

9-19-2007

## State v. Pina Clerk's Record v. 2 Dckt. 34192

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LAW CLERK

Vol. 2089

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

STATE OF IDAHO

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

VS.

JUAN CARLOS FUENTES PINA

Defendant/Appellant

\_\_\_\_\_ and

**FIFTH**

Appealed from the District Court of the \_\_\_\_\_  
Judicial District for the State of Idaho, in and

for **TWIN FALLS** County

Hon. **G. RICHARD BEVAN** District Judge

**MOLLY HUSKEY**

Attorney  for Appellant

**LAWRENCE WARDEN**

Attorney  for Respondent

**FILED COPY**

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

**SEP 19 2007**

\_\_\_\_\_ Clerk

By \_\_\_\_\_ Supreme Court \_\_\_\_\_ Court of Appeals  
Entered on AFS by \_\_\_\_\_ Deputy

Volume 2

**34192**

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. 34192
	)	DISTRICT COURT NO. CR 06-107
Plaintiff/Respondent,	)	
	)	
vs.	)	
	)	
JUAN CARLOS FUENTES PINA,	)	
	)	
<u>Defendant/Appellant.</u>	)	

CLERK'S RECORD ON APPEAL

*Volume 2*

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

HONORABLE G. RICHARD BEVAN  
District Judge

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

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

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

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PLAINTIFF: State Of Idaho

COUNSEL: Grant Loeb

CASE NO: CR 06-107 DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

VS.

JUN 13 2006

DEFENDANT: Juan Carlos Fuentes Pina

COUNSEL: Marilyn Paul, Stan Holloway

DATE: June 14, 2006

By: Ily Clerk  
Deputy Clerk

<del>John Crawford</del> 10	<del>Randy Hawker</del> 50	<del>Loren Wolters</del> 51	<del>Janine Kopp</del> 52	<del>Timothy Lent</del> 53	
<del>Theresa Olivas</del> 37	<del>James Zeigler</del> 38	Janelle Moore 39	<del>Staci McComas</del> 40	Paula Mangini 41	<del>Michael Gooding</del> 42
Leigh Josephsen 25	<del>Courtney Gemar</del> 26	Susan Parslow 27	<del>Amanda Egnar</del> 28	<del>Corla Wolters</del> 29	<del>Betty Sable</del> 30
Nancy Swain 13	<del>Stacy Sheppard</del> 14	<del>Rudy DeLeon</del> 15	<del>Sharie Hutton</del> 16	Jason Scott 17	<del>Mark Gawlinsky</del> 18
<del>Colleen Nicely</del> 1	<del>Thomas Tanner</del> 2	Danielle Gietzen 3	<del>Deborah Fuss</del> 4	<del>Jessica Bateman</del> 5	<del>Matthew Talbot</del> 6

	<del>Cory Holloway</del> 54	<del>Steven Human</del> 55	<del>Vanessa Olmstead</del> 56	<del>Michelle McRoberts</del> 57	Jerry Aguirre 58
<del>Anna Hanson</del> 43	<del>Judy Baggett</del> 44	Marilyn Swenson 45	<del>Kathleen Davis</del> 46	<del>Ronald Alvey</del> 47	<del>Sally Overton</del> 48
<del>Connie Starry</del> 31	<del>Wiley Dobbs</del> 32	<del>Marion Oneida</del> 33	<del>Ronald James</del> 34	Mark McGuire 35	Samuel Klucken 36
<del>Cindy Fetterly</del> 19	Trenton Hill 20	Jeffrey Geer 21	<del>Lupe Goodman</del> 22	<del>Kevin Peterson</del> 23	<del>Renee Demure</del> 24
<del>William Ronk</del> 7	<del>Danny Webb</del> 8	<del>Molly Newby</del> 9	<del>Lucinda Beer</del> 10	Donna Aston 11	Joseph Ratto 12

JURY PANEL

STATE OF IDAHO

Mr. GRANT LOEBS

CASE NO. CR 06-107

Plaintiff

Attorney

JUAN CARLOS FUENTES PINA

Ms. MARILYN PAUL

DATE: June 13, 2006

Defendant

Attorney

59 Scott Jacoby <i>(A)</i>	60 Amanda Drown <i>(B)</i>	61 Ruth Helton	62 Kenneth White <i>excused</i>	63 Tabitha Baumgartner <i>excused</i>	64 Sally Van Leuven <i>excused</i>	65 Douglas Stokes <i>excused</i>
66 Charles Merrill <i>excused</i>	67 Scott Miller <i>excused</i>	68 David Orr	69 Lisa Spooner	70 Savannah Jentzsch	71 Heather Luff	
72 Patricia Brownfield <i>excused</i>	73 James Woods	74 Jack Bills	75 Darcie Koffer	76 Melanie Sanders		
77 Julie Akins	78 Michelle Blaylock <i>excused</i>	79 Lori Bean <i>excused</i>				

PLAINTIFF: STATE OF IDAHO

COUNSEL: GRANT LOEBS

CASE NO: CR 2006-107

CLERK OF DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

602

VS.

DEFENDANT: JUAN CARLOS FUENTES-PINA

COUNSEL: MARILYN PAUL, STAN HOLLOWAY

DATE: JUNE 13, 2006

2006 JUN 13 PM 2:10

BY: *[Signature]*  
CLERK DEPUTY

John Crawford 19	Randy Hawker 50	Loren Walters 51	Janine Kopp 52	Timothy Lent 53	<del>Bob</del>
Teresa Olivias 37	James Zeigler 38	Janelle Moore 39	Stacy McComas 40	Paula Mangini 41	Michael Gooding 42
Leigh Josephson 25	Courtney Gammar 26	Susan Parslow 27	Amanda Egnar 28	Corla Walters 29	Betty Sable 30
Nancy Swain 13	Stan Sheppard 14	Rudy DeLeon 15	Shirley Hutton 16	Jason Scott 17	Mark Eawlinsky 18
Cohen Nicely 1	Thomas Tanner 2	Danielle Gietzen 3	Deborah Furr 4	Jessica Bateman 5	Matthew Talbot 6

Cory Holloway 54	Steven Human 55	Vanessa Olmstead 56	Michelle McRoberts 57	Peru Aguirre 58	Scott Jacoby 59
Anna Hanson 43	Judy Baggett 44	Marilyn Swenson 45	Kathleen Davis 46	Ronald Alvey 47	Sally Overton 48
Connie Sterry 31	Wiley Dobbs 32	Marion Oneida 33	Ronald James 34	Mark McGuire 35	Samuel Klucken 36
Cindy Fetterly 19	Trenton Hill 20	Jeffrey Greer 21	Lupe Goodman 22	Kevin Peterson 23	Renee Demule 24
William Ronk 7	Danny Webb 8	Molly Newbery 9	Lucinda Beer 10	Donna Aston 11	Joseph Ratto 12

JURY PANEL

STATE OF IDAHO

Plaintiff

Mr. GRANT LOEBS

Attorney

CASE NO. CR 06-107

JUAN CARLOS FUENTES PINA

Defendant

Ms. MARILYN PAUL

Attorney

DATE: June 13, 2006

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 13 PM 2:11

BY \_\_\_\_\_

CLERK  
DEPUTY

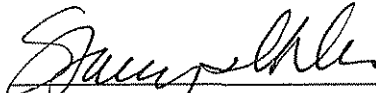
072

60 Amanda Drown	61 Ruth Helton	62 Kenneth White	63 Tabitha Baumgartner	64 Sally Van Leuven	65 Douglas Stokes	66 Charles Merrill
67 Scott Miller	68 David Orr	69 Lisa Spooner	70 Saraiah Jentzsch	71 Heather Luff	72 Patricia Brownfield	
73 James Woods	74 Jack Bills	75 Darcy Koffer	76 Melanie Sandus	77 Julie Akins		
78 Michelle Blaylock	79 Lori Bean	80	81	82		



**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of June 2006, I served a copy of the foregoing **STATE'S SECOND ADDITIONAL WITNESS 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.



Stacey Ihler  
Felony Case Assistant



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

JUN 14 2006

By [Signature] Clerk  
User: BARTLE Clerk

Date: 6/26/2006  
Time: 09:33 AM  
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**Fifth Judicial District Court - Twin Falls County**

Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Motion for 404 B Evidence	Minutes date:	06/14/2006
Assigned judge:	G. Richard Bevan	Start time:	04:25 PM
Court reporter:	Virginia Bailey	End time:	04:25 PM
Minutes clerk:	Teresa Yochem	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

Tape Counter: 422	Court addressed Counsel
Tape Counter: 423	Ms. Paul memorialized the stipulations reached with the State of Idaho regarding Jeremiah Schmidt, Jay Martindale and Jay Degarmo.
Tape Counter: 426	Court addressed Counsel regarding the motions that will be heard today.
Tape Counter: 426	Mr. Loeb gave argument on the issue of the testimony of Richard Martin, a witness in this case.
Tape Counter: 430	Ms. Paul gave argument on the issues of the testimony of Richard Martin
Tape Counter: 437	Mr. Loeb gave final arguments
Tape Counter: 442	Ms. Paul gave argument.
Tape Counter: 445	Mr. Loeb addressed the court.
Tape Counter: 447	Court will consider this issue and will give decision on Monday before opening arguments.
Tape Counter: 448	Ms. Paul gave argument on the Bruton issue.
Tape Counter: 448	Mr. Loeb gave argument on the motion.
Tape Counter: 449	Court addressed counsel. Mr. Shores will be allowed to testify.
Tape Counter: 451	Court addressed the jury instruction issues.
Tape Counter: 451	Ms. Paul addressed the court.
Tape Counter: 453	Mr. Loeb put objections on the record.
Tape Counter: 456	Ms. Paul gave final argument on the jury instructions.
Tape Counter: 457	Court made decision.
Tape Counter: 458	Court will convene at 9:00 am for the jury trial.

