

2-2-2009

## State v. Johnson Clerk's Record v. 1 Dckt. 35635

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**LAW CLERK**

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

STATE OF IDAHO

Plaintiff/Respondent \_\_\_\_\_ and

VS.

**LONNIE JOHNSON**

Defendant/Appellant \_\_\_\_\_ and

Appealed from the District Court of the **FIFTH**  
Judicial District for the State of Idaho, in and

for ~~TWIN FALLS~~ County

Hon. **STEVE J. STOKER** District Judge

**MOLLY HUSKEY**

Attorney  for Appellant

**LAWRENCE WASDEN**

Attorney  for Respondent

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**FILED - COPY**  
**FEB - 2 2009**  
Entered on ATS by: \_\_\_\_\_

By \_\_\_\_\_ Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_ Deputy

**35635**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 35635-2008
	)	DISTRICT COURT NO. CR 07-10094
Plaintiff/Respondent,	)	
	)	
vs.	)	
	)	
LONNIE JOHNSON,	)	
	)	
<u>Defendant/Appellant.</u>	)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District  
of the State of Idaho, in and for the County of Twin Falls

HONORABLE RANDY J. STOKER  
District Judge

MOLLY HUSKEY  
State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, Idaho 83703

LAWRENCE WASDEN  
Attorney General  
Statehouse Mail Room 210  
P.O. Box 83720  
Boise, Idaho 83720-0010

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

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State of Idaho vs. Lonnie R Johnson

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10/24/2007	NCRF	BRYANT	New Case Filed-Felony	Thomas D. Kershaw Jr.
	PROS	BRYANT	Prosecutor assigned Grant Loebis	Thomas D. Kershaw Jr.
	CRCO	BRYANT	Criminal Complaint	Thomas D. Kershaw Jr.
	AFWT	BRYANT	Affidavit In Support Of Complaint Or Warrant For Arrest	Thomas D. Kershaw Jr.
	WARI	BRYANT	Warrant Issued - Arrest Bond amount: 10000.00 Defendant: Johnson, Lonnie R	Thomas D. Kershaw Jr.
10/26/2007	CMIN	DENTON	Court Minutes-Gooding County	Thomas D. Kershaw Jr.
12/7/2007	WART	BRYANT	Warrant Served Defendant: Johnson, Lonnie R	Thomas D. Kershaw Jr.
12/10/2007	WART	DENTON	Warrant Returned	Thomas D. Kershaw Jr.
	TFJP	DENTON	Twin Falls County Jail Packett	Thomas D. Kershaw Jr.
	CHJG	DENTON	Change Assigned Judge	Roger Harris
	HRSC	DENTON	Hearing Scheduled (Preliminary 12/21/2007 08:15 AM)	Roger Harris
		DENTON	Notice Of Hearing	Roger Harris
	ARRN	DENTON	Arraignment / First Appearance	Roger Harris
	NORF	DENTON	Notification Of Rights Felony	Roger Harris
	TFPA	DENTON	Twin Falls County Public Defender Application***Appointed***	Roger Harris
	CMIN	DENTON	Court Minutes	Roger Harris
	ORTA	DENTON	Order to Appear	Roger Harris
	ORPD	DENTON	Order Appointing Public Defender	Roger Harris
	BSET	DENTON	BOND SET: at 10000.00 Per Warrant	Roger Harris
12/11/2007	REQD	NIELSEN	Request For Discovery/defendant	Roger Harris
	RESD	NIELSEN	Response To Request For Discovery/defendant	Roger Harris
12/18/2007	REQP	NIELSEN	Request For Discovery/plaintiff	Roger Harris
	RESP	NIELSEN	Response To Request For Discovery/plaintiff	Roger Harris
12/21/2007	CMIN	DJONES	Court Minutes	Roger Harris
	WAVT	DJONES	Written Waiver of Time for Preliminary Hearing	Roger Harris
	CONT	DJONES	Hearing result for Preliminary held on 12/21/2007 08:15 AM: Continued	Roger Harris
	HRSC	DJONES	Hearing Scheduled (Preliminary 01/11/2008 08:15 AM)	Roger Harris
		DJONES	Notice Of Hearing	Roger Harris
1/11/2008	BOUN	BARTLETT	Hearing result for Preliminary held on 01/11/2008 08:15 AM: Bound Over (after Prelim)	Roger Harris

State of Idaho vs. Lonnie R Johnson

Date	Code	User		Judge
1/11/2008	CMIN	BARTLETT	Court Minutes	Roger Harris
	AMCO	BARTLETT	Amended Complaint Filed	Roger Harris
	OADC	BARTLETT	Order Holding Defendant To Answer To District Court	Roger Harris
	HRSC	MCMULLEN	Hearing Scheduled (Arraignment 01/28/2008 01:00 PM)	Randy J. Stoker
		MCMULLEN	Notice Of Hearing	Randy J. Stoker
1/14/2008	MOTN	QUAM	Motion For Preparation Of Transcript At County Expense	Randy J. Stoker
	MOTN	NIELSEN	Motion Challenging Sufficiency of Preliminary Hearing	Randy J. Stoker
1/15/2008	INFO	NIELSEN	Information for a Felony, Namely; Grand Theft by Possession of Stolen Property	Randy J. Stoker
	SUPR	NIELSEN	Supplemental Response To Request For Discovery	Randy J. Stoker
	ORTR	MCMULLEN	Order for Preparation of Transcript at County Expense	Randy J. Stoker
	MOTN	QUAM	Motion For Transcript	Randy J. Stoker
1/24/2008	INFO	NIELSEN	Amended Information: Part 1 - Count I - Grand Theft by Possession of Stolen Property, Part II - Persistent Violator	Randy J. Stoker
	SUPR	NIELSEN	Supplemental Response To Request For Discovery	Randy J. Stoker
1/28/2008	ARRN	MCMULLEN	Hearing result for Arraignment held on 01/28/2008 01:00 PM: Arraignment / First Appearance	Randy J. Stoker
	APNG	MCMULLEN	Appear & Plead Not Guilty	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
2/1/2008	ORDR	MCMULLEN	Scheduling Order	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Pretrial Conference 03/31/2008 04:00 PM)	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Jury Trial 04/16/2008 09:00 AM)	Randy J. Stoker
		MCMULLEN	Notice Of Hearing	Randy J. Stoker
	TRAN	SCHULZ	Transcript Filed of Preliminary Hearing Held 1-11-08	Randy J. Stoker
	AKSV	SCHULZ	Acknowledgment Of Service of transcript	Randy J. Stoker
2/4/2008	NOHG	NIELSEN	Notice Of Hearing	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion 03/04/2008 03:30 AM) Motion Challenging Sufficiency of Preliminary Hearing	Randy J. Stoker
3/4/2008	MEMO	MCMULLEN	Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing	Randy J. Stoker

State of Idaho vs. Lonnie R Johnson

Date	Code	User	Judge
3/4/2008	HRHD	MCMULLEN	Hearing result for Motion held on 03/04/2008 03:30 PM: Hearing Held Motion Challenging Sufficiency of Preliminary Hearing
	CMIN	MCMULLEN	Court Minutes
3/14/2008		NIELSEN	State's Response to Defendant's Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing
3/19/2008		NIELSEN	Defendant's Reply Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing
3/31/2008	OPIN	MCMULLEN	Opinion Denying Defendants Motiono Challenging Sufficiency of Evidence at Preliminary Hearing
	HRHD	MCMULLEN	Hearing result for Pretrial Conference held on 03/31/2008 04:00 PM: Hearing Held
	CMIN	MCMULLEN	Court Minutes
	DCHH	MCMULLEN	District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated: 7 p
4/4/2008	CONT	MCMULLEN	Continued (Jury Trial 04/17/2008 09:00 AM)
		MCMULLEN	Notice Of Hearing
		NIELSEN	Plaintiff's Requested Jury Instructions
		NIELSEN	Exhibit List
	SUPR	NIELSEN	Supplemental Response To Request For Discovery and Witness List
4/9/2008	STIP	AGUIRRE	Stipulation to Continue Jury Trial
4/10/2008	ORDR	MCMULLEN	Order to Continue Jury Trial and Notice of Reset Jury Trial (and pretrial)
	CONT	MCMULLEN	Continued (Jury Trial 06/11/2008 09:00 AM)
	HRSC	MCMULLEN	Hearing Scheduled (Pretrial Conference 05/12/2008 04:00 PM)
5/8/2008	NINT	NIELSEN	Notice Of Intent to Present 404(b) Evidence at Trial
	SUPR	NIELSEN	Supplemental Response To Request For Discovery
5/12/2008	DCHH	MCMULLEN	Hearing result for Pretrial Conference held on 05/12/2008 04:00 PM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated:
	CMIN	MCMULLEN	Court Minutes
5/23/2008	OBJC	NIELSEN	Objection to State's Notice of Intent to Present 404(b) Evidence at Trial and Memorandum in Support
5/27/2008	HRSC	MCMULLEN	Hearing Scheduled (Motion to Suppress 06/05/2008 01:30 PM) Also 404(b) Motion

State of Idaho vs. Lonnie R Johnson

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5/27/2008	NOHG	NIELSEN	Notice Of Hearing Randy J. Stoker
5/28/2008	MOTN	NIELSEN	Motion in Limine Randy J. Stoker
	NOHG	NIELSEN	Notice Of Hearing Randy J. Stoker
6/4/2008	NOTC	NIELSEN	Further Notice of Intent to Present 404(b) Evidence at Trial and Brief in Response to Defendant's Objection and Motion in Limine Randy J. Stoker
6/5/2008	HRHD	MCMULLEN	Hearing result for Motion to Suppress held on 06/05/2008 01:30 PM: Hearing Held Also 404(b) Motion Randy J. Stoker
	DCHH	MCMULLEN	District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated: Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
6/10/2008	MISC	MCMULLEN	Defendant's Requested Jury Instructions Randy J. Stoker
6/11/2008	JTST	MCMULLEN	Hearing result for Jury Trial held on 06/11/2008 09:00 AM: Jury Trial Started Randy J. Stoker
	MISC	MCMULLEN	Jury Roll Call Randy J. Stoker
	MISC	MCMULLEN	Seating Charts Randy J. Stoker
	MISC	MCMULLEN	Preliminary Jury Instructions Randy J. Stoker
6/12/2008	MISC	MCMULLEN	Final Jury Instructions Randy J. Stoker
	MISC	MCMULLEN	Verdict Randy J. Stoker
	MISC	MCMULLEN	Instruction 15-A Randy J. Stoker
	MISC	MCMULLEN	Supplemental Verdict Randy J. Stoker
	MISC	MCMULLEN	Witness List Randy J. Stoker
	MISC	MCMULLEN	Exhibit List Randy J. Stoker
	FOGT	MCMULLEN	Found Guilty After Trial Randy J. Stoker
	MISC	MCMULLEN	Instruction #16 Randy J. Stoker
	OPSI	MCMULLEN	Order For Presentence Report Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
6/13/2008	HRSC	MCMULLEN	Hearing Scheduled (Sentencing 08/18/2008 02:00 PM) Randy J. Stoker
		MCMULLEN	Notice Of Hearing Randy J. Stoker
6/23/2008	LETT	MCMULLEN	Letter from P & P re: presentence Randy J. Stoker
6/24/2008	NOHG	NIELSEN	Notice Of Hearing Randy J. Stoker
	MOTN	NIELSEN	Rule 29 (c) Motion for Judgment of Acquittal After Discharge of Jury Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion 07/07/2008 11:00 AM) Motion for Judgment of Acquittal after Discharge of Jury Randy J. Stoker

State of Idaho vs. Lonnie R Johnson

Date	Code	User	Judge
7/7/2008	DCHH	MCMULLEN	Hearing result for Motion held on 07/07/2008 11:00 AM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated: Motion for Judgment of Acquittal after Discharge of Jury
	CMIN	MCMULLEN	Court Minutes
8/6/2008	PSR	MCMULLEN	Presentence Report
8/18/2008	SNIC	MCMULLEN	Sentenced To Incarceration (I18-2407(1) Theft-Grand) Confinement terms: Penitentiary determinate: 5 years. Penitentiary indeterminate: 9 years.
	DCHH	MCMULLEN	Hearing result for Sentencing held on 08/18/2008 02:00 PM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated:
	CMIN	MCMULLEN	Court Minutes
	ORDR	MCMULLEN	Order Directing Amendment of Presentence Report (In presentence envelope)
8/20/2008	ORDR	MCMULLEN	Judgment of Conviction Upon a Jury Verdict of Guilty on One Felony Count and Order of Commitment
3/27/2008	NOTA	QUAM	NOTICE OF APPEAL
	APSC	COOPE	Appealed To The Supreme Court
3/28/2008	NAPD	COOPE	Notice And Order Appointing State Appellate Public Defender In Direct Appeal
3/29/2008	CCOA	COOPE	Clerk's Certificate Of Appeal
3/5/2008	SCDF	COOPE	Supreme Court Document Filed- Filing of Clerk's Certificate
	SCDF	COOPE	Supreme Court Document Filed- Notice of Appeal (T)
1/12/2008	ORDR	MCMULLEN	Order of Restitution
1/25/2008	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record & Transcript Due Date Reset
0/1/2008	NTOA	COOPE	Amended Notice Of Appeal
0/6/2008	CCOA	COOPE	Amended Clerk's Certificate Of Appeal
0/17/2008	SCDF	COOPE	Supreme Court Document Filed- Amended Clerk's Certificate
	SCDF	COOPE	Supreme Court Document Filed- Amended Notice of Appeal
1/25/2008	SCDF	COOPE	Supreme Court Document Filed- Court Reporter's Motion for Extension of Time
1/1/2008	SCDF	COOPE	Supreme Court Document Filed- Order Granting Court Reporter's Motion for Extension of Time



Date: 12/12/2008

Fifth Judicial District Court - Twin Falls County

User: COOPE

Time: 02:15 PM

ROA Report

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Case: CR-2007-0010094 Current Judge: Randy J. Stoker

Defendant: Johnson, Lonnie R

State of Idaho vs. Lonnie R Johnson

Date	Code	User	Judge
12/1/2008	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record & Transcript Due Date Reset Randy J. Stoker

DISTRICT COURT  
TWIN FALLS COUNTY  
FILED

2007 OCT 24 PM 2:01

BY \_\_\_\_\_ CLERK

TD DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83301  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LONNIE ROBERT JOHNSON, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR 07- 10094

CRIMINAL COMPLAINT

DOB: [REDACTED]  
SSN: [REDACTED]

Personally appears before me this 24 day of October, 2007, Julie Sturgill,  
Deputy Prosecuting Attorney, Twin Falls County, State of Idaho, and presents this complaint,  
pursuant to Idaho Criminal Rule 3 and based upon the attached sworn affidavit, that LONNIE  
ROBERT JOHNSON, did commit the following:

ORIGINAL

**GRAND THEFT BY DISPOSING OF STOLEN PROPERTY**  
**Felony, I.C. 18-2403(4), 18-2407(1)**

That the Defendant, LONNIE ROBERT JOHNSON, on or about or between October 4, 2007, and October 22, 2007, in the County of Twin Falls, State of Idaho, did knowingly dispose of stolen property, to-wit: copper wire, of a value in excess of One Thousand Dollars (\$1,000.00) lawful money of the United States, the property of Union Pacific Railroad, knowing the property to have been stolen by another, or under circumstances as would reasonably induce him to believe that the property was stolen, and with the intent to deprive the owner permanently of the use or benefit of the property, in violation of Idaho Code Section 18-2403(4), 18-2407(1).


All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Said Complainant therefore prays that a WARRANT be issued for the said defendant, LONNIE ROBERT JOHNSON, and that he may be dealt with according to law.



\_\_\_\_\_  
Julie Sturgill  
Deputy Prosecuting Attorney

Signed before me this 24<sup>th</sup> day of October, 2007.



\_\_\_\_\_  
Judge

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWINE FALLS  
MAGISTRATE DIVISION

FILED

\* \* \* \* \*

2007 OCT 24 PM 2:01

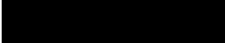
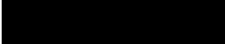
STATE OF IDAHO  
Plaintiff,

AFFIDAVIT IN SUPPORT OF  
COMPLAINT OR WARRANT  
FOR ARREST - NOT OBSERVED  
TJB DEPUTY

VS.

Lonnie Robert Johnson  
Defendant,

Case Number: \_\_\_\_\_

DOB:   
SSN:   
OLN: 

State: ID

STATE OF IDAHO

COUNTY OF TWINE FALLS

\* \* \* \* \*

I, Dejan Miloyanovic, of the Union Pacific Police, being first duly sworn, state that I am the same person whose name is subscribed to the attached Criminal Complaint/Citation, and that my answers to the questions asked by the Court with reference to said Complaint/Citation are as follows:

1. Please set forth the information which gives you reason to believe the above named Defendant(s) committed the crime(s) in the Complaint.

Answer: Lonnie Robert Johnson sold 283 pounds of stolen Union Pacific Copper Wire to Pacific Steel and Recycling a business in Twin Falls Idaho in violation of Idaho Code 18-2403 (4). This occurred on three transactions occurring on the 04<sup>th</sup>, 10<sup>th</sup> and 22<sup>nd</sup> days of October 2007. The wire sold by Lonnie Robert Johnson has been positively identified as Union Pacific Railroad signal wire, stolen from Lincoln County. Robert Lonnie Johnson received at total of \$665.05 from the sale of the stolen wire. The replacement cost to the Union Pacific Railroad is approximately \$7680.00.

2. List the name(s) of the individuals that the information was obtained from.

Answer: Earl E. Hulet Employee of Union Pacific Railroad  
Doug Richard Manager of Union Pacific Railroad  
Russell Cornia Employee of Pacific Steel and Recycling  
Russ Taylor Employee of Pacific Steel and Recycling

3. Please set forth, for each of the informants listed in response to Question 2, the reasons why you believe the information from these individuals, respectively, is credible and why you believe there is a factual basis for the information furnished.

Answer: The individuals are in good standing in the community and have no motive to provide false information. No rewards or offers were made, their information was strictly voluntary.

ORIGINAL 18

**AFFIDAVIT IN SUPPORT OF COMPLAINT OR WARRANT FOR ARREST - NOT OBSERVED**

Page 2 of 2

4. What further information do you have giving you reasonable grounds to believe that the Defendant(s) committed the crime(s) alleged?

Answer: See Attached Union Pacific Police Case Report 07-096400

5. Do you believe a warrant should be issued?

Answer: YES

6. Set out any information you have, and its source, as to why a warrant instead of a summons should be issued.

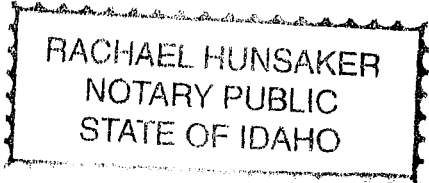
Answer: Lonnie Robert Johnson frequents multiple Idaho Counties, I have been unable to confirm his address or locate him.

Dated on 24<sup>th</sup> day of October, 2007

[Signature]  
Affiant

SUBSCRIBED and SWORN to before me on October 24, 2007

[Signature]  
Notary Public for Idaho  
Residing in Bull. ID, Idaho  
My Commission Expires: 06-01-10



**ORDER**

Based upon the above Affidavit, the Court hereby finds that there is Probable Cause to believe that a crime had been committed, and that the defendant(s) committed said crime.

\_\_\_\_\_  
Magistrate

CR07-10894

OCT 29 2007 AM 9:52

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING  
MAGISTRATE DIVISION

*Gooding Twin Falls*  
*[Signature]*  
Deputy Clerk

CASE # CR - \_\_\_\_\_ DATE: 10-25-07 TIME: \_\_\_\_\_  
CD : 2007-14 JUDGE: Robinson CLERK: R. Tanner

STATE OF IDAHO Attorney Shull/Campbell  
vs. \_\_\_\_\_  
Lorne Johnson Attorney \_\_\_\_\_

Offense: Twin Falls Warrant Interpreter \_\_\_\_\_

Appeared in person \_\_\_\_\_ Bond Set \$ 10,000 OR Release  
*(In Custody)*  
\_\_\_\_\_ Failed to appear \_\_\_\_\_ Warrant Issued *Cash on Surrender* Bond Forfeited  
 Rights given \_\_\_\_\_ Rights form signed  Rights Understood  
\_\_\_\_\_ Penalties Given \_\_\_\_\_ Penalties Understood

1:16:19  
|  
1:17:23

Counsel: \_\_\_\_\_ Waived \_\_\_\_\_ PD Appointed \_\_\_\_\_ May Reimburse \_\_\_\_\_ PD Denied \_\_\_\_\_ Hire Own  
\_\_\_\_\_ Plead Guilty \_\_\_\_\_ Accepted by Court \_\_\_\_\_ Sentencing Set \_\_\_\_\_  
\_\_\_\_\_ Plead Not Guilty \_\_\_\_\_ Waive Jury Trial \_\_\_\_\_ Pre-Trial Conference  
\_\_\_\_\_ Preliminary Hearing Set \_\_\_\_\_ Court/Jury Trial Set \_\_\_\_\_  
\_\_\_\_\_ Sentenced: \_\_\_\_\_ Days Jail \_\_\_\_\_ Suspended Credit \_\_\_\_\_ days time served  
\_\_\_\_\_ Fine \$ \_\_\_\_\_ + costs \_\_\_\_\_ Suspended \$ \_\_\_\_\_ Pay by \_\_\_\_\_  
\_\_\_\_\_ Drivers License Suspended \_\_\_\_\_ days \_\_\_\_\_ absolute Begins \_\_\_\_\_  
\_\_\_\_\_ Supervised Probation at discretion of probation office  
\_\_\_\_\_ Unsupervised Probation \_\_\_\_\_

Probation Terms: \_\_\_\_\_ Violate no Laws, \_\_\_\_\_ Maintain Liability Insur, \_\_\_\_\_ No Alcohol  
\_\_\_\_\_ No drinking and driving, \_\_\_\_\_ Random BBU, \_\_\_\_\_ Submit to Requested Tests,  
\_\_\_\_\_ Attend Alc Sch, \_\_\_\_\_ COA/10 days \_\_\_\_\_ Reimburse County/Probation Serv.  
\_\_\_\_\_ Pay All Fines, Costs, Restitution  
\_\_\_\_\_ Other terms set by probation \_\_\_\_\_ Comply w/eval. \_\_\_\_\_ hrs. comm. service  
\_\_\_\_\_ Other \_\_\_\_\_

Warrant read to Defendant

\_\_\_\_\_ 42 Days to Appeal \_\_\_\_\_ Seal Evaluation in File

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
GOODING COUNTY, MAGISTRATE DIVISION

STATE OF IDAHO, )

VS. )

\_\_\_\_\_  
Defendant. )

CASE NO. \_\_\_\_\_

**STATEMENT OF DEFENDANT'S RIGHTS IN FELONY CASES: INITIAL OR CHECK EACH  
PARAGRAPH BELOW.**

- LT 1. You have the right to remain silent; any statement you make can be used against you. You cannot be compelled to incriminate yourself.
- LT 2. You have the right to bail. The amount and type of bail or release on your own recognizance is determined by the Judge after considering factors provided by law.
- LT 3. You have the right to have an attorney represent you at all stages of these proceedings; if you are poor and unable to afford counsel, you may apply to the Court for the appointment of an attorney to represent you at public expense.
- LT 4. You have the right to a preliminary hearing within fourteen (14) days of this date if you are being held in custody or within twenty-one (21) days if you are not being held in custody. A preliminary examination is a hearing to determine if an offense has been committed and if there is probable cause to believe that you committed the offense. If you waive your right to a preliminary hearing, you will be ordered to appear in the District Court and answer the charge(s) pending against you.
- LT 5. You cannot enter a plea to the charge(s) at your appearance in Magistrate Court but you may enter a plea of guilty or not guilty at the time you are arraigned in District Court.
- LT 6. If you plead **NOT GUILTY** at your District Court arraignment, the Court will set a trial date and you or your attorney will be notified of that date.
- LT 7. You have the right to a jury trial, or you may waive the jury and have the matter tried before the Court. At the trial the prosecution has to prove you guilty beyond a reasonable doubt. Any guilty verdict by a jury must be unanimous.
- LT 8. You have the right to confront or ask questions of any witness who testifies against you, and to compel the attendance of witnesses to testify on your behalf at no expense to yourself.
- LT 9. If you plead **GUILTY** in District Court, you waive or give up all of the above rights and you waive or give up any defenses you may have to the complaint filed against you.
- LT 10. If you plead **GUILTY** in District Court, the Court will set a date for sentencing at which time you will be given an opportunity to make a statement by way of explanation or mitigation.
- LT 11. In addition to any fine imposed by the Court upon a conviction, there are court costs.
- LT 12. You have the right to appeal any conviction or sentence of the District Court to the Idaho Supreme Court. The appeal must be filed within forty-two (42) days after the judgment of conviction is entered.

I acknowledge that I have read this statement, or had it read to me, and fully understand its contents.

Dated this 25 day of Oct 2007.

Kennie Johnson  
Defendant.

Revised 01-22-01

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
GOODING COUNTY, MAGISTRATE DIVISION

STATE OF IDAHO,

VS.

Defendant.

CASE NO. \_\_\_\_\_

**STATEMENT OF DEFENDANT'S RIGHTS IN MISDEMEANOR CASES: INITIAL OR CHECK EACH PARAGRAPH BELOW.**

- LT 1. You have the right to remain silent; any statement you make can be used against you. You cannot be compelled to incriminate yourself.
- LT 2. You have the right to bail. The amount and type of bail or release on your own recognizance is determined by the Judge after considering factors provided by law.
- LT 3. You have the right to have an attorney represent you at all stages of these proceedings; if you are poor and unable to afford counsel, and the Court determines that you may be subject to a jail sentence if convicted, you may apply to the Court for the appointment of an attorney to represent you at public expense.
- LT 4. You have the right to a jury trial, or you may waive the jury and have the matter tried before the Court. At the trial, the prosecution has to prove you guilty beyond a reasonable doubt. Any guilty verdict by a jury must be unanimous.
- LT 5. You have the right to confront or ask questions of any witness who testifies against you, and to compel the attendance of witnesses to testify on your behalf at no expense to yourself.
- LT 6. You may enter a plea of guilty or not guilty at this time or request a continuance in order to consult an attorney as to the plea.
- LT 7. If you plead **GUILTY**, you waive or give up all of the above rights and you waive or give up any defenses you may have to the complaint filed against you.
- LT 8. You have the right to appeal any conviction or sentence to the District Court. The appeal must be filed within forty-two (42) days after the judgment of conviction is entered.
- LT 9. If you plead **NOT GUILTY**, the Court will set a trial date and you or your attorney will be notified of that date.
- LT 10. If you plead **GUILTY**, the Court will ordinarily sentence you immediately unless you request a delay. At the sentencing you will be given the opportunity to make a statement by way of explanation or mitigation.
- LT 11. The **maximum** penalty for a criminal misdemeanor is a fine up to one thousand dollars (\$1000) and up to six (6) months in jail. There are some exceptions, and if you are subject to a different penalty, the Court will advise you.
- LT 12. If you plead guilty or are found guilty of a traffic offense, a record of the conviction will be sent to the Department of Transportation and becomes a part of your driving record. There is a traffic violation point system and the accumulation of points may lead to suspension of your driving privileges in addition to any Court imposed suspension.
- LT 13. In addition to any fine imposed by the Court upon a conviction, there are also court costs.

I acknowledge that I have read this statement, or had it read to me, and fully understand its contents.

Dated this 25 day of Oct 2007.

Donna Johnson  
Defendant.

