD FOCUS.

Input: GC7446 04/20/2009 23:17:33 Edited: GC7446 04/20/2009 23:17:33
210 BE 19 SOUTH ATL ON THE VEHICLE.

Input: GC7446 04/20/2009 23:21:10 Edited: GC7446 04/20/2009 23:21:10
215 NEG 45 WITH THE VEHICLE

Input: GC7446 04/20/2009 23:25:55 Edited: GC7446 04/20/2009 23:25:55
215 IT BE NM JPK 015 NOT AT 86 FORD SEDAN NM AEL 1101 AT MILE POST 86 THE
MALE PERSON IS HIDING SOMTHING HE PUT 410

Input: GC7446 04/20/2009 23:31:57 Edited: GC7446 04/20/2009 23:31:57
TWO MALE SUBJECTS THE ONE 101. CK 29 ON WILTON BENALLY NORMAN LOT AND
BUNDY. NEG 29 X 3

Input: GC7446 04/20/2009 23:35:23 Edited: GC7446 04/20/2009 23:35:23
215 210 CODE 4

Input: GC7446 04/20/2009 23:38:02 Edited: GC7446 04/20/2009 23:38:02
215 A-O THE 37 FOR 707

Input: GC7446 04/20/2009 23:40:58 Edited: GC7446 04/20/2009 23:40:58
94 TO BUCKS

Input: GC7446 04/20/2009 23:41:39 Edited: GC7446 04/20/2009 23:41:39
210 BE 19 WITH TWO TO 105 BOTH FOR 488

Input: GC7446 04/21/2009 00:02:23 Edited: GC7446 04/21/2009 00:07:36
A-O 101 BEG MI 92195 ALSO 926 IS 10-8

Input: GC7446 04/21/2009 00:03:04 Edited: GC7446 04/21/2009 00:08:15
EN ROUTE TO 105

SHIPROCK

02-09-013121 4/20/2009

- Administrative Gang Related
- Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

Input: GC7446 04/21/2009 00:15:26 Edited: GC7446 04/21/2009 00:15:26
215 AT 105 END MI 92202

SHIPROCK

02-09-013121 4/20/2009

- Administrative Gang Related
- Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

On Monday April 20, 2009 I, Officer Samuel Sloan Jr. arrested Maria Bundy for Driving Undertheinfluence and Possession of Liquor at mile post 86 of U.S. Highway 491 south of Shiprock, New Mexico. Officer Sloan also arrested Wilton Benally and Norman Lott for PublicIntoxication.

Officer Sloan was conducting a security check south bound on U.S. Highway 491 near mile post 88.5. The officer was traveling on the left, inside lane in a marked patrol vehicle. The officer observed a sedan traveling south bound behind a pick up truck. The sedan was following very close to the pick up truck. The rear break lights on the sedan came on indicating that the driver stepped on the breaks. The driver stepped on the breaks twice. The officer pasted the vehicle going approximately 45 miles per hour. Officer Sloan observed that the driver of the sedan was unable to maintain its lane. The sedan was swerving over the white shoulder line and the center yellow lines. The sedan was still followingthe pick up truck for approximately another .5 miles. The driver then signaled for a lane change and maneuvered into the left lane. The sedan was now traveling in front of OfficerSloan patrol vehicle.

Officer Sloan noticed that the vehicle is a gray four door, Ford, Taurus bearing Arizona plate AEL1101. The driver passed the pick up truck and changed lanes back into the right south bound lane. Officer Sloan got behind the vehicle and observed the sedan still swerving over the white shoulder line. The driver swerved over the shoulder line five times and four times over the center striped line. The gray sedan was still traveling approximately 55 miles per hour. The driver stepped on the breaks again slowing down to approximately 45 miles perhour. The driver activated the turn signal for a rightturn and the sedan began to slowly drive onto the shoulder. The sedan was traveling on the shoulder then the signal was deactivated. The driver swerved back into the right lane and continued south bound. At this time Officer Sloan activated his over head red and blue emergency lights with siren to conduct a traffic stop for suspicion of DUI. The sedan gradually drove onto the shoulder and came to a stop. Officer Sloan activated his spot lights directing them towards the vehicle.