OFFICE OF THE PUBLIC DEFENDER  
Attorney at Law  
P.O. Box 126  
Twin Falls, ID 83303-0126  
Telephone: (208) 734-1155  
ISB# 4444

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
**ORIGINAL**  
2006 JUN 14 PM 3:21  
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 06-107  
Plaintiff. )  
)  
vs. ) ) WITNESS LIST  
)  
JUAN FUENTES-PINA, )  
)  
Defendant. )  
\_\_\_\_\_ )

COMES NOW The Defendant, by and through his attorney of record, Marilyn B. Paul, Public Defender for Twin Falls County, State of Idaho, and submits the following list of witnesses in the above-entitled matter:


1. Twin Falls Police Department  
  
Shirlene Aguirre  
Steve Benkula  
Clinton Doerr  
Chris Fullmer  
Curtis Gambrel  
Ryan Howe  
Mark Marvin

Charles Miller  
Dennis Pullin  
Patty Rohweder  
Eric Steele  
Craig Stotts  
Michelle Wyatt

2. Wendy Walter - Bureau of Lands
3. Douglas Hughes - Twin Falls Sheriff's Dept.
4. Frank Neumeyer - Probation and Parole
5. Glen Groben, M.D. - Ada County Coroner's Office
6. Jacob DeGarmo
7. Jay Martindale
8. Art Martinez
9. James Naranjo
10. Christina Pierre
11. Jeremiah Schmidt  
Mini-Cassia Detention Facility
12. Johnny Shores  
Twin Falls Criminal Justice Facility
13. Philip Warren  
Twin Falls Criminal Justice Facility
14. Debbie Heck
15. Joel Peterson  
Twin Falls Criminal Justice Facility/Retained Jurisdiction
16. Romeo Trevino  
Twin Falls Criminal Justice Facility
17. Phillip Flieger
18. Dave Ramstead
19. Dawn Shores
20. Michael Shores

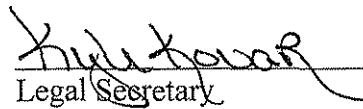
Defendant reserves the right to submit and call additional witnesses on behalf of the defense.

DATED this 14 day of June, 2006.

  
\_\_\_\_\_  
Marilyn B. Paul  
Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of June, 2006, I served a copy of the foregoing ANTICIPATED WITNESSES thereof into the mail slot for THE OFFICE OF THE TWIN FALLS COUNTY PROSECUTOR 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 Public Defender's Office.

  
Legal Secretary

TWIN FALLS COUNTY PUBLIC DEFENDER  
Attorneys at Law  
P.O. Box 126  
Twin Falls, ID 83303-0126  
Telephone: (208) 734-1155  
Fax #: (208) 734-1161  
ISB # 4444

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

ORIGINAL

2006 JUN 14 AM 8:39

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

*Jhy* \_\_\_\_\_ 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,

v.

JUAN FUENTES-PINA,

Defendant.

Case No. CR-06-107

MOTION TO  
TRANSPORT

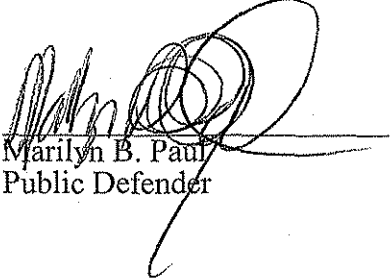
COMES NOW, the Defendant, Juan Fuentes-Pina, by and through his attorney, MARILYN B. PAUL and hereby moves for an order to transport Phillip Warren from the Mini-Cassia County Jail, Burley, Idaho, to the Twin Falls County Jail, by the Twin Falls County Sheriff's Office, by no later than June 22, 2006, and to be held there until he has testified in the above-entitled matter, at which time he shall be returned to the Mini-Cassia County Jail, Burley, Idaho.

It is anticipated that he will testify no later than June 30, 2006.

WHEREFORE, the Defendant prays this Honorable Court grant his Motion for

Transport.

DATED this 14 day of June, 2006.

  
Marilyn B. Paul  
Public Defender

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing MOTION TO TRANSPORT was delivered to the office of the Twin Falls County Prosecutor on the 14 day of June, 2006.

GRANT LOEBS  
TWIN FALLS COUNTY  
PROSECUTING ATTORNEY

Courthouse Mail

Kyle Kavan



**DISTRICT COURT**  
Fifth Judicial District  
County of \_\_\_\_\_ of Idaho

JUN 15 2006

By \_\_\_\_\_ Clerk  
\_\_\_\_\_  
Deputy Clerk  
User: BARTLETT

Date: 6/26/2006

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

Time: 09:33 AM

Minutes Report

Page 5 of 8

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Motion	Minutes date:	06/15/2006
Assigned judge:	G. Richard Bevan	Start time:	08:56 AM
Court reporter:	Virginia Bailey	End time:	08:56 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

Tape Counter: 916 Court addressed counsel. Court addressed Mr. Pina's attire during the trial. Ms. Paul informed the court Mr. Pina refused to wear the clothing provided to Mr. Pina and would like to appear in orange.

Tape Counter: 917 Mr. Pina addressed the court.

Tape Counter: 918 Court addressed Mr. Pina. Court admonished Mr. Pina.

Tape Counter: 918 Ms. Paul addressed the court.

Tape Counter: 920 Mr. Loeb addressed the court.

Tape Counter: 920 Court inquired of Mr. Pina. Mr. Pina addressed the court.

Tape Counter: 921 Court addressed Mr. Pina. Court admonished Mr. Pina.

Tape Counter: 923 Court in recess.

Tape Counter: 937 Court convened.

Tape Counter: 937 Court addressed Counsel. Mr. Pina is not present at this time. Ms. Paul addressed the court.

Tape Counter: 938 Mr. Douglas Sugden, bailiff, addressed the court. Court inquired of Mr. Sugden. Mr. Sugden responded.

Tape Counter: 941 Mr. Pina is now present in the courtroom.

Tape Counter: 941 Court addressed Mr. Pina. Court ruled that Mr. Pina will not be shackled in front of the jury.

Tape Counter: 943 Court strongly admonished Mr. Pina.

Tape Counter: 944 Court in recess.

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

**JUN 15 2006**

Date: 6/26/2006  
Time: 09:33 AM  
Page 6 of 8

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

Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

By Jfy Clerk  
User: BARTLETT  
Deputy Clerk

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Hearing type:	Jury Selection	Minutes date:	06/15/2006
Assigned judge:	G. Richard Bevan	Start time:	09:50 AM
Court reporter:	Virginia Bailey	End time:	09:50 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

Tape Counter: 1007 Court addressed the prospective jurors.

Tape Counter: 1009 Court addressed the jurors regarding the defendant's attire.

Tape Counter: 1010 Clerk called the roll.

Tape Counter: 1015 Court addressed the prospective jurors and introduced the Courtroom staff.

Tape Counter: 1017 Court introduced all the parties involved in this case.  
For the State of Idaho, Grant Loeb, Suzanne Craig and Jennifer Gose-Ells. For the Defense, Marilyn Paul and Stanley Holloway and the defendant, Juan Carlos Fuentes Pina.

Tape Counter: 1021 The prospective jurors were duly sworn.

Tape Counter: 1029 Court conducted voir dire examination. Court inquired of the jurors of hardship. Court excused juror #7. Court excused juror #4. Court excused juror #16. Court excused juror #15. Court excused #18. Court excused juror #22. Court excused juror #23. Court excused juror #26. Court excused juror #28. Court excused juror #40. Court excused juror #43. Court excused juror #50. Court excused juror #51. Court excused juror #54. Court excused juror #63. Court excused juror #65. Court excused #66. Court excused juror #67. Court excused juror #72.

Tape Counter: 1045 Court inquired of medical hardship. Jurors 62, 52, 21, 33, and 24 requested they meet with the judge in chambers.  
Court excused juror #79. Court excused juror #6.

Tape Counter: 1118 Court admonished the jurors. Court in recess.

Tape Counter: 1130 Court convened in chambers and met with jurors 62, 52, 21, 33, 24, 64, 78, 32 and 47.  
Court excused jurors #62, 52, 33, 64 and 78.

Tape Counter: 1145 Court convened. Court continued with voir dire examination.

Tape Counter: 1213 Court admonished the jury. Court is in recess till 1:30 pm.

Tape Counter: 137 Court convened.

Tape Counter: 138 Court called roll.

Tape Counter: 140 Mr. Loeb conducted voir dire examination.

Tape Counter: 310 Court in recess.

Tape Counter: 325 Court convened.

Tape Counter: 325 Mr. Loeb continued with voir dire examination.

Tape Counter: 405 Court addressed the prospective jurors. Court admonished the jurors.

Date: 6/26/2006

Time: 09:33 AM

Page 7 of 8

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

Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 407

Court excused the jury till 9:00 am tomorrow morning.

User: BARTLETT

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED  
**ORIGINAL**

2006 JUN 15 AM 11:20

TWIN FALLS COUNTY PUBLIC DEFENDER  
Attorneys at Law  
P.O. Box 126  
Twin Falls, ID 83303-0126

BY \_\_\_\_\_  
*Jly* 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,

v.

JUAN FUENTES-PINA,  
Defendant.


Case No. CR-06-107

ORDER TO  
TRANSPORT

IT IS HEREBY ORDERED: That the Philip Warren, be transported from the Mini-Cassia County Jail, Burley, Idaho, to the Twin Falls County Jail by the Twin Falls County Sheriff's Office no later than June 22, 2006 to be available to testify in the Jury Trial in the above-entitled matter, at which time he shall be returned to the Mini-Cassia County Jail, Burley, Idaho.

It is anticipated that he will testify no later than June 30, 2006.

DATED this 15<sup>th</sup> day of June, 2006.

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

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing ORDER TO TRANSPORT to be delivered to the following on this 16 day of June, 2006.

