

3-11-2008

Cooke v. State Clerk's Record v. 1 Dckt. 34820

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LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO,
PLAINTIFF-RESPONDENT,

vs.

MAX RITCHIE COOKE,
DEFENDANT-APPELLANT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

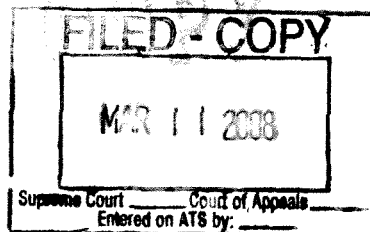
Hon MICHAEL R. MCLAUGHLIN, District Judge

MOLLY HUSKEY
State Appellate Public Defender

Attorney for Appellant

LAWRENCE G. WASDEN
Attorney General

Attorney for Respondent



34820

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MAX RITCHIE COOKE,

Defendant-Appellant.

Supreme Court Case No. 34820

LIMITED CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MICHAEL R. MCLAUGHLIN

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER ON DIRECT APPEAL,
 FILED DECEMBER 10, 200787

ORDER FOR PREPARATION OF TRANSCRIPT, FILED MAY 15, 200774

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SECOND AMENDED JUDGMENT OF CONVICTION, FILED NOVEMBER 15, 200780

STATE'S AMENDED NOTICE OF ANTICIPATED TRIAL WITNESSES, FILED
 JUNE 9, 2003.....11

STATE'S BRIEF IN SUPPORT OF IDAHO RULE 404(b) EVIDENCE, FILED
 JUNE 9, 2003.....13

STATE'S NOTICE OF ANTICIPATED TRIAL WITNESSES, FILED MAY 29, 20039

STATE'S NOTICE OF INTENT NOT TO SEEK DEATH PENALTY, FILED
 APRIL 4, 20038

In the Supreme Court of the State of Idaho

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	ORDER TAKING JUDICIAL
)	NOTICE
v.)	
)	
MAX RITCHIE COOKE,)	NO. 34820
)	
Defendant-Appellant.)	

The Notice of Appeal was filed in the District Court November 30, 2007. A Reporter's Transcript and Clerk's Record was filed February 3, 2004 in related appeal No. 30187, State v. Cooke; therefore good cause appearing,

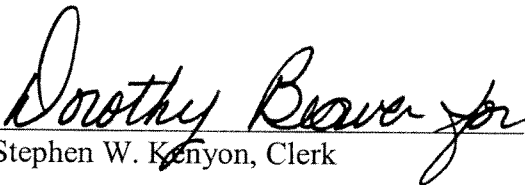
IT HEREBY IS ORDERED that this Court shall take JUDICIAL NOTICE of the Reporter's Transcript and Clerk's Record filed in prior appeal No. 30187, State v. Cooke.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in the Notice of Appeal, together with a copy of this Order, but shall not duplicate any documents filed in prior appeal No. 30187.

IT FURTHER IS ORDERED that the District Court Reporter shall prepare and lodge a SUPPLEMENTAL REPORTER'S TRANSCRIPT, which shall include the proceedings requested in the Notice of Appeal, but shall not duplicate any proceedings included in the Reporter's Transcript filed in prior appeal No. 30187. The LIMITED CLERK'S RECORD and REPORTER'S TRANSCRIPT shall be filed with this Court after settlement. Further, the exhibits submitted in prior appeal No. 30187, which were returned to the District Court on April 20, 2004, are not covered by this Order and they will not be sent to the Supreme Court unless specifically requested by the parties. The party requesting any or all of the prior exhibits must specifically designate those exhibits being requested.

DATED this 6th day of December 2007.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

ADA COUNTY

Register of Actions

Case# H0300279



Court 1-District
Issuing Agency A-Ada County
Municipality AD-Ada County
Judge 189-Michael R. McLaughlin
Case Ref GJ03-20
Prosecutor A-010 Roger A Bourne
Victim Coordinator A-061 Tammy Parker
3/04/2003 Case Created

03/04/2003 Case Created

CH

Defendant(s):

01 COOKE MAX RITCHIE

Charge(s):

002 S 18-907 -A	BATTERY AGGRAVATED	Felony	Disposed	06/12/2003
001 S 18-4503	KIDNAPPING II	Felony	Disposed	06/12/2003
003 S 18-901 -B	ASSAULT	Misdemeanor	Disposed	06/12/2003

Register of Actions:

03/04/2003	001	Case Opened	CH
03/04/2003	001	Charge Created	CH
03/04/2003	002	Charge Created	CH
03/04/2003	003	Charge Created	CH
03/04/2003		INDICTMENT FILED	CH
03/04/2003	001	Charge Filed Cause Found	BP
03/04/2003	002	Charge Filed Cause Found	BP
03/04/2003	003	Charge Filed Cause Found	BP
03/04/2003		Order No Contact with ...Alison Cooke	CH
03/04/2003		Arraignment 03/05/2003	CH
03/05/2003		Event Continued entry of plea	MG
03/05/2003		Notice of Hearing	SG
03/05/2003		Motion for Bond Reduction	SG
03/11/2003		Arraignment (Con't)	KB
03/11/2003	001	Not Guilty Plea	KB
03/11/2003	002	Not Guilty Plea	KB
03/11/2003	003	Not Guilty Plea	KB
03/11/2003		Event Scheduled Pre-Trial Conference 05/27/2003	KB
03/11/2003		Jury Trial Set 06/10/2003	KB
03/17/2003		Scheduling Order	KB
03/31/2003		State/City Request for Discovery	MP
03/31/2003		State/City Response to Disc. Req.	MP
04/04/2003		Notice of Intent Not To ...Seek Death Penalty	HQ
04/08/2003		State/City Response to Disc. Req. /Addendum	HQ
05/27/2003		Pre-Trial Conference	KB
05/27/2003		Event Scheduled Pre-Trial Conference 06/03/2003	KB
05/29/2003		Notice of Anticipated Trial ...Witnesses	HQ
06/03/2003		Pre-Trial Conference	KB
06/04/2003		State/City Response to Disc. Req. /Fourth Addendum	MP
06/09/2003		State's Amended list ...of Trial Witnesses	KB
06/09/2003		Cert of Delivery	HQ
06/09/2003		State's Brief in ...Support of 404(b)	KB
06/10/2003		Jury Trial	KB
06/10/2003		Amended Indictment	KB