Revised 07-01-2005



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

**STATEMENT OF RIGHTS IMMIGRATION STATUS**

If you are not a citizen of the United States and you plead guilty or are found guilty of any criminal offense, this could have immigration consequences to include your deportation from the United States, your inability to obtain legal status in the United States, or denial of an application for United States citizenship.

I acknowledge that I have read this statement of rights and fully understand its content.

Date: Oct 25-2007 Signed: *Lonnie Johnson*  
Defendant

7/2007

PUBLIC DEFENDER APPLICATION

NAME: Lonnie Johnson CASE # \_\_\_\_\_

- 1. My monthly take-home pay is \$ 0.
- 2. My employer is 0.
- 3. Monthly take-home income for others in my home is \$ 0.
- 4. Others in my home are employed by 0.
- 5. Cash on hand in banks, credit unions, S. & L., ect... 0.
- 6. Own real estate worth \$ 0 - Total owed \$ 0.  
Monthly Payments \$ 0.
- 7. Own cars/trucks worth \$ 0. Total owed \$ 0.  
Monthly Payments 0.

8. Own other own things worth more than \$100.00.

Item	Value	Item	Value
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
_____	_____	_____	_____
_____	_____	_____	_____

9. Monthly expenses.

Expense	Amount	Expense	Amount
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

- 10. I support 0 people including myself and 0 children.
- 11. I pay 0 per month ion child support and I ( ) am, ( ) am not current.
- 11. I live with 0 parent (s), 0 spouse, 0 friend (s), 0 alone.

Lonnie Johnson  
Signature

Application: ( ) Denied

( ) Approved

10-25-07

[Signature]  
Magistrate Judge

Date

Revised 01-22-2001

DISTRICT COURT,  
TWIN FALLS CO. IDAHO  
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
MAGISTRATE DIVISION

2007 DEC 10 PM 2:28

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Johnson Lennie )  
 )  
 Defendant. )  
 )

BY \_\_\_\_\_ CLERK  
CASE NO: CF-07-10074 20 DEPUTY  
NOTIFICATION OF RIGHTS--  
FELONY

The purpose of this initial appearance is to advise you of your rights and charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court will appoint one to help you. If you are found guilty or plead guilty, you may be ordered to reimburse Twin Falls County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- You have the right to a preliminary hearing before a judge.
- The purpose of a preliminary hearing is to determine whether probable cause exists to believe you have committed the crime(s) charged. A preliminary hearing is not a trial to decide guilt or innocence.
- You can cross-examine all witnesses who testify against you.
- You can present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If the court finds probable cause exists that you committed the crime(s) charged, or if you waive your preliminary hearing, you will be sent to the District Court for arraignment.

If you have any questions about the charge(s), about your rights or the court process, don't hesitate to speak up. It is important that you understand.

**Acknowledgment of Rights**

I have read this entire document and I understand these rights as set forth above.

12-10-2007  
Date

Lennie Johnson  
Defendant's signature

NOTIFICATION OF RIGHTS--1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS,  
MAGISTRATE DIVISION TWIN FALLS CO. IDAHO  
FILED

ARRAIGNMENT MINUTES

2007 DEC 10 PM 2:28

Date 12/10/07 Time 1:00 pm Counter 2:06:16 Case No. CR07-10094  
Judge Harris Deputy Clerk T. VanLeeuwen Interpreter DO DEPUTY Ctrm # 5

State of Idaho Attorney \_\_\_\_\_

vs Lonnie Johnson Attorney Jeremy Vaughn

Offense: Grand Theft

- Appeared in person  Bond 12,000.00  per warrant  OR release  OR to Court Compliance program
- Failed to appear  Warrant issued  Walk In Arraignment/Summons  Bond previously posted
- Complaint read  Probation violation read  Defendant waived reading of probation violation
- Rights and penalties given  Rights form signed  Rights and penalties understood
- Defendant waived counsel  Private counsel \_\_\_\_\_  to hire
- Public defender appointed  Public defender denied  Public defender confirmed/continued

- Plead not guilty  Pretrial \_\_\_\_\_
- Plead guilty  Court trial \_\_\_\_\_
- Court accepted plea  Sentencing \_\_\_\_\_
- Prelim 12-21-07 at 8:15 AM
- Fugitive (identity) \_\_\_\_\_

- PV - admit  Admit/Deny set \_\_\_\_\_
- PV - deny  Evidentiary set \_\_\_\_\_
- Status set \_\_\_\_\_

SENTENCE:  
Jail \_\_\_\_\_ Days Suspended \_\_\_\_\_ Days  Credit time served  
Fine \$ \_\_\_\_\_ Suspended \$ \_\_\_\_\_ Court Cost \$ \_\_\_\_\_ To be paid by: \_\_\_\_\_  
 Public Defender Reimbursement \$ \_\_\_\_\_  
Driving Privileges Suspended \_\_\_\_\_ Days Beginning \_\_\_\_\_  1<sup>ST</sup> \_\_\_\_\_ Days Absolute  
 Probation \_\_\_\_\_ months  Supervised \_\_\_\_\_ months

- Conditions of bond/OR release/probation:
- Check in with public defender immediately upon release
  - Check in with court compliance officer; Pay costs associated with court compliance
  - Court entered no contact order
  - Border patrol hold
  - Do not enter country illegally.

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

IN DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

2007 DEC 10 PM 2: 28

State of Idaho,

Plaintiff,

vs.

Lonnie R Johnson,  
4702 W Pasadina  
Boise ID 83705

Defendant.

BY \_\_\_\_\_ CLERK  
Case No: CR-2007-0010094  
DEPUTY

ORDER TO APPEAR

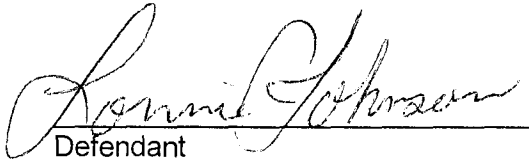
You, Lonnie R Johnson, the above named Defendant are notified and ordered to comply as follows:

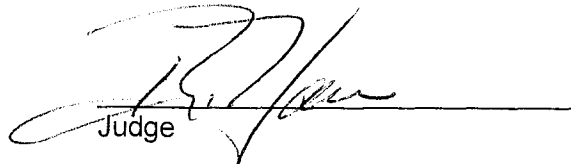
1. To personally appear at the Public Defender's Office, located at 231 4<sup>th</sup> Avenue North, Twin Falls, Idaho, on immediately Upon Release, 20\_\_\_\_ at \_\_\_\_\_ a.m./p.m.
2. To keep the Public Defender's Office notified of your residential address, mailing address, phone number and place of employment.
3. To personally appear at and to keep each appointment with your Public Defender and the Court.

FAILURE TO COMPLY WITH THIS ORDER will result in the forfeiture of any bail posted or the revocation of your recognizance release, a warrant for your arrest and may result in the filing of contempt charges.

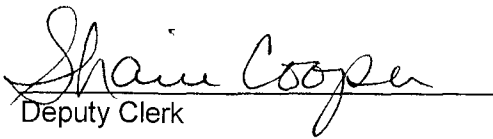
GOOD CAUSE HAVING BEEN SHOWN, the Public Defender of Twin Falls County is hereby appointed to represent you. You may be ordered to reimburse Twin Falls County Idaho for all or part of the cost of legal representation.

Dated this 10th day of December, 2007.

  
Defendant

  
Judge

Copies to:  Public Defender  
 Prosecutor  
 Defendant

  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
MAGISTRATE DIVISION

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

MINUTES FOR PRELIMINARY HEARING

JUDGE: HARRIS

DATE: 12-22-2007 DEZ 21 AM 10:55

DEPUTY CLERK: D Jones

TIME: 8:15 BY HW

CASE # CR 07-10094

TAPE: 8:33:33 HW CLERK

THE STATE OF IDAHO,  
Plaintiff,

ATTY: Leah Clark Thomas DEPUTY

vs.

TD Lonnie Johnson  
Defendant.

ATTY: Ben Anderson

THIS BEING THE TIME AND PLACE SET FOR PRELIMINARY HEARING IN THE ABOVE ENTITLED MATTER, THE DEFENDANT IS CHARGED WITH:

Grand Theft

- COURT REVIEWED THE FILE.
- COURT READ THE COMPLAINT.  COUNSEL WAIVED READING.
- DEFENDANT WAIVED PRELIMINARY HEARING.  WRITTEN WAIVER FILED
- DEFENDANT WAIVED **SPEEDY** PRELIMINARY HEARING.  WRITTEN WAIVER FILED
- COURT GAVE THE DEFENDANT HIS/HER RIGHTS IN THIS MATTER.
- COUNSEL SAW NO REASON WHY WAIVER SHOULD NOT BE ACCEPTED.
- WRITTEN OFFER SIGNED BY DEFENDANT AND FILED WITH THE COURT.
- COURT ACCEPTED WAIVER.
- DEFENDANT WAS BOUND OVER TO DISTRICT COURT.**

- COUNSEL MOVED FOR BOND REDUCTION.
- BOND WILL REMAIN THE SAME.  O.R. RELEASE
- BOND RESET AT \$ \_\_\_\_\_ (BOND IS FOR THIS CASE ONLY, UNLESS OTHERWISE POSTED)

STATE DEFENSE REQUESTED A CONTINUANCE.  
CONTINUED TO: 1-11-08

- PRELIMINARY HEARING TO BE HELD  SEE PAGE 2
- COUNSEL MOVED FOR THE EXCLUSION OF WITNESSES  COURT GRANTED.

STATE DISMISSED THE CHARGE(S) \_\_\_\_\_

- STATE REDUCED THE CHARGE(S) TO: \_\_\_\_\_
- COURT GAVE DEFENDANT HIS/HER RIGHTS IN THIS MATTER.
- DEFENDANT ENTERED GUILTY PLEA TO THE REDUCED CHARGE.
- COURT ACCEPTED PLEA.  SET FOR SENTENCING ON \_\_\_\_\_

SENTENCED: \_\_\_\_\_ JAIL TIME: \_\_\_\_\_ SUSPENDED: \_\_\_\_\_  
 FINE \$ \_\_\_\_\_ SUSPENDED \$ \_\_\_\_\_ COURT COST \$ \_\_\_\_\_  
 DRIVING PRIVILEGES SUSPENDED: \_\_\_\_\_ R.P. \_\_\_\_\_  
 PROBATION: \_\_\_\_\_ MONITORED PROBATION: \_\_\_\_\_  
 RESTITUTION: \_\_\_\_\_

OTHER: \_\_\_\_\_

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2007 DEC 21 AM 10:55

BY \_\_\_\_\_ CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
MAGISTRATE COURT

STATE OF IDAHO,

Plaintiff,

vs.

Lonnie Johnson,

Defendant.

Case No. CR 07-10094

TIME WAIVER FOR  
PRELIMINARY HEARING

I understand that I have the right to have a preliminary hearing conducted within 14 days of my initial appearance if I am in custody, and within 21 days of my initial appearance if I have posted bail or have otherwise been released from custody. By executing this document, I preserve my right to have a preliminary hearing, but waive my right to have the preliminary hearing held within the above time constraints.

I further acknowledge that the preliminary hearing will be rescheduled at the court's convenience and that the preliminary hearing can be held beyond the times required by Idaho Criminal Rule 5.1. There have been no promises made to me in exchange for executing this waiver.

DATED this 20<sup>th</sup> day of Dec, 2007.

Lonnie Johnson  
Defendant

Blair Adams  
Defense Attorney

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
MAGISTRATE DIVISION

11:30 am

MINUTES FOR PRELIMINARY HEARING

JUDGE: Harris  
DEPUTY CLERK: S Bartlett  
CASE # CR 07-10094

DATE: 1-11-08  
TIME: 8:15 am  
TAPE: 9:10 Gr Room 5  
ATTY: Lean Clark-Thomas

THE STATE OF IDAHO,  
Plaintiff,

vs.

Lonnie R. Johnson  
Defendant.

ATTY: Robin Weeks

THIS BEING THE TIME AND PLACE SET FOR PRELIMINARY HEARING IN THE ABOVE ENTITLED MATTER, THE DEFENDANT IS CHARGED WITH:

Grand Theft

- COURT REVIEWED THE FILE.
- COURT READ THE COMPLAINT.  COUNSEL WAIVED READING.
- DEFENDANT WAIVED PRELIMINARY HEARING.  WRITTEN WAIVER FILED
- DEFENDANT WAIVED **SPEEDY** PRELIMINARY HEARING.  WRITTEN WAIVER FILED
- COURT GAVE THE DEFENDANT HIS/HER RIGHTS IN THIS MATTER.
- COUNSEL SAW NO REASON WHY WAIVER SHOULD NOT BE ACCEPTED.
- WRITTEN OFFER SIGNED BY DEFENDANT AND FILED WITH THE COURT.
- COURT ACCEPTED WAIVER.
- DEFENDANT WAS BOUND OVER TO DISTRICT COURT.**

- COUNSEL MOVED FOR BOND REDUCTION.
- BOND WILL REMAIN THE SAME.  O.R. RELEASE
- BOND RESET AT \$ \_\_\_\_\_ (BOND IS FOR THIS CASE ONLY, UNLESS OTHERWISE POSTED)

- STATE / DEFENSE REQUESTED A CONTINUANCE.
- CONTINUED TO: \_\_\_\_\_

- PRELIMINARY HEARING TO BE HELD  SEE PAGE 2
- COUNSEL MOVED FOR THE EXCLUSION OF WITNESSES  COURT GRANTED.

STATE DISMISSED THE CHARGE(S) \_\_\_\_\_

- STATE REDUCED THE CHARGE(S) TO: \_\_\_\_\_
- COURT GAVE DEFENDANT HIS/HER RIGHTS IN THIS MATTER.
- DEFENDANT ENTERED GUILTY PLEA TO THE REDUCED CHARGE.
- COURT ACCEPTED PLEA.  SET FOR SENTENCING ON \_\_\_\_\_

SENTENCED: \_\_\_\_\_ JAIL TIME: \_\_\_\_\_ SUSPENDED: \_\_\_\_\_  
 FINE \$ \_\_\_\_\_ SUSPENDED \$ \_\_\_\_\_ COURT COST \$ \_\_\_\_\_  
 DRIVING PRIVILEGES SUSPENDED: \_\_\_\_\_ R.P. \_\_\_\_\_  
 PROBATION: \_\_\_\_\_ MONITORED PROBATION: \_\_\_\_\_  
 RESTITUTION: \_\_\_\_\_

OTHER: Amended Complaint filed -



Date: 1/11/2008  
Time: 11:04 AM  
Page 1 of 1

**Fifth Judicial District Court - Twin Falls County**

User: BARTLETT

Minutes Report

Case: CR-2007-0010094

Defendant: Johnson, Lonnie R

Selected Items

---

Hearing type:	Preliminary	Minutes date:	01/11/2008
Assigned judge:	Roger Harris	Start time:	09:12 AM
Court reporter:		End time:	09:12 AM
Minutes clerk:	Shelley Bartlett	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

PAGE 2

Tape Counter: 910 Court called the case. State's 1st witness, Dan Milovanovic was called to the stand. Officer Milovanovic was duly sworn and examined by Ms. Clark-Thomas. 915 State's Exhibit 1 and State's Exhibit 2, copies of receipts, which were previously marked, were identified. State's Exhibits 1 and 2 were offered and admitted.

Tape Counter: 925 Ms. Weeks cross examined.

Tape Counter: 929 Witness stepped down.

Tape Counter: 929 State's 2nd witness, Russell Cornia was called to the stand. Mr. Cornia was duly sworn and examined by Ms. Clark-Thomas. State's Exhibit 3, copy of receipt from Pacific Steel dated Oct. 22, 2007, which was previously marked was identified. State's Exhibit 3 was offered, objected to by Ms. Weeks. Further questions from Ms. Clark-Thomas and further objection by Ms. Weeks. Objection was overruled and State's Exhibit 3 was admitted. 941 Witness identified the defendant.

Tape Counter: 941 Ms. Weeks cross examined.

Tape Counter: 943 Ms. Clark-Thomas conducted further examination.

Tape Counter: 944 Witness stepped down.

Tape Counter: 945 State's 3rd witness, Doug Richard was called to the stand. Mr. Richard was duly sworn and examined by Ms. Clark-Thomas.

Tape Counter: 953 Ms. Weeks cross examined.

Tape Counter: 956 Ms. Clark-Thomas conducted further examination.

Tape Counter: 959 Ms. Weeks conducted further re-cross.

Tape Counter: 1000 Witness stepped down.

Tape Counter: 1000 State rested. No witnesses from the defense.

Tape Counter: 1001 Ms. Clark-Thomas gave closing argument.

Tape Counter: 1003 Ms. Weeks gave closing argument.

Tape Counter: 1008 Court gave findings. Defendant was bound over to the District Court.

JAN 11 2008 11:30 AM

By \_\_\_\_\_  
\_\_\_\_\_ *ST* \_\_\_\_\_  
Deputy Clerk

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83301  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

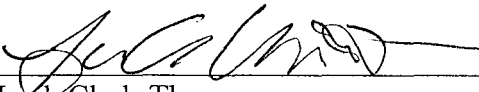
STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDED CRIMINAL COMPLAINT
	)	
LONNIE ROBERT JOHNSON,	)	DOB [REDACTED]
	)	SSN [REDACTED]
Defendant.	)	
_____	)	

Personally appears before me this 11 day of January, 2008, Leah Clark-Thomas, Deputy Prosecuting Attorney, Twin Falls County, State of Idaho, and presents this Amended Complaint, pursuant to Idaho Criminal Rule 3 and based upon the sworn affidavit previously filed with the Court, that LONNIE ROBERT JOHNSON, did commit the following:

**GRAND THEFT BY DISPOSING OF STOLEN PROPERTY**  
**Felony, I.C. 18-2403(4), 18-2407(1)**

That the Defendant, LONNIE ROBERT JOHNSON, on or about or between October 4, 2007, and October 22, 2007, in the County of Twin Falls, State of Idaho, did knowingly, in a series of thefts as part of a common scheme or plan, dispose of stolen property, to-wit: copper wire , of a value in excess of One Thousand Dollars (\$1,000.00) lawful money of the United States, the property of Union Pacific Railroad, knowing the property to have been stolen by another, or under circumstances as would reasonably induce him to believe that the property was stolen, and with the intent to deprive the owner permanently of the use or benefit of the property, in violation of Idaho Code Section 18-2403(4), 18-2407(1).

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

  
\_\_\_\_\_  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

Signed before me this 11 day of January, 2008.

  
\_\_\_\_\_  
Judge

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of January, 2008, I served a copy of the foregoing  
**AMENDED CRIMINAL COMPLAINT** thereof to the following:

**Leah Clark-Thomas** [ ] **Court Folder**  
**Senior Deputy Prosecuting Attorney**

**Office of the Public Defender** [ ] **Court Folder**  
**Attorney for Defendant**

\_\_\_\_\_  
Clerk of the Court

JAN 11 2008 11:30am

By [Signature]  
[Signature]

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2007-0010094
	)	
vs.	)	<b>ORDER HOLDING</b>
	)	<b>DEFENDANT TO ANSWER TO</b>
LONNIE R JOHNSON,	)	<b>DISTRICT COURT</b>
	)	
Defendant.	)	
	)	

Defendant having freely, knowingly and voluntarily waived a preliminary hearing, I order that defendant be held to answer to the charge(s) of:  
118-2407(1) Theft-Grand in the District Court.

From the evidence presented, I find that the offense(s) of:  
118-2407(1) Theft-Grand has/have been committed and there is sufficient cause to believe the defendant is guilty thereof. I order that defendant be held to answer in the District Court.

DATED January 11, 2008.

CC: Grant Loeb  
Marilyn Paul

[Signature]  
Magistrate Judge

OFFICE OF THE PUBLIC DEFENDER  
 Attorneys at Law  
 P. O. Box 126  
 Twin Falls, Idaho 83303-0126  
 (208)734-1155  
 ISB # 6976

CLERK OF DISTRICT COURT  
 COUNTY OF TWIN FALLS, IDAHO  
 2008 JAN 14 AM 11:50  
 BY \_\_\_\_\_ CLERK  
 \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR 07-10094
	)	
v.	)	
	)	MOTION FOR
	)	PREPARATION OF
LONNIE JOHNSON,	)	TRANSCRIPT AT
	)	COUNTY EXPENSE
Defendant.	)	
_____	)	

COMES NOW, the Defendant by and through his attorney, and hereby moves the Court pursuant to Rule 5.2 of the Idaho Rules of Criminal Practice and Procedure, for an order requiring the reporter or reporters of the Preliminary Hearing heretofore in the above-entitled case to prepare a transcript of the evidence educed at said hearing held on the 11th day of January, 2008, at the cost and expense of the County of Twin Falls.

This motion is made and based upon the records, files and pleadings in the above-entitled action and for the following reasons:

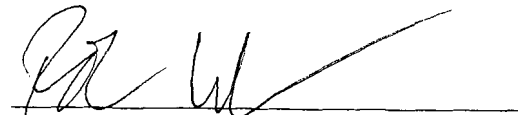
1. That Defendant is entitled to said transcript pursuant to the above cited rule;
2. That Defendant is indigent by virtue of the Defendant's representation by the

Public Defender;

3. That said transcript is necessary to aid Counsel in adequately preparing an appeal or for purpose of a hearing as provided for by Idaho Code Section 19-815(A).

DATED this 14<sup>th</sup> day of January, 2008.

OFFICE OF THE PUBLIC DEFENDER



Robin M.A. Weeks  
Deputy Public Defender

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing Motion for Preparation of Transcript at County Expense, was delivered on the 14 day of January, 2008 to the following:

Grant Loeb  
Twin Falls County Prosecutor

Kyle Kovacs



OFFICE OF THE PUBLIC DEFENDER  
Attorneys at Law  
P. O. Box 126  
Twin Falls, Idaho 83303-0126  
(208)734-1155  
ISB# 6976

ORIGINAL  
DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2008 JAN 14 AM 11:50

BY \_\_\_\_\_

CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR 07-10094
	)	
v.	)	MOTION CHALLENGING
	)	SUFFICIENCY OF PRELIMINARY
LONNIE JOHNSON,	)	HEARING
	)	
Defendant.	)	
_____	)	

COMES NOW the above-named Defendant by and through his attorney, Robin M.A. Weeks, Deputy Public Defender, and hereby moves to challenge the sufficiency of the Preliminary Hearing in the above-entitled matter pursuant to Idaho Code 19-815A. The defendant challenges the sufficiency of the evidence educed at the Preliminary Hearing.

RESPECTFULLY SUBMITTED This 14th day of January, 2008.

OFFICE OF THE PUBLIC DEFENDER



Robin M.A. Weeks  
Deputy Public Defender

**CERTIFICATE OF DELIVERY**

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing MOTION to be placed in the Twin Falls County Prosecutor's file at the Twin Falls County Clerk's Office in Twin Falls, Idaho on the 14 day of January, 2008.

GRANT LOEBS  
TWIN FALLS COUNTY  
PROSECUTING ATTORNEY

Grant Loeb

DISTRICT COURT  
TWIN FALLS CO., IDAHO

2008 JAN 15 AM 11:10

BY \_\_\_\_\_ CLERK

DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, Idaho 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, ) Case No. CR07-10094

)  
)  
) Plaintiff, )

vs. )

) **INFORMATION FOR A FELONY, NAMELY:**  
) **Grand Theft by Possession of Stolen Property**

)  
) LONNIE ROBERT JOHNSON, )

)  
) Defendant. )

)  
) DOB [REDACTED]  
) SSN [REDACTED]  
)


Leah Clark-Thomas, Deputy Prosecuting Attorney for Twin Falls County, State of Idaho, who in the name and by the authority of said State, prosecutes in its behalf, in proper person, comes now into said District Court of the County of Twin Falls, State of Idaho, and gives the Court to understand and be informed that LONNIE ROBERT JOHNSON, the above-named defendant, is accused by this Information of the crime of GRAND THEFT BY POSSESSION OF STOLEN PROPERTY, a Felony.

ORIGINAL

**GRAND THEFT BY DISPOSING OF STOLEN PROPERTY**  
**Felony, I.C. 18-2403(4), 18-2407(1)**

That the Defendant, LONNIE ROBERT JOHNSON, on or about or between October 4, 2007, and October 22, 2007, in the County of Twin Falls, State of Idaho, did knowingly, in a series of thefts as part of a common scheme or plan, dispose of stolen property, to-wit: copper wire , of a value in excess of One Thousand Dollars (\$1,000.00) lawful money of the United States, the property of Union Pacific Railroad, knowing the property to have been stolen by another, or under circumstances as would reasonably induce him to believe that the property was stolen, and with the intent to deprive the owner permanently of the use or benefit of the property, in violation of Idaho Code Section 18-2403(4), 18-2407(1).

DATED this 14 day of January, 2008.



Leah Clark-Thomas  
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of January 2008, I served a copy of the foregoing **INFORMATION** thereof into the mail slot for **THE OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.



Rachael Hunsaker  
Case Assistant

JAN 15 2008

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

4:00 PM  
Clerk  
Deputy Clerk

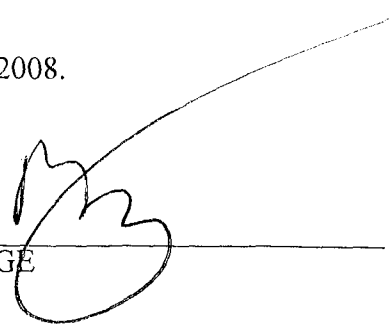
STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
LONNIE JOHNSON,  
  
Defendant.

Case No. 07-10094  
  
ORDER FOR PREPARATION  
OF TRANSCRIPT AT  
COUNTY EXPENSE

PURSUANT TO the Motion for Preparation of Transcript at County Expense being filed  
and, FOR GOOD CAUSE APPEARING THEREFORE,

IT IS HEREBY ORDERED AND THIS DOES ORDER, that a transcript of the  
Defendant's Preliminary Hearing in the above entitled matter, held January 11, 2008, be prepared at  
county expense.

DATED this 15 day of January, 2008.

  
\_\_\_\_\_  
JUDGE

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that a true and correct copy of the foregoing ORDER was placed in the County Prosecutor's file in Magistrate Court on the 16 day of Jan, 2008.

OFFICE OF THE  
PROSECUTING ATTORNEY  
GRANT LOEBS

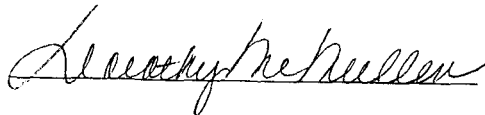
Hand Deliver  
 Courthouse Mail

OFFICE OF THE  
PUBLIC DEFENDER

Hand Deliver  
 Courthouse Mail

~~COURT REPORTER~~ RECORDS

Courthouse



DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2008 JAN 15 AM 11:10

BY \_\_\_\_\_ CLERK  
*S. Clark-Thomas* DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MOTION FOR TRANSCRIPT</b>
	)	
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the Twin Falls County Prosecuting Attorney's Office by and through its Attorney of Record, Leah Clark-Thomas, Deputy Prosecuting Attorney, and moves the above-entitled Court for an order allowing the preparation of a transcript of the Preliminary hearing held January 11, 2008, in the above-entitled action.

DATED this 14 day of January, 2008

*Leah Clark-Thomas*  
Leah Clark-Thomas  
Deputy Prosecuting Attorney



CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of January 2008, I served a copy of the foregoing **MOTION FOR TRANSCRIPT** thereof into the mail slot for **THE OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.