After the gray sedan came to a stop Officer Sloan observed a heavy set male subject sitting on the right rear passenger seat moving around. The windows to the sedan were not tinted and movement inside the vehicle was obvious. The male subject picked up a box moving it to the left of his person. The officer read the label on the box and it read Bud Light. The rear passenger put down the top portion above the left seating area which allows access to the trunk. The male subject moved the box into the trunk and secured the top portion of the seat back into place. The male subject then moved over to the left seating area where he had just opened and placed the box labeled Bud Light in the trunk.

Officer Sloan exited the patrol vehicle and approached the rear passenger door. After approaching the vehicle Officer Sloan saw that there were three occupants in the vehicle. There was a rear male passenger, a female driver and a front male passenger. Officer Sloan approached the rear passenger door and instructed the male subject to put his hands

SHIPROCK

02-09-013121 4/20/2009

- Administrative Gang Related
- Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

up. For safety reasons due to the suspicious movement in the vehicle Officer Sloan instructed all the occupants to show their hands and keep them up. The female driver turned the vehicle off, opened her door and attempted to exit the vehicle. Officer Sloan instructed the driver to stay in the vehicle. The vehicle driver sat back on her seat but left the door partially open. The officer tried to open the rear passenger door and it was locked. Officer Sloan then instructed the driver to unlock the doors. The female driver could not follow simple instructions to unlock the door. The female driver again attempted to exit the vehicle and the officer told her again to stay inside the vehicle. Officer Sloan repeated this instruction to the driver three times. The officer instructed the driver to hand the ignition key to him which she complied. The officer secured the keys on his person. The officer instructed the rear passenger to unlock his door. The passenger unlocked the door and after several attempts fumbling with the door handle. The officer opened the door and instructed the passenger to exit the vehicle. Officer Sloan could smell a strong odor of an intoxicated beverage emitting from inside the sedan.

The male subject exited the vehicle and he was directed to the rear of the sedan. The male subject staggered to the rear of the sedan. Officer Sloan observed that the male subject had bloodshot, watery eyes and a strong odor of an intoxicated beverage emitting from his person. The officer for his safety, immediately and properly handcuffed the male subject. The officer advised the male subject he is being detained. Next the officer instructed the driver to exit the vehicle.

The driver exited the vehicle and was staggered to the rear of the vehicle. Officer Sloan instructed the driver to remain at the rear of the vehicle. The officer approached the front passenger door and instructed the male subject to exit the vehicle.

The front male subject cooperated and exited the sedan. When the male subject exited the vehicle he had trouble keeping his balance and almost tripped. The male subject staggered to the rear of the vehicle. The male subject was familiar to the officer and he was identified as Norman Lott. Officer Sloan had past history of arrest on Mr. Lott and he had been aggressive. Officer Sloan immediately and properly handcuffed Mr. Lott. The officer could smell a strong odor of an intoxicating beverage emitting from his person. Officer Sloan notified police dispatch that he has two male subjects detained and there is a female driver that was a possible drunk driver. The officer request police dispatch do warrant checks on all the subjects.

Officer Sloan asked the female driver for her drivers license which she produced. The female driver was identified as Maria Bundy date of birth [REDACTED] 71. Officer Sloan asked Maria if there are any alcoholic beverages in the vehicle. Maria did not answer immediately and after a few seconds pause she stated "Yes there is". The officer asked where and she advised in the trunk.

Officer Sloan opened the left, rear passenger door and opened the top portion of the seat accessing the trunk. Directly behind the seat was a box labeled Bud Light Beer. The

SHIPROCK

02-09-013121 4/20/2009
OFFICER: T 2014 SAMUEL SLOAN JR.

- Administrative
- Gang Related
- Investigation
- Accident
- Arrests Made
- Suspects

Incident Report Form

officer removed the box and inside there were unopened bottles of Bud Light beer. The package had already been opened and there were several opened consumed bottles of Bud Light beer. The officer removed the box and placed it on top of the vehicle. Officer Sloan identified the other rear male passenger as Wilton Benally date of birth [REDACTED]

Sergeant Leonard Chee arrived at location to assist Officer Sloan. Sgt. Chee secured Mr. Lott and Mr. Benally in his patrol vehicle.

Officer Sloan asked Maria if she had consumed an alcoholic beverages and she replied "They had no one else to drive them". The officer asked Maria again if she had anything to drink and she replied "I had like two beers that's it". The officer asked Maria if she is willing to do some field sobriety test and she replied "Yeah".