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ADA COUNTY

Register of Actions

Case# H0300279



06/12/2003	...Filed	
06/12/2003	Jury Instructions	
06/12/2003	...Filed	KB
06/12/2003	Jury Verdict Filed	
06/12/2003	Event Scheduled Sentencing Hearing 07/24/2003	KB
06/12/2003	001 Charge Amended From S 18-4501 F KIDNAPPI	KB
06/12/2003	001 To S 18-4503 F KIDNAPPI	KB
06/12/2003	001 Defendant Found Guilty	KB
06/12/2003	002 Defendant Found Guilty	KB
06/12/2003	003 Defendant Found Guilty	KB
06/12/2003	003 Defendant Found Guilty	KB
06/12/2003	003 Charge Amended From S 18-920 M CONTACT O	KB
06/12/2003	003 To S 18-901-B M ASSAULT	KB
06/12/2003	003 Defendant Found Guilty	KB
06/25/2003	Motion for Anger Control	KB
	...Evaluation	KB
06/26/2003	Order for Anger Control	
	...Evaluation	KB
07/11/2003	Notice of Hearing	
07/11/2003	Event Scheduled Sentencing Hearing 08/06/2003	KB
07/11/2003	Event Scheduled Sentencing Hearing 08/13/2003	KB
07/18/2003	Notice of Hearing 8/20/03	KB
	...(Amended)	KB
07/18/2003	Event Scheduled Sentencing Hearing 08/20/2003	
08/20/2003	Sentence Hearing	KB
08/20/2003	001 Final Judgment, Order or Decree	KB
08/20/2003	001 Sentenced to ISCI 25y 194d cr	KB
08/20/2003	003 Final Judgment, Order or Decree	KB
08/20/2003	003 Sentenced to Jail 90d 90d cr	KB
	...Concurrent	KB
08/20/2003	002 Judgment Corrected	
08/20/2003	002 Judgment Corrected S 18-907-A BATTERY	KB
08/20/2003	002 Sentence Removed- Fines	KB
08/20/2003	002 Sentence Modified- Incarceration	KB
08/20/2003	002 Sentenced to ISCI 15y	KB
08/21/2003	Judgment of Convict 08/21/2003	
10/10/2003	Notice of Appeal to Supreme	
	...Court	PM
10/10/2003	Motion to Proceed in Forma	
	...Pauperis & Affidavit	PM
10/10/2003	Motion for Appointment of	
	...Counsel on Appeal	PM
10/10/2003	Affidavit in Support	
	...of Motn for Appt	PM
10/14/2003	Amended Judgment	
	...of Conviction	
10/20/2003	Order Granting Motion to	
	...Appoint Counsel	KB
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11/05/2003	Notice for Appt of PD to	RN
	...Pursue Appeal	RN
11/12/2003	Order Re: Appointment of	
	...PD on Appeal	KB
11/19/2003	Order Appointing App. PD	
	...on Direct Appeal	KB
12/18/2003	Remittitur-dismissed	
	...Supreme Ct#30187	PM
04/22/2004	Remittitur-Dismisssed	

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BT

ADA COUNTY

Register of Actions

Case# H0300279



04/30/2007	...Supreme Ct #30187	KB
04/30/2007	Event Scheduled Hearing 08/27/2007	KB
04/30/2007	Event Scheduled Hearing 09/26/2007	RC
05/08/2007	Motion for Preparation of ...JT Transcript	KB
05/15/2007	Order for Preparation of ...Transcript	KB
06/01/2007	Transcript - Partial	KB
08/27/2007	Hearing	KB
09/26/2007	Hearing	SA
11/15/2007	2nd Amended Judgment ...of Conviction	RC
11/30/2007	Notice of Appeal	BT
12/10/2007	Order Appointing ...S.A.P.D.	BT
01/07/2008	Amended Notice Of ...Appeal	

00007

APR 4 2003

J. DAVID NAVARRO, Clerk
by H. [Signature]
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger A. Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MAX RITCHIE COOKE,)
)
Defendant.)
_____)

Case No. H0300279
STATE'S NOTICE OF INTENT
NOT TO SEEK DEATH
PENALTY

COMES NOW, Roger A. Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and hereby puts the Court and counsel on notice that the State will not seek the death penalty in the event the Defendant is convicted of the crime of first degree kidnapping as charged in Count I of the Indictment.

DATED this 2nd day of April, 2003.

GREG H. BOWER
Ada County Prosecuting Attorney

R Bourne
Roger A. Bourne
Deputy Prosecuting Attorney

440

NO. _____
A.M. 11:19 P.M. FILED

MAY 28 2009

By H. Howard
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front St., Room 3191
Boise Idaho 83702
Telephone: 208-287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
 Plaintiff,)
 vs.)
)
 MAX RITCHIE COOKE,)
)
 Defendant,)
)
)
)

Case No. H0300279

**STATE'S NOTICE OF
ANTICIPATED TRIAL
WITNESSES**


COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts Court and counsel on notice of the witnesses that the State anticipates it will call at the upcoming trial. The State has not included the addresses of the civilian witnesses in this notice so that they will not become public. The State has previously made those addresses available to defense counsel.

1. Deputy Gary Brodin, ACSO
2. Allison Cooke, c/o Ada County Prosecuting Attorney
3. Andy Wonacott, c/o Ada County Prosecuting Attorney
4. Deputy Brenda Glenn, ACSO
5. Christine Heavin, c/o Ada County Prosecuting Attorney

6. Sherry Biddle, c/o Ada County Prosecuting Attorney
7. Jackie Carlson, c/o Ada County Prosecuting Attorney
8. Case Christensen, c/o Ada County Prosecuting Attorney
9. Ladene Hubble, c/o Ada County Prosecuting Attorney
10. Stacy Wilson, c/o Ada County Prosecuting Attorney
11. Kathy Bosserman, c/o Ada County Prosecuting Attorney
12. Officer Arnold, BCPD, #532
13. Officer Ruffalo, BCPD, #678
14. Sgt. Basterrechea, BCPD, #416
15. Brian Fetherolf, c/o Ada County Prosecuting Attorney
16. Jennifer Novacio, c/o Ada County Prosecuting Attorney
17. Dep. Ed McDaniel, ACSO
18. Brandi Wonacott, c/o Ada County Prosecuting Attorney
19. Det. Ken Smith, ACSO
20. Shane McCubbins, c/o Ada County Prosecuting Attorney
21. Stephanie Turner, c/o Ada County Prosecuting Attorney
22. Tina Rossi, Ada County Paramedic
23. Dale & Amy Riggs, c/o Ada County Prosecuting Attorney
24. Deputy Brodin, ACSO
25. Sean Maloney, c/o Ada County Prosecuting Attorney
26. Det. Shellie Strolberg, ACSO

DATED this 28 day of May, 2003.

GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

FILED
P.M. 1:30

JUN 09 2003

J. DAVID NAVARRO, CLERK
K. S. BROWN

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front St., Room 3191
Boise Idaho 83702
Telephone: 208-287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
MAX RITCHIE COOKE,)
)
Defendant,)
)
_____)

Case No. H0300279

**STATE'S AMENDED NOTICE
OF ANTICIPATED TRIAL
WITNESSES**

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts Court and counsel on notice of the witnesses that the State anticipates it will call at the upcoming trial. The State has not included the addresses of the civilian witnesses in this notice so that they will not become public. The State has previously made those addresses available to defense counsel.


1. Andy Wonacott, c/o Ada County Prosecuting Attorney
2. Christine Heavin, c/o Ada County Prosecuting Attorney
3. Stacy Wilson, c/o Ada County Prosecuting Attorney

XB

4. Kathy Bosserman, c/o Ada County Prosecuting Attorney
5. Shane McCubbins, c/o Ada County Prosecuting Attorney
6. Jennifer Novacio, c/o Ada County Prosecuting Attorney
7. Deputy Brenda Glenn, ACSO
8. Brian Zimmerman, Meridian Fire Department
9. Tina Rossi, Ada County Paramedic
10. Deputy Gary Brodin, ACSO
11. Det. Mike Kinzel, ACSO
12. Det. Ken Smith, ACSO
13. Det. Shellie Strolberg, ACSO
14. Allison Cooke, c/o Ada County Prosecuting Attorney

DATED this 9th day of June, 2003.

GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

FILED
P.M. 1/

JUN 09 2003

J. DAVID NAVARRO, CLERK

DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MAX RITCHIE COOKE,)
)
Defendant.)
_____)

Case No. H0300279

**STATE'S BRIEF IN SUPPORT
OF IDAHO RULE 404(b)
EVIDENCE**

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts before the Court the State's view of anticipated facts at trial, together with Idaho case law on the admissibility of Idaho Criminal Rule 404(b) misconduct, by the defendant.