GRANT LOEBS  
TWIN FALLS COUNTY  
PROSECUTING ATTORNEY

Courthouse Mail

MARILYN B. PAUL  
TWIN FALLS COUNTY  
PUBLIC DEFENDER

Courthouse Mail

TWIN FALLS COUNTY JAIL

Courthouse Mail

JERRY  
COURT SECURITY

Courthouse Mail

Leresa L. Yeckham

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 15 AM 11: 21

BY \_\_\_\_\_  
*Jly* CLERK  
DEPUTY

GRANT P. LOEBBS  
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

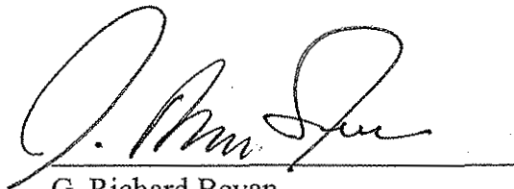
STATE OF IDAHO,	)	Case No. CR 06-107
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER TO TRANSPORT</b>
	)	
JUAN CARLOS FUENTES-PINA,	)	
	)	
Defendant.	)	
_____	)	

IT IS HEREBY ORDERED that the Twin Falls County Sheriff's Office transport Jeremiah Schmidt from the Mini-Cassia County Criminal Justice Facility to the Twin Falls County Criminal Justice Facility for a Jury Trial scheduled in the above-captioned case from June 20-23, 2006, and June 27-30, 2006. Jeremiah Schmidt is a material witness in the above-entitled matter and is under subpoena.

ORIGINAL

IT IS FURTHER ORDERED that Jeremiah Schmidt be transported to the Twin Falls  
County Criminal Justice Facility as necessary to testify in the above-captioned case.

DATED this 15 day of June 2006.

A handwritten signature in black ink, appearing to read "G. Richard Bevan", written over a horizontal line.

G. Richard Bevan  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16 day of June 2006, I served a copy of the foregoing

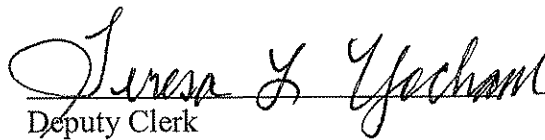
**ORDER TO TRANSPORT** thereof to the following:

**Grant P. Loeb**  
**Prosecuting Attorney**

**Court Folder**

**Marilyn Paul**  
**Attorney for Defendant**

**Court Folder**

  
Deputy Clerk



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

**JUN 16 2006**

By [Signature] Clerk  
Deputy Clerk  
User: BARTLETT

Date: 6/26/2006  
Time: 09:33 AM  
Page 8 of 8

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

Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Jury Selection Day 2	Minutes date:	06/16/2006
Assigned judge:	G. Richard Bevan	Start time:	08:22 AM
Court reporter:	Virginia Bailey	End time:	08:22 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loebis		
Defense attorney:	Marilyn Paul		

Tape Counter: 906	Court Convened.
Tape Counter: 906	Court addressed the court.
Tape Counter: 907	Court called roll. Court excused jurors 5 and 29. Jury commissioner to call on juror #57 to find why is not present.
Tape Counter: 910	Court convened in jury room to meet with juror # 8.
Tape Counter: 913	Court excused juror #8.
Tape Counter: 913	The prospective jurors were duly sworn.
Tape Counter: 914	Ms. Paul conducted voir dire examination.
Tape Counter: 932	Juror #57 entered the courtroom. Clerk swore in the juror. Court inquired of #57. Juror #57 responded.
Tape Counter: 933	Ms. Paul continued with voir dire examination.
Tape Counter: 1031	Ms. Paul passed the panel for cause. Court admonished the jury.
Tape Counter: 1032	Court in recess.
Tape Counter: 1051	Court convened.
Tape Counter: 1052	Court addressed the prospective jurors. Counsel will exercise twelve preemptory challenges each.
Tape Counter: 1121	The final jury was selected.
Tape Counter: 1124	Court addressed the all jurors. Court excused the remaining jurors.
Tape Counter: 1126	Court addressed the final jury. Court read the final jury an instruction on this case. The jury will be sworn in on Monday afternoon. Court advised the jurors to return on Monday at 1:30 pm to begin the trial process. The jurors were excused.
Tape Counter: 1129	Ms. Paul addressed the court. Mr. Pina addressed the court regarding the attire. Mr. Pina apologized to the court, and to Ms. Paul and Mr. Lobes for his actions yesterday.
Tape Counter: 1130	Court addressed Counsel regarding jury instructions.
Tape Counter: 1132	Court will recess till Monday afternoon at 1:30 pm. Court in recess.

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 16 AM 8:20

BY \_\_\_\_\_  
*Jly* DEPUTY

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JUAN FUENTES-PIÑA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-06-0107

**OPINION R.E. DEFENDANT'S  
MOTION TO RECONSIDER  
IT'S DECISION TO DISMISS  
GRAND JURY INDICTMENT**

This matter is before the Court on Defendant's Motion seeking reconsideration of the court's refusal to dismiss the Grand Jury Indictment. Ms. Marilyn Paul filed this Motion 06/05/06. After reviewing the materials submitted and researching the applicable law, Defendant's request to reconsider dismissal of the indictment is denied.

Defendant asks this court to reconsider its decision to deny Defendant's Motion to Dismiss Indictment based on statements made by an alleged co-accomplice Johnny Shores to Detective Curtis Gambrel. Detective Gambrel testified before the Grand Jury about these statements. The court, in its Memorandum Decision and Order R.E. Defendant's Motion to Dismiss determined that although the statements were in fact hearsay, Shores' statement was not "devastating" to the Defendant. See Memorandum Decision and Order R.E. Defendant's Motion to Dismiss pages 24-26.

Even if the statements were stricken from the record, the court determined there was "still more than ample evidence upon which the jury could find probable cause to indict the Defendant." When the detective testified before the Grand Jury, the State instructed them that the detective's recitation of Johnny Shores' statement was not to be used against the Defendant Juan Piña, as they were hearsay. The statement was to be used solely against the declarant.

Where improper testimony is inadvertently introduced into a *trial* and the trial court promptly instructs the jury to disregard such evidence, it is ordinarily presumed that the jury obeyed the court's instruction entirely. See *State v. Hill*, 140 Idaho 625, 631, 97 P.3d 1014, 1020 (Ct. App. 2004); *State v. Hedger*, 115 Idaho 598, 601, 768 P.2d 1331, 1334 (1989); *State v. Boothe*, 103 Idaho 187, 192, 646 P.2d 429, 434 (Ct.App.1982). As noted by the Court in *State v. Hill*:

No less an authority than the United States Supreme Court has proclaimed:

We normally presume that a jury will follow an instruction to disregard inadmissible evidence inadvertently presented to it, unless there is an 'overwhelming probability' that the jury will be unable to follow the court's instructions, and a strong likelihood that the effect of the evidence would be 'devastating' to the defendant.

*Greer v. Miller*, 483 U.S. 756, 766 n. 8, 107 S.Ct. 3102 (1987) (citations omitted).

140 Idaho at 631, 97 P.3d at 1020.

While Idaho has not adopted this same rationale for grand jury proceedings, there is no reason the same conclusion would not follow. This court does not find any "overwhelming probability" that Detective Gambrel's recitation of Johnny Shores' statement would have caused the grand jury to disregard the prosecuting attorney's instruction to apply Shores' statement to Shores only.

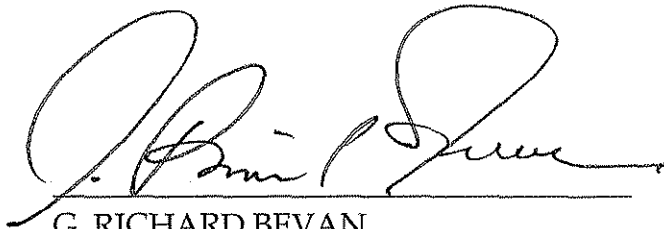
In considering the indictment and the proceedings as a whole, there is no evidence or legal cause why the indictment against the Defendant should be dismissed. The court is within its discretion to deny the motion to dismiss the grand jury indictment; this court will exercise its discretion in denying Defendant's motion in all respects.

Based on the court's reasoning, Defendant's motion will not be granted. The Defendant has not introduced anything different or new that could

potentially alter either the court's reasoning or decision. As such, the indictment will stand as against the Defendant.

IT IS SO ORDERED.

Dated this 16 day of June, 2006.

A handwritten signature in cursive script, appearing to read "G. Richard Bevan", written over a horizontal line.

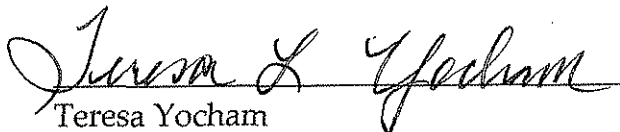
G. RICHARD BEVAN  
District Judge

CERTIFICATE OF MAILING/DELIVERY

I, Teresa Yocham, hereby certify that on the 16 day of June, 2006, a true and correct copy of the foregoing Order was mailed, postage paid, and/or hand-delivered to the following persons:

Grant Loeb  
Twin Falls County Prosecutor  
P.O. Box 126  
Twin Falls, ID 83303

Marilyn Paul  
Twin Falls County Public Defender  
P.O. Box 126  
Twin Fall, ID 83303

  
Teresa Yocham  
Deputy Clerk

STATE OF IDAHO

vs.