  
Rachael Hunsaker  
Case Assistant

2008 JAN 24 AM 11:09  
BY: [Signature] CLERK  
DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, Idaho 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

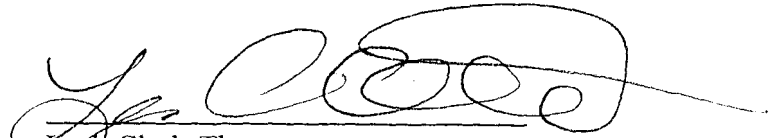
STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	<b>AMENDED INFORMATION:</b>
	)	<b><u>Part I</u> - Count I – Grand Theft by Possession of</b>
vs.	)	<b>Stolen Property,</b>
	)	<b><u>Part II</u> - Persistent Violator</b>
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant.	)	DOB [REDACTED]
	)	SSN [REDACTED]
_____	)	

Leah Clark-Thomas, Deputy Prosecuting Attorney for Twin Falls County, State of Idaho, who in the name and by the authority of said State, prosecutes in its behalf, in proper person, comes now into said District Court of the County of Twin Falls, State of Idaho, and gives the Court to understand and be informed that LONNIE ROBERT JOHNSON, the above-named defendant, is accused by this Amended Information in Part I of the felony crimes of GRAND THEFT BY POSSESSION OF STOLEN PROPERTY, and Part II, PERSISTENT VIOLATOR enhancement.

**GRAND THEFT BY DISPOSING OF STOLEN PROPERTY**  
**Felony, I.C. 18-2403(4), 18-2407(1)**

That the Defendant, LONNIE ROBERT JOHNSON, on or about or between October 4, 2007, and October 22, 2007, in the County of Twin Falls, State of Idaho, did knowingly, in a series of thefts as part of a common scheme or plan, dispose of stolen property, to-wit: copper wire , of a value in excess of One Thousand Dollars (\$1,000.00) lawful money of the United States, the property of Union Pacific Railroad, knowing the property to have been stolen by another, or under circumstances as would reasonably induce him to believe that the property was stolen, and with the intent to deprive the owner permanently of the use or benefit of the property, in violation of Idaho Code Section 18-2403(4), 18-2407(1).

DATED this 23 day of January, 2008.

  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

**PART II**  
**PERSISTENT VIOLATOR**  
**Felony, I.C. 19-2514**

That the Defendant, LONNIE ROBERT JOHNSON, was previously convicted of two or more of the following felonies:

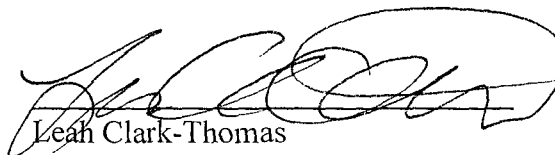
POSSESSION OF A CONTROLLED SUBSTANCE

On or about the 7th day of August, 2001, the Defendant was convicted of the felony of Possession of a Controlled Substance, in the County of Gooding, State of Idaho, in case number CR 01-00279.

GRAND THEFT

On or about the 20th day of September, 1988, the Defendant was convicted of the felony of Grand Theft, in the County of Jerome, State of Idaho, in case number 1139.

DATED this 23 day of January, 2008.

  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14 day of January 2008, I served a copy of the foregoing **AMENDED INFORMATION** thereof into the mail slot for **OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.



Rachael Hunsaker  
Case Assistant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
DISTRICT COURT  
5th Judicial District  
County of Twin Falls - State of Idaho


Judge: Randy J Stoker

Courtroom # 2

Clerk: Dorothy McMullen

Reporter: Sabrina Torres

JAN 28 2008

By  Clerk  
Deputy Clerk

THE STATE OF IDAHO, )  
 )  
Plaintiff. )  
VS )  
 )  
Lonnie R Johnson )  
 )  
Defendant. )

**Court Minutes**

Case No. CR-07-10094

DATE: 1/28/08

TIME: 1:00pm

State: *Loren Anderson*

Other:

Defense: *Robin Weeks*

Defendant ()

Custody Status (*IG*)

*2 days*

*4-16*

Hearing : Arrestment

Name Verified (  ) Public Defender Appointed/Confirmed (  ) Rights Given (  )

*(2:04) Not Guilty plea entered - Set for trial*

DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

FEB - 1 2008

By \_\_\_\_\_ 11:00 AM  
Clerk  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE STATE OF IDAHO, )  
 )  
 Plaintiff. ) Case No. CR 07-10094  
 Vs )  
 ) SCHEDULING ORDER  
 )  
 LONNIE R. JOHNSON, )  
 )  
 Defendant. )

This matter came on for hearing before the Honorable Randy J. Stoker,  
District Judge. Appearing was the above-named defendant through counsel,  
Robin Weeks; Loren Anderson appeared on behalf of the State of Idaho.

NOW THEREFORE, IT IS ORDERED that the following dates shall govern  
trial of this case:

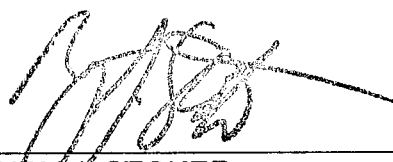
1. Pretrial Motions must be filed within 28 days of arraignment and noticed for hearing on Law & Motion day within 14 days from filing. However, a motion pursuant to I.C.R. 22 must be filed within 20 days from the date of arraignment. The moving party shall also file a brief setting forth 1) the grounds for relief sought, 2) the factual basis supporting the motion, 3) the legal authority supporting the motion and 4) legal argument applying the law and facts.
2. Pretrial discovery is to be completed 35 days prior to the trial date. The Prosecuting Attorney must review the law enforcement agency's file prior to the pre-trial conference to make sure all reports or evidence are disclosed to defense counsel.

3. Expert testimony. All defense medical or expert testimony witnesses must be disclosed on or before the pre-trial date. If that expert prepares a written report, it must be given to opposing counsel prior to the pre-trial date.
4. Jury Instructions. Counsel must submit their proposed instructions to the Court ten days prior to the trial date.
5. Exhibit and Witness lists must be filed 20 days prior to the trial to be used in preliminary jury instructions and to limit trial issues.
6. Exhibits. Counsel will meet with the clerk to mark and/or to stipulate to exhibits at the pre-trial conference.

NOTICE OF TRIAL AND PRETRIAL IS ATTACHED

Time calculations are governed by Idaho Criminal Rules.

DATED this 1st day of January 2008.

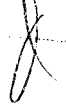
  
\_\_\_\_\_  
RANDY J. STOKER  
District Judge

Alternate Judges: Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.C.R. 25(a)(6). Notice is also given that if there are multiple defendants, any disqualification pursuant to I.C.R. 25(a)(1) is subject to a prior determination under I.C.R. 25(a)(3). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action: Judges Bevan, Butler, Elgee, Higer, Hurlbutt, Meehl, Melanson and Wood.



DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2008 MAR -4 AM 7:53

BY:  CLERK  
DEPUTY

OFFICE OF THE  
PUBLIC DEFENDER  
TWIN FALLS COUNTY  
P.O. Box 126  
Twin Falls, Idaho 83303  
Telephone: (208) 734-1155  
Idaho State Bar #6976

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS,**

\*\*\*\*\*

STATE OF IDAHO,	)	
	)	Case No. CR 07-10094
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF MOTION CHALLENGING</b>
	)	<b>SUFFICIENCY OF EVIDENCE</b>
LONNIE JOHNSON,	)	<b>AT PRELIMINARY HEARING</b>
	)	
Defendant.	)	
	)	

COMES NOW the above named Defendant, Lonnie Johnson, by and through his attorney Robin Weeks, Twin Falls County Deputy Public Defender, and provides the following Memorandum in Support of his Motion Challenging Sufficiency of Preliminary Hearing, filed January 14, 2008.

**FACTUAL SUMMARY**

A transcript of the Preliminary Hearing has been prepared and was filed on February 1, 2008. At that hearing, the State called three witnesses: Officer Dan Milovanovic (Union Pacific

Officer), Russell Cornia (employee of Pacific Steel and Recycling), and Doug Richard (Manager of Signal Maintenance for Union Pacific Railroad).

Officer Milovanovic testified that he was able to view the wire allegedly sold to Pacific Steel and Recycling by Mr. Johnson on October 22, 2007 (referenced by State's Exhibit 3) and identified it as very old signal wire belonging to Union Pacific Railroad. Taped Transcript of Preliminary Hearing (hereinafter Tr.) p.8, L.3-p.10, L. 10. His identification was based, in part, on still-existing traces of a "peculiar insulation" consisting of a fiber tar blend which would still only exist in traces on the wire "because it's been up there so long." *Id.* Officer Milovanovic did not personally view the wire allegedly brought to Pacific Steel and Recycling by Mr. Johnson on two prior occasions (referenced in State's Exhibits 1 and 2). Tr. p.12, L. 12-20. Officer Milovanovic also did not personally weigh the wire he viewed and was unable to testify that he had seen all the wire referenced in Exhibit 3. Tr. p.13, L. 6-8. Officer Milovanovic did not offer any testimony as to the market value or replacement value of the wire. Tr. p.12, L. 6-8.

Russell Cornia testified next that he assisted Mr. Johnson on several occasions when he would bring in copper wire. Tr. p.22, L. 7-11. He indicated that, each time he observed Mr. Johnson bring in copper wire, it was "[t]he same copper wire with the green tint." Mr. Cornia was unable to testify as to the value of the copper wire allegedly brought in by Mr. Johnson, as he was merely trained in basic identification and how to weigh the metal, while the office would assign a value to the weights he indicated. Tr. p.23, L.24-p.24, L.1.

Doug Richards testified last and indicated that he was responsible for purchasing replacement wire for Union Pacific. Tr. p.27, L. 6-8. He testified that he did not know the value of the actual wire allegedly taken to Pacific Steel and Recycling by Mr. Johnson and had not personally ever purchased wire with a tar and fiber covering. Tr. p.32, L. 17-p. 33, L.20. He did,

however, read the monetary amounts listed on State Exhibits 1-3 into the record, which together indicate that Mr. Johnson allegedly received a total of \$665.05 for the wire Pacific Steel and Recycling allegedly received from Mr. Johnson. *See* Tr. p.33, L. 2-7.

Mr. Richards further testified that not all of the wire which was cut down in Lincoln County would need to be replaced and indicated that he would only have to purchase a two thousand foot roll of plastic-covered copper wire, at a cost of \$500, to replace the signal wire which did need to be replaced. Tr. p.34, L. 14 — p.35, L. 4. He further indicated that the two thousand foot roll is the minimum he can buy from his supplier, but did not indicate how much of the roll would be used to make the necessary repairs to the line. Tr. p.35, L. 1-4. More, Mr. Richards testified that there was more wire cut down in Lincoln County than that allegedly sold to Union Pacific Steel and Recycling. Tr. p.34, L.15-17. No testimony was given to establish whether the wire allegedly sold by Mr. Johnson to Pacific Steel and Recycling came from lines which would need to be replaced or from lines which were no longer used. *See* Tr. p.36, L.6 – p.37, L.3.

Nevertheless, Mr. Richards indicated that, to replace the 283 lbs weight of copper wire allegedly sold to Pacific Steel and Recycling by Mr. Johnson with the same weight of new plastic-covered copper wire would require a purchase of \$2000 worth of plastic-covered copper wire. Tr. p.28, L.11-p.30, L. 26.

#### ARGUMENT

I.C. 18-2402(11) and ICJI 575 guide the court in setting a proper value on items allegedly stolen. As indicated by the code and model jury instructions, the court should first seek to determine “the market value of the property at the time and place of the crime.” If the market

value "cannot be satisfactorily ascertained," the court may then look to "the cost of replacement of the property within a reasonable time after the crime." If neither can be satisfactorily ascertained, I.C. 18-2402(11)(c) indicates that the default is that "its value shall be deemed to be one thousand dollars (\$1,000) or less." Because no evidence has been presented which sets either the market value or the replacement value of the copper allegedly sold to Pacific Steel and Recycling by Mr. Johnson at a cost above \$1000, he cannot be charged with a felony offense.

### **I. Market Value Determined by the Selling Price of Property**

In *State v. Smith*, 144 Idaho 687, 169 P.3d 275, 281 (Ct.App. 2007), the Idaho Court of Appeals stated:

We now hold that, generally, the 'market value' of consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the 'cost of replacement' which would be the cost for the owner to reacquire the same goods.

Though it is acknowledged that the copper wire at issue in this case is not a "consumer good," per se, this general rule has been widely used. See *State v. Vanendacre*, 131 Idaho 507 (Ct.App.1998) (owner allowed to testify as to what she believed was the "fair market value" of her used stereo system, officer testified as to what he would be willing to pay for such a system).

In this case, the market value at the time and place of the alleged theft should be determined by an examination of what a buyer would pay for the wire which was allegedly stolen. Pacific Steel and Recycling allegedly paid a total of \$665.05 for the wire they allegedly received from Mr. Johnson. No other potential buyer has been identified who would be willing to pay over \$1000 for the same wire. This court should therefore find that the copper wire at issue in this case has a fair market value of \$665.05.

## II. Replacement Cost of the Fiber and Tar Insulated Copper Wire has not been Established

Because fair market value of the wire at issue in this case is reasonably ascertainable, it is unnecessary to determine replacement cost. If, however, the Court does not find that the market value is reasonably ascertainable, Mr. Johnson asserts that the testimony presented by the State at Preliminary Hearing did not attempt to estimate the replacement cost of the actual, alleged stolen, fiber-and-tar insulated, very old copper wire which was allegedly sold by Mr. Johnson to Pacific Steel and Recycling. Instead, the State produced evidence as to what it would cost to purchase an equal weight of brand new, weatherproof, plastic-covered copper wire. As to that, the Idaho Court of Appeals had the following to say:

In some cases the destroyed item may have no market value or the value may not be ascertainable. Therefore, upon a showing that fair market value cannot be established, the State may show the economic value of the loss caused by the defendant through such factors as original purchase price, replacement cost, the property's general use and purpose, and salvage value. If the State attempts to prove value through replacement cost, however, we think it incumbent upon the State to produce some evidence that the replacement item is of a quality and design comparable to that of the destroyed item. This is so because a replacement actually purchased by the crime victim may bear little or no relationship to the quality and value of the destroyed property, and the classification of the offense as a misdemeanor or a felony should not turn upon the victim's choice between a higher quality, more expensive replacement and a lower quality, more modestly priced item.

We hold, therefore, that replacement cost evidence may be used as an indicator of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value, and when replacement cost evidence is relied upon, the State must show that the replacement (whether actually purchased by the victim or not) is a reasonably close proximation of the design and quality of the destroyed item.

*State v. Hughes*, 130 Idaho 698, 703 (Ct.App. 1997). (Internal citations omitted.)

Applying the reasoning of the *Hughes* court to the case at bar, then, it is apparent that the State is attempting to purchase brand new, plastic-covered copper wire to replace a very old and

worn out wire which has not been in use for, perhaps, decades. *See* Tr. p.33, L.8-20. This, again, even though Mr. Richard testified that the actual cost to replace the line which must be replaced will amount to less than \$500.

This Court should find that, because fair market value of the wire at issue in this case is reasonably ascertainable, it is unnecessary to determine replacement cost. If, however, the Court does not find that the market value is reasonably ascertainable, the Court should find that the State has not met the burden dictated by the *Hughes* court to show "that the replacement... is a reasonably close proximation of the design and quality of the destroyed item." Given this, this Court should further find that the copper wire at issue in this case should be valued by the default valuation found in I.C. 18-2402(11)(c).

### **III. I.C. 18-2403(11)(c) Dictates a Default of a Misdemeanor**

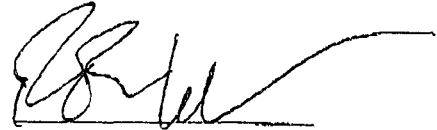
As provided in I.C. 18-2403(11)(c), "[w]hen the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in paragraphs (a) and (b) of this subsection, its value shall be deemed to be one thousand dollars (\$1,000) or less" and therefore a misdemeanor. Therefore, if this Court finds that neither the market value nor the replacement cost of the fiber-and-tar insulated copper wire at issue in this case can be satisfactorily ascertained, it should determine that the value is deemed to be \$1000 or less and dismiss the felony Information.

### **CONCLUSION**

The State produced no evidence at Preliminary Hearing to show that the value of the old fiber-and-tar insulated copper wire at issue in this case had either a market value or a replacement

cost above \$1,000. This Court should therefore find that the value of the wire is less than \$1000 and dismiss the felony Information.

DATED this 4<sup>th</sup> day of March, 2008.



Robin M. A. Weeks  
Deputy Public Defender

**CERTIFICATE OF DELIVERY**

I, the undersigned, hereby certify that a true and correct copy of the foregoing was delivered to the following on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by placing said copies in the appropriate boxes at the Twin Falls County Courthouse.

[ ] Grant Loeb  
Twin Falls County Prosecutor

\_\_\_\_\_



OFFICE OF THE PUBLIC DEFENDER  
TWIN FALLS COUNTY

Marilyn B. Paul, Public Defender  
Benjamin P. Andersen  
Robin M. A. Weeks  
George P. Essma  
Peter M. Hatch  
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231 Fourth Avenue North  
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FAX COVER SHEET

March 3, 2008

To: Dorothy (for Judge Stoker)  
Fax Number: (208) 736-4155

Also to: Leah Clark-Thomas  
Fax Number: (208) 736-4120

From: Robin Weeks  
Fax Number: (208) 734-1161

Re: Lonnie Johnson 07-10094—Memorandum in Support of Prelim Challenge

Dear Dorothy and Leah:

I'll be filing the Original, etc more properly in the morning, but I wanted to at least try to get these to you in time for the Court and State to review them prior to our afternoon hearing.

**Important:  
Motion Hearing  
March 4, 2008 at  
3:30 p.m.**

Sincerely,



Robin Weeks

Number of pages including cover sheet: 9

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Judge: Randy J. Stoker

Courtroom # 2

Clerk: Dorothy McMullen

Reporter: Sabrina Torres

THE STATE OF IDAHO, )

Plaintiff. )

Vs )

Lonnie R. Johnson )

Defendant. )

Court Minutes

Case No. CR 07-10094

DATE:

TIME:

3-4-08

3:30 P.M.

State: Leah Clark-Thomas

Other:

Defense: Robin Weeks

Defendant (  )

Custody Status (  )

Hearing: Motion Challenging Sufficiency of Preliminary Hearing

Name verified ( ) Public Defender Appointed/Confirmed ( ) Rights given ( )

(3:34) Argument by Ms. Weeks; Argument by Ms. Clark-Thomas;  
Rebuttal argument by Ms. Weeks;

Court took the matter under advisement.  
Ms. Clark-Thomas has until Friday 3-21 - Ms. Weeks may  
respond thereafter.

GRANT P. LOEBS  
 Prosecuting Attorney  
 for Twin Falls County  
 P.O. Box 126  
 Twin Falls, ID 83303  
 Phone: (208) 736-4020  
 Fax: (208) 736-4120

2008 MAR 14 AM 11:43

BY: \_\_\_\_\_  
 \_\_\_\_\_  
 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	
	)	<b>STATE'S RESPONSE TO DEFENDANT'S</b>
vs.	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>MOTION CHALLENGING SUFFICIENCY</b>
LONNIE JOHNSON,	)	<b>OF EVIDENCE AT PRELIMINARY HEARING</b>
	)	
Defendant.	)	
_____	)	

COMES NOW the Twin Falls County Prosecuting Attorney's Office by and through its Attorney of Record, Leah Clark-Thomas, Deputy Prosecuting Attorney, and hereby responds to the defendant's *Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing*, filed with the District Court on March 4, 2008.

### Facts

On October 19<sup>th</sup> 2007, Union Pacific Railroad (UPR) Police officer Dan Milovanovic received information that UPR copper signal wire has been cut from lines near Deitrich, Idaho. Taped Transcript of Preliminary Hearing (Tr.) P. 5. Officer Milovanovic responded to the scene of the theft and began an investigation. He found two receipts from Pacific Steel and Recycling Company of Twin Falls, crumpled with some garbage at the site bearing the name of Lonnie Johnson. The receipts indicated that Lonnie Johnson had sold just under one hundred pounds of copper wire to the recycling business on two different dates in early October of 2007. Tr. p. 6, ll. 11-15 & p. 7 ll. 6-7.

Upon further investigation at Pacific Steel and Recycling Officer Milovanovic was informed that Lonnie Johnson made a third sale to the recycle company on October 22, 2007 and was handed a receipt for that transaction. Tr. p. 8, ll. 8-13. Officer Milovanovic then examined the wire that Lonnie Johnson had sold according to the receipt and determined the copper wire to be UPR signal wire from its unique characteristics. Tr p. 8, ll. 18-26 & p. 9 ll. 1-10.

An employee of Union Pacific and Steel Recycling, Russell Cornia, was able to identify Lonnie Johnson as the same person who brought in UPR copper wire on several occasions to the recycle company. Tr. p. 16. More specifically, Mr. Cornia was able to identify Lonnie Johnson as the same person who disposed of 283 lbs of UPR wire by selling it to the recycling center during the month of October 2007. Tr. pp. 14-22.

When UPR needs to replace copper signal wire, Doug Richard, Manager of Signal Maintenance, purchases it through the railroad supplier. Tr. p. 28. All variations of signal wire they purchase are approximately the same price, which is .25 cents per linear foot. Tr. p. 33-34.

Richard calculated the current cost of purchasing 283 pounds of signal wire as a replacement for those related to the defendant's crime, and arrived at the sum of \$2,000.00. Tr. p. 30.

### Argument

#### **I. Standard of review supports magistrate's bind over**

For purposes of preliminary hearing, the State must show that a crime was committed and there is probable cause to believe that the accused committed it. Idaho Criminal Rule 5.1(b). If a magistrate judge finds that the State has met that burden of proof, "a clear abuse of discretion must be shown in order to overturn the magistrate's finding." *State v. Horn*, 101 Idaho 192, 610 P.2d 551, 554 (Idaho 1980).

Defense counsel challenges the sufficiency of evidence at preliminary hearing in this case, arguing that probable cause was not established and therefore, the case should be dismissed or in the alternative amended to a misdemeanor. Defense counsel's challenge is founded on an argument that the State failed to establish the fair market value of, or the replacement cost for the stolen property which was disposed of by the defendant in this case.

Based on the above rule regarding the standard of review, the Court need not consider defense counsel's argument unless it finds that the magistrate judge clearly abused his discretion when binding the case over to District Court.

In this case, the magistrate judge considered the "value" of the stolen property to be the replacement cost to UPR for 283 pounds of copper signal wire. The Court made that determination after hearing evidence presented by the State regarding each material element of the crime as well as evidence regarding value. Due to the specific and particular nature and

identification of UPR wire, it can only be purchased through UPR's supplier. Arguably, the market value of the signal wire is the price set by the signal wire supplier which UPR purchases. The company could not simply go out and search the market for any variety of copper wire; it is signal wire responsible for train traffic control.

The magistrate's determination of value by considering replacement cost was not a clear abuse of discretion. Therefore the motion challenging the bind over should be dismissed, and the probable cause finding upheld.

## **II. Replacement cost is the appropriate measure of value**

Idaho Code section 18-2402(11)(a) defines the "value" of property as being "the fair market value of the property at the time and place of the crime, or if such cannot be reasonably ascertained, the cost of replacement of the property within a reasonable time after the crime."

In construing a statute, the goal is to give effect to the intent of the legislature. *State v. Dewey*, 131 Idaho 846, 965 P.2d 206, 208 (Ct.App.1998). "If possible, legislative intent is determined by the plain language of the statute." *Id.* at 208. The meaning (or legislative intent) of the statute as outlined above can be deciphered by looking at the plain language of the statute, which essentially says; if fair market value of property cannot be reasonably ascertained, the replacement cost shall be considered for purposes of determining value. Although the language in the statute is clear, the issue remains as to who determines whether fair market value can be reasonably ascertained.

Essentially, the magistrate is deemed the finder of fact for purposes of preliminary hearing. Likewise, the jury is the fact finder for purposes of trial. Idaho Criminal Jury Instruction number

575 (see attached) outlines Idaho Code section 18-2402(11)(a), whereby the jury is asked to consider how value is defined for purposes of proving an element of grand theft. In this case, the magistrate judge considered replacement cost as the reasonably ascertainable calculation of value based on a standard of probable cause. A jury should next be charged with determining under ICJI 575, whether the fair market value or replacement cost can be reasonably ascertained and decide if that amount exceeds one thousand dollars, proven beyond a reasonable doubt. For that reason, the defendant's motion to have this could determine value should be denied.

**III. *State v. Hughes* is satisfied, if applicable.**

Defense counsel argues a rule set forth in *State v. Hughes*, 130 Idaho 698, 946 P.2d 1338 (Ct.App. 1997) which considers the measure of "value" of damages within the meaning of Idaho Code section 18-7001 (Malicious Injury to Property). *Id.* at 1343. The Court in *Hughes* looks at the question of value for the first time as it pertains to a charge of Malicious Injury to Property and looks to other jurisdictions for assistance in making that determination. *Id.* at 1343-1344. The rule *Hughes* adopts is as follows:

"We hold, therefore, that replacement cost evidence may be used as an indicator of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value, and when replacement cost evidence is relied upon, the State must show that the replacement (whether actually purchased by the victim or not) is a reasonably close proximation of the design and quality of the destroyed item." *Id.* at 1344.

It is questionable as to whether this rule is applicable to the case at bar, as *Hughes* specifically considers injury to property, which is usually valued at the cost of repair, or other

ways as outlined by the Court of Appeals. However in this case, only the value of the stolen railroad signal wire can be considered, not the value as it was attached to the railroad lines. The cost of repair is not even an option for determining value in this case because the charge is disposing of stolen property, not injuring property or removing it (stealing it). Nevertheless, the rule outlined by the Court in *Hughes* essentially follows the same language and idea as set forth in the Idaho Code, section 18-2402(11)(a), which defines “value” of property.

The fair market value of UPR signal wire is set by the supplier. There is only one replacement option for copper signal wire. As stated by Mr. Richard, the company does not search the market for the best price on copper wire, as it must go through the railroad supplier to purchase signal wire. Tr. p. 28, ll. 4-6. The wire purchased is the closest in design and quality available to replace the destroyed property.

Finally, since the replacement cost of 283 pounds of copper signal wire is reasonably ascertainable, the Court need not consider the alternative language in Idaho Code section 18-2402(11)(c) which says if neither fair market value nor replacement cost can be reasonably ascertained, then the value shall be deemed one thousand dollars or less.

### **III. Market value of consumer goods not relevant**

Defense counsel also argues a rule set forth in *State v. Smith*, 144 Idaho 687, 169 P.3d 275, 281 (Ct.App. 2007) which holds that the market value of consumer goods should be considered for purposes of determining value, rather than the cost of replacement to the owner for such goods. Defense counsel then attempts to parallel that rule to the facts in this case.

*State v. Smith* is not applicable, binding or relevant to this case, as it is a civil case




regarding consumer goods. The case at issue involves placing a value on stolen property, a criminal offense. For purposes of determining value of property in a criminal case, Idaho Code section 18-2402(11)(a) is clear that if fair market value cannot be reasonably ascertained, replacement cost shall be considered. The statute contradicts the civil rule as outlined in *Smith*, which makes the holding a non-issue, since no Idaho Court has adopted *Smith* in criminal cases regarding stolen property.

### Conclusion

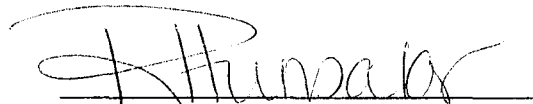
There is a market value for the copper signal wire criminally disposed of by the defendant. That value is set by its supplier. If the Court believes this is not fair market value, the replacement cost is the alternative measure of value. Given the unique identity of UPR signal wire, the replacement cost is an appropriate means of determining value because it is reasonably ascertainable. The magistrate's consideration of the State's evidence regarding the value and/or replacement cost of the stolen wire was not a clear abuse of discretion. If the Court finds that *State v. Hughes* does apply to this case, the State proved value at preliminary hearing and the question should proceed to the trier of fact at jury trial. The defendant's motion should be denied.