The first test given to Maria was the Horizontal Gaze Nystagmus (HGN) test. Officer Sloan instructed Maria to keep her head still and follow the tip of his pen with her eyes only. The officer observed that Maria had equal pupil size and equal tracking in both eyes. During the test Maria could not keep her head still when following the pen with her eyes. Maria was reminded to keep her head still. There was lack of smooth pursuit in both of Maria's eyes. Maria had distinct and sustained nystagmus at maximum deviation in both eyes. Maria had onset of nystagmus prior to forty five degrees. During the test Maria was swaying from side to side. Maria showed all six clues of impairment during the HGN test.

The second test given to Maria was the walk and turn test. The test was given on a paved, flat surface. Officer Sloan gave verbal instructions on how to do the test. The officer also demonstrated the test to Maria. The officer instructed Maria to stand in the start position with her right foot in front of her left foot and her hands at her side. Before Officer Sloan could instruct Maria to stay in the start position she began the test herself. Maria began walking on the line and she was told to stop and do not start the test until told to do so. Maria got back into the start position. Maria had trouble standing the start position and she had trouble keeping her balance. Maria raised her arms away from her body more than six inches and she stepped out of the start position twice.

The officer continued to give verbal instructions and she tried starting the test again. The officer had to remind Maria three times not to start until told to do so. The officer finished explaining the instructions to Maria. Officer Sloan asked Maria if she understood the instructions. Maria stated "No I'm confused". Officer Sloan re-demonstrated the test to Maria and she was asked three times if she understood the instructions and she replied "Yes". During the test Maria could not keep her feet aligned straight on the line and she was not counting her steps. During Maria's third and fourth step she stepped off the line. Maria could not keep her balance and she kept moving her hands away from her body more than six inches.

During the turn Maria asked for further instructions and she was reminded that she understood the instructions. Maria did not turn with her left foot planted on the ground using

SHIPROCK

02-09-013121 4/20/2009

- Administrative Gang Related
 Investigation Accident Arrests Made Suspects

OFFICER: T 2014 SAMUEL SLOAN JR.

Incident Report Form

her right foot to turn around or pivot towards the opposite directions. The officer reminded Maria to take nine steps back on the line. Maria then began to walk backwards in a different direction moving further off the shoulder onto the dirt and counting past nine. The officer then ended the walk and turn test. Maria showed six clues of impairment during the walk and turn test.

The third test given to Maria was the one leg stand. The officer instructed Maria to use which ever leg she comfortable with and raise it six inches off the ground with her toes pointed outwards. Maria was told to look down at her foot and keep her arms at her side. Maria was then told to count from 1001 until told to stop. Officer Sloan gave Maria verbal instructions on how to do the test and he also demonstrated the test. Maria was asked if she understood the test and she replied "Yes". During the test Maria raised her left leg and she immediately began to sway back and forth. Maria had trouble balancing herself and she began raising her hands away from her body more then six inches. Maria began to hop during test. Maria only counted up to 1009 and she ended the test placing her foot on the ground. Officer Sloan asked Maria if she is done and she replied "Yes". Officer Sloan then reminded Maria that she was not to stop the test until told to do so. Maria then began the test again and counted from the beginning of 1001. Maria again only counted to 1009 and ended the test. The officer asked Maria again if she is done with the test and she replied "Yes".

Officer Sloan told Maria to turn around and place her hands behind her back. The officer informed Maria that she is under arrest for DUI. Maria was properly handcuffed and secured in back of Officer Sloan's patrol vehicle. The officer informed police dispatch of the arrest and requested for a tow truck.

Officer Sloan filled out of Vehicle Removal Form and did inventory of the vehicle. More alcoholic beverages were found inside of the vehicle and were confiscated. Pictures of the contraband were taken. The opened alcoholic beverage containers had their contents disposed of at location.

The vehicle is a gray, 2004, Ford Taurus bearing Arizona plate AEL1101. The Vehicle's Identification Number is 1FAHP55UX4G109933. The vehicle was towed by Buck's Towing for safe keeping.

Sgt. Chee transported Norman Lot and Wilton Benally to the Shiprock Department of Corrections for booking. Both are charged for Public Intoxication. Officer Sloan transported Maria Bundy to the Shiprock Department of Corrections. Maria is charged for Driving Under the Influence and Possession of Liquor. Maria is also cited for Following to Close.

This case is closed with three arrest made.