JUAN CARLOS FUENTES PINA

CASE NO. CR 06-107

DATE: June 16, 2006

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

JUN 16 2006

By [Signature] Clerk  
Deputy Clerk

PLAINTIFF'S PEREMPTORY CHALLENGES

1. Ronald James #34 ~~✓~~
2. Amanda Drown #60 ~~✓~~
3. Kathleen Davis #46 ~~✓~~
4. Steven Human #55 ~~✓~~
5. Vonessa Olmstead #56 ~~✓~~
6. Janne Ziegler #38 ~~✓~~
7. Molly Newby #9 ~~✓~~
8. Judith Baggett #44 ~~✓~~
9. Betty Sabo #30 ~~✓~~
10. Lucinda Beer #10 ~~✓~~
11. Sydney Fetterly #19 ~~✓~~
12. Sally Creston #48 ~~✓~~

DEFENDANT'S PEREMPTORY CHALLENGES

1. Renee Demeule #24 ~~✓~~
2. Thomas Tanner #2 ~~✓~~
3. Colleen Nicely #1 ~~✓~~
4. Connie Starry #31 ~~✓~~
5. Wiley Dobbs #32 ~~✓~~
6. Theresa Olivas #37 ~~✓~~
7. Stacy (Sim) Sheppard #14 ~~✓~~
8. Ronald Alvey #47 ~~✓~~
9. Timothy Lent #53 ~~✓~~
10. John Crawford #49 ~~✓~~
11. Scott Jacoby #59 ~~✓~~
12. Michelle McRoberts #57 ~~✓~~

JURY 6/13/06 8:58:1

ROLL CALL JURY SECTION

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

JUDGE BENSON TIME IN \_\_\_\_\_

CASE CR-06-107 JURY SELECTED \_\_\_\_\_

St vs Pina

JURY FINISHED 6-16-11:30am JUDGEMENT \_\_\_\_\_

*full day*  
*1/2 - 16th*

JUN 16 2006

*Sty*

Clerk

Deputy Clerk

Trial 6/19 1/2 day 6/20 full 6/21 full 6/23  
VOIR PER CAUSE JURY  
6/27 full - 6:20 @ 10:30pm

JUROR# June 15<sup>th</sup>, 2006

EXC POST RC

JUROR#	NAME	EXC	POST	RC	VOIR	PER	CAUSE	JURY
JU/0000328	AGUIRRE, JERRY EDWARD (58)							X
JU/0000040	AKINS, JULIE L. (77)							
JU/0000024	ALVEY, RONALD DEAN JR (47)					X		
JU/0000425	ASTON, DONA KAY (11)							X
JU/0000241	BAGGETT, JUDY A (44)					X		
JU/0000320	BATEMAN, JESSICA SHILOH (5) <i>6-16-06 9:00 am</i>	X						
JU/0000473	BAUMGARTNER, TABATHA JO (63) <i>6-15-06</i>	X		AM 15				
JU/0000046	BEAN, LORI ANNE (79) <i>6-15-06</i>	X		AM 15				
JU/0000258	BEER, LUCINDA MARIE (10)					X		
JU/0000054	BILLS, JACK E (74)							
JU/0000035	BLAYLOCK, MICHELLE ELAINE (78) <i>6-15-06</i>	X		AM 15				
JU/0000056	BROWNFIELD, PATRICIA RAE (72) <i>6-15-06</i>	X		AM 15 <sup>th</sup>				
JU/0000269	CRAWFORD, JOHN (49)					X		
JU/0000042	DAVIS, KATHLEEN (46)					X		
JU/0000197	DELEON, RUDY JR (15) <i>6-15-06</i>	X		AM 6-15				
JU/0000364	DEMEULE, RENE P (24) <i>6-15-06</i>	X				X		
JU/0000447	DOBBS, WILEY JOEL (32)					X		
JU/0000021	DROWN, AMANDA NICOLE (60)					X		
JU/0000053	EGNER, AMANDA RENEE (28) <i>6-15-06</i>	X		AM 15 <sup>th</sup>				
JU/0000182	FETTERLY, SYDNEY LYNNE (19)					X		
JU/0000385	FUSS, DEBRA KAY (4) <i>6-15-06</i>	X		AM on 15 <sup>th</sup>				
JU/0000333	GAWLINSKI, MARK M (18) <i>6-15-06</i>	X		AM on 15				
JU/0000058	GEMAR, COURTNEY MARIE (26) <i>6-15-06</i>	X		AM 15				
JU/0000350	GIETZEN, DANIELLE C (3)							X



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

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

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

JUROR#	EXC	POST	RC	VOIR	PER	CAUSE	JURY
JU/0000071 GOODING, MICHAEL P (42)							
JU/0000359 GOODMAN, LUPE (22) 6-15-06	X						
JU/0000321 GREER, GEOFFREY BRIAN (21)							X
JU/0000037 HANSON, ANNA MAY (43) 6-15-06	X						
JU/0000412 HAWKER, RANDY RAY (50) 6-15-06	X						
JU/0000048 HELTON, RUTH ANN (61)							
JU/0000289 HILL, TRENTON HOWARD (20)							X
JU/0000029 HOLLOWAY, CORY LYNN (54) 6-15-06	X						
JU/0000066 HUMAN, STEVAN ADRIAN (55)					X		
JU/0000143 HUTTON, SHERI LYNNE (16) 6-15-06	X						
JU/0000297 JACOBY, SCOTT WAYNE (53)					X		
JU/0000045 JAMES, RONALD L (34)					X		
JU/0000493 JENTZSCH, SAVANAH MARIE (70)							
JU/0000156 JOSEPHSEN, LEIGH H (25)							X
JU/0000398 KLUCKEN, SAMUEL BENJAMIN (36)							X
JU/0000458 KOFFER, DARCI LEE (76)							
JU/0000175 KOPP, JANINE LANETTE (52) 6-15-06	X						
JU/0000264 LENT, TIMOTHY GEORGE (53)					X		
JU/0000038 LUFF, HEATHER MARIE (71)							
JU/0000078 MANGINI, PAULA RAE (41)							X
JU/0000216 MCCOMAS, STACI MICHELLE (40) 6-15-06	X						
JU/0000144 MCGUIRE, MARK EUGENE (35)							X
JU/0000051 MCROBERTS, MICHELE KALYNN (37)					X		
JU/0000429 MERRILL, CHARLES VERNON (66) 6-15-06	X						

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

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

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

JUROR#	EXC	POST	RC	VOIR	PER	CAUSE	JURY
JU/0000415 MILLER, SCOTT WILLIAM <i>6-15-06</i>	<input checked="" type="checkbox"/>		AM 15				
JU/0000218 MOORE, JANELLE MARIE	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
JU/0000397 NEWBRY, MOLLY ANN	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000453 NICELY, COLLEEN ANN	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000026 OLIVAS, THERESA MARIE	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000044 OLMSTEAD, VANESSA J	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000055 ONEIDA, MARION PAUL <i>6-15-06</i>	<input checked="" type="checkbox"/>		AM 15 <sup>th</sup>				
JU/0000106 ORR, DAVID SHAWN	<input checked="" type="checkbox"/>						
JU/0000097 OVERTON, SALLY JEAN	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000041 PARSLOW, SUSAN RUTH	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
JU/0000057 PETERSON, KEVIN J <i>6-15-06</i>	<input checked="" type="checkbox"/>		AM 15 <sup>th</sup>				
JU/0000308 RATTO, JOSEPH WILLIAM <i>6-15-06</i>	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
JU/0000034 RONK, WILLIAM JOSEPH	<input checked="" type="checkbox"/>		AM 15 <sup>th</sup>				
JU/0000174 SABO, BETTY RUTH	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000318 SANDERS, MELANIE DELL	<input checked="" type="checkbox"/>						
JU/0000039 SCOTT, JASON L	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
JU/0000481 SHEPPARD, STAN R	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000023 SPOONER, LISA	<input checked="" type="checkbox"/>						
JU/0000220 STARRY, CONNIE JO	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		
JU/0000123 STOKES, DOUGLAS ADAM <i>6-15-06</i>	<input checked="" type="checkbox"/>		AM 15				
JU/0000410 SWAIN, NANCY R	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
JU/0000478 SWENSEN, MARILYN GRACE	<input checked="" type="checkbox"/>						<input checked="" type="checkbox"/>
JU/0000232 TALBOT, MATTHEW NIMROD <i>6-15-06</i>	<input checked="" type="checkbox"/>		AM 15				
JU/0000337 TANNER, THOMAS D.	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		

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

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

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

JUROR#	EXC	POST	RC	VOIR	PER	CAUSE	JURY
JU/0000229 VAN LEUVEN, SALLY 6-15-06 (6A)	X			AM 15 <sup>th</sup>			
JU/0000224 WALTERS, KORLA 6-16-06 9:00 AM (29)	X			AM 15 <sup>th</sup>			
JU/0000446 WEBB, DANNY LYLE 6-16-06 9:18 AM (8)	X						
JU/0000435 WHITE, KENNETH LEE 6-15-06 (62)	X			AM 15			
JU/0000032 WOLTERS, LOREN JAY 6-15-06 (51)	X			AM 15			
JU/0000052 WOODS, JAMES CHARLES (73)							
JU/0000325 ZEIGLER, JAMES DANIEL (38)					X		

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 19 AM 10:23

BY Jly CLERK OF THE DISTRICT COURT

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. )  
 )  
 JUAN FUENTES-PIÑA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-06-0107

**MEMORANDUM DECISION**  
**AND ORDER R.E.**  
**MOTION TO**  
**PRESENT RULE 404(b)**  
**EVIDENCE**

This matter is before the Court on the State's Motion in Limine to present I.R.E. 404(b) evidence. The matter was argued on Wednesday, June 14, 2006. The defendant was present and represented by Ms. Marilyn Paul. Mr. Grant Loeb, Twin Falls Prosecuting Attorney, appeared on behalf of the State.

After reviewing the materials submitted by both parties, researching the applicable law, and hearing oral argument, the request to present the testimony of Mr. Richard Martin is granted in part and denied in part.

**A. The Motion in Limine Standard.**

Idaho recognizes the importance of a motion in limine. A motion in limine enables a judge to make a ruling on evidence without first exposing it to the jury. A motion in limine seeks an advance ruling on the admissibility of evidence. *State v. Young*, 136 Idaho 113, 120, 29 P.3d 949, 956 (2001). It avoids juror bias occasionally generated by objections to evidence during trial. The court's ruling on the motion enables counsel of both sides to make strategic decisions before trial concerning the content and order of evidence to be presented. *See generally Warren v. Sharp*, 139 Idaho 599, 83 P.3d 773 (2003).

The motion in limine is based upon an alleged set of facts rather than the actual testimony in order to for the trial court to make its ruling and therefore is not a final order. *Id.* The trial court may reconsider the issue at any time, including when the actual presentation of facts is made. *Id.* As the Idaho Supreme Court noted in *State v. Hairston*, 133 Idaho 496, 503, 988 P.2d 1170, 1177 (1999), certain evidence may become relevant for more than one purpose, i.e., for motive or impeachment, as the trial unfolds. Such enhanced relevancy, when appearing during the trial, will provide a basis for the court to alter a pre-trial ruling on a motion in limine.