The facts will show that in the early morning hours of January 18, 2003, the defendant drove a pickup truck off of Ustick Road, through a fence, approximately 80 yards through a field, and into a tree. His wife, Alison Cooke,

RB

was the passenger in the pickup truck. She was seriously injured when the truck struck the tree. Ada County Sheriffs deputies observations at the scene were that the driver of the pickup had sufficient time to stop the truck before it traveled the approximately 80 yards through the field. They also observed that the tracks in the pasture grass in the field showed that the truck corrected its course to line up on the tree prior to striking the tree. Finally, and most importantly, the deputies observed that the tracks indicated that the pickup truck accelerated in the field prior to striking the tree.

After the crash, the defendant was interviewed and gave various stories, but the central theme was that he left the road accidentally and apparently hit the gas pedal instead of the brake pedal prior to striking the tree. He maintains that the crash into the tree was an accident.

The State's evidence would show that the defendant made several threats to Alison Cooke in the approximately six weeks prior to the crash. The defendant was suspicious that his wife was calling or seeing another man. The threats made to Alison were that he would kill her if he found out that she was talking to another man or seeing another man. The defendant not only made these threats directly to Alison Cooke, but he also told other people that he would kill Alison if he found out that she was speaking to another man. He also threatened to kill himself.

Due to the trouble in the marriage, Alison Cooke left the defendant and went to live with her brother in Meridian. At the end of November, and again on December 17, 2002, the defendant was committed to Intermountain Hospital by Boise Police officers because of suicide threats that he was making due to the separation. During November and December the defendant threatened that he would kill her if he found out that she was seeing another man.

On the night in question, the defendant apparently discovered that Allison was not at a party with her sister. He then parked his vehicle around the corner from Alison's brothers house, where Alison was staying, and waited for her to return home. When she returned home, he forced his way into her pickup truck and drove down Ustick Road at high speed with Allison as the passenger. Tire marks on Ustick show that he drove off of Ustick Road, through a fence, across a field, and into the tree.

Immediately prior to kidnapping Alison, the defendant called the man that the defendant believed Alison was dating. The defendant told that man that if the defendant found out that Allison was speaking to that man, that the defendant would make "headline news." The crash took place within a couple of hours of that telephone call.

The State believes that those statements made by the defendant are evidence that the defendant's crash into the tree was not an accident as the defendant claims, but rather show the defendant's intent and his lack of absence

of mistake or accident. Idaho Rule of Evidence 404(b) together with Idaho case law permits the admission of evidence of other crimes, wrongs, or acts to prove what the defendant's intent was or to prove his absence of mistake or accident. The case law indicates that the Court must make a two-tiered analysis before the evidence can be admitted. The Court must first determine whether the evidence has any relevance to the issue at hand. If the Court finds relevance, the Court must then determine whether the unfair prejudicial effect of the evidence outweighs its probative value.

The following cases are instructive. In State v. Buzzard, 110 Idaho 800 (Ct. App. 1986) the defendant was charged with second-degree murder. The murder was by stabbing. The State's evidence showed that shortly before the fatal stabbing, Buzzard had threatened the victim with a machete. The court found that the machete incident was relevant and that the probative value was not outweighed by any unfair prejudice. The Court of Appeals upheld the admission of the testimony on the grounds that it was relevant to the defendant's motive and his intent towards the victim. The court said that:

We also recognize the state is entitled to present to the jury a complete account of the circumstances surrounding the commission of the crime. State v. Izatt, 96 Idaho 667 (1975). The machete incident was the basis of the argument, which eventually led to the stabbing of Hayward. The jury would have received an incomplete story had no basis for the argument been established. Further, the judge balanced the probative value of the evidence with its possible prejudicial effect...

In State v. McAbee, 130 Idaho 517 (Ct. App. 1997), the defendant was charged with forgery and burglary. The state's evidence showed that she had passed other checks on the same account, which were also unauthorized. The defendant claimed that the check she had passed was authorized.

The court permitted the admission of the other checks, not to show that the defendant was a person of bad character and acted in conformity therewith, but to show the defendant's intent and lack of mistake.

Finally, in State v. Whipple, 134 Idaho 498 (Ct. App. 2000), the defendant was convicted of second-degree murder for beating his wife to death with a hammer. The defendant claimed that he suffered from post-traumatic stress disorder resulting from his tour of duty in Vietnam.

In rebuttal, the state called a member of the school board to testify that Whipple had threatened to kill him and a busload of school children several years earlier. The state also called the defendant's daughter to testify about the defendant's abuse of her other family members and her pets. The State's theory that "the testimony was intended to illustrate Whipple's ability to premeditate and inflict violence upon others."

The trial court admitted the rebuttal evidence after determining that it was probative and was not outweighed by unfair prejudice to the defendant. The Court of Appeals upheld the trial court's admissibility ruling and held that it was proper rebuttal to Whipple's "non-volition defense, and was not used to show a

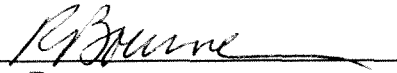
propensity.” The court held that the trial court did not abuse its discretion in admitting the evidence.

In the present case, evidence of the defendant’s specific threats to kill Alison Cooke are necessary to give the jury a “complete account of the circumstances surrounding the commission of the crime”. Buzzard, *supra*. Without that background, a jury will not understand that the crash into a tree is the culmination of threats made by the defendant to Alison Cooke from approximately two months before the crime until just a couple of hours before the crime. Those threats, together with the physical evidence at the scene of the crime, fly in the face of the defendant’s claim that his act of leaving the road, driving through the field and crashing into a tree were merely an accident.

The evidence will show that the defendant knew that Alison was not wearing a seatbelt. The defendant had an airbag, which protected him from serious injury at the time of the crash.

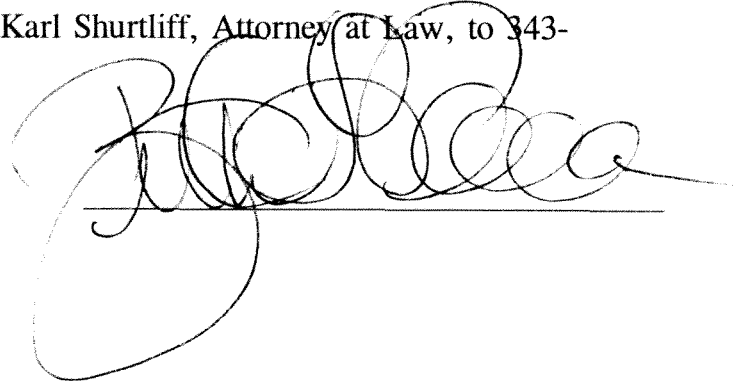
DATED this 9 day of June, 2003.

GREG H. BOWER
Ada County Prosecuting Attorney


Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF FAX

I HEREBY CERTIFY that on this 9 day of June, 2003, I faxed a true and correct copy of the foregoing to M. Karl Shurtliff, Attorney at Law, to 343-3282.

A handwritten signature in black ink, consisting of several large, overlapping loops and flourishes, is written over a horizontal line. The signature is positioned to the right of the text block.

NO. _____
FILED
A.M. _____ P.M. 7

JUN 12 2003

J. DAVID NAVAREDO, CLERK
[Signature]
CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 MAX RITCHIE COOKE,)
)
 Defendant.)
 _____)

Case No. H0300279
INSTRUCTIONS TO THE JURY

THE HONORABLE MICHAEL R. MCLAUGHLIN
DISTRICT JUDGE

PRESIDING

[Handwritten mark]

INSTRUCTION NO. 1

This is the case of State of Idaho v. Max Ritchie Cooke. Are the parties ready to proceed?

In a moment the Clerk will call the roll of the jury. When your name is called you will also be identified with a number. Please remember your number as we will be using it later in the jury selection process.