DATED this 14 day of March, 2008.

  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14 day of March 2008, I served a copy of the foregoing **STATE'S RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION CHALLENGING SUFFICIENCY OF EVIDENCE AT PRELIMINARY HEARING** thereof into the mail slot for **THE OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.



Rachael Hunsaker  
Case Assistant

2008 MAR 19 PM 4:51

BY: \_\_\_\_\_  
CLERK  
DEPUTY

OFFICE OF THE  
PUBLIC DEFENDER  
TWIN FALLS COUNTY  
P.O. Box 126  
Twin Falls, Idaho 83303  
Telephone: (208) 734-1155  
Idaho State Bar #6976

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS,**

\*\*\*\*\*

STATE OF IDAHO,	)	
	)	Case No. CR 07-10094
Plaintiff,	)	
	)	<b>DEFENDANT'S REPLY</b>
vs.	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF MOTION CHALLENGING</b>
	)	<b>SUFFICIENCY OF EVIDENCE</b>
LONNIE JOHNSON, ✓	)	<b>AT PRELIMINARY HEARING</b>
	)	
Defendant.	)	
_____	)	

COMES NOW the above named Defendant, Lonnie Johnson, by and through his attorney Robin Weeks, Twin Falls County Deputy Public Defender, and hereby responds to the State's Response to Defendant's Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing (hereafter State's Response).

## ARGUMENT

The Magistrate Court abused its discretion by binding Mr. Johnson over for trial without first determining that the fair market value of the wire was not reasonably ascertainable and, additionally, by not requiring the State to show substantial evidence that the replacement wire it sought to use in determining value was reasonably close in design and quality to the destroyed wire. Additionally, the Magistrate Court abused its discretion by overlooking relevant case law.

### **I. The Magistrate Court Clearly Abused Its Discretion**

The State's Response attempts to frame the issue as one which would be decided by the finder of fact, and implies that the fact finder has discretion to choose which standard to use. *See State's Response* at 4. To the contrary, Idaho Code § 18-2402(11)(a), along with supporting case law, is very clear that there are at least two questions which must be considered by the fact finder who wishes to use a replacement cost valuation. Each is discussed below.

#### ***A. The Magistrate Made no Preliminary Finding that the Fair Market Value was not Reasonably Ascertainable***

As has been thoroughly discussed in Defendant's initial Memorandum, and has also been mentioned by the State, I.C. § 18-2402(11)(a) allows replacement cost to be considered only after a finding that "fair market value cannot be satisfactorily ascertained." *State v. Hughes*, 130 Idaho 698, 703 (Ct.App. 1997) likewise is very specific that "replacement cost evidence may be used as an indicator of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value."

In the entirety of the Preliminary Hearing, no evidence or testimony was presented to suggest either what the fair market value of the cut wire was or that it was not reasonably

ascertainable. Instead, the State's witnesses based their valuation testimony on replacement cost alone. The Magistrate's ruling, as well, dealt strictly with the facts connecting the wire to Mr. Johnson and the replacement cost of the wire. Indeed, the Magistrate's language makes it clear that he not only failed to consider fair market value of the wire at the time and place of the crime, but discounted the argument entirely: "Whether or not it is covered plastic, whether or not it's covered with green tint, whether or not it's covered with tar and otherwise, the testimony from Mr. Richard is specific. The cost of copper to replace is... twenty-five cents a linear foot. Equate that with the number of pounds taken, it was a Thousand Dollars."<sup>1</sup> Taped Transcript of Preliminary Hearing (hereinafter Tr.) p.40, L.15-19. Because he failed to first consider and discount a valuation determined by fair market value, the Magistrate abused his discretion in binding this case over to the District Court.

***B. The Magistrate Did not Require the State to Show that the Replacement was Reasonably Close in Design and Quality to the Destroyed Item***

The *Hughes* court was equally clear that "when replacement evidence is relied upon, the State must show that the replacement (whether actually purchased by the victim or not) is a reasonably close approximation of the design and quality of the destroyed item." *Hughes*, 130 Idaho at 698. Again, in the Preliminary Hearing, the State presented no evidence which could be used by the Magistrate Court in finding that the plastic covered wire it sought to use in its valuation of replacement cost was similar in any approximation to the design and quality of the wire it alleges Mr. Johnson possessed in Twin Falls County. Instead, it sought—and still seeks—to argue that, because Union Pacific only uses one supplier of copper wire, they should be exempt from this evidentiary requirement. *See* Tr. p.37, L.23 – p.38-L.3; State's Response p.6.

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<sup>1</sup> Though it is noted that a value of only a thousand dollars would necessarily be a misdemeanor, the Magistrate's further comments make it clear that he considered the value to be *over* a thousand dollars by a preponderance of the

The State cites to no case law which supports this position. As is quoted above, the Magistrate's findings at Preliminary Hearing make it clear that he, also, did not attempt to compare the new wire with the old.

Because the Magistrate Court failed to require the State to show substantial evidence that the replacement wire was reasonably close in design and quality to the wire it alleges Mr. Johnson possessed unlawfully in Twin Falls, he abused his discretion in binding the case over to the District Court.

## **II. State Declined to Discuss Fair Market Value or Proximate Value of Replacement Item**

In attempting to convince this Court that Replacement Cost is the appropriate determination of value in this case, the State argues that 1) the Court should consider the statute's plain language, 2) the fact finder is the determiner of value, 3) the Magistrate Court was the Preliminary Hearing fact finder, 4) because the Magistrate Court used replacement cost in its value determination, replacement cost is the appropriate measure for Preliminary Hearing, and 5) the jury should also be able to decide the appropriate measure of value. *See* State's Response, at 4-5. In so arguing, the State attempts to bypass the two evidentiary requirements discussed above and, again, gives no thought to what the actual fair market value may have been. Neither does the State's Response even argue that fair market value could not be satisfactorily ascertained—only that, since the Magistrate Court used replacement cost and did not engage in an analysis of fair market value, that a fair market value analysis was unnecessary.

As has been discussed above, a fair market value analysis is an essential preliminary step in any valuation question. In not performing the analysis, the Magistrate Court abused its discretion in binding the case over to the District Court.

---

evidence.

### **III. *State v. Hughes* and *State v. Smith* Both Apply to Guide the Court in Determining Value**

The State's Response attempts to persuade the Court that it need not consider the *Hughes* decision, because it relates to an injury to property case "which is usually valued at the cost of repair" (State's Response at 5), and that the opinion in *State v. Smith*, 144 Idaho 687 (Ct.App.2007) "is not applicable, binding or relevant to this case, as it is a civil case regarding consumer goods." On the contrary, both cases are criminal cases, and in both the Idaho Court of Appeals considered issues relating to the proper manner of valuing property.

*Hughes* dealt with damage to a garage door, which the Idaho Court of Appeals concluded was not proved to have suffered damage of over \$1000. Though the facts are dissimilar in the case at bar, the *Hughes* opinion is important because it addresses the issue of valuation as one not adequately covered by Idaho statutes. Its analysis of the law covers both Idaho cases and that of other jurisdictions and only then provides the general rules previously cited by Mr. Johnson. Its analysis does not restrict itself to valuation of damaged property, but also covers destroyed property as well, as can be plainly seen in the sections quoted by Mr. Johnson. *See Hughes*, 130 Idaho at 702-03.

*State v. Smith's* deals with a woman convicted of grand theft of snowmobiles which could not be returned to the victim. Though the valuation analysis is primarily for the purpose of determining the restitution amount to be paid, the *Smith* Court's analysis clearly considers fair market value as well as replacement cost, and cites to I.C. § 18-2402(11)(a). *See Smith*, 144 Idaho at \_\_\_\_.

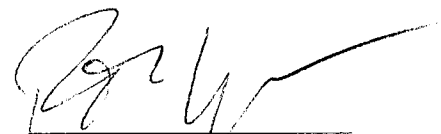
The State offers no conflicting case law to support its assertion that this Court should not consider these two cases, nor does it offer alternative case law which would support its own

position that replacement cost can be determined without a preliminary determination that fair market value cannot be reasonably ascertained. This Court should therefore consider all relevant case law on the issue of valuation and find that, in not considering the available case law the Magistrate Court abused its discretion in binding the case over to the District Court.

**CONCLUSION**

The State produced no evidence at Preliminary Hearing to show that the fair market value of the old fiber-and-tar insulated copper wire at issue in this case was not reasonably ascertainable or that the plastic-covered copper wire which is proposed to replace it was reasonably close in design and quality. Because he failed to consider these two evidentiary necessities, the Magistrate Court abused its discretion in binding this case over to the District Court. This Court should therefore dismiss this case or remand it to be tried as a misdemeanor.

DATED this 15<sup>th</sup> day of March, 2008.



Robin M. A. Weeks  
Deputy Public Defender



**CERTIFICATE OF DELIVERY**

I, the undersigned, hereby certify that a true and correct copy of the foregoing was delivered to the following on the 19 day of March, 2008 by placing said copies in the appropriate boxes at the Twin Falls County Courthouse.

Grant Loeb  
Twin Falls County Prosecutor

*[Signature]*

MAR 31 2008

8:30 AM

By \_\_\_\_\_ Clerk  
\_\_\_\_\_ Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	CASE NO. CR 07-10094
Plaintiff,	)	
	)	
vs.	)	<u>OPINION DENYING</u>
	)	<u>DEFENDANT'S MOTION</u>
LONNIE JOHNSON,	)	<u>CHALLENGING SUFFICIENCY OF</u>
	)	<u>EVIDENCE AT PRELIMINARY</u>
Defendant.	)	<u>HEARING</u>
_____	)	

INTRODUCTION

This matter is before the Court on Defendant Lonnie Johnson's ("Johnson") *Motion Challenging Sufficiency of Evidence at Preliminary Hearing*. Robin Weeks represents Johnson, and Leah Clark-Thomas represents the State. Argument on Johnson's Motion was heard on Tuesday, March 4, 2008. The parties requested leave of court to file additional briefs. The last of those briefs was received on March 19, 2008. This case is deemed submitted for decision as of that date.

FACTS

On October 19, 2007, Officer Dan Milovanovic of the Union Pacific Railroad ("UPR") Police Department responded to a scene along the railroad tracks in Lincoln

County where he found some copper signal wire had been cut down from the railroad's signal poles. Upon investigation of the area, he found a bag, footprints, and a T-shirt with the letters "L.J." written on the collar. Inside the bag, he found two receipts from Pacific Steel and Recycling ("Pacific Steel") with the name of Lonnie Johnson as the seller of copper wire. The first receipt showed that 87 pounds of copper wire had been sold on October 4, 2007 for \$204.45. The second receipt showed that 97 pounds of copper wire had been sold on October 10, 2007 for \$227.95.

Suspecting that the railroad's signal line had been sold to Pacific Steel, Officer Milovanovic went to Pacific Steel to inquire about Lonnie Johnson and the receipts. He found that Mr. Johnson had again been to Pacific Steel on October 22, 2007 and on this occasion sold 99 pounds of copper for \$232.65. The copper wire was a number six-gauge wire with a tar and fiber covering. Milovanovic inspected that copper wire that was brought in on the 22<sup>nd</sup> and he identified it as signal wire from UPR based on its distinctive characteristics.

A criminal complaint charging grand theft was filed against Mr. Johnson on October 24, 2007. The preliminary hearing was held before Magistrate Judge Roger B. Harris on January 11, 2008. An employee of Pacific Steel testified that all of the wire sold by Johnson was of the same character and composition. Douglas Richard, a signal maintenance manager with UPR, testified without objection that replacing all the wire that Mr. Johnson allegedly cut and sold to Pacific Steel would cost \$2000. He computed this value in the following manner. Signal wire must be purchased in 2000' rolls. A roll weighs 71#. Mr. Johnson sold 283# of copper wire to Pacific. The railroad

would therefore need to purchase four rolls, or 8000' of wire. Replacement wire costs 25 cents/foot. Therefore the replacement value of the wire taken by Johnson is \$2000.

The replacement signal wire purchased by UPR has a plastic cover as opposed to a tar and fiber covering. UPR purchases wire "through its supply system." Preliminary Hrg. Tr. P. 28, lines 3-7 When asked his opinion of the actual value of the wire sold to UPR, Mr. Richard testified that he would have "no idea." Preliminary Hrg. Tr. P. 32-33 Richard acknowledged that UPR would not have to replace "all" of the wire that was cut down. Rather, only some of it needed to be replaced. In order to replace "any of it", UPR needed the actual wire back. Richard testified that in order to replace it, UPR would have to buy new wire. Preliminary Hrg. Tr. P. 34

Based upon this evidence the State argued that it met its burden of proof because the replacement cost of the wire was well over \$1000 thus meeting the jurisdictional requirements for a felony. Johnson argued that the value of the copper wire should be \$665.05, the amount that he received from Pacific Steel, thus making this case a misdemeanor prosecution.

The Magistrate Court found that the value of the signal wire was over \$1,000, and bound the case over to District Court. In doing so the Magistrate stated:

Well I understand the arguments of both counsel . . . Whether or not [the wire] is covered plastic, whether or not it's covered with green tint, whether or not it's covered with tar and otherwise, the testimony from Mr. Richard was specific. The cost of copper to replace is twenty-five cents...a linear foot. Equate that to the number of pounds taken, it was [over] a Thousand Dollars. The issue...of whether or not the value is actually Fifteen Hundred [dollars], Two Thousand [dollars], Eighteen Fifty [dollars], that's the issue of fact for a jury to determine.... I do believe it has been sufficiently proven to me that there is clear and convincing evidence on each...charge brought against him that Mr. Johnson was involved with selling property that did not belong to him. The property belonged to

Union Pacific Railroad and it was in excess of value of a Thousand Dollars.

Taped Transcript of Preliminary Hearing (hereinafter Tr.) p.40, l.15-24.

### GOVERNING STANDARDS

In order to bind a defendant over to District Court a magistrate must find that a crime occurred and that it is probably true that the defendant committed the crime. I.R.C.5 The magistrate's finding of probable cause "must be based upon substantial evidence on every material element of the offense charged, and this test may be satisfied through circumstantial evidence and reasonable inferences to be drawn there from." *State v. Reyes*, 139 Idaho 502, 80 P.3d 1103, 1105 (Idaho App. 2003). "Once the magistrate determines that probable cause exists, a clear abuse of discretion must be shown in order to overturn the magistrate's finding." *State v. Horn*, 101 Idaho 192, 610 P.2d 551, 554 (1980). . When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

### ANALYSIS AND DECISION

. When any series of thefts, comprised of individual thefts having a value of one thousand dollars (\$1000) or less, are part of a common scheme or plan that exceeds \$1000, then the offense is a felony. I.C. §18-2407(b)(1), (b)(8). The question in this case is whether the magistrate acted consistently with the applicable legal standards in

determining whether the State sufficiently proved that a felony was committed because the Defendant stole over \$1000 of the railroad's property through a common scheme or plan.

Johnson argues that the magistrate incorrectly determined the value of the property allegedly taken by Johnson. First he argues the Magistrate was incorrect in finding that the value of the copper wire was over \$1,000 because the magistrate used the replacement cost of the stolen property as the measure of value without first determining that the market value of the property could not be properly ascertained. Second, Johnson argues that even if the record supports a finding that replacement cost is an appropriate measure of value that the replacement cost for the wire purchased by UPR was not a reasonably close proximation of the stolen property.

The Idaho Code sets forth the standard in determining the value in a theft case.

The value of property shall be ascertained as follows:

(a) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

I.C. 18-2403(11) (Emphasis added) In adopting this legislation, the Idaho legislature recognized that not all property has a "market value" that can be ascertained at the time of the commission of a crime.

In support of his position Johnson first relies on *State v. Smith*, 144 Idaho 687, 169 P.3d 275 (Ct. App. 1997) as authority providing guidance for the interpretation of I.C. 18-2403(11). The issue in *Smith* was whether the District Court correctly determined restitution. After noting that a court in determining the amount of restitution "may consider the value of any property stolen (by the defendant), and the value of that

property is to be calculated according to its "market value", so long as that value can be satisfactorily ascertained", the Court held that "generally, the 'market value' of consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the 'cost of replacement' which would be the cost for the owner to reacquire the same goods." *Id.* at 169 P.3d 275.

The Court agrees with the State that *Smith* is not controlling case law for deciding the issue before the Court. The issue in *Smith* was the proper method of valuing a loss for restitution purposes, not for the purpose of establishing a jurisdictional amount. The factors to be considered by the Court in setting restitution are much broader than those when determining "value" for jurisdictional purposes although the method of determining of "market value" can be similar in both situations. See *State v. Bybee*, 115 Idaho 541 (Ct. App. 1989) ("Under I.C. 19-5304(1) (a) restitution is for economic loss which includes, but is not limited to, the market value of the stolen property at the time and place of the crime").

Johnson also relies heavily on the following language in *State v. Hughes*, 130 Idaho 698 (Ct. App. 1997):

In some cases the destroyed item may have no market value or the value may not be ascertainable. Therefore, upon a showing that fair market value cannot be established, the State may show the economic value of the loss caused by the defendant through such factors as original purchase price, replacement cost, the property's general use and purpose, and salvage value. See *Dunoyair*, 660 P.2d at 895. If the State attempts to prove value through replacement cost, however, we think it incumbent upon the State to produce some evidence that the replacement item is of a quality and design comparable to that of the destroyed item. This is so because a replacement actually purchased by the crime victim may bear little or no relationship to the quality and value of the destroyed property, and the classification of the offense as a misdemeanor or a felony should not turn upon the victim's choice between a higher quality, more expensive replacement and a lower quality, more modestly priced item.

We hold, therefore, that replacement cost evidence may be used as an indicator

of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value, and when replacement cost evidence is relied upon, the State must show that the replacement (whether actually purchased by the victim or not) is a reasonably close proximation of the design and quality of the destroyed item.

*Hughes* addressed the proper measure of value under I.C. 18-7001 (Felony Malicious Injury to Property). Nevertheless *Hughes* provides guidance in this case in determining the value of the copper wire under I.C. 18-2403(11) because the Court provided an analytical framework to be used when evaluating “value” for *jurisdictional* purposes.

In this case the State must prove beyond a reasonable doubt to a jury that the value of the stolen property exceeds \$1000. Value is a material element of the crime. Under the theft statute the legislature has defined “value” to mean the “market value of the property at the time and place of the crime.” Only if such value cannot be satisfactorily ascertained may a jury convict using evidence of “the cost of replacement of the property within a reasonable time after the crime.” *Hughes, supra*. At a *preliminary* hearing the State must present *substantial evidence* that the value of the stolen property exceeds \$1000.

Error will not be presumed on appeal but must be affirmatively shown by an appellant. *State v. Crawford*, 104 Idaho 840, 663 P.2d1142 (Ct. App. 1983) Technically this case does not constitute an appeal, but the Court believes that the holding of *Crawford* is applicable. Using the abuse of discretion standard as required by *Horn, supra*, the Court now analyzes whether the Magistrate abused his discretion in binding this case over to District Court.

1. Whether The Magistrate Correctly Perceived The Issue As One Of Discretion



In their closing arguments the parties clearly articulated their respective positions on the value issue. The Magistrate affirmatively stated that he understood the arguments of both counsel. Thus inferentially he recognized the applicable law and that there were different methods of valuing stolen property. In this Court's opinion the magistrate correctly perceived the issue as one of discretion.

2. Whether The Magistrate Acted Within The Boundaries Of Such Discretion And Consistently With Any Legal Standards Applicable To The Specific Choices Before It

At the preliminary hearing, the State elicited direct testimony from Mr. Richard concerning only on the cost to replace the copper wire that was stolen. No objection was made to this testimony. When the State asked Richard for an opinion concerning the wire's *actual* value when it was given to Pacific Steel, he replied that he had no idea. Similarly, no objection was made to this testimony. There is no other evidence in the record of anyone's opinion of the wire's market value. There is direct evidence that Pacific Steel, a recycling center, purchased the wire for \$665.05. It is reasonable to infer that the price paid by Pacific Steel is a *salvage* price. Salvage value may or may not equate with market value. Typically it does not.

If a Court applies an incorrect legal standard, then the Court is not acting within the boundaries of its discretion. If there is insufficient evidence in the record to permit a finding that the market value of the wire could not be satisfactorily ascertained, then the Magistrate erred in his finding that evidence of the replacement cost satisfied the statute's jurisdictional requirements. This Court concludes that there was sufficient evidence in the record that would legally permit the Magistrate to conclude that the market value of the wire could not be satisfactorily ascertained and that the replacement

value is a reasonably close proximation of the design and quality of the destroyed item.

The destroyed signal wire was old. Richard testified that UPR currently uses wire wrapped in plastic, not tar and insulation. This implies that the stolen wire was outdated and no longer used. It is a further reasonable inference that the old wire is no longer available in the open market, thus implying that there is no method of ascertaining its market value. Finally, Richard testified that he had no opinion of the actual value of the wire at the time it was presented to Pacific Steel. Unfortunately neither party asked Richard whether that meant that he had no opinion because he had not researched the market to ascertain whether rolls of used signal wire could be purchased or whether that meant that he had no opinion because there was no source for used signal wire. Either inference is permissible. Consistent with the directive of *Hughes, supra*, the State has made "some effort" to show that the market value of the wire cannot be ascertained. On this evidence the Magistrate properly used replacement cost to determine the wire's value because true market value could not be satisfactorily ascertained.

In addition to establishing that the market value of the stolen property cannot be satisfactorily ascertained, the State must show that the replacement wire bears a reasonable relationship to the quality and value of the destroyed property. The State has established this in the record. Undoubtedly the new wire is better than the old wire. This does not preclude use of a replacement cost to prove value. It is only when there is "little or no relationship" to the quality and value of the destroyed property that a fact finder should not be allowed to consider replacement cost. *Hughes, supra*. The value of signal wire appears to be its copper core. While the replacement wire may have a

better cover (plastic), this Court cannot conclude that the replacement wire bears "little or no relationship" to the stolen wire.

### 3. Whether The Magistrate Reached His Decision By An Exercise Of Reason

The Magistrate made a finding that there was "clear and convincing" evidence that Johnson sold property that he didn't own and that the value thereof was in excess of \$1000. Preliminary Hearing Tr. P. 40. The evidentiary standard at preliminary hearing is "substantial evidence" not "clear and convincing" evidence. If anything, the standard used by the Magistrate is higher than that required by law. This demonstrates that the Magistrate recognized the State's burden of proof and was satisfied that it had been met.

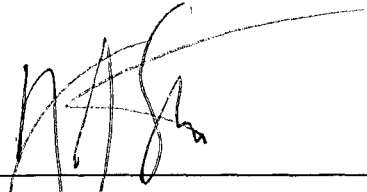
The Magistrate recognized that the signal wire was unique, accepted the victim's opinion of value and specifically found that the value was in excess of \$1000. Evidence in the record affirmatively shows that UPR needed the "actual" wire back and when they could not obtain it purchased new wire from their supplier. It is a reasonable inference that UPR need to purchase new wire in order to assure correct operation of its signal line.

The Magistrate recognized that the ultimate valuation issue was one for a jury while stating his opinion of value. Because there was no objection to the replacement value testimony of Richard, the Magistrate was well within his discretion to consider this evidence. On this record this Court will not presume that the Magistrate considered this evidence in violation of the proof requirements set forth in I.C. 18-2402(11) and does conclude that the Magistrate used reason in reaching his decision.

CONCLUSION

The Magistrate did not abuse his discretion in concluding that replacement cost could be used to determine the market value of the stolen wire. There is substantial evidence on all material elements of the grand theft charge to properly require that this matter proceed to jury trial. Accordingly, Johnson's Motion Challenging Sufficiency of Evidence is DENIED.

Dated this 31 day of March, 2008.



---

Randy J. Stoker  
District Judge

**CERTIFICATE OF SERVICE**

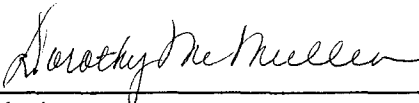
I hereby certify that on the 31 day of March 2008, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Lea Clark-Thomas, Deputy  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303

( ) U.S. Mail  
() Hand delivered  
( ) Faxed  
( ) Court Folder

Robin Weeks, Deputy  
Twin Falls County Public Defender  
P.O. Box 126  
Twin Falls, ID 83303

( ) U.S. Mail  
() Hand delivered  
( ) Faxed  
( ) Court Folder

  
\_\_\_\_\_  
Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Judge: Randy J. Stoker

Courtroom # 2

DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

Clerk: Dorothy McMullen

MAR 31 2008

Reporter: Sabrina Torres

By \_\_\_\_\_ Clerk  
\_\_\_\_\_ Deputy Clerk

THE STATE OF IDAHO, )

Plaintiff. )

Vs )

Lonnie R. Johnson )

Defendant. )

Court Minutes

Case No. CR 07-10094

DATE: 3-31-08

TIME: 4:00 PM.

State: Leah Clark-Thomas

Other:

Defense: Robin Weeks

Defendant (  )

Custody Status (  )

Hearing: Pretrial

Name verified ( ) Public Defender Appointed/Confirmed ( ) Rights given ( )

(4:55) Leave on trial calendar -

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2008 APR -4 PM 3:15

BY: OK  
CLERK

DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

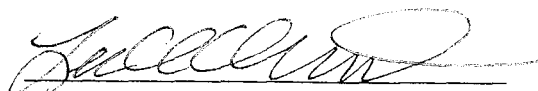
STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
LONNIE ROBERT JOHNSON, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR 07-10094

**PLAINTIFF'S REQUESTED JURY  
INSTRUCTIONS**

COMES NOW the Twin Falls County Prosecuting Attorney's Office by and through its Attorney of Record, Leah Clark-Thomas, Deputy Prosecuting Attorney, and respectfully requests the Court to give the following Jury Instructions numbered 1 through 12 in the above-entitled action.

DATED this 4 day of April, 2008.



Leah Clark-Thomas  
Deputy Prosecuting Attorney

93  
ORIGINAL

INSTRUCTION NO. \_\_

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

*Handwritten signature and date: [Signature] 6/12/08*

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 1  
GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED  \_\_\_\_\_



INSTRUCTION NO. \_\_\_\_

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.

*MS 6/14/08*

PROSECUTOR'S REQUESTED JURY INSTRUCTION NO. 2  
GIVEN   
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_

INSTRUCTION NO.     

In order for the Defendant to be guilty of Theft by Possession of Stolen Property, the state must prove each of the following:

1. On or about or between October 4, 2007 and October 22, 2007,
2. in the state of Idaho
3. the defendant Lonnie Johnson knowingly disposed of stolen property, to wit: copper wire,
4. either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen,
5. such property was in fact stolen, and
6. any of the following occurred:

- ~~(a) the defendant had the intent to deprive the owner permanently of the use or benefit of the property, or~~
- ~~(b) the defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or~~
- ~~(c) the defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.~~

*leaf 12*

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

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

*Both sides requested the identical instruction  
J.P. 6/12/08*

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 3

GIVEN

MODIFIED     

REFUSED     

COVERED

INSTRUCTION NO. \_\_\_\_

If the evidence shows that the defendant took, obtained, or withheld property by theft at various times from the same person; and that the value of the property taken in each theft was one thousand dollars (\$1000) or less; and that the property was taken, obtained, or withheld pursuant to one overall intent or plan to commit a series of thefts; then you are to add together the values of all the property taken, obtained, or withheld pursuant to that overall intent or plan. If the total value of such property is more than one thousand dollars (\$1000), then the crime is Grand Theft. The state has the burden of proving beyond a reasonable doubt that a theft is grand theft. If a theft is not grand theft, then it is petit theft.