The court recognizes that analysis of the proffered testimony presents a two-pronged inquiry under Rule 404(b). The first inquiry is whether the

evidence is relevant, and second, whether the probative value of the evidence is substantially outweighed by dangers of unfair prejudice. The court further recognizes the nature of a discretionary inquiry, which is: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason. *Sun Valley Shopping Ctr. v. Idaho Power*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

**B. Introduction.**

The State seeks to introduce the testimony of Mr. Richard Martin on two fronts: first, to establish that Martin had contact with the defendant a short time before the critical events in this case; and second, Mr. Martin would testify that he observed Mr. Piña allegedly displaying a weapon in the defendant's coat pocket a short time before the alleged killing in this matter.

**C. Mr. Martin May Testify As To His Sighting of Mr. Piña.**

"The district court has broad discretion in the admission and exclusion of evidence, and its decision to admit such evidence will be reversed only when there has been a clear abuse of that discretion." *State v. Perry*, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003). The State argues that Mr. Martin should be allowed to testify regarding his contact with Mr. Piña a short time before the alleged killing

of Mr. Naranjo. The court will allow Mr. Martin to testify to his alleged contact with the defendant.

Mr. Martin's testimony is being offered as impeachment of the defendant's statements. The credibility of a witness may be attacked at any time. I.R.E. 607. Martin's testimony will be that he had contact with the defendant at a time when Mr. Piña indicated he was elsewhere. As a direct contradiction of Mr. Piña's assertions, such testimony is admissible and will be allowed. *See, e.g., State v. Mace*, 133 Idaho 903, 906, 994 P.2d 1066, 1069 (Ct. App. 2000) (admission of evidence of a prior DUI was not improper; The State was not introducing the evidence to show that the defendant had a propensity to drink and drive, but to impeach the defendant's own prior statement. Therefore, admission of the evidence was not violative of I.R.E. 404(b)).

Martin's testimony is thus relevant and not prejudicial to the extent required for exclusion of the evidence. His testimony will be allowed.

**D. Mr. Martin May Not Testify As To Mr. Piña's Conduct At The Time Of Their Encounter.**

The State also seeks to introduce evidence that Mr. Piña had his hand in a jacket pocket and was moving the hand back and forth as if to threaten that Piña had a gun. The court will sustain the defendant's objection to this testimony on the basis of Rule 403.


The court concludes that the probative value of such testimony, i.e., that Piña had a gun a short time prior to the alleged killing, or that Piña was threatening others at that time, is substantially outweighed by the danger of unfair prejudice to Mr. Piña if this evidence is allowed. There is no evidence that Mr. Naranjo was present at that time, or that Piña's threats were somehow directed to Naranjo. The court further concludes that allowing such testimony could also lead to delay and/or confusion of the jury on the issues pending before this court.

#### CONCLUSION

Based upon the foregoing analysis and the state of the record at this time, the State's motion to present the testimony of Richard Martin is granted in part and denied in part, as set forth above.

DATED this 19<sup>th</sup> day of June, 2006.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "G. Richard Bevan", written over a horizontal line.

G. RICHARD BEVAN  
District Judge

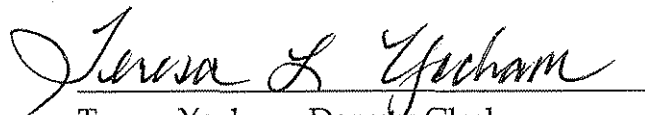


CERTIFICATE OF MAILING/DELIVERY

I, Teresa Yocham, hereby certify that on the 19 day of June, 2006, a true and correct copy of the foregoing Order was mailed, postage paid, faxed and/or hand-delivered to the following persons:

Grant Loeb  
Twin Falls County Prosecutor  
P.O. Box 126  
Twin Falls, ID 83303

Marilyn Paul  
Twin Falls County Public Defender  
P.O. Box 126  
Twin Fall, ID 83303

  
\_\_\_\_\_  
Teresa Yocham, Deputy Clerk

OFFICE OF THE PUBLIC DEFENDER  
Attorney at Law  
P.O. Box 126  
Twin Falls, ID 83303-0126  
Telephone: (208) 734-1155  
ISB# 4444

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2006 JUN 19 PM 12:03

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

DEPUTY

ORIGINAL

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. )

JUAN FUENTES-PINA, )

Defendant. )

No. CR 06-107

SUPPLEMENTAL  
EXHIBIT LIST

COMES NOW The Defendant, by and through his attorney of record, MARILYN B.  
PAUL, Public Defender for Twin Falls County, State of Idaho, and submits the following list of  
potential exhibits in the above-entitled matter:

EXHIBIT LIST

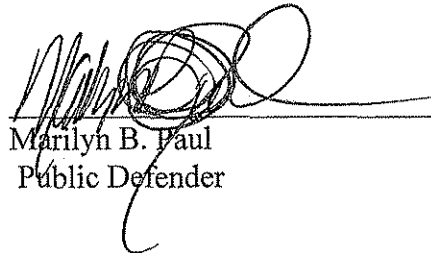
\_\_\_\_\_, DISTRICT JUDGE                      CASE NO. \_\_\_\_\_  
 \_\_\_\_\_, DEPUTY CLERK  
 \_\_\_\_\_, COURT REPORTER                      DATE: \_\_\_\_\_  
 CASE: \_\_\_\_\_ VS. \_\_\_\_\_

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
	Report Cassia County Case No. 051100103, 7 pages					
	Statement Johnny Shores, 2 pages					
	AFIS inquiry form, 2 pages					


NOTE: Numbers on documents are from discovery.

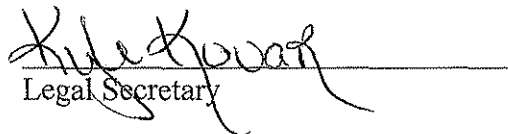
Defendant reserves the right to submit additional exhibits on behalf of the defense.

DATED this 19 day of June, 2006.

  
Marilyn B. Paul  
Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19 day of June, 2006, I served a copy of the foregoing ANTICIPATED EXHIBITS thereof into the mail slot for THE OFFICE OF THE TWIN FALLS COUNTY PROSECUTOR 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 Public Defender's Office.

  
Legal Secretary



**CASSIA COUNTY SHERIFF'S OFFICE**

129 E. 14<sup>th</sup> Street – Burley, Idaho 83318 Ph. 208-878-2251 Fax 208-878-9797

**FAX COVER SHEET**

TO: Det. Fulmer  
OF: Twin Falls Police Department  
FAX: 208-733-0876

FROM: Detective Dan Renz  
OF: Cassia County Sheriff's Office  
FAX #: 208-878-9797 Phone #: 208-878-9360

PAGES: 7 (Including Cover Sheet)  
DATE: 06-13-06

Re: Case #051100103

**COMMENTS:**

Let me know if you can't read the fax and I will mail you a copy.

CRIME- CRS008

CASSIA COUNTY SHERIFF DEPT.  
INCIDENT REPORT  
051100103

6/13/06 PAGE: 1

CASE#: 051100103 STATUS: CLEARED BY ARREST REPORTED BY: SHERIFF DISPATCH CENTER DATE REPORTED: 11-09-2005 18:25  
E911#: REPORTING OFFICER: MICHAEL D. SCHIERS

INVESTIGATOR ASSIGNED: DANIEL RENZ  
DIVISION ASSIGNED: INVESTIGATION  
DATE ASSIGNED: 11-10-2005

COMPLAINT CODE: 0502

BURGLARY-1ST DEGREE-NO FORCE

UCR: 05

INCIDENT DATE: 11-09-2005 WED

PATROL AREA: 71 HIWAY 27 TO HIWAY 77, RIVER TO 500 SOUTH  
SITUS ADDRESS: 346 E. 200 S. BURLEY

RESIDENTIAL? Y

PROPERTY STOLEN? Y

SUSPECT

PERSON#: 000026827 SCHMIDT, JEREMIAH BENJAMIN DOB: 4-01-1987 AGE: 18 M PLACE OF BIRTH: ELKO, NV  
BOOK#: 019522 SS#: 530-43-0662 STATE ID90001667  
FBI#: 852685JCI DRIVERS LIC#: BURLEY, ID 83318 RACE: WHITE/ARABIC/SPANISH GLASSES: NONE  
HOME PHONE: EYE COLOR: BLUE HAIR COLOR: BLOND  
WORK PHONE: HEIGHT: 5-09 WEIGHT: 165  
FACIAL HAIR: BUILD: HEAVY-LARGE HAIR LENGTH: SHORT-ABOVE EARS  
SPEECH CHAR: COMPLEXION: LIGHT HAIR STYLE: STRAIGHT

ALIASES

BEACH, SHANE MICHAEL

BIRTHDATE: 4-20-1984

SS#

SUSPECT

PERSON#: 000080153 MARTINDALE, JAY C DOB: 10-21-1986 AGE: 19 M PLACE OF BIRTH:  
325 6TH AVE EAST SS#: 519-29-0794 STATE  
FBI#: DRIVERS LIC#: ID HB186111F  
TWIN FALLS, ID 83301 RACE: WHITE/ARABIC/SPANISH GLASSES:  
HOME PHONE: EYE COLOR: HAZEL HAIR COLOR: BROWN  
WORK PHONE: HEIGHT: 5-11 WEIGHT: 140

SUSPECT

PERSON#: 000080154 DEGARMO, JACOB JEFFREY DOB: 10-27-1986 AGE: 19 M PLACE OF BIRTH: MOUNTAIN HME, ID  
BOOK#: 026186 1522 EAST 4500 NORTH SS#: 518-37-8435 STATE  
FBI#: DRIVERS LIC#: ID IA263614J  
BOHL, ID 83316 RACE: WHITE/ARABIC/SPANISH GLASSES:  
HOME PHONE: 543-4528 EYE COLOR: BLUE HAIR COLOR: BLOND  
WORK PHONE: HEIGHT: 5-11 WEIGHT: 185