The Clerk will now call the roll of the jury.

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select 13 jurors from among you.

I am Judge Michael McLaughlin the judge in charge of the courtroom and this trial. The deputy clerk of court, Kristin, marks the trial exhibits and administers oaths to you jurors and to the witnesses. The bailiff, _____, will assist me in maintaining courtroom order and working with the jury. The Court reporter, Tammy, will keep a verbatim account of all matters of record during the trial.

Each of you is qualified to serve as a juror of this court. This call upon your time does not frequently come to you, but is part of your obligation for your citizenship in this state and country.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of

the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The State of Idaho is the plaintiff in this action. The lawyer representing the State is Roger Bourne, a member of the Ada County Prosecuting Attorney's staff.

The defendant in this action is Max Ritchie Cooke. The lawyer representing Mr. Cooke is Karl Shurtliff. I will now read you the pertinent portion of the Indictment which sets forth the charges against the defendant. The Indictment is not to be considered as evidence but is a mere formal charge against the defendant. You must not consider it as evidence of guilt and you must not be influenced by the fact that charges have been filed.

With regard to the Indictment it charges, that the defendant, Max Ritchie Cooke, on or about January 18, 2003, in the County of Ada, State of Idaho, did willfully seize and/or take Allison Cooke with the intent to commit rape and/or to commit serious bodily injury upon Allison Cooke, and that also on the same date, the defendant did willfully commit Aggravated Battery upon Allison Cooke and that also on the same date, the defendant did intentionally, unlawfully and with apparent ability commit Assault with Intent to Commit Rape upon Allison Cooke.

To this charge Mr. Cooke has pled not guilty.

Under our law and system of justice, every defendant is presumed to be innocent. The effect of this presumption is to require the state to prove a defendant's guilt beyond a reasonable doubt in order to support a conviction against that defendant.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case. **(Read reasonable doubt instruction)**

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

**** THE CLERK WILL NOW GIVE TO THE PANEL THE OATH ****

In this part of the jury selection, you will be asked questions touching on your qualifications to serve as jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject

matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately. If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question. The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefor. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The State of Idaho is the plaintiff in this action. The lawyer representing the State is Roger Bourne, a member of the Ada County Prosecuting Attorney's staff.

The defendant in this action is Max Ritchie Cooke. The lawyer representing Mr. Cooke is Karl Shurtliff. I will now read you the pertinent portion of the Indictment which sets forth the charges against the defendant. The Indictment is not to be considered as evidence but is a mere formal charge against the defendant. You must not consider it as evidence of guilt and you must not be influenced by the fact that charges have been filed.

With regard to the Indictment it charges, that the defendant, Max Ritchie Cooke, on or about January 18, 2003, in the County of Ada, State of Idaho, did willfully seize and/or take Allison Cooke with the intent to commit rape and/or to commit serious bodily injury upon Allison Cooke, and that also on the same date, the defendant did willfully commit Aggravated Battery upon Allison Cooke and that also on the same date, the defendant did intentionally, unlawfully and with apparent ability commit Assault with Intent to Commit Rape upon Allison Cooke.

To this charge Mr. Cooke has pled not guilty.

Under our law and system of justice, every defendant is presumed to be innocent. The effect of this presumption is to require the state to prove a defendant's guilt beyond a reasonable doubt in order to support a conviction against that defendant.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case. **(Read reasonable doubt instruction)**

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

**** THE CLERK WILL NOW GIVE TO THE PANEL THE OATH ****

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Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject

matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately. If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question. The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefor. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

INSTRUCTION NO. 2

1. You have heard the charge made in the Information/Indictment against the defendant. Other than what I have told you, do any of you know anything about this case, either through your own personal knowledge, by discussion with anyone else or from radio, television or newspapers?

2. Have any of you ever formed or expressed an unqualified opinion that Max Ritchie Cooke is guilty or not guilty of the offenses charged?

3. Are any of you related by blood or marriage to Max Ritchie Cooke or do you know him/her from any business or social relationship? Are any of you a party in any civil action against Max Ritchie Cooke or the State of Idaho?

4. Does the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, boarder or lodger exist between any of you and Max Ritchie Cooke?

5. I have introduced you to the lawyers representing the parties. Are any of you related by blood or marriage to any of the lawyers or do any of you know any of the lawyers from any professional, business or social relationship?

6. Do any of you have a religious or moral position that would make it impossible to render judgment?

7. Do any of you have any bias or prejudice either for or against Max Ritchie Cooke?

8. I will now read to you the names of those who may possibly testify in this

cause. I will read their names slowly and I ask that if you know any of them in any capacity that you immediately advise me of this fact.

WITNESS LIST

Deputy Gary Brodin, ACSO
Allison Cooke
Andy Wonacott
Deputy Brenda Glenn, ACSO
Christine Heavin
Sherry Biddle
Jackie Carlson
Case Christensen
Ladene Hubble
Stacy Wilson
Kathy Bosserman
Officer Arnold, BCPD
Officer Ruffalo, BCPD
Sgt. Basterrechea, BCPD
Brian Fetherolf
Jennifer Novacio
Deputy Ed McDaniel, ACSO
Brandi Wonacott
Detective Ken Smith, ACSO
Shane McCubbins
Sephania Turner
Tina Rossi, Ada County Paramedic
Dale & Amy Riggs
Deputy Brodin, ACSO
Sean Maloney
Detective Shellie Strolberg, ACSO

9. **Are there any of you who are unwilling to follow my instructions to you, the jury, as to the law that you must apply in determining this case?**

COURT CLUB?
PRIOR JUROR?
PRIOR DEFENDANT?
PRIOR WITNESS?
PRIOR PARTY?
WHAT ABOUT POLICE AND PROSECUTORS, ANY BIAS?
BEEN ACCUSED OF A CRIME BEFORE?
PRESSING FAMILY OR BUSINESS MATTERS?

PHYSICAL PROBLEMS OR SEEING OR HEARING THE EVIDENCE?

10. **Do any of you know each other?**

11. Are there any of you, if selected as a juror in this case, who is unwilling or unable to render a fair and impartial verdict based upon the evidence presented in this courtroom and the law as instructed by the Court?

12. Do any of you have any other reason why you cannot give this case your undivided attention and render a fair and impartial verdict?

INSTRUCTION NO. 3

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the State's opening statement, the defense may make an opening statement, or may wait until the State has presented its case.

The State will offer evidence that it says will support the charges against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the State may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the State and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 4

This criminal case has been brought by the State of Idaho.

The defendant is charged by the State of Idaho with violation of the law. The charges against the defendant are contained in the Indictment. The Clerk shall read the Indictment and state the defendant's plea.

The Indictment is simply a description of the charge; it is not evidence.

INSTRUCTION NO. 5

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The State has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the State must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It is the kind of doubt which would make an ordinary person hesitant to act in the most important affairs of his or her own life. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 6

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should

put it out of your mind, and not refer to it or rely on it in your later deliberations.


During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.



A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 7

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 8

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 9

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

I advised you that we have a court reporter that also keeps a verbatim record of these proceedings. However, no transcript is made of these proceedings for review by the jury.

INSTRUCTION NO. 10

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

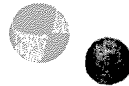
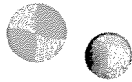
Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go any place mentioned in the testimony

without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.



INSTRUCTION NO. 11

You were advised earlier that twelve (12) members of this panel will decide this case. The alternate juror will be selected after the final arguments are presented in this case.

INSTRUCTION NO. 12

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on any or all of the offenses charged.