*Handwritten signature and date: JMB 6/2/08*

PROSECUTOR'S REQUESTED JURY INSTRUCTION NO. 4  
GIVEN   
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
DEFERRED \_\_\_\_\_  
\_\_\_\_\_

INSTRUCTION NO.     

The phrase "intent to deprive" means:

- a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or
- b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

The phrase "intent to appropriate" means:

- a. ~~The intent to exercise control over property, or to aid someone other than the owner to exercise control over it, permanently or for so extended a period of time or under such circumstances as to acquire the major portion of its economic value or benefit; or~~
- b. ~~The intent to dispose of the property for the benefit of oneself or someone other than the owner.~~

*Handwritten signature*  
*6/12/08*

COURT'S REQUESTED JURY INSTRUCTION NO. 5

REVIEWED  
 IDENTIFIED  
 REUSED  
 RECORDED

INSTRUCTION NO. \_\_\_\_

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

*Amg 6/12/08*

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 6  
BY \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
ADDED \_\_\_\_\_  
DELETED \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

*Agro 6/12/08*

CLERK'S REQUESTED JURY INSTRUCTION NO. 7  
\_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REMOVED \_\_\_\_\_  
ADDED \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

"Property" means anything of value including labor or services.

*Handwritten signature*

CLIFF'S REGISTERED JURY INSTRUCTION NO. 8  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INSTRUCTION NO. \_\_\_

A person steals property and commits theft when, with intent to deprive another of property or appropriate the same to the person or to a third party, such person wrongfully takes, obtains, or withholds such property from an owner thereof.

*Handwritten signature and date: JMO 6/12/18*

CLERK'S REQUESTED JURY INSTRUCTION NO. 9  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



INSTRUCTION NO. \_\_\_\_

The term "value" as used in these instructions means as follows:

The market value of the property at the time and place of the crime, or if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

When the value of property cannot be satisfactorily ascertained pursuant to any of the above standards its value shall be deemed to be one thousand dollars (\$1000) or less.

*John G. [unclear]*

CLERK'S REQUESTED JURY INSTRUCTION NO. 10

DATE \_\_\_\_\_  
BY \_\_\_\_\_  
BY \_\_\_\_\_  
BY \_\_\_\_\_

INSTRUCTION NO. \_\_

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

"We, the Jury, duly impaneled and sworn to try the above entitled action, for our verdict, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** Is defendant ROBERT LONNIE JOHNSON not guilty or guilty of Theft?

**Not Guilty** \_\_\_\_\_ **Guilty** \_\_\_\_\_

If you unanimously answered Question No. 1 "**Guilty**", then you must answer Question No. 2. If you unanimously answered Question No. 1 "**Not Guilty**", then simply sign the verdict form and return with it to court.

**QUESTION NO. 2:** Is the crime Grand Theft?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

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

*[Handwritten signature]*  
*6/12/08*

OFF'S REQUESTED JURY INSTRUCTION NO. 11  
\_\_\_\_\_  
CORRECTED \_\_\_\_\_  
USED \_\_\_\_\_  
DATE \_\_\_\_\_

INSTRUCTION NO. \_\_

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	<b>VERDICT</b>
	)	
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant.	)	
_____	)	

We, the Jury, duly impaneled and sworn to try the above-entitled action, for our verdict, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** Is defendant ROBERTO LONNIE JOHNSON not guilty or guilty of Theft?

**Not Guilty** \_\_\_\_\_ **Guilty** \_\_\_\_\_

If you unanimously answered Question No. 1 "**Guilty**", then you must answer Question No. 2. If you unanimously answered Question No. 1 "**Not Guilty**", then simply sign the verdict form and return with it to court.

QUESTION NO. 2: Is the crime Grand Theft?

Yes \_\_\_\_\_ No \_\_\_\_\_

DATED this \_\_\_\_ day of April, 2008.

\_\_\_\_\_  
**Presiding Juror**

*BOB 6/12/08*

PROSECUTOR'S REQUESTED JURY INSTRUCTION NO. 12  
ADDED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
DELETED \_\_\_\_\_  
ADDED \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of April, 2008, I served a copy of the foregoing **STATE'S REQUESTED JURY INSTRUCTIONS** thereof into the mail slot for **OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.

A handwritten signature in black ink that reads "Rachael Hunsaker". The signature is written in a cursive style with a large, looping initial "R".

Rachael Hunsaker  
Felony Case Assistant

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2008 APR -4 PM 3: 15

BY \_\_\_\_\_  
CLERK

\_\_\_\_\_  
DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	<b>EXHIBIT LIST</b>
	)	
LONNIE ROBERT JOHNSON, J	)	
	)	
Defendant.	)	
_____	)	

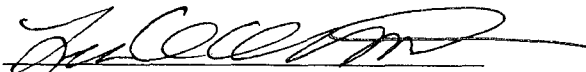
COMES NOW The Plaintiff, Leah Clark-Thomas, Deputy Prosecuting Attorney for Twin Falls County, State of Idaho, and submits the following list of potential exhibits in the above-entitled matter:

1. Receipts for the sale of copper wire to Pacific Steel & Recycling, bearing Defendant's name.
2. Photographic evidence of the site where two of the above receipts were found.
3. T-shirt found at the above mentioned site bearing the initials "LJ".

ORIGINAL

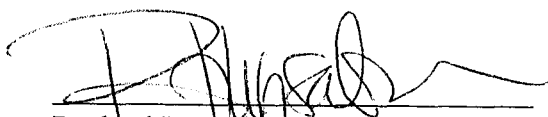
4. Enlarged photo identification of Defendant (Driver's License).
5. Bag of trash found at the above mentioned site.
6. Union Pacific Railroad copper wire collected as evidence during the investigation of this case.
7. Telephone wire as comparison.
8. Example of blank weight receipts and sale receipts used in the ordinary course of business by Pacific Steel and Recycling.

DATED This 4 day of April, 2008.

  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4 day of April 2008, I served a copy of the foregoing **EXHIBIT LIST** thereof into the mail slot for **THE OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.

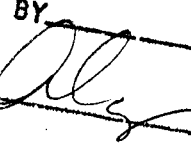


Rachael Hunsaker  
Case Assistant



DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2008 APR -9 PM 3: 14

BY  CLERK  
DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
LONNIE R. JOHNSON, )  
)  
Defendant. )


Case No. CR07-10094


**STIPULATION TO CONTINUE  
JURY TRIAL**

COMES NOW Leah Clark-Thomas, Deputy Prosecuting Attorney, and Robin Weeks, Attorney for Defendant, and stipulate that the Jury Trial currently scheduled begin April 17, 2008, should be continued and reset for a time that is convenient to the Court and all parties. This basis for this stipulation is that a material witness for the State is unavailable to testify at the Trial as presently set.

Dated this 9th day of April 2008.

Dated this 9th day of April 2008.

  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

  
Robin Weeks  
Attorney for Defendant

STIPULATION TO CONTINUE JURY TRIAL- 1

DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

APR 10 2008

9:30 A.M.

By \_\_\_\_\_  
Clerk  
Deputy Clerk

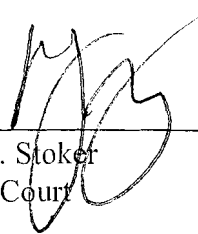
GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER TO CONTINUE</b>
	)	<b>JURY TRIAL and</b>
LONNIE R. JOHNSON,	)	<b>NOTICE OF RESET</b>
	)	<b>JURY TRIAL</b>
Defendant.	)	
_____	)	

IT IS HEREBY ORDERED that the Jury Trial currently scheduled to begin April 17, 2008, in the above-entitled action be continued to June 11, 2008 at 9:00 a.m., pretrial at 4:00 P.M. on 5-12 @ 4:00 P.M.

DATED this 10 day of April 2008.

  
\_\_\_\_\_  
Randy J. Stoker  
District Court

ORDER TO CONTINUE AND NOTICE OF HEARING

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112

**CERTIFICATE OF SERVICE**

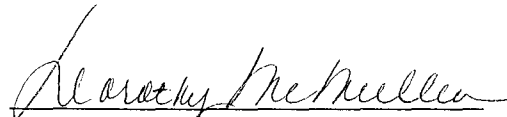
I hereby certify that on the 10 day of April 2008, I served a copy of the foregoing  
**ORDER TO CONTINUE JURY TRIAL and NOTICE OF RESET JURY TRIAL** thereof to  
the following:

**Leah Clark-Thomas**  
**Deputy Prosecuting Attorney**

[✓] **Court Folder**

**Office of the Public Defender**  
**Attorney for Defendant**

[✓] **Court Folder**

  
Deputy Clerk

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2008 MAY -8 AM 11:07

BY \_\_\_\_\_  
CLERK  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	<b>NOTICE OF INTENT TO PRESENT 404(b)</b>
	)	<b>EVIDENCE AT TRIAL</b>
LONNIE R. JOHNSON,	)	
	)	
Defendant.	)	
_____	)	

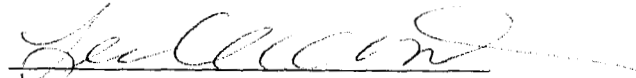
COMES NOW the Twin Falls County Prosecuting Attorney's Office by and through its Attorney of Record, Leah Clark-Thomas, Prosecuting Attorney, and gives notice of its intent to present evidence of other crimes, wrongs or acts at Defendant's Jury Trial in the above-entitled case. This notice is provided pursuant to I.R.E. 404(b).

The general nature of the evidence that the State intends to introduce at trial concerns the defendant's judgment of conviction regarding the theft of Union Pacific Railroad copper wire in Lincoln County Case Number CR 07-1176. Details of said conduct are contained in the discovery provided to defense counsel in Twin Falls County Case Number CR 07-10094. The

ORIGINAL

witness that may testify to said evidence is named in the discovery documents.

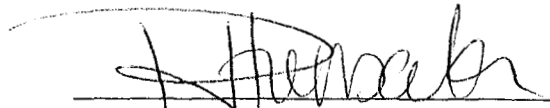
DATED this 8 day of May, 2008.



Leah Clark-Thomas  
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of May, 2008, I served a copy of the foregoing **Notice of Intent to Present 404(b) Evidence at Trial** thereof into the mail slot for **Office of the Public Defender** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.



Rachael Hunsaker  
Case Assistant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Judge: Randy J. Stoker

Clerk: Dorothy McMullen

Reporter: Sabrina Torres

THE STATE OF IDAHO,

Plaintiff,

vs

Lonnie E. Johnson

Defendant.

State: Deek Clark-Johnson

Defense: Robin Weere

Custody Status ( 12 )

Hearing: Retrial

Name verified ( ) Public Defender Appointed/Confirmed ( ) Rights given ( )

~~(4:35) Deek on trial order - Court & counsel dismissed trial order.~~

Courtroom # 2

*d*



OFFICE OF THE PUBLIC DEFENDER  
Attorneys at Law  
P.O. Box 126  
Twin Falls, Idaho 83303-0126  
(208) 734-1155  
ISB # 6976

ORIGINAL

2008 MAY 23 PM 3:02

BY \_\_\_\_\_  
CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*

STATE OF IDAHO,	)	
	)	CASE NO. CR 07-10094
Plaintiff,	)	
	)	
v.	)	OBJECTION TO STATE'S
	)	NOTICE OF INTENT TO
LONNIE JOHNSON, ↓	)	PRESENT 404(b) EVIDENCE
	)	AT TRIAL AND MEMORANDUM
Defendant.	)	IN SUPPORT
_____	)	

COMES NOW the Defendant by and through counsel Robin Weeks, Deputy Public Defender, and hereby objects to the State's Notice of Intent to Present 404(b) evidence in the above-entitled matter.

Mr. Johnson's objection is based upon Idaho Rules of Evidence 401, 402, 403 and 404, as well as the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and Article One, Section Thirteen of the Idaho Constitution. Further, Mr. Johnson claims all rights and protections afforded to him as a citizen of the State of Idaho which exceed those afforded to him by the United States Constitution. *State v. Cada*, 129 Idaho 224, 923 P.2d 469 (Ct. App. 1996).



Mr. Johnson asserts that the purported evidence is not relevant, and if it is ruled to be relevant, that it is so confusing, misleading and unfairly prejudicial as to warrant its being held inadmissible.

#### Legal Analysis

The State seeks to introduce evidence concerning Mr. Johnson's judgment of conviction in Lincoln County Case Number CR 07-1176. The State alleges that this conviction also concerned theft of Union Pacific Railroad copper wire. *State's Notice of Intent to Present 404(b) Evidence* at 2. The State's Notice does not indicate the purpose for which it seeks to use this testimony or how this testimony will support the case against Mr. Johnson other than to prove propensity to act in conformity with a certain character trait.

Mr. Johnson notes preliminarily that Lincoln County Case CR 07-1176 relates to a speeding infraction charged against one Edward Forman, and does not relate in any way to Mr. Johnson. However, Mr. Johnson will concede that he pled guilty to Misdemeanor Theft by Unauthorized Control or Transfer of Property in Lincoln County Case CR 07-1776, will assume that the case number mentioned by the State was a clerical error, and will henceforth in this Memorandum assume the State seeks to introduce evidence of his conviction in Lincoln County Case CR 07-1776.

Mr. Johnson asserts that evidence relating the his Lincoln County conviction is irrelevant, that it carries a significant risk of prejudicing, confusing and/or misleading the jury, and that it merely constitutes evidence that would be asserted to prove bad character activity in conformity with bad character, or propensity to commit such acts. Mr. Johnson further argues that this

purported evidence does not fall within the exceptions of I.R.E. 404(b) that would permit admission of such evidence.

I.R.E. 401

Mr. Johnson asserts that the testimony noticed in the State's 404(b) notice is irrelevant to the determination of the action, as not causing the substantive case to be more probable or less probable with its admission, pursuant to I.R.E. 401.

I.R.E. 403

Should the Court deem the State's proposed 404(b) evidence to be relevant, Mr. Johnson asserts that the proposed evidence carries a substantial danger, outweighing the value of any relevance, of unfairly prejudicing, confusing or misleading the jury. The evidence sought to be introduced by the State will create a prejudicial impact upon the jury and the evidence may powerfully suggest to the jury that the defendant had a propensity to commit an offense of the type charged. *State v. Wood*, 126 Idaho, 880 P.2d 771 (Ct. App. 1994).

Mr. Johnson contends that the jury would be likely confused about the logical role that this testimony would be expected to occupy in their analysis. This is especially true because Mr. Johnson entered a guilty plea in the Lincoln County case, so no evidence was presented to either establish that the property at issue in that case did, in fact, belong to Union Pacific, or to answer the question of how Mr. Johnson came to be in possession of the wire. The conviction in Lincoln County case CR 07-1776, therefore, if presented as evidence in the case at bar, would necessitate a mini-trial, in which witnesses would be required to testify as to the facts of the Lincoln County case. This recitation of the facts of a similar conviction would create a substantial danger, if not a

certainty, of unfair prejudice, confusion of the issues, misleading the jury, undue delay, and waste of time.

I.R.E. 404

404(b) makes it clear that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.” It should be clear that the wire Mr. Johnson was convicted of unlawfully possessing in the Lincoln county case is not the same wire he is charged with possessing in the case at bar, and was a completely separate crime, wrong, or act. The evidence of his conviction in Lincoln county would serve only to convince a jury that he allegedly continued to act in conformity with a bad character trait.

Though 404(b) also provides that evidence of other crimes, wrongs, or acts may be admissible to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” Mr. Johnson contends that the purported evidence does not fall within any of these delineated exceptions, but serves only to show conformity with a bad character trait. Again, the State has not specified how it intends to use this evidence.

One element the State is required to prove in this case is the element of knowledge: that Mr. Johnson knew the property was stolen. It should be clear that the Lincoln County conviction could not have added to his knowledge, as the Amended Information filed in this case alleges wrong acts committed *prior to* the October 25, 2007 filing of the Lincoln County case. The State, therefore, cannot use the December 2007 Lincoln County conviction to prove that, in early October 2007, Mr. Johnson knew that the wire was stolen.

Instead, it tends to show only a propensity of character in an attempt to convince the jury that, in early October 2007, Mr. Johnson acted in conformity with this character by knowingly possessing stolen property, as he was later convicted of doing in Lincoln County.

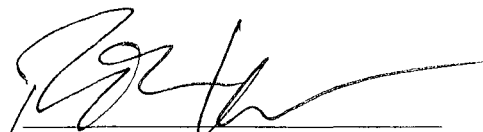
Even should this Court conclude that the testimony sought to be introduced by the State is relevant to the elements which must be proved by the State, its questionable probative value is far outweighed by its probable unfair prejudicial impact on the jury. In this case, the presumption of innocence still applies on both the currently charged crime and on prior bad acts. If the State is allowed to present the suggested testimony, there is real danger that the jury may conclude that, since Mr. Johnson was convicted of possessing stolen property around the same time as the alleged possession in this case, he has a propensity for possessing stolen property and likely acted in conformity therewith in Twin Falls County.

#### Conclusion

This Court should conclude that the anticipated evidence of the December 2007 conviction in Lincoln County case CR 07-1776 is irrelevant to prove that Mr. Johnson knowingly possessed stolen property on or about early October 2007, in the County of Twin Falls, State of Idaho, or that, even though it is relevant, its probative value is outweighed by the risk of unfair prejudice. Mr. Johnson requests that the State's purported I.R.E. 404(b) evidence be ruled not admissible.

Oral Argument is requested. Further, Mr. Johnson reserves the right to file additional briefings following the hearing as may be necessary to address the further issues which may be raised at the hearing and as may be helpful to the Court.

Dated this 23<sup>rd</sup> day of May, 2008.



Robin M. A. Weeks  
Deputy Public Defender

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing MOTION to be properly delivered to the Prosecutor, on this 23 day of May, 2008.

Grant Loeb  
Prosecutor

Court Folder

Betsy Brown

OFFICE OF THE PUBLIC DEFENDER  
 Attorneys at Law  
 P.O. Box 126  
 Twin Falls, Idaho 83303-0126  
 (208) 734-1155  
 ISB #6976

ORIGINAL

DISTRICT COURT  
 TWIN FALLS CO. IDAHO  
 FILED

2008 MAY 28 PM 3:03

BY \_\_\_\_\_ CLERK

\_\_\_\_\_ DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

\* \* \* \* \*

STATE OF IDAHO,	)	
	)	CASE NO: CR 07-10094
Plaintiff,	)	
v.	)	<b>MOTION IN LIMINE</b>
	)	
LONNIE JOHNSON,	)	
	)	
Defendant.	)	
	)	

---

COMES NOW, the Defendant, by and through counsel, Robin Weeks, pursuant to I.R.E. 401, 402, 403, and 404, and hereby moves for the exclusion of the following from being presented as evidence by the State in the jury trial:

1. Cut signal line wire located in Lincoln County by Union Pacific Police Officer Dan Milovanovic. This evidence is irrelevant under I.R.E. 401 and 402, would, if admitted, be unfairly prejudicial under I.R.E. 403, and is suggestive of uncharged bad acts, for which notice has not been given under I.R.E. 404(b).
  
2. Pacific Steel and Recycling receipts, located by Union Pacific Police Officer Dan Milovanovic in Lincoln County, dated 10/4/07 and 10/10/07, purporting to purchase 87 pounds and 97 pounds of copper wire, respectively, from Lonnie Johnson. Or, in the alternative, the location where the receipts were found by Officer Milovanovic. This evidence, especially the location the receipts were located, if admitted, would be unfairly prejudicial under Rule I.R.E. 403.

3. The white T-Shirt, bearing the initials L.J., found in Lincoln County by Union Pacific Police Officer Dan Milovanovic. This evidence is irrelevant under I.R.E. 401 and 402 and would, if admitted, be unfairly prejudicial under Rule I.R.E. 403.
4. Any testimony purporting to establish that the wire allegedly sold to Pacific Steel and Recycling on 10/4/07 and 10/10/07 was the same type of wire as that allegedly observed by Officer Milovanovic at Pacific Steel and Recycling on 10/23/07, when offered by a witness who has not been certified as an expert in the identification of various types of copper wire, their probable origins, and the differences between railroad signal wire and telephone communications wire. Any speculation by a non-expert witness as to the similarity between the three batches of wire would be irrelevant under I.R.E. 401 and 402, and unfairly prejudicial under I.R.E. 403.

The defendant requests exclusion of the above.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of May, 2008.



---

Robin Weeks  
Deputy Public Defender



CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that a true and correct copy of the foregoing MOTION IN LIMINE was delivered to the office of the Twin Falls County Prosecuting Attorney on the 28 day of May, 2008.

GRANT LOEBS  
Twin Falls County  
Prosecuting Attorney

Courthouse Mail  
 Fax

*Angie Duncan*

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2008 JUN -4 AM 11:31

*OK*  
CLERK  
DEPUTY

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LONNIE JOHNSON, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR 07-10094

**FURTHER NOTICE OF INTENT TO  
PRESENT 404(b) EVIDENCE AT  
TRIAL AND BRIEF IN RESPONSE TO  
DEFENDANT'S OBJECTION AND  
MOTION IN LIMINE**

COMES NOW the Twin Falls County Prosecuting Attorney's Office by and through its Attorney of Record, Leah Clark-Thomas, Prosecuting Attorney, and gives notice of its intent to present further evidence of other crimes, wrongs or acts at Defendant's Jury Trial in the above-entitled case. This notice is provided pursuant to I.R.E. 404(b).

07-10094-1216

The nature of the evidence involves pictures and physical evidence found in Lincoln County near milepost 304.25, during the investigation of the theft in this case. This evidence can be found on the State's Trial Exhibit List, filed April 4, 2008. Prior notice of State's intent to present 404(b) involves a judgment of conviction for the crime of Petit Theft in Lincoln County, where the defendant pleaded guilty to possessing stolen wire. All evidence in this case, 404(b) and otherwise has been discovered to the defendant.

### FACTS

On October 19<sup>th</sup> 2007, Union Pacific Railroad (UPR) Police officer Dan Milovanovic received information that UPR copper signal wire had been cut from lines near Deitrich, Idaho. Taped Transcript of Preliminary Hearing (Tr.) p. 5. Officer Milovanovic responded to the scene of the theft and began an investigation. He first observed some signal wire that had been cut down in small pieces on the ground next to a white t-shirt bearing the initials L.J. in the collar of the shirt. Tr. p. 6, ll. 2-7. The officer continued walking through a BLM fence area that had been cut and found a plastic bag full of trash. Tr. p. 6, ll.8-12. Later, upon search of the contents of the bag, the officer found two crumpled up receipts from Pacific Steel and Recycling Company of Twin Falls, bearing the name of Lonnie Johnson. The receipts indicated that Lonnie Johnson had sold just under one hundred pounds of copper wire to the recycling business on two different dates in early October of 2007. Tr. p. 6, ll. 11-15 & p. 7 ll. 6-7.

Upon further investigation at Pacific Steel and Recycling Officer Milovanovic was given another receipt bearing Lonnie Johnson's name for a third sale to the recycling company on

October 22, 2007. Tr. p. 8, ll. 8-13. Officer Milovanovic then examined the wire that Lonnie Johnson had sold according to the receipt and determined the copper wire to be UPR signal wire from its unique characteristics. Tr p. 8, ll. 18-26 & p. 9 ll. 1-10.

An employee of Union Pacific and Steel Recycling, Russell Cornia, was able to identify Lonnie Johnson as the same person who brought in UPR copper wire on several occasions to the recycle company. Tr. p. 16. More specifically, Mr. Cornia was able to identify Lonnie Johnson as the same person who disposed of 283 lbs of UPR wire by selling it to the recycling center during the month of October 2007. Tr. pp. 14-22.

Replacement copper signal wire is purchased by Doug Richard, Manager of Signal Maintenance, through the railroad supplier. Tr. p. 28. All variations of signal wire they purchase are approximately the same price, which is .25 cents per linear foot. Tr. p. 33-34. Richard calculated the current cost of purchasing 283 pounds of signal wire as a replacement for those related to the defendant's crime, and arrived at the sum of \$2,000.00. Tr. p. 30.

## LAW

Idaho Rule of Evidence 404(b) governs the admissibility of evidence of a criminal defendant's uncharged misconduct. That rule provides:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

I.R.E. 404 (b).

Other crimes, wrongs or acts for 404(b) purposes do not have to be in the form of convictions, as indicated by the language of the Rule. Idaho Courts have consistently upheld that both dismissed charges and prior uncharged conduct is not excluded from admissibility under I.R.E. 404(b). *See State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989), *State v. Hoots*, 131 Idaho 592, 961 P.2d 1195 (1998).

"... I.R.E. 404(b) [ ] prohibits such evidence [of other misconduct] only where its sole purpose is to show propensity or character. The enumerated "other purposes" for which evidence of other crimes, wrongs or acts may be admitted is not exhaustive. *See State v. Rodriguez*, 118 Idaho 948, 951 & n. 1, 801 P.2d 1299, 1302 & n.1 (Ct. App. 1990); Report of the Idaho State Bar Evidence Committee, Comment to Rule 404 12/16/1983 *rev.* 6/1/1985."

*State v. Blackstead*, 126 Idaho 14, 18 (Ct. App. 1994).

"Other purposes" may include the need to present the complete story of the crime to the jury, or *res gestae*. "*Res gestae* refers to other acts that occur during the commission of or in close temporal proximity to the charged offense which must be described to complete the story of the crime on trial by placing it in the context of nearby and nearly contemporaneous happenings." *Id.*

A trial court must make a two-part analysis in deciding whether to admit any evidence of prior bad acts. "First, the court must determine whether the evidence is relevant to a disputed material issue concerning the charged crime. *State v. Moore*, 120 Idaho 743, 819 P.2d 1143 (1991) . . . If the evidence is relevant, the trial court must then consider whether its probative value is substantially outweighed by unfair prejudice." *State v. Scovell*, 136 Idaho 587, 38 P.3d 625, 628 (Ct. App. 2001) (citations omitted.)

Relevant evidence is defined by the Idaho Rules of Evidence Rule 401 as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

"In other words, a Rule 404(b) objection is intrinsically a relevancy objection because it requires the trial judge to determine whether the evidence is relevant for some purpose other than that prohibited by the rule." State v. Avila, 137 Idaho 410, 49 P.3d 1260, 1262 (Ct. App. 2002).

## **ARGUMENT**

In order to prove to a jury beyond a reasonable doubt that the defendant is guilty of grand theft, the State not only must show that the Defendant was in possession of stolen property valued in excess of one-thousand dollars, but must also prove that the Defendant knew or should have known that the property was in fact stolen. The following 404(b) evidence is properly admissible because it makes the existence of facts in the substantive case more or less probable than they would be without the evidence (i.e.- relevant under I.R.E. 401), and the probative value of the evidence outweighs unfair prejudice to the Defendant.

### **1. The Defendant's conviction in Lincoln County**

On October 25, 2007 the defendant was charged in Lincoln County for possessing stolen wire. On October 24, 2007 he was charged in Twin Falls County for possessing stolen wire when evidence found in Lincoln County indicated he'd committed a crime in Twin Falls by disposing of the same type of wire. Defendant's conviction for possessing stolen wire in Lincoln County is highly relevant evidence for the case at hand because it goes to a disputed material issue

concerning the crime charged in this case. The defendant disputes he knew the wire was stolen. This evidence shows the defendant's knowledge that the wire he possessed and disposed of in Twin Falls was stolen and also demonstrates lack of mistake in possessing stolen Union Pacific Railroad (UPR) wire. This evidence should be admitted under I.R.E. 404(b) because it is presented for "some purpose other than that prohibited by the rule" and because it is more probative than it is unfairly prejudicial.

The defendant, through counsel, argues that before the judgment of conviction can be admitted, a "mini-trial" must be heard in order to prove the Lincoln County case which the defendant already pleaded guilty to. The defendant contends this is so because there is no evidence to establish that the stolen wire in that case was in fact UPR property and there is no answer as to how the defendant came into possession of that wire. A mini trial is not necessary.