VICTIM

PERSON#: 000079034 FUELLING, KARL D. DOB: 6-05-1959 AGE: 46 M PLACE OF BIRTH:  
346 E. 200 S. SS#: STATE  
FBI#: DRIVERS LIC#: ID  
BURLEY, ID 83318 RACE: WHITE/ARABIC/SPANISH GLASSES:  
HOME PHONE: 208-678-9277 EYE COLOR: BROWN HAIR COLOR: BLOND  
WORK PHONE: 678-0430 HEIGHT: 58 WEIGHT: 160

CRIME- CRS008

CASSIA COUNTY SHERIFF DEPT.  
INCIDENT REPORT  
051100103

6/13/06 PAGE: 2

SUBJECT

PERSON#: 000063446	THOMPSON, BRIANA K	DOB: 2-22-1987	AGE: 18 F	PLACE OF BIRTH: BURLEY, ID
BOOK#: 023439	550-A SOUTH 300 WEST	SS#: 518-31-6755		STATE
	HEYBURN, ID 83336	FBI#:		DRIVERS LIC#: ID SK321621G
HOME PHONE: 436-0793		RACE: WHITE/ARABIC/SPANISH		GLASSES:
WORK PHONE: 732-6110		EYE COLOR: HAZEL		HAIR COLOR: BLOND
		HEIGHT: 5-09		WEIGHT: 125

EMPLOYMENT

PETSMART

JOB DESCRIPTION:

TWIN FALLS, ID

WORK PHONE: 732-6110

PROPERTY- HANDGUNS

DESCRIPTION: .22 CAL PISTOL SEMI-AUTO	MANUFACTURER: BERETTA	SERIAL NUMBER: UNK
COLOR:	PROPERTY VALUE: 0.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED:	RECOVERY CODE:
	RECOVERED VALUE: 0.	WHERE RECOVERED:
	RETAINED FOR EVIDENCE?	DATE RETURNED:

PROPERTY- MISC. ITEMS

DESCRIPTION: METAL CABINET	MANUFACTURER: HOMAK	SERIAL NUMBER:
COLOR: GREEN	PROPERTY VALUE: 80.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED: 2-24-2006	RECOVERY CODE: RECOVERED/DAMAGED
	RECOVERED VALUE: 0.	WHERE RECOVERED: BIG WOOD CANAL
	RETAINED FOR EVIDENCE?	DATE RETURNED: 2-24-2006

PROPERTY- MISC. ITEMS

DESCRIPTION: 5 BOXES 12 GA. SHOTSHELL	MANUFACTURER: UNK	SERIAL NUMBER:
COLOR:	PROPERTY VALUE: 30.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED:	RECOVERY CODE:
	RECOVERED VALUE: 0.	WHERE RECOVERED:
	RETAINED FOR EVIDENCE?	DATE RETURNED:

PROPERTY- MISC. ITEMS

DESCRIPTION: 2 BOXES .30-06 SHELLS	MANUFACTURER: UNK	SERIAL NUMBER:
COLOR:	PROPERTY VALUE: 30.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED:	RECOVERY CODE:
	RECOVERED VALUE: 0.	WHERE RECOVERED:
	RETAINED FOR EVIDENCE?	DATE RETURNED:

PROPERTY- RIFLES

DESCRIPTION: MOD. 700 30-06	MANUFACTURER: REMINGTON	SERIAL NUMBER: UNK
COLOR:	PROPERTY VALUE: 450.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED:	RECOVERY CODE:
	RECOVERED VALUE: 0.	WHERE RECOVERED:
	RETAINED FOR EVIDENCE?	DATE RETURNED:

CRIME- CRS008

CASSIA COUNTY SHERIFF DEPT.  
INCIDENT REPORT  
051100103

6/13/06 PAGE: 3

PROPERTY- RIFLES

DESCRIPTION: MOD. 12 12 GAUGE SHOTGUN	MANUFACTURER: WINCHESTER	SERIAL NUMBER: UNK
COLOR:	PROPERTY VALUE: 500.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED:	RECOVERY CODE:
	RECOVERED VALUE: 0.	WHERE RECOVERED:
	RETAINED FOR EVIDENCE?	DATE RETURNED:

PROPERTY- RIFLES

DESCRIPTION: MOD. 52 .22 CAL RIFLE	MANUFACTURER: WINCHESTER	SERIAL NUMBER: UNK
COLOR:	PROPERTY VALUE: 0.	OWNER: 000079034 FUELLING, KARL D.
STOLEN: Y	DATE RECOVERED:	RECOVERY CODE:
	RECOVERED VALUE: 0.	WHERE RECOVERED:
	RETAINED FOR EVIDENCE?	DATE RETURNED:

PROPERTY VALUE: 1,090. RECOVERED VALUE: 0.

----- CASE NARRATIVE -----

COMMENTS MADE ON 11-09-2005 BY 302 MICHAEL D. SCHIERS

ON THE ABOVE DATE AND TIME, I WAS SENT TO 346 E. 200 S. IN REFERENCE TO A BURGLARY THAT TOOK PLACE IN THE DAYTIME OF TODAY'S DATE. WHEN I ARRIVED, I SPOKE TO KARL FUELLING. HE STATED THAT SOMETIME TODAY, SOMEONE ENTERED THE UNLOCKED HOUSE AND WENT DOWNSTAIRS TO THE PANTRY. HE STATED HE HAD A METAL CABINET THAT WAS SCREWED INTO THE PLASTER BOARD. INSIDE THE CABINET WERE SEVERAL GUNS. KARL SAID THAT THE PERSON OR PERSONS PULLED THE CABINET FROM THE WALL AND REMOVED IT FROM THE HOUSE. HE IS NOT AWARE OF ANYONE HAVING BEEN IN THE HOUSE THAT SHOULDN'T HAVE BEEN. HE DID STATE THAT THE CABLE COMPANY WAS AT THE HOUSE A FEW DAYS AGO, BUT HE IS NOT SURE IF THEY WENT INTO THE PANTRY OR NOT. KARL STATED THAT NOTHING ELSE HAS BEEN TAKEN FROM THE HOUSE. HE IS GOING TO TRY AND FIND THE SERIAL NUMBERS TO THE WEAPONS AND BRING THEM IN.

SEE CASE FILE FOR MORE INFORMATION.

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_





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Cassia County Sheriff's Office  
Supplemental Report

Cassia County Case Number: 05110103  
Date of Initial Report: 11-09-05  
Report Prepared by: Det. Daniel Renz  
Offense: Burglary, Grand Theft  
Status: Cleared by Arrest

SYNOPSIS: See incident report by Sgt. Mike Schiers for the above case number.

DETAILS: On 12-03-05 I spoke with Karl Fuelling on the phone. Karl told me he spoke with his neighbor, Rocky Schmidt, who told him that he thinks his son, Jeremiah Schmidt, had committed the burglary.

On 12-05-05 I spoke with Rocky Schmidt on the phone. Rocky told me that he suspects that Jeremiah committed the burglary at the Fuelling's residence, but he could not get Jeremiah to admit it. Rocky did not know where Jeremiah was living.

On 02-09-06 I interviewed Jeremiah Schmidt at the sheriff's office. Jeremiah was in custody at the time on different charges. Jeremiah was read his rights by Det. Jay Heward and he signed a waiver. The interview was recorded on DVD. See DVD for complete interview.

During the course of the interview Jeremiah told me that on a day he went to court in Burley he acted as a lookout while Jay Martindale and Jake Degarmo (from Twin Falls) entered the Fuelling residence (located at 346 East 200 South, Cassia County, Idaho) and stole the gun safe. Jeremiah said he acted as a lookout from his parents' residence and he was talking to Martindale and Degarmo on a cell phone while they were inside the Fuelling residence. Jeremiah said he picked up Martindale, Degarmo and the gun safe driving his ex-girlfriend's car, a red Mazda 240 SX hatchback. Jeremiah's ex-girlfriend is Breanna Thompson.

Jeremiah said he and Degarmo went into the Fuelling residence about 3 weeks prior and scoped it out. It was then that they saw the gun safe. Jeremiah said Martindale and Degarmo wanted to come to Burley with him to steal the gun safe.

Jeremiah said they took the gun safe to the Milner area, opened the safe, took the guns, and dumped the safe. Jeremiah said the safe contained a .22 caliber pistol, a shotgun, a 308 rifle and a .22 rifle.

Jeremiah indicated that the guns were taken to Jay Martindale's residence in Twin Falls. Jeremiah also said he thinks the shotgun was used in a murder committed by Johnny Shore. Jeremiah said that Jay told him he sawed off the shotgun that they stole. Jeremiah said Jay showed him the shotgun and the blue bandana that he put on the end of the gun.

I, along with Lt. Randy Kidd, took Jeremiah to the Milner dam area and he showed us the canal that the gun safe was thrown into. Jeremiah could not remember the exact location where the gun safe was left. We were unable to locate the gun safe by driving the north side of the canal.

On 02-21-06 I spoke with Det. Chris Fulmer of the Twin Falls Police Department. Det. Fulmer advised me that two shotguns were recovered from Jay Martindale's residence at 325 6<sup>th</sup> Avenue East in Twin Falls during a murder investigation. Det. Fulmer advised that a Winchester model 12 pump shotgun that had been sawed off was recovered.

On 02-23-06 I left a phone message for Det. Fulmer requesting that photos of the Winchester shotgun be mailed to me.

On 02-24-06 at about 1030 hours I, along with Det. Jay Heward, located a green Homak gun safe in the canal operated by the Big Wood Canal Company located to the northeast of Milner Dam. The gun safe was laying in water and ice on the bottom of the canal against the north bank. That area of the canal was very steep. I located the safe by walking the south bank. The safe was in the area where Jeremiah Schmidt said the stolen gun safe was discarded. I took pictures of the safe with a disposable camera. Det. Heward and I transported the safe to the Cassia County Sheriff's Office. I inspected the safe and found it to have a layer of dirt/dust on the areas that were not submerged. I was unable to dust for prints due to the dirty condition of the safe. The safe appeared to have been ripped open at the seams on the top and the bottom. The safe contained several dead crawdads and one red shotgun shell. I showed the gun safe to Karl Fuelling and he identified it as his stolen safe. I took additional photos of the safe and returned it to Fuelling.