INSTRUCTION NO 12(a)

Evidence has been introduced for the purpose of showing that the defendant committed wrongs or acts other than that for which the defendant is on trial.

Such evidence, if believed, is not to be considered by you to prove the defendant's character or that the defendant has a disposition to commit crimes.

Such evidence may be considered by you only for the limited purpose of proving the defendant's motive, preparation, plan or absence of mistake or accident.

INSTRUCTION NO 12(b)

Evidence that a witness has been convicted of an offense may be considered by you only as it may affect the believability of the witness.

INSTRUCTION NO. 13

All of the evidence has been presented in this case. You are to determine the facts solely from the evidence you heard or saw during the trial. I want to remind you of some things that are not evidence. They include questions and comments to witnesses; objections or statements about the admissibility of evidence; testimony that was excluded or stricken, or that you were instructed to disregard; and anything you may have heard or seen when court was not in session.

I will not reread the instructions I gave you at the beginning of the trial. If you have any questions about those instructions, please review them during your deliberations. You must consider the instructions as a whole, not picking out one and disregarding others. The order in which you are instructed on various issues has no significance as to their relative importance.

You will have the original jury instructions and the trial exhibits with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

You will also have the original jury verdict form. Please use it to return your verdict.

INSTRUCTION NO. 14

In order for the defendant to be guilty of Count I: Kidnapping in the First Degree, the State must prove each of the following:

1. On or about January 18, 2003;
2. in the State of Idaho;
3. the defendant Max Ritchie Cooke seized and/or took Allison Cooke;
4. with the intent to cause Allison Cooke, without authority of law, to be secretly confined or kept or detained against Allison Cooke's will;
5. with the intent to commit rape and/or with the intent to commit serious bodily injury upon Allison Cooke.

If any of the above has not been proved beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO. 15

Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under either of the following circumstances:

1. Where she resists but her resistance is overcome by force or violence.
2. Where she is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution.

INSTRUCTION NO. 16

The term "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

INSTRUCTION NO. 17

If you find the defendant guilty of Kidnapping, you must next decide whether the State has proven Kidnapping in the First Degree. For the defendant to be guilty of Kidnapping in the First Degree, the state must prove beyond a reasonable doubt that the kidnapping was:

Committed for the purpose of committing serious bodily injury and/or rape upon the person kidnapped

For the defendant to be guilty of Kidnapping in the First Degree, you must unanimously agree that the above circumstance has been proven beyond a reasonable doubt. If you unanimously find that the above circumstance has not been proven beyond a reasonable doubt, you must next consider the offense of Kidnapping in the Second Degree.

INSTRUCTION NO. 18

In order for the defendant to be guilty of Kidnapping in the Second Degree, the State must prove each of the following:

1. On or about January 18, 2003;
2. in the State of Idaho;
3. the defendant Max Ritchie Cooke seized and/or took Allison Cooke;
4. with the intent to cause Allison Cooke, without authority of law, to be secretly confined within this state to be in any way kept or detained against Allison Cooke's will.

If any of the above has not been proved beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO. 19

In order for the defendant to be guilty of Count II: Aggravated Battery, the State must prove each of the following:

1. On or about January 18, 2003;
2. in the State of Idaho;
3. the defendant Max Ritchie Cooke committed a battery upon Allison Cooke;
4. by causing great bodily harm to Allison Cooke.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO. 20

A "battery" is committed when a person:

(1) wilfully and unlawfully uses force or violence upon the person of another;

or

(2) actually, intentionally and unlawfully touches or strikes another person against the will of the other; or

(3) unlawfully and intentionally causes bodily harm to an individual.

INSTRUCTION NO. 21

A person commits aggravated battery who, in committing battery:

- (a) Causes great bodily harm, permanent disability or permanent disfigurement.

INSTRUCTION NO. 22

If your unanimous verdict is that the defendant is not guilty of Aggravated Battery, you must acquit the defendant of that charge. In that event, you must next consider the included offense of Battery.

INSTRUCTION NO. 23

In order for the defendant to be guilty of the lesser included offense of Battery, the State must prove each of the following:

- (1) On or about January 18, 2003;
- (2) in the State of Idaho;
- (3) the defendant Max Ritchie Cooke wilfully and unlawfully;
- (4) caused bodily harm to Allison Cooke.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO. 24

In order for the defendant to be guilty of Count III: Assault With Intent to Commit Rape, the State must prove each of the following:

- (1) On or about January 18, 2003;
- (2) in the State of Idaho;
- (3) the defendant Max Ritchie Cooke committed an assault upon Allison Cooke;
- (4) with the intent to commit rape.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO. 25

An "assault" is committed when a person:

(1) unlawfully attempts, with apparent ability, to commit a violent injury on the person of another; or

(2) intentionally and unlawfully threatens by word or act to do violence to the person of another, with an apparent ability to do so, and does some act which creates a well-founded fear in the other person that such violence is imminent.

INSTRUCTION NO. 26

If your unanimous verdict is that the defendant is not guilty of Assault with the Intent to Commit Rape, you must acquit the defendant of that charge. In that event, you must next consider the included offense of Assault.

INSTRUCTION NO. 27

In order for the defendant to be guilty of the lesser included offense of Assault, the State must prove each of the following:

1. On or about January 18, 2003;
2. in the State of Idaho;
3. the defendant Max Ritchie Cooke, intentionally and unlawfully;
4. threatened by word or act to do violence to Allison Cooke;
5. with an apparent ability to do so;
6. and did some act which created a well-founded fear in the other person that such violence was imminent.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

INSTRUCTION NO. 28

In this case you will return a verdict, consisting of a series of questions. Although the explanations on the verdict form are self explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

“We, the Jury, for our verdict, unanimously answer the questions submitted to us as follows:

As to Count I:

QUESTION NO. 1: Is Max Ritchie Cooke guilty or not guilty of Kidnapping in the First Degree?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 “**Guilty**”, then you should proceed to Question No. 3. If you unanimously answered Question No. 1 “**Not Guilty**”, then proceed to answer Question No. 2.

QUESTION NO. 2: Is Max Ritchie Cooke guilty or not guilty of Kidnapping in the Second Degree?

Not Guilty _____ Guilty _____

Proceed to Question No. 3.

As to Count II:

QUESTION NO. 3: Is Max Ritchie Cooke guilty or not guilty of Aggravated Battery?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 3 **“Guilty”**, then you should proceed to Question No. 5. If you unanimously answered Question No. 3 **“Not Guilty”**, then proceed to answer Question No. 4.

QUESTION NO. 4: Is Max Ritchie Cooke guilty or not guilty of Battery?

Not Guilty _____ **Guilty** _____

Proceed to Question No. 5.

As to Count III:

QUESTION NO. 5: Is Max Ritchie Cooke guilty or not guilty of Assault with Intent to Commit Rape?

Not Guilty _____ **Guilty** _____

If you unanimously answered Question No. 5 **“Guilty”** then you should simply sign the verdict form and advise the bailiff. If you unanimously answered Question No. 5 **“Not Guilty”** then proceed to answer Question No. 6.

QUESTION NO. 6: Is Max Ritchie Cooke guilty or not guilty of Assault?

Not Guilty _____ **Guilty** _____

The verdict form then has a place for it to be dated and signed. You should sign the verdict form as explained in another instruction.

INSTRUCTION NO. 29

You heard testimony that the defendant Max Ritchie Cooke made a statement to the police concerning the crimes charged in this case. You must decide what, if any, statements were made and give them the weight you believe is appropriate, just as you would any other evidence or statements in the case.

INSTRUCTION NO. 30

In every crime or public offense there must exist a union or joint operation of act and intent.