UPR Officer Dan Milovanovic was the officer in both cases and will verify that the defendant pleaded guilty to petit theft for possession of copper wire, and that UPR was the victim in that case, as well as in this case. This evidence is proof that the defendant knew the wire in his possession was stolen when he sold it in Twin Falls County. Contrary to what the defense argues, the State does not need to prove how the defendant came into possession of the wire to which he pled guilty, nor how he came into possession of the wire he sold in Twin Falls. The "how" is not relevant.

The defendant also argues that the State cannot use the December 2007 Lincoln County conviction to prove that in early October, the defendant knew that the wire was stolen because the Lincoln County case was not filed until late October. The date of filing is irrelevant because both the Lincoln County and Twin Falls County cases were filed in late October alleging crimes

of theft at an earlier date in October. So, contrary to what the defendant argues, the Lincoln County conviction is evidence of Defendant's knowledge that the property in this case was stolen.

Finally, the defendant argues that the wire he pleaded guilty to possessing isn't the same wire that he is charged with disposing of in this case and therefore cannot be used to show the wire sold to Pacific Steel and Recycling was also UPR wire. The State is not arguing the defendant pleaded guilty to possessing the same UPR wire, only that the Defendant pleaded guilty to a charge that involved the theft of wire where UPR was the victim, which would give him good reason to know the wire he possessed in this case was also stolen. The unique character of UPR wire is obvious and the similar circumstances surrounding location of evidence in each crime being around railroad tracks are strongly indicative of the defendant's knowledge that the wire was stolen. The evidence is more probative than prejudicial and must be allowed.

## **2. Evidence of Theft in Lincoln County**

Cut signal wire found at the scene of the theft in Lincoln County should be admitted as 404(b) evidence of the commission of the crime charged in this case because again, the evidence is highly relevant and goes to some purpose other than showing Defendant's propensity to act in conformity with a bad character trait or suggest uncharged bad acts. The evidence collected by Officer Milovanovic in Lincoln County consisting of cut signal wire, a trash bag with receipts for the sale of copper wire bearing Defendant's name, as well as a t-shirt bearing Defendant's initials are all crucial pieces of evidence to show the defendant committed the crime of grand theft by possessing/disposing of stolen property in Twin Falls County. The State must not only show that stolen property was disposed of, but also that the defendant knew the property was stolen.



Admission of photos of the stolen wire laying on the ground next to a t-shirt bearing the defendant's initials all in proximity to a bag with wire recycling receipts goes to the defendant's knowledge of where the wire came from.

404(b) evidence is also necessary in this case to present the complete story of the crime to the jury. Although the evidence is obviously prejudicial to the Defendant's case, it is not unfairly prejudicial because it constitutes another bad act that occurred "during the commission of or in close temporal proximity to the charged offense." *Blackstead* at 18. It is not presented for the purpose of showing propensity to act in conformity with a certain character trait, as the defendant argues. For these reasons, this evidence is admissible at trial.

### **3. Defendant's Motion in Limine**

The defendant also argues through counsel in a Motion in Limine filed May 28, 2008 that the evidence collected in Lincoln County should be excluded under I.R.E. 403 because it is unfairly prejudicial, and also argues that some of the evidence is irrelevant and therefore also should be excluded under I.R.E. 401 and 402. In that motion, the defendant moves to exclude the cut signal wire, the t-shirt with initials L.J., the crumpled up sale receipts from Pacific Steel and Recycling bearing Lonnie Johnson's name, and any testimony offered to identify the wire sold by the defendant pertaining to the sale receipts. Basically, the defendant wants to exclude all evidence and testimony considered during the preliminary hearing, which the Magistrate found to be probable cause that Lonnie Johnson committed the crime. For the record, the defendant already filed an motion challenging the Magistrate's bind over decision, which was denied.

The defendant is seeking to prevent the State from presenting any evidence against him which the jury would use to find him guilty. He doesn't get to do that. The defendant claims all

the above evidence is unfairly prejudicial or just plain irrelevant, but doesn't state why or give any authority to demonstrate how the evidence is so prejudicial or misleading to a jury that it should be excluded. Of course, all the evidence the state is going to present is prejudicial to the defendant: it is direct evidence that he committed a crime.

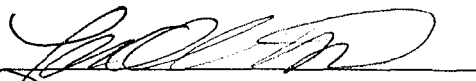
The evidence discussed above in this brief is all relevant evidence as defined under I.R.E. 401 because it makes the existence of facts in the substantive case more or less probable than they would be without the evidence. I.R.E. 402 makes that evidence admissible. I.R.E. 403 is a rule of exclusion that "protects against evidence that is unfairly prejudicial, that is, if it tends to suggest decision on an improper basis." State v. Floyd, 125 Idaho 651, 873 P.2d 905 (Ct. App. 1994). In order for the Trial Court to exclude such evidence under I.R.E. 403 in this case, the defendant must show more than mere prejudice in the sense that the evidence sought to be used by the State is detrimental to the defendant's case. He can't make that showing and his motion in limine must be denied.

### CONCLUSION

The above 404(b) evidence should be admitted because it goes to a material issue in dispute- whether the defendant had knowledge that the copper wire he was in possession of and sold to Pacific Steel and Recycling was stolen property. Because the evidence is relevant for purposes other than those forbidden under I.R.E. 404(b) and not outweighed by unfair prejudice to the Defendant, the State should be allowed to present such evidence to the jury at trial in the case in chief. Similarly, the defendant's motion in limine should be denied because the Court

cannot exclude relevant evidence just because the defendant doesn't like it. The defendant has made no showing that the probative value of the evidence presented by the State is substantially outweighed by unfair prejudice, thus invoking I.R.E 403 to exclude such evidence.

DATED this 4 day of June, 2008.

  
Leah Clark-Thomas  
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of June 2008, I served a copy of the foregoing **FURTHER NOTICE OF INTENT TO PRESENT 404(b) EVIDENCE AT TRIAL AND BRIEF IN RESPONSE TO DEFENDANT'S OBJECTION** thereof into the mail slot for **THE OFFICE OF THE PUBLIC DEFENDER** located at the District Court Services Office and for delivery on the regular delivery route made every morning and afternoon to all Courthouse offices receiving mail from the Prosecutor's Office.

A handwritten signature in black ink that reads "Rachael Hunsaker". The signature is written in a cursive style with a large, looping initial "R".

Rachael Hunsaker  
Case Assistant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Judge: Randy J. Stoker

Courtroom # 2

Clerk: Dorothy McMullen

3:00 P.M.

Reporter: Sabrina Torres

THE STATE OF IDAHO, )

Plaintiff. )

Vs )

Louise Johnson )

Defendant. )

Court Minutes

Case No. CR 07- 10094

DATE:  
4-5-08

TIME:  
1:30 P.M.

State: Leah Clark-Thomas

Other:

Defense: Robin Weeks

Defendant (  )

Custody Status (  )

Hearing: 404 b Motion

Name verified ( ) Public Defender Appointed/Confirmed ( ) Rights given ( )

(1:30) Comments by Ms. Clark-Thomas; Ms. Weeks responded;  
Rebuttal argument by Ms. Clark-Thomas; Further comments by  
Ms. Weeks; Further comments by Ms. Clark-Thomas; Further  
comments by Ms. Weeks;

Court ruled may not use prior misdemeanor convictions as  
404(b) evidence; Video on ground will be admissible; Receipts  
will be on basis of testimony;

Defense motions in limine denied

States motion re: misd. - denied -

DISTRICT COURT ORIGINAL  
TWIN FALLS CO., IDAHO  
FILED

2008 JUN 10 PM 3:08

BY [Signature] CLERK  
DEPUTY

OFFICE OF THE PUBLIC DEFENDER  
Attorneys at Law  
P.O. Box 126  
Twin Falls, Idaho 83303-0126  
(208) 734-1155  
ISB # 6976

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*

STATE OF IDAHO,	)	
	)	CASE NO. 07-10094
Plaintiff,	)	
	)	<b>DEFENDANT'S REQUESTED</b>
v.	)	<b>JURY INSTRUCTIONS</b>
	)	
LONNIE JOHNSON,	)	
	)	
Defendant.	)	
_____	)	


COMES NOW the Defendant, by and through his attorney, Robin M.A. Weeks, Deputy Public Defender, and offers the following 1-6 Jury Instructions in this action in addition to those already submitted and given by the Court or offered by the State.

DATED this 10<sup>th</sup> day of June, 2008.

[Signature]  
Robin M.A. Weeks  
Deputy Public Defender

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that a true and correct copy of the foregoing  
DEFENDANT'S REQUESTED JURY INSTRUCTIONS was delivered to the Office of the  
Twin Falls County Prosecutor by placing it in their basket at the Twin Falls County Courthouse  
on the 10<sup>th</sup> day of June, 2008.

  
Legal Assistant

ICJI 103A REASONABLE DOUBT (ALTERNATIVE)  
PRESUMPTION OF INNOCENCE-REASONABLE DOUBT  
INSTRUCTION NO. \_\_

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.

*MS 6/22/08*

Defendant's Requested Jury Instruction No. 1  
Given \_\_\_\_\_  
Notified \_\_\_\_\_  
Refused \_\_\_\_\_  
Covered / \_\_\_\_\_  
Other \_\_\_\_\_



ICJI 556 THEFT—DEGREES—VERDICT INSTRUCTION

INSTRUCTION NO. \_\_\_

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

"We, the Jury, duly impaneled and sworn to try the above entitled action, for our verdict, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** Is defendant Lonnie Johnson not guilty or guilty of Theft by Possession of Stolen Property?

**Not Guilty** \_\_\_ **Guilty** \_\_\_

If you unanimously answered Question No. 1 "**Guilty**", then you must answer Question No. 2. If you unanimously answered Question No. 1 "**Not Guilty**", then simply sign the verdict form and return with it to court.

**QUESTION NO. 2:** Is the crime Grand Theft by Possession of Stolen Property?

**Yes** \_\_\_ **No** \_\_\_

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

*[Handwritten signature]*  
*6/14/08*

Defendant's Requested Jury Instruction No. 2  
Given \_\_\_\_\_  
*modified* Modified  \_\_\_\_\_  
Refused \_\_\_\_\_  
Covered \_\_\_\_\_  
Other \_\_\_\_\_

ICJI 557 THEFT—DEGREES—VERDICT FORM

INSTRUCTION NO. \_\_

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LONNIE JOHNSON, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CASE NO. 07-10094

**VERDICT FORM**

We, the Jury, duly impaneled and sworn to try the above-entitled action, for our verdict, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** Is defendant Lonnie Johnson, not guilty or guilty of Theft by Possession of Stolen Property?

**Not Guilty** \_\_\_ **Guilty** \_\_\_

If you unanimously answered Question No. 1 "**Guilty**", then you must answer Question No. 2. If you unanimously answered Question No. 1 "**Not Guilty**", then simply sign the verdict form and return with it to court.

**QUESTION NO. 2:** Is the crime Grand Theft by Possession of Stolen Property?

**Yes** \_\_\_ **No** \_\_\_

DATED this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_.

\_\_\_\_\_  
**Presiding Juror**

*My 6/12/08*

Defendant's Requested Jury Instruction No. 3

*notified* Given \_\_\_\_\_  
 Notified \_\_\_\_\_  
 Refused \_\_\_\_\_  
 Covered \_\_\_\_\_  
 Other \_\_\_\_\_

ICJI 542 DEGREE OF THEFT

INSTRUCTION NO. \_\_

Theft by Possession of Stolen Property is classified into two degrees: Grand Theft by Possession of Stolen Property and Petit Theft by Possession of Stolen Property. If you find the defendant guilty of Theft by Possession of Stolen Property, then you must determine whether the crime was Grand Theft by Possession of Stolen Property or Petit Theft by Possession of Stolen Property. The state has the burden of proving beyond a reasonable doubt that the Theft by Possession of Stolen Property is Grand Theft. You must state the degree in your verdict.

The Theft by Possession of Stolen Property which exceeds one thousand dollars (\$1000) in value is Grand Theft.

*MS 6/14/08*

Defendant's Requested Jury Instruction No. 4  
Given \_\_\_\_\_  
Notified \_\_\_\_\_  
Refused \_\_\_\_\_  
Covered \_\_\_\_\_  
Other \_\_\_\_\_

ICJI 547 THEFT BY POSSESSION OF STOLEN PROPERTY

INSTRUCTION NO. \_\_\_

In order for the Defendant to be guilty of Theft by Possession of Stolen Property, the state must prove each of the following:

1. On or about October 4, October 10, and October 22, 2007
2. in the state of Idaho, County of Twin Falls
3. the defendant Lonnie Johnson knowingly disposed of stolen property, to wit: copper wire belonging to Union Pacific Railroad,
4. either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen,
5. such property was in fact stolen, and
6. any of the following occurred:
  - (a) the defendant had the intent to deprive the owner permanently of the use or benefit of the property, or
  - (b) the defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or
  - (c) the defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.

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

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

*Identical to States  
Requested instruction on this  
was  
Jury 6/14/08*

Defendant's Requested Jury Instruction No. 5

Given

*am* Notified modified

Refused \_\_\_\_\_

Covered \_\_\_\_\_

Other \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

The term "value" as used in these instructions means as follows:

The market value of the property at the time and place of the crime, or if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

When the value of property cannot be satisfactorily ascertained pursuant to any of the above standards its value shall be deemed to be one thousand dollars (\$1000) or less.

*Myth 6/12/08*

Defendant's Requested Jury Instruction no. 6  
Given \_\_\_\_\_  
Notified \_\_\_\_\_  
Refused \_\_\_\_\_  
Covered \_\_\_\_\_  
Other \_\_\_\_\_ 1 1/2

JUDGE STOKER

TIME IN 9:00 AM, 7-11-08

CASE CR-07-10094

JURY SELECTED 11:30 AM 7-11-08

TRIAL DATE: 6-11-2008

JURY FINISHED 6:00 P.M. 6-12-08

JUDGEMENT Guilty Post Trial

ST VS LONNIE JOHNSON

JUROR#	RANDOM SEAT	EXC	NO SHOW	ROLL CALL	VOIR	PER	CAUSE	JURY
J8/0000710 ALLRED, CLARA ANN		X						
J8/0000649 ALVES, AMBER ALEXANDRINA		X						
J8/0000786 BELT, STEPHEN BOYD				/				
J8/0000793 BERRY, JILL				/	✓			☆
J8/0000749 BRENDEN, SHARON ANN				/	✓			☆
J8/0000675 BURKHART, ROBIN ANN		X						
J8/0000643 BURTON, KAREN ANN				/	✓	✓		
J8/0000703 CARVER, WILLIAM NATHANIEL				/	✓			☆
J8/0000801 COX, DAVID KAY		X						
J8/0000773 CRANER, AMANDA LANE				/	✓			☆
J8/0000708 CUTSINGER, CHARLES E				/	✓		✓	
J8/0000740 DAVIS, KELLY DEAN				/				
J8/0000684 DOBBS, TERRY WAYNE		X						
J8/0000755 FALCONBURG, DENNIS L				/	✓	✓		
J8/0000646 FISHER, JENIFER JO				/	✓		✓	
J8/0000737 FISTOLERA, CHAD DAVID				/				
J8/0000688 FREEMAN, MATTHEW LANE				/	✓	✓		
J8/0000757 HAMILTON, CAROLYN JANE				/	✓			☆
J8/0000678 HUTCHINS, SAMUEL DAVID				/				
J8/0000715 JACOBSEN, KERRIE LEE <i>coming in</i>				/				
J8/0000673 JORDAN, MARGERY A <i>be in 25 mins</i>				/	✓			☆
J8/0000654 JUCHAU, CHRISTOPHER ALAN				/	✓			☆
J8/0000714 LEAVITT, JENNIFER CHRISTIN				/				

JUDGE STOKER

TIME IN \_\_\_\_\_

CASE CR-07-10094

JURY SELECTED \_\_\_\_\_

TRIAL DATE: 6-11-2008

JURY FINISHED \_\_\_\_\_

JUDGEMENT \_\_\_\_\_

ST VS LONNIE JOHNSON

JUROR#	RANDOM SEAT	EXC	NO SHOW	ROLL CALL	VOIR	PER	CAUSE	JURY
J8/0000781	LEHMANN, VANCE FREDRICK			/	✓			☆
J8/0000693	LOVEDAY, BRADLEY LEDUE			/	✓	✓		
J8/0000766	MASON, BRANDY PAULINE			/	✓	✓		
J8/0000689	MCFARLAND, VICKY RAE			/	✓			☆
J8/0000663	MILLER, LARRY RAY			/	✓			☆
J8/0000670	MOORE, JENNIFER LYNN			/	✓	✓		
J8/0000794	MURRAY, RANDY EUGENE			/	✓			☆
J8/0000732	PARMA, KEVIN ANTHONY			/				
J8/0000738	PETERS, ALLEN WADE			/	✓			☆
J8/0000660	PRINE, ARLENE BERTHA			/				
J8/0000800	RIVERA, THOMAS ALLEN			/	✓	✓		
J8/0000690	SCHROEDER, MICHELLE SARAH			/	✓	✓		
J8/0000799	SHULL, DURAN SCOTT			/	✓	✓		
J8/0000702	SNOW, REGINA LYNNETTE			/		✓		
J8/0000642	SORAN, DEBRA DRISCOLL			/	✓	✓		
J8/0000712	STARK, STEFANIE NECOLE R			/				
J8/0000804	STAYNER, DONNA LUE			/	✓		✓	
J8/0000759	SUNDERMAN, PATSY JEAN		X					
J8/0000777	SWEET, TARA LEIGH			/				
J8/0000775	TIBBETS, NEOMA ELAINE			/				
J8/0000750	WAGNER, LISA ANNE			/				
J8/0000754	WELSH, SANDY CATHERINE			/	✓	✓		
J8/0000641	WOODWORTH, FRANKIE MARVEEN			/				

9:00 AM

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	CASE NO. CR 07-10094
Plaintiff,	)	
	)	
v.	)	<u>PRELIMINARY JURY</u>
	)	<u>INSTRUCTIONS</u>
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant.	)	

---

MEMBERS OF THE JURY: I will now give you the Preliminary Instructions in this case. Individual copies of these Preliminary Instructions are being provided to each of you. These copies are yours to use, and you may highlight or make notes upon them as you wish. However, I do need these returned to the court at the end of the trial. Once the evidence is fully presented, I will give you the Final Instructions in this case. Those Final Instructions, together, with these Preliminary Jury Instructions will control your deliberations.



## INSTRUCTION NO. 1

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 charge(s) 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. 2

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. 3

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. 4

A Defendant in a criminal action is presumed to be innocent. This presumption places upon the State the burden of proving the Defendant guilty beyond a reasonable doubt. Thus, a Defendant, although accused, begins the trial with a clean slate with no evidence against the Defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the Defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the State of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

INSTRUCTION NO. 5

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. 6

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.

If you wish to take notes, and you have not yet been provided with a notebook and pencil, please advise the bailiff.



## INSTRUCTION NO. 7

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. 8

It is highly probable that during the course of this trial, it will be necessary for me to excuse you and ask that you wait in the jury room while counsel for the parties and I discuss and try to resolve disputes over the admissibility of evidence, the propriety of proposed jury instructions, or other important legal issues that may affect the trial. On occasion, I may declare an early recess, or have you come in later than normal in order not to keep you waiting while we do this.

Let me assure you that while you are waiting, we are working. Let me also assure you that both the attorneys and I know that your time is valuable, and understand that delays which keep you waiting can be frustrating. Both they and I will do everything reasonably possible to expedite the presentation of evidence so that you can complete your duties and return to your normal lives as soon as possible. I know that you understand that these proceedings are extremely important to the parties, and your patience will help ensure that the final outcome is just and legally correct.

9:00 PM

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,  
Plaintiff,  
v.  
LONNIE ROBERT JOHNSON,  
Defendant.

)  
) CASE NO. CR 07-10094  
)  
) FINAL JURY INSTRUCTIONS  
)  
)  
)  
)  
)  
)

MEMBERS OF THE JURY: I will now give you the final jury instructions in this case. These Final Jury Instructions, along with the Preliminary Jury Instructions which were given to you earlier in the trial, will control your deliberations. A copy of these instructions is being provided to each of you for your use during your deliberations, and you may highlight or write on them as you see fit. After I have given you these instructions, counsel for the parties will deliver their closing arguments.

INSTRUCTION NO. 9

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 10

The original instructions and the exhibits will be 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 have each received a duplicate copy of these instructions and the verdict form. You are free to highlight or write on your copies of the instructions.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 11

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

## INSTRUCTION NO. 12

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.



INSTRUCTION NO. 13

The instructions on reasonable doubt and the burden of proof to be carried by the State of Idaho do not require the State to prove every fact and every circumstance put in evidence beyond a reasonable doubt. The burden of proof extends only to the material elements of the offense. These material elements are set forth in the following instruction.

INSTRUCTION NO. 13-A

In order for the Defendant to be guilty of Theft by Possession of Stolen Property, the state must prove each of the following:

1. On or about or between October 4, 2007 and October 22, 2007,
2. in the state of Idaho
3. the defendant Lonnie Johnson knowingly disposed of stolen property, to wit: copper wire,
4. either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen,
5. such property was in fact stolen, and
6. any of the following occurred:
  - (a) the defendant had the intent to deprive the owner permanently of the use or benefit of the property, or
  - (b) the defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or
  - (c) the defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

INSTRUCTION NO. 13-B

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. 13-C

If the evidence shows that the defendant took, obtained, or withheld property by theft at various times from the same person; and that the value of the property taken in each theft was one thousand dollars (\$1000) or less; and that the property was taken, obtained, or withheld pursuant to one overall intent or plan to commit a series of thefts; then you are to add together the values of all the property taken, obtained, or withheld pursuant to that overall intent or plan. If the total value of such property is more than one thousand dollars (\$1000), then the crime is Grand Theft. The state has the burden of proving beyond a reasonable doubt that a theft is grand theft. If a theft is not grand theft, then it is petit theft.

INSTRUCTION NO. 13-D

The phrase "intent to deprive" means:

a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or

b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

INSTRUCTION NO. 13-E

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

"Property" means anything of value including labor or services.

INSTRUCTION NO. 13-F

The term "value" as used in these instructions means as follows:

The market value of the property at the time and place of the crime, or if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

When the value of property cannot be satisfactorily ascertained pursuant to any of the above standards its value shall be deemed to be one thousand dollars (\$1000) or less.

INSTRUCTION NO. 13-G

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

We, the Jury, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** The defendant LONNIE ROBERT JOHNSON is

\_\_\_\_\_ Not Guilty of Grand Theft by Possession.

\_\_\_\_\_ Guilty of Grand Theft by Possession.

*If you unanimously answered Question No. 1 "**Guilty**", then simply sign the verdict form and return with it to court. If you unanimously answered Question No. 1 "**Not Guilty**", then proceed to the next question.*

**QUESTION NO. 2:** The defendant LONNIE ROBERT JOHNSON is

\_\_\_\_\_ Not Guilty of Petit Theft by Possession.

\_\_\_\_\_ Guilty of Petit Theft by Possession.



## INSTRUCTION NO. 14

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.

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. 15

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

In this case, your verdict must be unanimous. When all of you have arrived at a verdict, the presiding juror will fill out and sign the original Verdict, and advise the bailiff that you have completed your deliberations. The bailiff will then return you into open court. The person selected as presiding juror will serve as your spokesperson for purposes of announcing your verdict.

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.

5.00 PR

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-0710094
	)	
v.	)	<b>VERDICT</b>
	)	
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant.	)	

---

We, the Jury, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** The defendant LONNIE ROBERT JOHNSON is

\_\_\_\_\_ Not Guilty of Grand Theft by Possession.

Guilty of Grand Theft by Possession.

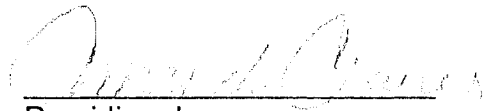
*If you unanimously answered Question No. 1 "Guilty", then simply sign the verdict form and return with it to court. If you unanimously answered Question No. 1 "Not Guilty", then proceed to the next question.*

**QUESTION NO. 2:** The defendant LONNIE ROBERT JOHNSON is

\_\_\_\_\_ Not Guilty of Petit Theft by Possession.

\_\_\_\_\_ Guilty of Petit Theft by Possession.

Dated this 12 day of June 2008.

  
Presiding Juror

INSTRUCTION NO. 15-A

Having found the defendant guilty of Grand Theft by Possession, you must next consider whether the defendant has been convicted on two prior occasions of felony offenses.

The state alleges the defendant has prior convictions as follows:

1. On or about the 7th day of August 2001, the defendant was convicted of Possession of a Controlled Substance, in the County of Gooding, State of Idaho, and
2. On or about the 20th day of September 1988, the defendant was convicted of Grand Theft in the County of Jerome, State of Idaho.

The existence of a prior conviction must be proved beyond a reasonable doubt and your decision must be unanimous.

5:30 PM

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LONNIE ROBERT JOHNSON, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-0710094

*6:00 P.M.*  
*Q*

**SUPPLEMENTAL VERDICT**

We, the Jury, unanimously answer the question(s) submitted to us as follows:

**QUESTION NO. 1:** The defendant LONNIE ROBERT JOHNSON is

\_\_\_\_\_ Not Guilty  
 Guilty

of having been convicted of the crime of Possession of a Controlled Substance in the County of Gooding, State of Idaho, on or about the 7<sup>th</sup> day of August 2001.

**QUESTION NO. 2:** The defendant LONNIE ROBERT JOHNSON is

\_\_\_\_\_ Not Guilty  
 Guilty

of having been convicted of the crime of Grand Theft in the County of Jerome, State of Idaho, on or about 20<sup>th</sup> day of September 1988.

Dated this 12 day of June 2008.

*[Signature]*  
\_\_\_\_\_  
Presiding Juror

State of Idaho  
Vs  
Lonnie Johnson

Witness List  
CR 07-10094

① 6:00 P.M.

---

State's Witnesses

Officer Dan Milovanovic

Russell Taylor

Russell Cornia

Doug Richard

Defense Witness

Lonnie Johnson

Exhibit Summary

Case: CR-2007-0010094

State of Idaho vs. Lonnie R Johnson

Sorted by Exhibit Number

*6:00 PM*

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	(diagram) 6-12-08	Admitted	exhibit rm		
		Assigned to:	Loebs, Grant, 4726		
2	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
3	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
4	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
5	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
6	(wire) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
7	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
8	(invoice) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
9	(document) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
10	(wire) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
11	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
12	(photograph) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
13	(document) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
14	(document) 6-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		



Exhibit Summary

Case: CR-2007-0010094

State of Idaho vs. Lonnie R Johnson

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
	15 (documents re: past convictions)(9-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		
	16 (document re: identity)(9-12-08	Admitted	ex rm		
		Assigned to:	Loebs, Grant, 4726		

INSTRUCTION NO. 16

You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. If you took notes during the course of the trial or your deliberations, please tear your notes out of your notebook and give them to the bailiff. Your notes will be destroyed, and no one, including myself will be allowed to read or inspect them.

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 trying to discuss the case over your objection, or becomes critical in any way of your service, either before or after any discussion has begun, please report it to me.