On 02-24-06 I received a letter in the mail from the Twin Falls Police Department. The letter contained photos of a sawed off shot gun. I asked Karl Fuelling to look at the photos. Fuelling said the shotgun looks like the one that he owned that was stolen from his residence (except that the stock and barrel had been sawed off). Fuelling said he thinks it is his stolen shotgun. Fuelling said he could be more positive if he inspected the shotgun in person and looked for some scratches in the metal.

On 02-24-06 I showed the shotgun photos to Jeremiah Schmidt at the sheriff's office. Jeremiah said he did not know if it was the shotgun stolen from the fuelling residence. Jeremiah said he was not familiar enough with the shotgun to identify it by sight.

On 02-24-06 I spoke with Sheela Antone of the Minidoka County Prosecutor's Office and she confirmed that Jeremiah Schmidt was scheduled for court on 11-09-05.

I request that charges be filed against Jeremiah Schmidt, Jay Martindale and Jacob Degarmo for the charges of burglary and grand theft.

Date Prepared: 02-27-06

On 03-07-06 at 1700 hrs I went to the probation and parole offices located at 594 Washington Street South in Twin Falls, Idaho. I spoke with probation officer Larry Shepherd who is Jacob Degarmo's probation officer. Officer Shepherd and Degarmo had a meeting scheduled for 1715 hours. I met with Jacob Degarmo in an office that was not being used at the time. I read Degarmo his constitutional rights and he signed a waiver agreeing to speak with me. The interview was recorded onto micro-cassette. See micro-cassette for complete interview.

During the course of the interview Degarmo said that he attended school with Jeremiah Schmidt for about 4 years in Burley. I showed Degarmo two pictures of the recovered gun safe. Degarmo said he knew about the safe and about the guns. Degarmo denied that he participated in the theft. Degarmo also denied going in the house with Schmidt three weeks prior to the theft. Degarmo said he saw the guns after they were brought back to Jay Martindale's home in Twin Falls. Degarmo said that Martindale and Schmidt brought the guns to the house. Degarmo said he was at Martindale's house when Schmidt talked about wanting to go to Burley and steal some guns from a house. Degarmo told me that Martindale said he would go with Schmidt because they needed a lookout or something. Degarmo said that he was going to go with them but he didn't because his girlfriend would not approve of him going to Burley. Degarmo said that Johnny Shore and Johnny's girlfriend were there at Martindale's residence at the time.

Degarmo said that after Schmidt and Martindale got back from Burley he walked over to Martindale's residence. Degarmo said he saw the guns in the back hot tub room. Degarmo said he saw a .22 rifle, a 30-30 rifle (or maybe a 30-06) with a scope, a shotgun and a little black .22 caliber Beretta slide action pistol. Degarmo said that Schmidt told him that these were the guns that they took. Degarmo said that he took the Beretta and he sold it to Carlos Pena for \$100.00 a couple days later. Degarmo said that Schmidt sold the two rifles to Schmidt's cousin who is on probation and lives in Hazelton. Degarmo said that there was a red headed male named Nathan living with Schmidt's cousin. Degarmo said that Martindale sawed off the shotgun's barrel and stock. Degarmo said he saw Martindale do this. Degarmo said he believes it was the shotgun used in the murder of Jesse Naranjo.

Degarmo said that he used to have couple of cell phones that belonged to his girlfriend Cindy Garcia. Degarmo said he could not remember the phone numbers. I told Degarmo that Schmidt said he spoke with Degarmo on his cell phone from Schmidt's parents' house while Schmidt was acting as a lookout for Degarmo and Martindale. I advised Degarmo that there would be records of that call. Degarmo told me that Schmidt called him from his Dad's house that day they went to Burley. I told Degarmo that (his story) was way too convenient for me to swallow and I thought he was involved. I said, "If you're involved Jake, like I said, tell me your involvement, I'm not going to arrest you."

I continued talking and a few seconds later Degarmo looked at his watch and said, "Look, I gotta get going. I was there." I asked Degarmo, "You was at the house?" Degarmo said, "Yea, I went there. Three weeks before I was not there. We did go in the house. I was there when I, we took the safe, it was Jeremiah's idea to go get the safe. I was hurting for money. I had 700 dollars worth of rent, 500 dollars worth of bills. I was like fuck it, yea, let's do it. I was strung out on meth. Alright? I was there, we went in, we got the safe."

Degarmo told me that Schmidt did not act as a lookout and went in the house with them. Degarmo said all three of them went in the house. Degarmo said the safe was downstairs. Degarmo said they were in Schmidt's girlfriend's car, a red Probe. Degarmo said the safe was thrown in the water at Milner, after the bridge.

After the interview was over I was talking to Degarmo and his probation officer, Larry Shepherd. Degarmo asked me if he was going to be facing felony charges for this. I told him that he was going to be charged and an arrest warrant for him may come out. I told him I would try to advise his probation officer if a warrant came out so he could turn himself in.

Report updated on 03-08-06

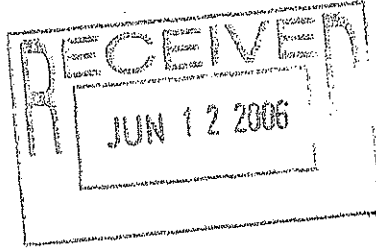
I was asleep in my bedroom with my girlfriend Christina Ferrer and we were awoken by people arguing in Spanish. Christina told me to get up and go see what was going on. I said not lets just go back to bed, then we heard one of the voices get louder which was Carlos Pina. Then Christina said Johnny go see whats going on. So I got outta bed so did Christina we went to the door opened it and when we did someone was on his knees I couldn't tell who it was because his back area was pointed towards me and Carlos was in front of him with a shotgun walking back and forth yelling at him in Spanish. Carlos stopped once and pointed the gun at him. I realized who it was <sup>Jesse P.</sup> and Christina said Johnny make them stop or take care of it. So I went out there told Carlos to give me the gun. when he did Jesse Naranjo jumped off of his knees and grabbed the shotgun away from me. Jay Montindale, Jake Dagermo, all ran in the room on something and me, Carlos, Jesse. all wrestled around for the gun. Jesse had possession of the trigger and butt area of the shotgun. And he said he would pull the trigger Carlos ill pull the trigger. I had a hold of the barrel and pump part of the shotgun so did Carlos, Carlos also was punching him. I looked over to see where it would shoot if he did pull the trigger and it was pointed directly at Christina's face and body area. She was standing in my bedroom doorway. So I started yanking on the gun. we all continued to fight/wrestle for the gun. I ended up getting the gun away. they still continued to fight or Carlos was punching him. they got to the back door and Carlos pushed the door shut on Jesse and I was at the kitchen doorway that leads to the back porch and I had the shotgun. I then fired the gun. I went back into the living room laid the gun on the couch. went into my bedroom Christina was grabbing some things and yelling. Then Jay came in with

The gun and said we need to get rid of it. I put on my shoes grabbed my hat and grabbed the gun and put it under Jays bed I then heard hunking I went outside got into my girlfriends car Jeremiah Smith, Jay Norfindale and Christina were all in the car. I got in and we left while driving I said we should go back but Jeremiah and Jay said No. Christina agreed she would go back with me but we never ended up going back we dropped off Jay and Jeremiah at Jeremiah's house and we all agreed to say we were not there. Me and Christina drove to my rooms I knocked but she never answered, so we went to Christina's house. I called my mom from Christina's. I got hold of her and I started to cry so she said she wanted to talk to Christine so I let her and I sat on her stairs, Christine came up to me and said your mom wants us to go over there, so we did. Then we went to Fred's ~~Myers~~ and while we were there Christina's dad called Christine and said you need to come home now because the cops wanted to talk to her. Christine said she was gonna drop me off and I said No I'm going too. So we went back to my rooms and told her we were going over to Christina's house, when we got there the cops showed up.

# TWIN FALLS POLICE DEPARTMENT

JAMES R. MUNN JR.

Chief Of Police



## FACSIMILE TRANSMITTAL SHEET

TO: Grant FAX NUMBER: 736-4120

FROM: Patti PHONE NUMBER: 735-7261

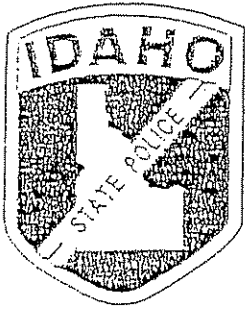
DATE: 6-9-06 TOTAL # OF PAGES INCL. TRANSMITTAL SHEET: \_\_\_\_\_

REFERENCE: \_\_\_\_\_

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY

NOTES/COMMENTS: \_\_\_\_\_

WARNING: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU RECEIVE THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THIS AGENCY IMMEDIATELY BY TELEPHONE AT (208) 735-7226 AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS BELOW VIA THE US POSTAL SERVICE. THANK YOU.



IDAHO STATE POLICE  
 BUREAU OF CRIMINAL IDENTIFICATION  
 P.O. BOX 700  
 MERIDIAN, ID 83680-0700  
 (208) 884-7130

AFIS INQUIRY FORM

Submitting Agency Information		
Originating Agency: <u>Twain Falls Police</u>	Officer Name: <u>w walter</u>	
Case Number: <u>0506450</u>	Crime: <u>Homicide</u>	Crime Date: <u>11-29-05</u>
Date Submitted/Sent to BCI: <u>12-12-05</u> <i>WPS</i> <u>#12 RR7 059 P3 9096 1122</u>	Items submitted for AFIS processing <input checked="" type="checkbox"/> Number of Latent lift cards <input type="checkbox"/> Number of Ten print cards	
Bureau of Criminal Identification Processing Results		
Date Received BCI: <u>12-15-05</u>	BCI Latent AFIS Lab Number: <u>051199</u>	
BCI Fingerprint Technician who processed: <u>Maria J. Ferguson</u>		Date Processed: <u>12-15-05</u>
Results: <input type="checkbox"/> Latents of no value to make an identification <input type="checkbox"/> Latents of no value for AFIS inquiry <input checked="" type="checkbox"/> Latents submitted to AFIS. Date searched: <u>12-15-05</u> <input checked="" type="checkbox"/> No hit. <input type="checkbox"/> HIT. Candidate list attached. <input type="checkbox"/> Submitted latents are palms only. <input type="checkbox"/> Latents are of value to make an identification, however not an AFIS search. Please submit suspect fingerprints, when available, along with the latent to the ISP Forensic Bureau for examination and comparison by a Latent Fingerprint Examiner.		