INSTRUCTION NO. 31

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 32

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest

discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 33

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 34

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

DATED on this 12 day of June 2003.



Michael R. McLaughlin
District Court Judge

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN FOR THE COUNTY OF ADA

STATE OF IDAHO)	
)	CASE NO. H0300279
Plaintiff,)	
)	
v.)	VERDICT
)	
MAX RITCHIE COOKE)	
)	
Defendant.)	
_____)	

"We, the Jury, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is Max Ritchie Cooke guilty or not guilty of Kidnapping in the First Degree?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 "**Guilty**", then you should proceed to Question No. 3. If you unanimously answered Question No. 1 "**Not Guilty**", then proceed to answer Question No. 2.

QUESTION NO. 2: Is Max Ritchie Cooke guilty or not guilty of Kidnapping in the Second Degree?

Not Guilty _____ Guilty _____

Proceed to Question No. 3.

QUESTION NO. 3: Is Max Ritchie Cooke guilty or not guilty of Aggravated Battery?

Not Guilty _____ **Guilty** _____

If you unanimously answered Question No. 3 "**Guilty**", then you should proceed to Question No. 5. If you unanimously answered Question No. 3 "**Not Guilty**", then proceed to answer Question No. 4.

QUESTION NO. 4: Is Max Ritchie Cooke guilty or not guilty of Battery?

Not Guilty _____ **Guilty** _____

Proceed to Question No. 5.

QUESTION NO. 5: Is Max Ritchie Cooke guilty or not guilty of Assault with Intent to Commit Rape?

Not Guilty _____ **Guilty** _____

If you unanimously answered Question No. 5 "**Guilty**" then you should simply sign the verdict form and advise the bailiff. If you unanimously answered Question No. 5 "**Not Guilty**" then proceed to answer Question No. 6.

QUESTION NO. 6: Is Max Ritchie Cooke guilty or not guilty of Assault?

Not Guilty _____ **Guilty** _____

DATED this _____ day of June 2003.

Presiding Juror

INSTRUCTION NO. 35

You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the Court instructs you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you wish to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to, you may tell them as much or as little as you like, but you should be careful to respect the privacy and feelings of your fellow jurors. Remember that they understood their deliberations to be confidential. Therefore, you should limit your comments to your own perceptions and feelings. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, please report it to me.

FILED
A.M. P.M. 4

MAY 08 2007

J. DAVID NAVARRO, Clerk
By R. CALLAHAN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MAX RITCHIE COOKE,)
)
Defendant.)
_____)

Case No. H0300279
**MOTION FOR PREPARATION
OF TRANSCRIPT**

COMES NOW, Roger Bourne, Ada County Deputy Prosecuting Attorney, and moves this Court for an order for preparation of a transcript of the testimony of Alison Cooke from the Jury Trial, occurring between the 10th day of June 2003 and the 12th day of June 2003. The basis of this motion is for assistance in the post conviction case.

DATED this 3 day of May 2007.

GREG H. BOWER
Ada County Prosecuting Attorney

By: Roger Bourne
Deputy Prosecuting Attorney

20

AM. 10 P.M.

RECEIVED

MAY 15 2007

MAY 08 2007

Ada County Clerk

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MAX RITCHIE COOKE,)
)
Defendant.)
_____)


Case No. H0300279

**ORDER FOR PREPARATION
OF TRANSCRIPT**

Upon motion of the State, and good cause being shown;

IT IS HEREBY ORDERED that a transcript of Alison Cooke's testimony from the Jury Trial conducted between the 10th day of June 2003 and the 12th day of June 2003, be prepared. The Transcription Department and/or Court Reporter is authorized to prepare and deliver to the Court an original and a copy to the Ada County Prosecuting Attorney.

DATED this 14th day of May 2007.

for : 

MICHAEL R. MCLAUGHLIN
District Court Judge

dr

Session: mclaughlin082707
Session Date: 2007/08/27
Judge: McLaughlin, Michael R.
Reporter: Hohenleitner, Tammy

Division: DC
Session Time: 08:07

Courtroom: CR510

Clerk(s):
Brown, Kristin

State Attorneys:
Bourne, Roger

Public Defender(s):
DeAngelo, Michael

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case Number: SPOT0400770
Plaintiff: Cook, Max Ritchie
Plaintiff Attorney:
Defendant: State of Idaho
Co-Defendant(s):
Pers. Attorney:
State Attorney: Bourne, Roger
Public Defender: DeAngelo, Michael

2007/08/27

15:04:03 - Operator
Recording:
15:04:03 - New case
State of Idaho,
15:04:37 - State Attorney: Bourne, Roger
present, as to hearing 9/26-27 - will be ready to proceed
15:05:04 - Public Defender: DeAngelo, Michael
present - as to hearing
15:09:21 - Judge: McLaughlin, Michael R.
as to focus of hearing - will hear as scheduled
15:09:42 - Operator
Stop recording:

Session: mclaughlin092607
Session Date: 2007/09/26
Judge: McLaughlin, Michael R.
Reporter: Hohenleitner, Tammy

Division: DC
Session Time: 08:56

Courtroom: CR508

Clerk(s):
Brown, Kristin

State Attorneys:
Alidjani, Fafa
Bourne, Roger
Haws, Joshua
Lorello, David

Public Defender(s):
DeAngelo, Michael
Steveley, Craig

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: SPOT0400770 / H0300279
Plaintiff:
Plaintiff Attorney:
Defendant: Idaho, State of
Co-Defendant(s):
Pers. Attorney:
State Attorney: Bourne, Roger
Public Defender: DeAngelo, Michael

2007/09/26

08:57:49 - Operator
Recording:
08:57:49 - New case
Idaho, State of
08:58:30 - Operator
Stop recording:
09:08:26 - Operator
Recording:
09:08:26 - Record
Idaho, State of
09:08:32 - Judge: McLaughlin, Michael R.
calls case - post conviction relief
09:08:46 - Plaintiff:
Max Ritchie Cooke
09:09:00 - Other: Cooke, Max
petitioner in custody - penn
09:09:12 - State Attorney: Bourne, Roger
present
09:09:22 - Public Defender: DeAngelo, Michael

present for petitioner
09:09:35 - Judge: McLaughlin, Michael R.
speaks as to summary dismissal in SPOT case, appeal
09:10:27 - Judge: McLaughlin, Michael R.
failure of petitioners counsel to file notice of appeal
09:11:48 - Judge: McLaughlin, Michael R.
as to exhibits
09:11:54 - State Attorney: Bourne, Roger
to Court
09:13:48 - Judge: McLaughlin, Michael R.
petitioner exhibit 1 admitted
09:15:14 - Public Defender: DeAngelo, Michael
opening statement to Court, as to remanded issues
09:16:46 - State Attorney: Bourne, Roger
will defer opening remarks
09:18:20 - Other: Cooke, Max
sworn as witness
09:18:28 - Public Defender: DeAngelo, Michael
examination of witness
09:33:00 - Judge: McLaughlin, Michael R.
Pet. Ex. 2 admitted
09:34:53 - Judge: McLaughlin, Michael R.
Pet. Ex 3 admitted
09:38:34 - State Attorney: Bourne, Roger
no questions
09:38:38 - Judge: McLaughlin, Michael R.
no questions
09:38:46 - Public Defender: DeAngelo, Michael
calls next witness
09:39:38 - Other: Marinez, Sgt. Delberto
sworn as witness - ICC
09:43:05 - State Attorney: Bourne, Roger
to witness
09:45:00 - Public Defender: DeAngelo, Michael
re-direct to witness
09:45:21 - State Attorney: Bourne, Roger
one follow up question
09:46:53 - Other: Excused, Witness
09:47:09 - Other: Cooke, Alison
sworn as witness
09:47:53 - Public Defender: DeAngelo, Michael
examination of witness - Alison Archileta
09:53:41 - State Attorney: Bourne, Roger
speaks as to objection to letter/affidavit
09:56:10 - Judge: McLaughlin, Michael R.
will admit Pet. 5,
10:16:42 - Judge: McLaughlin, Michael R.
ex 4 conditionally admitted
10:16:55 - State Attorney: Bourne, Roger
exam of witness
10:22:25 - Judge: McLaughlin, Michael R.
questions witness
10:28:11 - Other: Excused, Witness
10:28:35 - Other: Richards, Larry
sworn as a witness
10:31:19 - Public Defender: DeAngelo, Michael
examination of witness
10:38:30 - Other: Excused, Witness