6:00 PM

6:00 PM

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, )  
 )  
 Plaintiff )  
 vs. )  
 Lonnie Robert Johnson )  
 Defendant )

CASE NO. CR 07-10094

NOTICE OF SENTENCING HEARING AND  
ORDER REGARDING PREPARATION FOR  
SENTENCING HEARING

D.O.B.: 5-20-56 518-66-6549

S.S.N.: \_\_\_\_\_

CUSTODY STATUS: IN CUSTODY

CHARGE: Grand Theft by Possession  
of Stolen Property - Habitual Violator

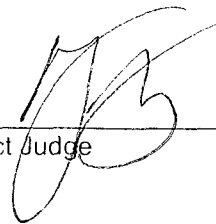
Based upon the above-named defendant having been  found guilty;  pled guilty, notice is hereby, given that the above-entitled matter is scheduled for a Sentencing hearing before the Honorable G. Richard Bevan, District Judge, at the Theron Ward Judicial Building, Twin Falls, Idaho, to begin at 2:00 P.m. on the 18 day of June Aug, 2008.

IT IS HEREBY ORDERED that the Defendant must complete the following requirements marked with an X below:

- Meet with the court pre-sentence investigative reporter and aid in the preparation of a pre-sentence investigative report.
- Alcohol Evaluation.
- Controlled Substance Evaluation.
- Psychological Evaluation.
- Psychosexual Evaluation.
- Other: \_\_\_\_\_

Appointments with the evaluators must be made immediately upon leaving the courtroom today. The final report(s) must be delivered to the Court and opposing counsel at least one (1) working day before sentencing. These evaluations must be performed by persons approved by the Court or who meet the requirements as set forth in the Idaho Code or applicable court rules.

IT IS SO ORDERED THIS 12 day of June, 2008.

  
\_\_\_\_\_  
District Judge

Hand delivered:  Prosecutor--yellow  Defense counsel--pink  P&P--gold

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Judge: Randy J. Stoker

Courtroom #2

Clerk: Dorothy McMullen

Reporter: Sabrina Torres

Handwritten notes and signatures in the top right corner, including a signature that appears to be 'd'.

STATE OF IDAHO, )  
)  
Plaintiff. )  
Vs )  
)  
LONNIE JOHNSON, )  
)  
Defendant. )

Court Minutes

Case No. CR 07-10094 (Jury Trial)

DATE: June 11, 2008 TIME: 9:00 AM

(9:08) The State appeared through Leah Clark-Thomas; the defendant appeared in person and with his counsel, Robin Weeks, this being the time and place set for jury trial in the above entitled matter. The Court made introductions and the prospective jurors were sworn. The following names were called:

Debra Soran, Karen Burton, Margery Jordan, Larry Miller, Sharon Brenden and Jennifer Moore.  
Brandy Mason, Bradley Loveday, Amanda Craner, Donna Stayner, Vance Lehman and Duran Shull.  
Matthew Freeman, Jill Berry, Allen Peters, Sandy Welsh, Vicky McFarland and Dennis Falconburg.  
Thomas Rivera, Chris Juchau, Jenifer Fisher, William Carver, Carolyn Hamilton and Randy Murray.

(9:22) The Court began voir dire of the prospective jurors. Jenifer Fisher was excused and Charles Cutsinger was called. Mr. Cutsinger was excused and Michelle Schroeder was called. The Court continued voir dire. (9:53) Ms. Clark-Thomas began voir dire. Donna Stayner was excused and Regina Snow was called. The Court questioned the prospective jurors. Ms. Clark-Thomas continued voir dire. (10:38) Ms. Clark-Thomas passed the panel for cause. The jurors were admonished and Court recessed.

(10:52) Reconvene. Ms. Weeks began voir dire. (11:18) Ms. Weeks passed the panel for cause. Peremptory challenges were as follows:

First peremptory challenge, state excused Debra Soran and defense excused Karen Burton. Second peremptory challenge, state excused Jennifer Moore and defense

excused Bradley Loveday. Third peremptory challenge, state excused Duran Shull and defense excused Matthew Freeman. Fourth peremptory challenge, state excused Dennis Falconburg and defense excused Thomas Rivera. Fifth peremptory challenge, state excused Regina Snow and defense excused Michelle Schroeder. Sixth peremptory challenge, state excused Brandy Mason and defense excused Sandy Welsh. The panel was seated as follows:

Margery Jordan, Larry Miller, Sharon Brenden, Amanda Craner, Vance Lehmann and Jill Berry.

Allen Peters, Vicky McFarland, Christopher Juchau, William Carver, Carolyn Hamilton and Randy Murray.

The panel was sworn and they were admonished and excused to the jury room.

(11:43) The jury was returned to the courtroom and the Court read the preliminary instructions to the jury. The jury was admonished and recessed to 1:15 p.m.

(1:17) Court reconvened. Counsel stipulated that all parties were present and in their proper places. Ms. Clark-Thomas presented opening argument. (1:20) Opening statement by Ms. Weeks. (1:33) State called Officer Dan Milovanovic and he was sworn. Mr. Clark-Thomas examined the witness. State's exhibit 1 (Diagram) was marked and was admitted for illustrative purposes. State's exhibits 2 thru 4 (photographs) were marked for identification and were admitted into evidence. State's exhibits 5 (photograph) and 6 (inventory of wire) were marked and admitted. State's exhibit 7 (photograph) and 8 (receipts and envelope) were marked and admitted. State's exhibit 9 (copy of receipt) was marked for identification and exhibits 10, 11 and 12 (photographs) were marked for identification. Exhibits 10, 11 and 12 were admitted. (2:37) Jury admonished and removed.

(2:42) Court reconvened. Counsel stipulated that all parties were present and in their proper places. (2:45) Mr. Weeks cross-examined the witness. The jurors were admonished and court recessed.

(3:15) Court reconvened. Counsel stipulated that all parties were present and in their proper places. The state called Russell Taylor and he was sworn. Ms. Clark-Thomas examined the witness. State's exhibits 13 and 14 (copies of purchase tickets) were marked for identification. (3:29) Ms. Weeks cross-examined the witness. (3:32) Ms. Clark-Thomas examined the witness on re-direct examination. (3:34) Ms. Weeks examined the witness on re-cross examination. (3:35) The state called Russell Cornia and he was sworn. Ms. Clark-Thomas examined the witness. Exhibits 9, 13 and 14 were admitted. (3:53) Ms. Weeks cross-examined the witness. (3:57) Re-direct examination by Ms. Clark-Thomas. (4:01) Re-cross examination by Ms. Weeks. (Juror Craner advised that she knew one of the witnesses but had not recognized the name earlier during selection). The jurors, other than Ms. Craner were excused from the courtroom. Court and counsel questioned

Ms. Craner. No objections were made and Ms. Craner returned to the jury room. Court recessed.

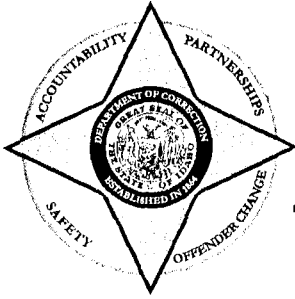
(4:11) Court reconvened. The state called Doug Richard and he was sworn. Ms. Clark-Thomas examined the witness. (4:29) Ms. Weeks cross-examined the witness. The state rested. The jury was admonished and excused. Court recessed.

June 12, 2008 (8:59) Court reconvened. Ms. Weeks moved to dismiss the charges against the defendant. Ms. Clark-Thomas responded. Rebuttal argument by Ms. Weeks. The Court denied the motion at this time. Ms. Weeks moved to be allowed to call an additional witness. Ms. Clark-Thomas responded. Rebuttal argument was presented by Ms. Weeks. The Court denied the request for additional late witness. (9:23) The jury was brought in. The defense called Lonnie Johnson and he was sworn. Ms. Weeks examined the witness. (9:41) Ms. Clark-Thomas cross-examined the witness. (9:59) Ms. Weeks examined the witness on re-direct examination. Defense rested. The jury was admonished and court recessed. (10:10) Court and counsel discussed the final jury instructions. Neither counsel had any objections to the proposed instructions. Court recessed.

(10:29) Court reconvened. Counsel stipulated that all parties were present and in their proper places. The Court read the final instructions to the jury. (10:45) Closing argument was presented by Ms. Clark-Thomas. (11:07) Ms. Weeks presented closing argument. (12:10) Ms. Clark-Thomas presented final argument. (12:27) The bailiff's were sworn and the jury was retired for deliberation.

(5:05) Court reconvened. Jury advised regarding verdict having been reached. Verdict was read finding the defendant guilty of Grand Theft. The jury was polled at the request of defense counsel. Court read the part II jury instruction to the jurors. The jury retired to the jury room to retrieve their notes. (5:16) Opening statement by Ms. Clark-Thomas. Ms. Clark-Thomas provided documents (exhibit 15 and 16) regarding defendant's prior convictions and they were marked and admitted, Ms. Clark-Thomas made closing argument to the jury. (5:25) The jury retired for deliberation. (5:27) The jury was brought back in and advised regarding incorrect instruction and was again retired for deliberation.

(5:53) Jury returned and the verdict was read find the defendant guilty of being a habitual violator. The Court read the final instruction to the jury and they were excused. The Court directed the clerk to enter the verdict of the jury and a presentence investigation was ordered. Court recessed.



# IDAHO DEPARTMENT OF CORRECTION

*"Protecting Idaho through Safety, Accountability, Partnerships,  
and Opportunities for Offender Change"*

C. L. "BUTCH" OTTER  
Governor

BRENT D. REINKE

~~DISTRICT COURT~~  
Fifth Judicial District  
County of Twin Falls - State of Idaho

JUN 23 2008

ADDENDUM  
PRESENTENCE REPORT  
June 23, 2008

By \_\_\_\_\_ 4:00 P.M.  
Clerk  
Deputy Clerk

Honorable Randy J. Stoker  
Fifth District Judge  
Twin Falls County Courthouse  
Twin Falls, ID 83301

RE: JOHNSON, Lonnie Robert  
Twin Falls County Case # CR 07-10094

Dear Judge Stoker:

On June 12, 2008, the above named defendant was ordered in your Court to meet with a Presentence Investigator and aid in the preparation of a Presentence Investigation Report.

On June 23, 2008, I went to the Twin Falls County Jail to conduct the Presentence Interview. Mr. Johnson refused to participate in the interview.

A Presentence Investigation Report will be completed using available information and forwarded to the Court as ordered.

Sincerely,

*Margie Wilson*  
Margie Wilson  
Presentence Investigator

Pc: Leah Clark-Thomas, Prosecuting Attorney  
Robin Weeks, Defense Attorney  
IDOC File

594 WASHINGTON ST. SO. \* TWIN FALLS \* IDAHO \* 83301 \* PHONE (208)736-3080 \* FAX (208)736-3054

TEST OF COURT ORIGINAL  
TWIN FALLS FILED

2008 JUN 24 AM 11:40

BY \_\_\_\_\_ CLERK

DEPUTY

OFFICE OF THE PUBLIC DEFENDER  
Attorneys at Law  
P.O. Box 126  
Twin Falls, Idaho 83303-0126  
(208) 734-1155  
ISB #6976

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

\* \* \* \* \*

STATE OF IDAHO,	)	
	)	CASE NO: CR 07-10094
Plaintiff,	)	
v.	)	<b>RULE 29(c) MOTION FOR</b>
	)	<b>JUDGMENT OF ACQUITTAL</b>
LONNIE JOHNSON,	)	<b>AFTER DISCHARGE OF JURY</b>
	)	
Defendant.	)	

---

COMES NOW the above named Defendant, Lonnie Johnson, by and through his attorney Robin Weeks, Twin Falls County Deputy Public Defender, and moves this honorable court pursuant to I.C.R. 29(c) to set aside the verdict of guilty and enter its Judgment of Acquittal. Mr. Johnson requests that the Court take judicial notice of the evidence and testimony presented at Jury Trial on June 11 and 12, 2008.

**ARGUMENT**

In order to win a guilty verdict, the State must provide substantial evidence to prove each essential element of the crime beyond a reasonable doubt. *State v. Barlow*, 113 Idaho 573 (Ct.App. 1987). In the case at bar, the evidence was insufficient to prove 1) that, at the time Mr. Johnson acquired it, the property was stolen rather than abandoned by the railroad, 2) that Mr.



Johnson knew that the property was stolen from the railroad, and 3) that the value of the property exceeded \$1000. Because these elements were not proven beyond a reasonable doubt, this Court should find that no reasonable juror could help but have a reasonable doubt as to the proof of those elements and should therefore set aside the verdict and enter a Judgment of Acquittal.

### **I. Property Was Abandoned by the Railroad**

In the civil case of *Corliss v. Wenner*, 136 Idaho 417 (Ct.App. 2001), the Idaho Court of Appeals was required to decide the ownership of coins which had been buried for around 70 years and which were unearthed by two workers who were building a driveway for the new owner of the property. The workers eventually had a falling out and the worker who ended up with the coins gave them to the new owner of the property, who was subsequently sued by the other worker for some or all of the coins. *Id.* Though the Court of Appeals ultimately classified the coins as mislaid and/or embedded property (*not* abandoned) and decided that the landowner was entitled to possession of all such property found on his land, its analysis of the nature of personal property in general is instructive.

The *Corliss* Court began its analysis by explaining that

The major distinctions between characterizations of found property turn on questions of fact, i.e., and analysis of the facts and circumstances in an effort to divine the intent of the true owner at the time he or she parted with the property.... However, the characterization of that property, in light of these facts, is a question of law over which [the court] exercise[s] free review.

*Id.* Internal citations omitted. It is therefore within this Court's discretion to examine the undisputed facts presented at trial to determine the legal distinction of the property at question.

The *Corliss* Court explained that abandoned property is "that which the owner has discarded or voluntarily forsaken with the intention of terminating his ownership, but without

vesting ownership in any other person.” *Id. referencing Terry v. Lock*, 343 Ark. 452, 37 S.W.3d 202, 206 (2001). It further explained that “the finder of lost or abandoned property and treasure trove acquires a right to possess the property against the entire world but the rightful owner regardless of the place of finding.” Similarly, the Arkansas Supreme Court’s language in *Lock* explains that

Property is said to be "abandoned" when it is thrown away, or its possession is voluntarily forsaken by the owner, in which case it will become the property of the first occupant; or when it is involuntarily lost or left without the hope and expectation of again acquiring it, and then *it becomes the property of the finder*, subject to the superior claim of the owner.

*Lock*, 37 S.W.3d 202, emphasis added. From the language of these two cases, it is clear that the finder of abandoned property has an actual right to possess that property and, though the property must be returned to the original owner (it is assumed upon proof of original ownership), if the finder has a property right in the abandoned property, he cannot be charged with the crime of theft when he has only possessed abandoned property.

It is noted that the *Corliss* Court’s refusal to validate the disfavored “finders keepers’ rule of treasure trove” hinged in large part on their desire to preserve the peace by discouraging trespassers, who would otherwise feel themselves free to scour their neighbor’s land for mislaid valuables. This analysis, by extension, would also likely deny ownership rights to abandoned property when such property is obtained by trespassing on another’s land.

In the case at bar, Officer Milovanovic testified at trial that the crew which repaired the section of cut active wire finished their repairs and left the area without removing the cut wire he later located at the scene. He further testified that he, himself, collected only one section of that wire and likewise left the rest of the wire where he had found it. He again abandoned wire which would properly be the property of the Union Pacific Railroad (henceforth “the railroad”) during

his visit to Pacific Steel and Recycling. Throughout the trial, no witness for the railroad expressed a plan for or interest in reclaiming that cut wire. Rather, Doug Richard's testimony suggested that wire which had been cut down from the lines was of little or no value to the railroad, as it required considerable time and effort to splice the sections back together and that, rather than go to that effort, they prefer to replace damaged sections with new, plastic-covered wire. Far from proving beyond a reasonable doubt that this cut wire was wanted by the railroad, such testimony instead establishes that the cut sections of wire were abandoned by the railroad, thus establishing a possible property right in a finder. Though the railroad employees expressed displeasure that the wire had been cut down from the poles, the actual sections of cut wire were repeatedly overlooked, unvalued, and, most importantly, abandoned.

Further, there was no testimony presented which would establish that the land on which the wire was located enjoyed rights of restricted access to only certain authorized personnel or that "No Trespassing" signs were displayed at any location. It cannot be assumed, therefore, that the only legitimate finder of the abandoned wire would necessarily be the property owner: absent evidence of restricted access, any person could have legitimately found the abandoned wire and had valid claim upon it, subject only to the possible future assertion of rights by the original owner.

Because the State failed to present substantial evidence to establish that the actual cut sections of wire at issue in this case were stolen and not simply the abandoned by the railroad, this Court should find that no reasonable juror could help but have a reasonable doubt as to the proof that the wire was, in fact, stolen, and should therefore set aside the verdict and enter a Judgment of Acquittal.

## **II. Mr. Johnson Did Not Know Property was Stolen**

As an extension of the foregoing analysis of the characterization of the property itself, it is impossible to prove beyond a reasonable doubt that a person can know something which is not, in fact, true. If the cut wire is properly characterized as abandoned property, Mr. Johnson could not know that it was stolen.

More than that, however, there was no evidence presented that Mr. Johnson himself was the individual which cut the wire from the poles. Speculations were made, but Officer Milovanovic himself testified that the only reason he suspected Mr. Johnson to be the individual who may have cut the line down was that Mr. Johnson was the sole suspect, the only individual whom he could at all tie to the scene. This despite his further testimony that the theft of railroad wire is a widespread problem with many as yet unidentified participants. Indeed, the State did not even attempt to prove that Mr. Johnson was the individual which cut down the wire, relying solely on innuendo and a theory that any reasonable person would know that wire lying on the side of the road must have been stolen from someone.

Again, the State is required to provide substantial evidence which would prove beyond a reasonable doubt that Mr. Johnson knew that the wire he took to Pacific Steel and Recycling was stolen or that he obtained it under circumstances which would reasonably induce him to believe it was stolen. Here, even viewing all evidence in the light most favorable to the prosecution, there was absolutely no evidence to support, much less prove beyond a reasonable doubt, the theory that the batches sold on October 4<sup>th</sup> and 10<sup>th</sup>, 2007 were obtained in any manner which would suggest to Mr. Johnson that the wire was stolen. Further, there was no evidence presented which would prove beyond a reasonable doubt that Mr. Johnson would have believed that the wire he

obtained in Lincoln County and sold to Pacific Steel and Recycling on October 22, 2007 was not abandoned property.

Because the State failed to present substantial evidence to establish that Mr. Johnson knew the cut wire was stolen by another or under such circumstances as would reasonably induce the defendant to believe the wire was stolen, this Court should find that no reasonable juror could help but have a reasonable doubt as to the proof of this element of the charge, and should therefore set aside the verdict and enter a Judgment of Acquittal.

### **III. Value of Property Was \$1000 or Less**

Though this issue was thoroughly briefed and argued prior to trial, it is noted that the standard of proof is now one of reasonable doubt and not simply whether the lower court exercised proper perception, discretion, and exercise of reason. The question is now whether the State produced substantial evidence to prove the actual value of the alleged stolen wire beyond a reasonable doubt.

The State produced no evidence related to the fair market value of the wire, instead classifying the two values suggested by the defense as salvage values and itself relying on what it termed replacement cost valuation. Viewing the evidence in the light most favorable to the State's position, then, the jury had no way to judge whether the market value of the wire was reasonably ascertainable before considering the replacement cost of the wire. Furthermore, the State produced no evidence that the replacement wire it sought to use was reasonably close in design and quality to the destroyed wire and utterly failed to produce evidence to prove that the actual value of the economic loss to the victim related to this charge exceeded \$1000.

***A. The State Did Not Prove that the Market Value was not Satisfactorily Ascertainable***

I.C. § 18-2402(11)(a), together with Jury Instruction 13-F allows replacement cost to be considered only after a finding that “the market value cannot be satisfactorily ascertained.” *State v. Hughes*, 130 Idaho 698, 703 (Ct.App. 1997) likewise is very specific that “replacement cost evidence may be used as an indicator of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value.”

According to the State’s position on the values suggested by the defense, in the entirety of the Jury Trial, no evidence or testimony was presented to suggest either what the market value of the cut wire was or that it was not satisfactorily ascertainable. Instead, the State’s witnesses based their valuation testimony on replacement cost alone. The State then suggested to the jury that, in the *absence* of testimony relating to what it considered market value, the value it deemed as replacement cost was the proper valuation. This was the incorrect legal standard.

In the criminal case of *State v. Smith*, 144 Idaho 687, 169 P.3d 275, 281 (Ct.App. 2007), the Idaho Court of Appeals stated:

We now hold that, generally, the ‘market value’ of consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the ‘cost of replacement’ which would be the cost for the owner to reacquire the same goods.

Though it is acknowledged that the copper wire at issue in this case is not likely a “consumer good,” per se, this general rule has been widely used. *See State v. Vanendacre*, 131 Idaho 507 (Ct.App.1998) (owner allowed to testify as to what she believed was the “fair market value” of her used stereo system, officer testified as to what he would be willing to pay for such a system).

In this case, the market value at the time and place of the alleged theft should be determined by an examination of what a buyer would pay for the wire which was allegedly stolen. The evidence presented at trial demonstrated that Pacific Steel and Recycling purchased the wire from Mr. Johnson for \$2.35 per pound, a total of \$665.05 for all three batches. They then sold it themselves for \$3.25 per pound, a total of \$919.75 for all three batches.

Again, because the State produced no evidence to prove beyond a reasonable doubt that Mr. Johnson was the individual who cut down the wire from the poles, and because the railroad itself abandoned the wire, any wire which Mr. Johnson found lying on the ground, regardless of how suspicious the circumstances, was of no value to the railroad and therefore should not be given replacement cost valuation. At best, the wire at issue in this case was fit for salvage. No other potential buyer has been identified who would be willing to pay over \$1000 for the same wire.

***B. State Did Not Prove Replacement Cost of the Actual Wire at Issue or the Economic Value of the Loss to the Railroad***

The testimony presented by the State at Jury Trial did not attempt to estimate the replacement cost of the two kinds of actual, alleged stolen, sectioned, century-old copper wire which was sold by Mr. Johnson to Pacific Steel and Recycling. Instead, the State produced evidence as to what it would cost to purchase an equal weight of brand new, whole, weatherproof, plastic-covered copper wire. As to that, the Idaho Court of Appeals had the following to say:

In some cases the destroyed item may have no market value or the value may not be ascertainable. Therefore, upon a showing that fair market value cannot be established, the State may show the *economic value of the loss* caused by the

defendant through such factors as original purchase price, replacement cost, the property's general use and purpose, and salvage value. If the State attempts to prove value through replacement cost, however, we think it incumbent upon the State to produce some evidence that the replacement item is of a quality and design comparable to that of the destroyed item. This is so because a replacement actually purchased by the crime victim may bear little or no relationship to the quality and value of the destroyed property, and the classification of the offense as a misdemeanor or a felony should not turn upon the victim's choice between a higher quality, more expensive replacement and a lower quality, more modestly priced item.

We hold, therefore, that replacement cost evidence may be used as an indicator of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value, and when replacement cost evidence is relied upon, the State must show that the replacement (whether actually purchased by the victim or not) is a reasonably close proximation of the design and quality of the destroyed item.

*State v. Hughes*, 130 Idaho 698, 703 (Ct.App. 1997). Emphasis added, internal citations omitted.

Applying the reasoning of the *Hughes* court to the case at bar, then, it is apparent that the State is attempting to purchase brand new, plastic-covered copper wire to replace a very old, worn out, and cut up wire which has not been in use for, perhaps, decades. This cannot stand as substantial evidence to prove beyond a reasonable doubt that the replacement wire is a “reasonably close proximation of the design and quality of” the wire Mr. Johnson sold to Pacific Steel and Recycling.

Perhaps most importantly, the language of the *Hughes* Court makes it clear that “original purchase price, replacement cost, the property's general use and purpose, and salvage value” are mere factors to consider when attempting to establish the essential question of the actual “economic value of the loss” to the victim. Though Doug Richard testified that only *some* of the wire was part of an active line and that the railroad does not intend to replace the inactive line, and though there was substantial evidence to suggest that much more wire was cut down than was sold to Pacific Steel and Recycling, no testimony or evidence was introduced to prove



beyond a reasonable doubt either 1) how much of the wire cut from the poles was part of the active line, or 2) that the wire Mr. Johnson sold to Pacific Steel and Recycling was part of the active system which would need to be replaced. Absent any proof on these two important questions, no reasonable juror could help but have a reasonable doubt as to the actual economic value of the loss suffered by the railroad.

This Court should find that the State did not provide substantial evidence to prove beyond a reasonable doubt that the cost to purchase new plastic covered wire to replace the same weight of wire as that sold to Pacific Steel and Recycling is the correct valuation. This Court should further find that the State did not provide substantial evidence to prove beyond a reasonable doubt the value of the actual economic loss suffered by the railroad. This Court should therefore find that the copper wire at issue in this case should be valued by the default valuation found in I.C. 18-2402(11)(c) and in Jury Instruction 13-F

***C. I.C. 18-2403(11)(c) and Jury Instruction 13-F Require a Misdemeanor Valuation***

As provided in I.C. 18-2403(11)(c) and Jury Instruction 13-F, “[w]hen the value of property cannot be satisfactorily ascertained... its value shall be deemed to be one thousand dollars (\$1,000) or less” and a misdemeanor. Therefore, because the State did not provide substantial evidence to prove beyond a reasonable doubt either 1) that the market value could not be satisfactorily ascertained; 2) that the plastic-covered copper wire used in the replacement cost valuation was reasonably close in design and quality to the actual wire sold to Pacific Steel and Recycling; or 3) that the actual economic loss to the victim in the value of wire related to this case exceeded \$1000, this Court should conclude that no reasonable juror could have found that


the value of the wire at issue in the case exceeded \$1000 and should therefore apply a value of \$1000 or less.

#### CONCLUSION

The State failed to provide substantial evidence to prove beyond a reasonable doubt 1) that, at the time Mr. Johnson acquired it, the property was stolen rather than abandoned by the railroad, 2) that Mr. Johnson knew that the property was stolen from the railroad, and 3) that the value of the property exceeded \$1000. Because these elements were not proved beyond a reasonable doubt, this Court should find that no reasonable juror could help but have a reasonable doubt as to the proof of those elements and should therefore set aside the verdict and enter a Judgment of Acquittal as to the charges reflected in the Verdict and the Supplemental Verdict. In the alternative, this Court should set aside the Supplemental Verdict and enter its Judgment of Acquittal as to the Supplemental Verdict and as to the charge of Grand Theft in the Verdict, but enter its Judgment of Conviction as to Question 2 on the Verdict: Petit Theft.

A hearing is requested. Mr. Johnson reserves the right to produce supplemental briefing in support of his Motion should it seem necessary following the hearing.

DATED this 23<sup>rd</sup> day of June, 2008.

  
Robin M. A. Weeks  
Deputy Public Defender

**CERTIFICATE OF DELIVERY**

I, the undersigned, hereby certify that a true and correct copy of the foregoing was delivered to the following on the 24 day of June, 2008 by placing said copies in the appropriate boxes at the Twin Falls County Courthouse.

Grant Loeb  
Twin Falls County Prosecutor

*Angie Duncan*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

Judge: Randy J. Stoker

Courtroom # 2

Clerk: Dorothy McMullen

JUL - 7 2008

Reporter: Sabrina Torres

By [Signature] Clerk  
Deputy Clerk

THE STATE OF IDAHO, )  
)  
Plaintiff. )  
Vs )  
Lonnie R. Johnson )  
)  
Defendant. )

Court Minutes

Case No. CR 07-10094

DATE: 7-7-08 TIME: 11:00 AM.