10:38:35 - Operator
Stop recording:
10:50:10 - Operator
Recording:
10:50:10 - Record
Idaho, State of
10:50:15 - Public Defender: DeAngelo, Michael
calls next witness
10:50:42 - Other: Shurtliff, Karl
sworn as witness
10:50:55 - Public Defender: DeAngelo, Michael
exam of witness
11:07:47 - Judge: McLaughlin, Michael R.
ex 6 admitted
11:11:40 - Judge: McLaughlin, Michael R.
ex 7 admitted
11:26:24 - Public Defender: DeAngelo, Michael
follow up questions to witness
11:34:00 - Other: McMillan, Timothy
sworn as witness
11:42:27 - Judge: McLaughlin, Michael R.
to witness
11:44:35 - Public Defender: DeAngelo, Michael
no further evidence
11:44:42 - Public Defender: DeAngelo, Michael
petitioner rests
11:45:31 - State Attorney: Bourne, Roger
intends to call witness
11:45:42 - State Attorney: Bourne, Roger
calls witness
11:46:06 - Other: Gardner, Janelle
sworn as witness
11:46:11 - State Attorney: Bourne, Roger
exam of witness
12:07:13 - State Attorney: Bourne, Roger
to witness, re-direct
12:07:56 - Public Defender: DeAngelo, Michael
follow up to witness
12:10:47 - Operator
Stop recording: (On Recess)
13:01:38 - Operator
Recording:
13:01:38 - Record
Idaho, State of
13:01:45 - Judge: McLaughlin, Michael R.
evidenciary portion of case closed
13:02:45 - Public Defender: DeAngelo, Michael
closing remarks to Court
13:23:15 - State Attorney: Bourne, Roger
to Court, closing remarks
13:42:23 - Public Defender: DeAngelo, Michael
final argument to Court
13:47:39 - Judge: McLaughlin, Michael R.
speaks to counsel, has heard evidence in case
13:47:52 - Judge: McLaughlin, Michael R.
can make findings here today
13:51:45 - Judge: McLaughlin, Michael R.
does not believe witness was incompetent to testify

14:02:39 - Judge: McLaughlin, Michael R.
on direct appeal issue, will issue written decision, if coun
sel wish, they
14:02:55 - Judge: McLaughlin, Michael R.
may submit something in writing to the Court by 10/2, then w
ill be under
14:03:13 - Judge: McLaughlin, Michael R.
advisement
14:06:27 - Operator
Stop recording:

NOV 15 2007

J. DAVID NAVARRO, Clerk
By *[Signature]*
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

MAX RITCHIE COOKE,

Defendant.

DOB: [REDACTED]
SSN: [REDACTED]

Case No. H0300279

SECOND AMENDED JUDGMENT OF
CONVICTION

This being the time fixed by the Court for pronouncing sentence upon the defendant, the Court noted the presence of the Prosecuting Attorney, or his deputy, the defendant, and Karl Shurtliff, counsel for the defendant, in court.

The defendant was duly informed of the Indictment filed against him, and the defendant was found guilty on June 12, 2003 the crimes of Count I: Kidnapping in the Second Degree, a felony under I.C. §18-4503, Count II: Aggravated Battery, a felony under I.C. §18-903(c) and 18-907(a) and Count III: Assault, a misdemeanor under I.C. §18-901 (b) committed on or about January 18, 2003.

The defendant, and his counsel, were then asked if they had any legal cause or reason to offer why judgment and sentence should not be pronounced against the defendant, and if the defendant, or his counsel, wished to make a statement on behalf of the defendant, or to present any information to the court in mitigation of punishment;

52

1 and the court, having accepted such statement, and having found no legal cause or
2 reason why judgment and sentence should not be pronounced against the defendant
3 at this time; does render its judgment of conviction as follows, to-wit:

4 That, whereas, the defendant having been found guilty in this court to the crimes
5 of Count I: Kidnapping in the Second Degree, a felony under I.C. §18-4503, Count II:
6 Aggravated Battery, a felony under I.C. §18-903(c) and 18-907(a) and Count III:
7 Assault, a misdemeanor under I.C. §18-901 (b).

8 **The Court originally sentenced the defendant on August 21, 2003. The**
9 **defendant filed a Post Conviction proceeding and the Court ruled on November**
10 **13, 2007, that the defendant's counsel was ineffective in not filing an appeal of**
11 **the jury verdict in this case. The Court ordered that a Second Amended**
12 **Judgment of Conviction shall be filed with the Court and submitted to the Idaho**
13 **Department of Correction. The only amendment to the Judgment of Conviction**
14 **is the date of the Second Amended Judgment of Conviction, to allow the**
15 **defendant to file an appeal.**

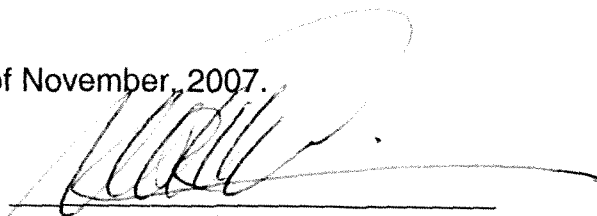
17 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
18 defendant, Max Ritchie Cooke, is guilty of the crime(s) of Count I: Kidnapping in the
19 Second Degree, a felony under I.C. §18-4503, Count II: Aggravated Battery, a felony
20 under I.C. §18-903(c) and 18-907(a) and that he be sentenced to the Idaho State
21 Board of Correction, under the Unified Sentence Law of the State of Idaho, Count I, for
22 an aggregate term of twenty-five (25) years, to be served as follows: a minimum
23 period of confinement of twelve (12) years, followed by a subsequent indeterminate
24 period of custody not to exceed thirteen (13) years, and Count II, for an aggregate term
25

1 of fifteen (15) years, to be served as follows: a minimum period of confinement of
2 seven (7) years, followed by a subsequent indeterminate period of custody not to
3 exceed eight (8) years, said terms to run concurrent with all other sentences being
4 served, with said terms to commence immediately. Defendant is to receive credit for
5 one hundred and ninety-four (194) days served as of October 14, 2003.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED That the Defendant,
7 Max Ritchie Cooke, is guilty of the crime of Count III: Assault, a misdemeanor under
8 I.C. §18-901 (b), and that he be sentenced on said charge to ninety (90) days in the
9 Ada County Jail. Defendant is to receive credit for ninety (90) days served.

10 IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this
11 Judgment and Commitment to the said Sheriff, which shall serve as the commitment of
12 the defendant.

13
14 Sentenced and dated this 14 day of November, 2007.

15
16 
17 Michael R. McLaughlin
18 District Judge
19
20
21
22
23
24
25
26

CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 15th day of November 2007, one copy of the: AMENDED JUDGMENT OF CONVICTION AND COMMITMENT TO STATE as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

KARL SHURTLIFF
ATTORNEY AT LAW
PO BOX 1652
BOISE ID 83701-1652

DEPARTMENT OF CORRECTIONS
CENTRAL RECORDS
1299 N ORCHARD SUITE 110
BOISE ID 83706

ADA COUNTY JAIL
VIA MARSHAL'S OFFICE

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By


Deputy Clerk

NOV 30 2007 3 AM

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

J. DAVID NAVARRO, Clerk
By A. URQUIDI
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Criminal No. H0300279
)	
)	NOTICE OF APPEAL
MAX RITCHIE COOKE,)	
)	
Defendant-Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, GREG BOWER, ADA COUNTY PROSECUTOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Defendant, appeals against the State of Idaho to the Idaho Supreme Court from the Second Amended Judgment, the final Decision and Order entered against him in the above-entitled action on the 15th day of November, 2007, the Honorable Michael R. McLaughlin, District Judge, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph one (1) above is appealable pursuant to I.A.R. 11(c)(1).
3. That the Defendant requests the entire reporter's standard transcript as defined in Rule 25(a), I.A.R.

RC

4. The Defendant also requests the preparation of the following additional portions of the reporter's transcript:

June 10, 2003 - Jury Trial
August 20, 2003 - Sentencing Hearing

5. The Defendant requests that the clerk's record contain only those documents automatically included as set out in I.A.R. 28(b)(2), including the Grand Jury Transcript if Indicted, any Jury Instructions requested and given, and Pre-Sentence Investigation Report. (SEE Record in Supreme Court No. 32447)
6. I certify:
- a) That a copy of this Notice of Appeal has been served on the reporter.
 - b) That the Defendant is exempt from paying the estimated transcript fee because he is an indigent person and is unable to pay said fee.
 - c) That the Defendant is exempt from paying the estimated fee for preparation of the record because he is an indigent person and is unable to pay said fee.
 - d) That the Defendant is exempt from paying the appellate filing fee because he is indigent and is unable to pay said fee.
 - e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.
7. That the Defendant anticipates raising issues including, but not limited to:
- a) Was there sufficient, substantial competent evidence to support the jury's verdict?
 - b) Whether the Trial Court erred in its rulings allowing I.R.E. 4004(b) evidence of Defendant's prior conduct which

placed him in a prejudicial light?

- c) Whether the District Court's sentence in Count I - KIDNAPPING SECOND DEGREE - twelve (12) years fixed, thirteen (13) years indeterminate for an aggregate of twenty-five (25) years; Count II - AGGRAVATED BATTERY - seven (7) years fixed, eight (8) years indeterminate for an aggregate of fifteen (15) years; and County III - ASSAULT Misdemeanor - ninety (90) days County Jail was excessive, unreasonable, and an abuse of discretion?

DATED This 29th day of November, 2007.



MICHAEL DeANGELO
Attorney for Defendant

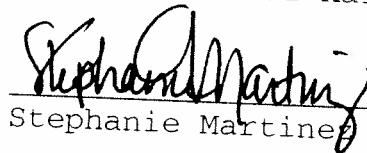
CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 29th day of November, 2007, I mailed a true and correct copies of the foregoing, **NOTICE OF APPEAL** to:

LAWRENCE G. WASDEN, ATTORNEY GENERAL, and

HONORABLE JUDGE MICHAEL R. McLAUGHLIN'S COURT REPORTER

by depositing the same in the Interdepartmental Mail.



Stephanie Martine

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

RECEIVED
NOV 30 2007
Ada County Clerk

AM 10 PM
DEC 10 2007
J. [Signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)
)
Plaintiff-Respondent,)
)
vs.)
)
MAX RITCHIE COOKE,)
)
Defendant-Appellant.)
_____)

Criminal No. H0300279

ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER
ON DIRECT APPEAL

The above-named Defendant, **MAX RITCHIE COOKE**, being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, and said Defendant having elected to pursue a direct appeal in the above entitled matter;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Idaho State Appellate Public Defender is appointed to represent the above named Defendant, **MAX RITCHIE COOKE**, in all matters pertaining to the direct appeal.

DATED This 5 day of December 2007

[Signature]
MICHAEL R. McLAUGHLIN
District Judge

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER ON DIRECT APPEAL

[Handwritten mark]

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ORIGINAL

ORIGINAL
NO. _____ FILED _____
AM. _____ 4:00
JAN 02 2008
J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

MAX RITCHIE COOKE,

Defendant-Appellant.

CASE NO. H0300279
S.C. DOCKET NO. 34820
AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, ROGER BOURNE, ADA COUNTY PROSECUTOR, 200 W. FRONT, SUITE 3191, BOISE, ID, 83702, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Second Amended Judgment of Conviction entered in the above-entitled action on the 15th day of November, 2007, the Honorable Michael R. McLaughlin, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, are:

- (a) Was there sufficient, substantial competent evidence to support the jury's verdict?
- (b) Did the district court err in its ruling allowing I.R.E. 404(b) evidence of Defendant's prior conduct which placed him in prejudicial light?
- (c) Did the district court abuse its discretion by imposing and excessive sentence?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Presentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) Jury Trial held June 10–12, 2003, to include the opening statements, closing arguments, jury instruction conferences and orally presented jury instructions.

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Notice of Intent Not to Seek Death Penalty filed April 4, 2003;

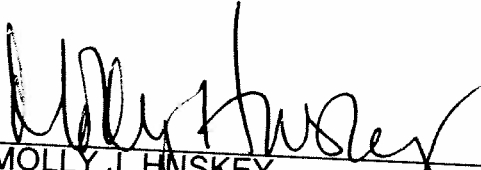
- (b) Notice of Anticipated Trial Witnesses filed May 29, 2003;
- (c) State's Amended List of Trial Witnesses filed June 9, 2003;
- (d) State's Brief in Support of 404(b) lodged June 9, 2003;
- (e) All proposed and given jury instructions including, but not limited to, the Jury Instructions filed June 12, 2003;
- (f) Partial Transcript filed June 1, 2007;
- (g) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at the jury trial and the sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the reporter;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Ada County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and

(e) That service has been made upon all parties required to be served pursuant to I.A.R 20.

DATED this 7th day of January, 2008.


MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 7th day of January, 2008, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:


MAX RITCHIE COOKE
INMATE #25564
ICC
PO BOX 70010
BOISE ID 83707

MICHAEL R DEANGELO
ADA COUNTY PUBLIC DEFENDERS OFFICE
200 W FRONT ST DEPARTMENT 17
BOISE ID 83702
STATEHOUSE MAIL

TAMARA HOHENLEITNER
200 W FRONT ST
BOISE ID 83702

ROGER BOURNE
ADA COUNTY PROSECUTORS OFFICE
200 W FRONT SUITE 3191
BOISE ID 83702
STATEHOUSE MAIL

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court



HEATHER R. CRAWFORD
Administrative Assistant

MJH/TMF/SBT/hrc

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,
vs.

MAX RITCHIE COOKE,

Defendant-Appellant.

Supreme Court Case No. 34820

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the
State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 7th day of February, 2008.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

00093

SEAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

 Plaintiff-Respondent,
vs.

MAX RITCHIE COOKE,

 Defendant-Appellant.

Supreme Court Case No. 34820

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

LIMITED CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: FEB 0 8 2008

By BRADLEY J. THIES
Deputy Clerk

SEAL

CERTIFICATE OF SERVICE

00094

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,
vs.
MAX RITCHIE COOKE,

Defendant-Appellant.

Supreme Court Case No. 34820

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 30th day of November, 2007.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

SEAL

CERTIFICATE TO RECORD

00095