State: Leah Clark-Thomas

Other:

Defense: Robin Weeks

Defendant (  )

Custody Status (  )

Hearing: Motion for Judgment of Acquittal

Name verified ( ) Public Defender Appointed/Confirmed ( ) Rights given ( )

(11:29) Argument by Ms. Weeks; Ms. Clark-Thomas responded; Rebuttal argument by Ms. Weeks

Court denied the motion. ~~Ms.~~ Ms. Clark-Thomas to prepare the Order.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Judge: Randy J. Stoker

Courtroom # 2

Clerk: Dorothy McMullen

Reporter: Sabrina Torres

THE STATE OF IDAHO, )

Plaintiff. )

Vs )

Lonnie R. Johnson, )

Defendant. )

Court Minutes

Case No. CR 07-10094

DATE:

8-18-08

TIME:

2:00 PM

State: Leah Clark Thomas

Other:

Defense: Robin Weeks

Defendant (✓)

Custody Status ( 18

Hearing: Sentencing

Name verified ( ) Public Defender Appointed/Confirmed ( ) Rights given ( )

(2:47) Comments by Ms. Clark-Thomas; Comments by  
Ms. Weeks;

14 years prison; 5 years determinate; 9 indeterminate  
(Includes persist. violation)

\$1 2000<sup>00</sup> restitution (no fine or costs)

Right to Appeal

AUG 18 2008

By \_\_\_\_\_ 3:00 PM  
Clerk  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE STATE OF IDAHO, )

Plaintiff. )

Vs )

*Lennie Johnson* )

Defendant. )

Case No. CR *07-10094*

ORDER DIRECTING  
AMENDMENT OF  
PRESENTENCE REPORT

This Court has imposed sentence in this case. Prior to the imposition of sentence certain corrections, additions or modifications were made to the report in open court. The Court has determined that the pre-sentence report prepared by the Department of Corrections should be modified to include this information.

Accordingly, IT IS HEREBY ORDERED that the pre-sentence report shall be modified as follows:

To **substitute** the original page(s) of the report with those copies submitted with this order. *P*

To **supplement** the original report with that information submitted with this order.

DATED this *18* day of *Sept*, 2008.

*[Signature]*  
\_\_\_\_\_  
RANDY J. STOKER  
District Judge

cc: Probation & Parole, with attachments

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

State of Idaho,

Plaintiff,

vs.

Lonnie Robert Johnson  
SSN [REDACTED]  
DOE [REDACTED]

Defendant.

Case No. CR-2007-10094

20

8:00 A.M.

a

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JUDGMENT OF CONVICTION UPON A JURY VERDICT OF GUILTY ON ONE  
FELONY COUNT, AND ORDER OF COMMITMENT.

---

I. APPEARANCES.

1. The date of sentencing was 08/18/08, (hereinafter called sentencing date).
2. The State of Idaho was represented by counsel, Leah Clark-Thomas, of the Twin Falls County Prosecutor's office.
3. The defendant, Lonnie Robert Johnson, appeared personally. I.C. § 19-2503.
4. The defendant was represented by counsel, Robin Weeks.
5. Randy J. Stoker, District Judge, presiding.

II. ARRAIGNMENT FOR SENTENCING; I.C. § 19-2510, I.C.R. 33.

1. **Arraignment:** The defendant, Lonnie Robert Johnson, was informed by the Court at the time of the sentencing of the nature of charge and the defendant's guilty verdicts of the jury, which in this case were:
  - A. **Crime of:** Grand Theft by Possession of Stolen Property, a felony.

**Maximum Penalty:** Imprisonment for 14 years or a fine of \$5,000 or both.

**Idaho Code Section(s):** I.C. 18-2403(4); 18-2407(1).

**B. Persistent Violator Enhancement**

**Maximum Penalty:** Imprisonment for life.

**Idaho Code Section:** I.C. 19-2514

2. **Grounds for Not Entering Judgment (I.C. §§ 19-2510, 19-2511):** The Court inquired whether the defendant had any legal cause why judgment should not be pronounced against the defendant, and the defendant, through counsel, responded "No."

**III. SENTENCING DATE PROCEEDINGS.**

At sentencing, the Court proceeded as follows:

1. Determined that more than two (2) days had elapsed from the plea to the date of sentencing. I.C. § 19-2501, I.C.R. 33(a)(1).
2. Discussed the presentence report and relevant matters with the parties pursuant to I.C. § 20-220 and I.C.R. Rule 32.
3. Determined victim's rights and restitution issues pursuant to I.C. § 19-5301 and Article 1, § 22 of the Idaho Constitution.
4. Offered an aggravation and/or mitigation hearing to both parties, including the right to present evidence pursuant to I.C.R. 33(a)(1).
5. Heard comments and sentencing recommendations of both counsel and asked the defendant personally if the defendant wished to make a statement and/or to present any information in mitigation of punishment. I.C.R. 33(a)(1).
6. The Court made its comments pursuant to I.C. § 19-2512, and discussed one or more of the criteria set forth in I.C. § 19-2521.

**IV. THE SENTENCE.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:**

1. **Restitution:** The defendant shall pay \$2,000 in restitution. This amount is payable through the Clerk of the District Court to be disbursed to the appropriate recipients.
2. **Penitentiary:** The defendant, Lonnie Robert Johnson, shall be committed to the custody of the Idaho State Board of Correction, Boise, Idaho for a unified sentence (I.C. § 19-2513) of **14 years**; which unified sentence is comprised of a minimum (fixed) period of confinement of **5 years**, followed by an indeterminate period of custody of **9 years**, with the precise time of the indeterminate portion to



be set by said Board according to law, with the total sentence not to exceed 14 years. The Court determines that the maximum penalty under the persistent violator enhancement is not appropriate in this case.

3. **Credit for Time Served**: The defendant is given credit for time previously served locally and with the Idaho Department of Corrections in connection with this case. I.C. § 18-309.

**V. NO BOND TO EXONERATE.**

The conditions of bail having never been met in this case, there is no bail to be exonerated. I.C.R. 46(g).

**VI. ORDER ON PRESENTENCE INVESTIGATION REPORTS.**

The parties are hereby ordered to return their respective copies of the presentence investigative reports to the deputy clerk of the court's custody and use of said report shall thereafter be governed by I.C.R. 32(h)(1), (2), and (3).

**VII. ORDER OF COMMITMENT.**

It is ADJUDGED and ORDERED that the defendant be committed to the custody of the Sheriff of Twin Falls County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary, or other facility within the State designated by the State Board of Correction. I.C. § 20-237.

**VIII. ENTRY OF JUDGMENT – INCARCERATION - RECORD BY CLERK.**

The Court orders the Judgment and record be entered upon the minutes and that the record be assembled, prepared and filed by the Clerk of the Court in accordance with I.C. § 19-2519(a). In addition, and in accordance with I.C. § 19-2519(b), as soon as possible upon the entry of Judgment of Conviction the Clerk shall deliver to the Sheriff of Twin Falls County, a certified copy of the Judgment for delivery to the Director of Correction pursuant to I.C. § 20-237.

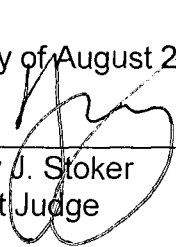
**IX. RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS.**

**The Right:** The Court advised the defendant, of the right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.C.R. 33(a)(3), I.A.R. 14(a).

**In Forma Pauperis:** The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3), I.C. § 19-852(a)(1) and (b)(2).

IT IS SO ORDERED.

Dated this 20 day of August 2008.

  
\_\_\_\_\_  
Randy J. Stoker  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of August 2008, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Leah Clark-Thomas  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303

U.S. Mail  
 Hand delivered  
 Faxed  
 Court Folder

Robin Weeks  
Twin Falls County Public Defender  
P.O. Box 126  
Twin Falls, ID 83303

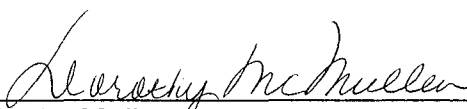
U.S. Mail  
 Hand delivered  
 Faxed  
 Court Folder

Idaho Department of Corrections  
Central Records  
1299 N. Orchard Ste 110  
Boise, Idaho 83706

U.S. Mail  
 Hand delivered  
 Faxed

Twin Falls County Jail  Court Folder

Idaho Department of Probation  Court Folder

  
\_\_\_\_\_  
Dorothy McMullen  
Deputy Clerk

OFFICE OF THE PUBLIC DEFENDER  
 Attorneys at Law  
 P.O. Box 126  
 Twin Falls, ID 83303  
 Telephone: (208) 734-1155  
 Fax #: (208) 734-1161  
 Idaho State Bar # 6976

DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO  
 TWIN FALLS COUNTY CLERK  
 FILED  
**ORIGINAL**

2008 AUG 27 PM 3:07

BY \_\_\_\_\_  
 \_\_\_\_\_ CLERK  
 \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	No. CR 07-10094
Plaintiff/Respondent.	)	
	)	
vs.	)	
	)	NOTICE OF APPEAL
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant/Appellant.	)	
_____	)	

TO: THE ABOVE NAMED PROSECUTOR, GRANT LOEBS, AND THE CLERK OF THE  
 ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent, the State of Idaho, to the Idaho Supreme Court from the ORDER HOLDING DEFENDANT TO ANSWER TO DISTRICT COURT entered on January 11, 2008, the OPINION DENYING DEFENDANTS MOTION CHALLENGING SUFFICIENCY OF EVIDENCE AT PRELIMINARY HEARING entered on March 31, 2008, the PARTIAL DENIAL OF

DEFENDANTS MOTION IN LIMINE on June 5, 2008, the DENIAL OF RULE 29(c) MOTION FOR JUDGMENT OF ACQUITTAL AFTER DISCHARGE OF JURY on July 7, 2008 and the JUDGMENT OF CONVICTION UPON A JURY VERDICT OF GUILTY ON ONE FELONY COUNT, AND ORDER OF COMMITMENT entered on August 20, 2008, in the Twin Falls County District Court, the Honorable Randy J. Stoker, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or order described in paragraph 1 is an appealable order under and pursuant to I.A.R. 11(c)(1).

3. The appellant intends to raise the following issues on appeal, provided that this list of issues on appeal is not exhaustive, and shall not prevent the appellant from asserting other issues on appeal.

- (a) Order Holding Defendant to Answer to District Court entered on January 11, 2008.
- (b) Opinion Denying Defendant's Motion Challenging Sufficiency of Evidence at Preliminary Hearing entered on March 31, 2008.
- (c) Partial Denial of Defendant's Motion in Limine on June 5, 2008.
- (d) Verdict after Jury Trial entered on June 12, 2008.
- (e) Denial of Rule 29(c) Motion for Judgment of Acquittal After Discharge of Jury on July 7, 2008.
- (f) Judgment of Conviction Upon a Jury Verdict of Guilty of One Felony Count, and Order of Commitment entered on August 20, 2008.

4. Appellant requests the preparation of the entire standard clerk's record as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portions of the reporter's transcript:

- (a) Reporter's Transcript of the Preliminary hearing held on January 11, 2008.
- (b) Reporter's Transcript of the hearing on Motion Challenging Sufficiency of Evidence at Preliminary Hearing held on March 4, 2008.
- (c) Reporter's Transcript of hearing on Defendant's Motion in Limine held on June 5, 2008.
- (d) Reporter's Transcript of the Jury Trial held on June 11 and June 12, 2008.
- (e) Reporter's Transcript of the hearing on Rule 29(c) Motion for Judgment of Acquittal After Discharge of Jury held on July 7, 2008.
- (f) Reporter's Transcript of the Sentencing hearing held on August 18, 2008.

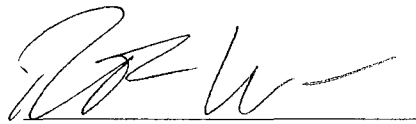
5. The appellant requests the normal clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Judgment of Conviction Upon A Jury Verdict of Guilty on One Felony Count, and Order of Commitment.
- (b) Pre-Sentence Investigation Report, including any exhibits, attachments or addendums thereto;
- (c) The Addendum Pre-sentence Report, including any and all exhibits.

6. I certify:

- (a) That a copy of this notice of appeal is being 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. 27(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 Twin Falls County who will be responsible for paying for the reporter's transcript, as the client is indigent, Idaho Code 31-3220, 31-3220A, I.A.R. 24(e);
- (e) That service is being made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 27<sup>th</sup> day of August, 2008.



Robin M.A. Weeks  
Deputy Public Defender

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that on the 27 day of Aug, 2008, NOTICE OF APPEAL was served as follows:

By delivering a true and correct copy of the foregoing to the following by placing said copy in the appropriately-marked mailbox/folder located in the Court Services Department of the Twin Falls County Courthouse:

GRANT LOEBS  
PROSECUTING ATTORNEY  
TWIN FALLS COUNTY


Court Reporter  
P.O. Box 126  
Twin Falls, ID 83303-0126

By U.S. Mail, with postage prepaid, in an envelope addressed to the following:

Clerk of the Idaho Supreme Court  
P.O. Box 83720  
Boise, ID 83720

Attorney General's Office  
P.O. Box 83720 Room, 210  
Boise, ID 83720

Office of the State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83706

  
Legal Secretary



OFFICE OF THE PUBLIC DEFENDER  
 Attorneys at Law  
 P.O. Box 126  
 Twin Falls, ID 83303  
 Telephone: (208)734-1155  
 Fax #: (208) 734-1161

ORIGINAL  
 DISTRICT COURT  
 Fifth Judicial District  
 County of Twin Falls - State of Idaho

AUG 28 2008

By \_\_\_\_\_ *9:00 AM*  
 \_\_\_\_\_ Clerk  
 \_\_\_\_\_ Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	CASE NO. CR 07-10094
	)	
vs.	)	NOTICE AND ORDER
	)	APPOINTING STATE APPELLATE
LONNIE ROBERT JOHNSON,	)	PUBLIC DEFENDER IN DIRECT
	)	APPEAL
Defendant.	)	
_____	)	

TO: The Office of the Idaho State Appellate Public Defender:

The above named petitioner/appellant has filed a notice of appeal on August 27, 2008, (copy attached) and/or has moved the Court for appointment of an appellate public defender in direct appeal of the ORDER HOLDING DEFENDANT TO ANSWER TO DISTRICT COURT entered on January 11, 2008, the OPINION DENYING DEFENDANTS MOTION CHALLENGING SUFFICIENCY OF EVIDENCE AT PRELIMINARY HEARING entered on March 31, 2008, the PARTIAL DENIAL OF DEFENDANTS MOTION IN LIMINE on June 5, 2008, the DENIAL OF RULE 29(c) MOTION FOR JUDGMENT OF ACQUITTAL AFTER DISCHARGE OF JURY on July 7, 2008 and the JUDGMENT OF CONVICTION UPON A ORDER

JURY VERDICT OF GUILTY ON ONE FELONY COUNT, AND ORDER OF COMMITMENT entered on August 20, 2008, in the Twin Falls County District Court, the Honorable Randy J. Stoker, presiding.

This Court being satisfied that said defendant-appellant is a needy person entitled to the services of the State Appellate Public Defender per §19-863A, Idaho Code,

IT IS HEREBY ORDERED, per §19-870, Idaho Code, that you are appointed to represent the defendant-appellant in all matters as indicated herein, or until relieved by further order of the court.

IT IS HEREBY ORDERED, pursuant to I.A.R. Rule 1, the parties, the Clerk of the court and the Court Reporter, shall follow the established Idaho Appellate Rules in the preparation of this appeal record.

IT IS FURTHER ORDERED that the State Appellate Public Defender's Office is provided the following information by the Court:

- 1) The defendant is in the custody of the Department of Corrections.
- 2) A copy of the Judgment of Conviction Upon a Jury Verdict of Guilty on One Felony County, And Order of Commitment entered on August 20, 2008.
- 3) A copy of the Notice of Appeal or Application.
- 4) A copy of the Register of Actions in this matter.
- 5) A copy of the Pre-Sentence Investigation Report.

IT IS SO ORDERED.

Dated: 8/28/08

Signed: 

ORDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28 day of Aug, 2008 served a true and correct copy of the attached NOTICE AND ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER IN DIRECT APPEAL by placing a copy in the United States mail, postage prepaid, addressed to:

State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, Idaho 83706

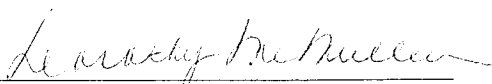
GRANT P. LOEBS  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

TWIN FALLS COUNTY  
PUBLIC DEFENDER  
P.O. Box 126  
Twin Falls, ID 83303-0126

Court Reporter

OFFICE OF THE ATTORNEY GENERAL  
Statehouse, Room 210  
P.O. Box 83720  
Boise, ID 83720

Clerk of the Supreme Court  
P.O. Box 83720  
Boise, ID 83720

  
\_\_\_\_\_  
Clerk of the Court

DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

SEP 12 2008

By \_\_\_\_\_ 5:00 P.M.  
Clerk  
Deputy Clerk

cc: D. Jones

GRANT P. LOEBS  
Prosecuting Attorney  
for Twin Falls County  
P.O. Box 126  
Twin Falls, ID 83303  
Phone: (208) 736-4020  
Fax: (208) 736-4120

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	Case No. CR 07-10094
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER OF RESTITUTION</b>
	)	
LONNIE ROBERT JOHNSON,	)	
	)	
Defendant.	)	
_____	)	

IT IS HEREBY ORDERED that **LONNIE ROBERT JOHNSON** pay restitution in the amount of \$2000.00 to Union Pacific Railroad, Attn: Doug Richard, 300 S. Harrison, Pocatello, ID 83204.

That such payments be *monitored* by said Probation Officer through the Probation and Parole Office, and *paid* to the Clerk of the Court, P.O. Box 126, Twin Falls, Idaho, 83303.

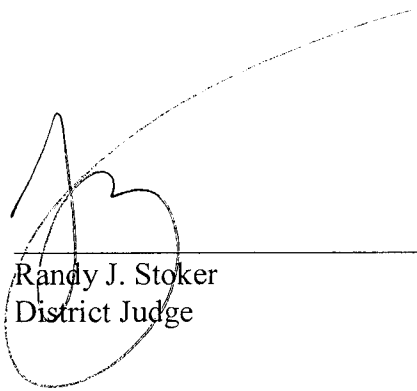
All restitution to be paid on a payment schedule as set forth by the Department of

ORIGINAL  
213

Probation and Parole.

Additionally, pursuant to Idaho Code § 19-5305, after forty-two (42) days from the entry of an Order of Restitution or at the conclusion of a hearing to reconsider an Order of Restitution, whichever occurs later, an Order of Restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

DATED this 12 day of September, 2008.



\_\_\_\_\_  
Randy J. Stoker  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12 day of September, 2008, I served a copy of the foregoing

**ORDER OF RESTITUTION** thereof to the following:

**Leah Clark-Thomas  
Deputy Prosecuting Attorney**

**Court Folder**

**The Office of The Public Defender  
Attorney for Defendant**

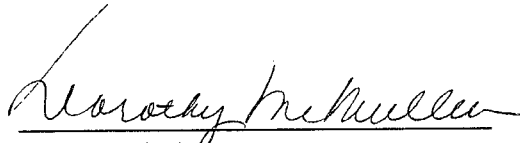
**Court Folder**

**Probation and Parole-District V**

**Court Folder**

**Central Records  
IDOC  
PO Box 83720  
Boise ID 83720-0018**

**U.S. Mail**

  
Deputy Clerk

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

DISTRICT COURT  
TWIN FALLS COUNTY, IDAHO  
FILED

2008 OCT -1 AM 8:39

BY \_\_\_\_\_ CLERK

 \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

STATE OF IDAHO, )  
 )  
Plaintiff-Respondent, )  
 )  
v. )  
 )  
LONNIE ROBERT JOHNSON, )  
 )  
Defendant-Appellant. )

CASE NO. CR 07-10094

S.C. DOCKET NO. 35635

AMENDED  
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, LEA CLARK-THOMAS, TWIN FALLS COUNTY PROSECUTOR, P.O. BOX 126, 425 SHOSHONE ST, 4TH FLOOR, TWIN FALLS, ID, 83303-0126, 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 Order Holding Defendant to Answer to District Court entered in the above-entitled action on the 11<sup>th</sup> day of January, 2008, the Opinion Denying Defendant's Motion Challenging Sufficiency of Evidence at Preliminary Hearing entered in the above-entitled action on the 31<sup>st</sup> day of March, 2008, the Partial Denial of Defendant's Motion in Limine entered in the above-entitled action on the 5<sup>th</sup> day of June, 2008, Denial of Rule

29(c) Motion for Judgment of Acquittal After Discharge of Jury entered in the above-entitled action on the 7<sup>th</sup> day of July, 2008, and the Judgment of Conviction Upon a Jury Verdict of Guilty Upon One Felony Count, and Order of Commitment entered in the above-entitled action on the 20<sup>th</sup> day of August, 2008, the Honorable Randy J. Stoker, 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) Did the district court err in issuing its Order Holding Defendant to Answer to District Court on January 11, 2008?
- b) Did the district court err in denying appellant's Motion challenging sufficiency of evidence at the preliminary hearing?
- c) Did the district court err denying, in part, appellant's motion in limine?
- d) Was there insufficient evidence to support a guilty jury verdict?
- e) Did the district court err denying appellant's motion for judgment of acquittal after discharge of the jury?
- f) Did the district court abuse its discretion by imposing an 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(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- b) Motion to Challenge Sufficiency of Evidence Hearing held on March 4, 2008 (Court Reporter: Sabrina Vasquez, no estimation of pages was listed on the Register of Actions);
- c) Motion in Limine Hearing held on June 5, 2008 (Court Reporter: Sabrina Vasquez, no estimation of pages was listed on the Register of Actions);
- d) Jury Trial held June 11-12, 2008, to include the opening and closing statements, and jury instruction conferences and given jury instructions (Court Reporter: Sabrina Vasquez, no estimation of pages was listed on the Register of Actions);
- e) Rule 29(c) Motion for Judgment of Acquittal After Discharge of Jury held on July 7, 2008 (Court Reporter: Sabrina Vasquez, no estimation of pages was listed on the Register of Actions);
- f) Sentencing Hearing held on August 18, 2008 (Court Reporter: Sabrina Vasquez, no estimation of pages was listed on the Register of Actions);

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) Affidavit in Support of Complaint or Warrant for Arrest filed October 24, 2007;
- b) Transcript of Preliminary Hearing held on January 11, 2008, and filed on February 1, 2008;
- c) Any affidavits, objections, responses, briefs or memorandums, filed or lodged, by the state, appellant or the court in support of or in opposition to the Motion Challenging Sufficiency of Evidence at Preliminary including, but not limited to, the Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing lodged on March 4, 2008, State's Response to Defendant's Memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing lodged on March 14, 2008, and Defendant's Reply memorandum in Support of Motion Challenging Sufficiency of Evidence at Preliminary Hearing lodged March 29, 2008;
- d) All proposed and given jury instructions, including, but not limited to, the Plaintiff's Requested Jury Instructions filed April 4, 2008, Defendant's Requested Jury Instructions filed June 10, 2008, Preliminary Jury Instructions filed June 11, 2008, Final Jury

Instructions filed June 12, 2008, Instruction 15-A filed June 12, 2008, and Instruction #16 filed June 12, 2008;

- e) Exhibit List filed April 4, 2008;
- f) Notice of Intent to Present 404(b) Evidence at Trial filed May 8, 2008;
- g) Objection to State's Notice of Intent to Present 404(b) Evidence at Trial and Memorandum in Support filed May 23, 2008;
- g) Further Notice of Intent to Present 404(b) Evidence at Trial and Brief in Response to Defendant's Objection and Motion in Limine filed June 4, 2008;
- h) Jury Roll Call filed June 11, 2008;
- i) Seating Charts filed June 11, 2008;
- j) Witness List filed June 12, 2008;
- k) Exhibit List filed June 12, 2008;
- l) Letter from Probation and Parole re: PSI filed June 23, 2008; and
- m) Any exhibits, including but not limited to letters or victim impact statements and other addendums to the PSI or other items offered at the sentencing hearing.

7. I certify:

- a That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Sabrina Vasquez;

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

DATED this 1<sup>st</sup> day of October, 2008.

  
MOLLY J. HUSKEY  
State Appellate Public Defender

CERTIFICATE OF MAILING

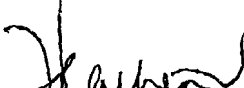
I HEREBY CERTIFY that I have this 1<sup>st</sup> day of October, 2008, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

ROBIN M WEEKS  
TWIN FALLS COUNTY PUBLIC DEFENDER  
231 4TH AVE N  
PO BOX 126  
TWIN FALLS ID 83303 0126

SABRINA VASQUEZ  
COURT REPORTER  
PO BOX 126  
TWIN FALLS ID 83303 0126

LEA CLARK THOMAS  
TWIN FALLS COUNTY PROSECUTORS OFFICE  
PO BOX 126  
425 SHOSHONE ST 4TH FLOOR  
TWIN FALLS ID 83303 0126

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

TMF/MJH/hrc

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 35635-2008
	)	DISTRICT COURT NO. CR 07-10094
Plaintiff/Respondent,	)	
	)	
vs.	)	CLERK'S CERTIFICATE
	)	
LONNIE JOHNSON,	)	
	)	
<u>Defendant/Appellant.</u>	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12<sup>th</sup> day of December, 2008.

KRISTINA GLASCOCK  
Clerk of the District Court

  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 35635-2008
	)	DISTRICT COURT NO. CR 07-10094
Plaintiff/Respondent,	)	
	)	
vs.	)	CERTIFICATE OF EXHIBITS
	)	
LONNIE JOHNSON,	)	
	)	
<u>Defendant/Appellant.</u>	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify:

That the following is a list of exhibits to the record that have been filed during the course of this case.

Pre Sentence Investigation Report (Confidential)

Transcript of Preliminary Hearing, January 11, 2008, Filed February 1, 2008  
State's Exhibit 1, copy of receipt dated 10-4-2007, Admitted 1-11-2008  
State's Exhibit 2, copy of receipt dated 10-10-2007, Admitted 1-11-2008  
State's Exhibit 3, copy of receipt dated 10-22-2007, Admitted 1-11-2008  
2 (photograph) 6-12-08  
3 (photograph) 6-12-08  
4 (photograph) 6-12-08  
5 (photograph) 6-12-08  
7 (photograph) 6-12-08  
8 (invoice) 6-12-08  
9 (document) 6-12-08  
11 (photograph) 6-12-08  
12 (photograph) 6-12-08  
13 (document) 6-12-08  
14 (document) 6-12-08  
15 (documents re: past convictions) 6-12-08

16 (document re: identity) 6-12-08

**PHOTO SENT TO SUPREME COURT IN PLACE OF EXHIBIT**

1 (diagram) 6-12-08

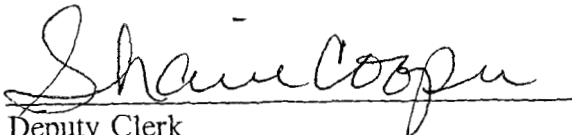
**EXHIBITS NOT SENT TO SUPREME COURT**

6 (wire) 6-12-08

10 (wire) 6-12-08

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12<sup>th</sup> day of December, 2008.

KRISTINA GLASCOCK  
Clerk of the District Court

  
Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 35635-2008
	)	DISTRICT COURT NO. CR 07-10094
Plaintiff/Respondent,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
LONNIE JOHNSON,	)	
	)	
<u>Defendant/Appellant.</u>	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and REPORTER'S TRANSCRIPT to each of the Attorneys of Record in this cause as follows:

MOLLY HUSKEY  
State Public Defender  
3647 Lake Harbor Lane  
Boise, Idaho 83703

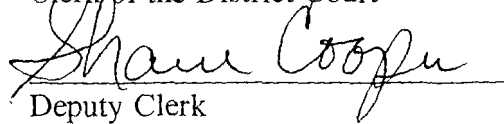
LAWRENCE WASDEN  
Attorney General  
Statehouse Mail Room 210  
P.O. Box 83720  
Boise, Idaho 83720-0010

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 12<sup>th</sup> day of December, 2008.

KRISTINA GLASCOCK  
Clerk of the District Court

  
Deputy Clerk