\*All latents will be retained at BCI and remain in AFIS until a Ident is made or the Statute of Limitations has been reached

259

1354

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

**JUN 19 2006**

By Jly Clerk  
Deputy, Clerk

Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

Page 1 of 1

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Jury Trial Day 1	Minutes date:	06/19/2006
Assigned judge:	G. Richard Bevan	Start time:	01:22 PM
Court reporter:	Virginia Bailey	End time:	01:22 PM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loebbs		
Defense attorney:	Marilyn Paul		

Tape Counter: 133 Court convened.  
Mr. Grant Loebbs, Suzanne Craig, Jennifer Gose-Ells are present for the State of Idaho.  
Ms. Marilyn Paul is present for the defendant, Mr. Juan Carlos-Fuentes Pina whom is also present.

Tape Counter: 134 Ms. Paul gave argument on the exhibits being used during the opening arguments.

Tape Counter: 136 Mr. Loebbs gave argument.

Tape Counter: 137 Ms. Paul gave final arguments.

Tape Counter: 138 Court will overrule the objection and court will allow the State of Idaho to use the gun in the opening argument.

Tape Counter: 139 The jury was brought in. Counsel stipulated the jury was present and in their proper places.

Tape Counter: 139 The jury was duly sworn.

Tape Counter: 140 Court read the preliminary jury instructions.

Tape Counter: 157 Mr. Loebbs gave opening argument.

Tape Counter: 236 Ms. Paul gave opening argument.

Tape Counter: 245 Court addressed the jurors. Court admonished the jury.

Tape Counter: 246 Court excused the jury till 9:00 am tomorrow morning.

Tape Counter: 300 Court in recess.

Tape Counter: 305 Court convened. Court addressed Counsel.

Tape Counter: 305 Court addressed the clothing attire of the defendant.

Tape Counter: 306 Court instructed Counsel to provide a list of witnesses by 5:00pm each day for the next day's witnesses. Court informed Counsel of trial schedule.

Tape Counter: 308 Mr. Loebbs requested the court to reconsider the 404(b) issue.

Tape Counter: 312 Ms. Paul gave argument on the motion.

Tape Counter: 312 Court will instruct counsel to follow the order that was issued earlier today, the gun is not to be mentioned.

Tape Counter: 313 Mr. Loebbs addressed the court. Court addressed Counsel.



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

JUN 20 2006

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

User: YOCHAM

Date: 6/30/2006

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

Time: 12:04 PM

Minutes Report

Page 1 of 4

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Jury Trial Day 2	Minutes date:	06/20/2006
Assigned judge:	G. Richard Bevan	Start time:	08:18 AM
Court reporter:	Virginia Bailey	End time:	08:18 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

Tape Counter: 902 Court addressed Counsel.

Tape Counter: 903 The jury was brought in. Counsel stipulated the jury was present and in their proper places.

Tape Counter: 904 State's 1st witness, Jon Reilly. Mr. Reilly was duly sworn and examined by Mr. Loeb.

Tape Counter: 907 State's Exhibit 2, picture of alley with blue garbage can, was marked, identified and admitted.

Tape Counter: 910 State's Exhibit 1, CD of 911 call, was marked, identified and admitted.

Tape Counter: 912 Cross-examination by Ms. Paul.

Tape Counter: 916 The witness stepped down.

Tape Counter: 917 State's 2nd witness, Jennifer Smallwood. Ms. Smallwood was duly sworn and examined by Ms. Gose-Ells.

Tape Counter: 924 Cross-examination by Ms. Paul.

Tape Counter: 926 Follow-up by Ms. Gose-Ells. The witness stepped down.

Tape Counter: 927 State's 3rd witness, Officer Eric Steele. Officer Steele was duly sworn and examined by Ms. Gose-Ells.

Tape Counter: 932 State's Exhibit 7, picture of Jesse Naranjo, was marked, identified and admitted.  
State's Exhibit 4, picture of jacket, was marked, identified and admitted.  
State's Exhibit 5, jacket, was marked, identified and admitted.

Tape Counter: 938 State's Exhibit 3, photograph of alley, was marked, identified and admitted.  
State's Exhibit 8, photograph of red car, was marked, identified and admitted.

Tape Counter: 943 Cross-examination by Ms. Paul.

Tape Counter: 944 The witness stepped down but remained for recall.

Tape Counter: 945 State's 4th witness, Dr. Kevin Kraal. Dr. Kraal was duly sworn and examined by Ms. Gose-Ells.

Tape Counter: 955 Cross-examination by Ms. Paul.

Tape Counter: 958 The witness stepped down.

Tape Counter: 959 Court admonished the jury. Court excused the jury.

Tape Counter: 1000 Mr. Loeb addressed the court regarding witnesses.

Tape Counter: 1000 Court in recess.

Tape Counter: 1018 Court convened. Court addressed the request from jury regarding reading of the newspaper. Court will grant the request.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

Page 2 of 4

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 1023	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 1023	State's 5th witness, Dennis Chambers. Coroner Chambers was duly sworn and examined by Ms. Craig.
Tape Counter: 1125	State's Exhibit 11, fingerprint card, was marked, identified and admitted.
Tape Counter: 1128	Cross-examination by Ms. Paul.
Tape Counter: 1128	Defendant's Exhibits, A & B, death certificate was marked, identified and admitted.
Tape Counter: 1150	Re direct by Ms. Craig.
Tape Counter: 1151	The witness stepped down.
Tape Counter: 1151	Court admonished the jury. Court excused the jury for the lunch hour.
Tape Counter: 140	Court convened. Ms. Paul addressed the court Mr. Loeb's addressed the court.
Tape Counter: 142	The jury was brought in. Counsel stipulated the jury was present and in their proper seats.
Tape Counter: 142	State's 6th witness, Dr. Glen Robert Groben. Dr. Groben was duly sworn and examined by Ms. Craig.
Tape Counter: 200	State's Exhibit 16, photo of head, was marked, identified and admitted.
Tape Counter: 202	State's Exhibit 17, photo of top of head, was marked, identified and admitted.
Tape Counter: 203	State's Exhibit 16, photo of chin, was marked, identified and admitted.
Tape Counter: 208	State's Exhibit 234, photo of gunshot wound, was marked, identified and admitted.
Tape Counter: 210	State's Exhibit 235, closeup of gunshot wound, was marked, identified and admitted.
Tape Counter: 216	Ms. Paul objected to the questioning of Dr. Groben. Ms. Craig addressed the court.
Tape Counter: 218	Court addressed the jury. Court excused the jury for a brief recess.
Tape Counter: 219	Court addressed Ms. Craig. Ms. Craig questioned the witness for offer of proof.
Tape Counter: 220	Ms. Paul gave argument.
Tape Counter: 221	Court made findings. Court will allow Dr. Groben to testify about what is in the book that is referred to.
Tape Counter: 223	The jury was brought back in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 224	Ms. Craig continued with examination of the witness.
Tape Counter: 229	State's Exhibit 114, bullet box and pellets, was marked, identified and admitted.
Tape Counter: 232	State's Exhibit 112, photo of jewelry, was marked, identified and admitted.
Tape Counter: 233	State's Exhibit 113, jewelry, was marked, identified and admitted.
Tape Counter: 234	State's Exhibit 115, plastic wadding, was marked, identified and admitted.
Tape Counter: 239	Cross-examination by Ms. Paul.
Tape Counter: 241	Defendant's Exhibit C, report from Dr. Groben, was marked, identified and admitted.
Tape Counter: 242	Defendant's Exhibit D, photo of hand, was marked, identified.
Tape Counter: 250	Court addressed the jury. Court excused the jury for the afternoon break.
Tape Counter: 251	Court in recess.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 316	Court convened.
Tape Counter: 316	Ms. Paul addressed the court.
Tape Counter: 316	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 317	Ms. Paul requested Defendant's Exhibit D be admitted. No objection. Defendant's Exhibit D, photo of hand, was admitted.
Tape Counter: 317	State's 7th witness, Detective Ryan Howe. Detective Howe was duly sworn and examined by Ms. Gose-Ells.
Tape Counter: 322	State's Exhibit 19, picture of alley with white vehicle, was marked, identified and admitted.
Tape Counter: 324	State's Exhibit 20, picture of garbage can, was marked, identified and admitted.
Tape Counter: 326	State's Exhibit 23, picture of house with cars in front, was marked, identified and admitted.
Tape Counter: 329	State's Exhibit 24 and 25, photo of house in dark, was marked, identified and admitted
Tape Counter: 333	State's Exhibit 104, picture of beer bottle, was marked, identified and admitted.
Tape Counter: 335	State's Exhibit 26 and 28, photo of was marked, identified and admitted
Tape Counter: 336	State's Exhibit 105, beer bottle, was marked, identified and admitted.
	State's Exhibit 29, shotgun shell, was marked, identified and admitted.
Tape Counter: 340	State's Exhibit 34, photograph of shotgun barrel on countertop, was marked, identified and admitted.
Tape Counter: 341	State's Exhibit 35. shotgun barrell, was marked, identified and admitted.
Tape Counter: 343	State's Exhibit 37, photograph of chair and shotgun shell, was marked, identified and admitted.
Tape Counter: 345	State's Exhibit 39, photo of shotgun shell not fired, was marked, identified and admitted
Tape Counter: 345	State's Exhibit 40, shotgun shell not fired, was marked, identified and admitted
Tape Counter: 347	State's Exhibit 101, shotgun shells on table, was marked, identified and admitted
Tape Counter: 350	State's Exhibit 102, shotgun and handgun shells, was marked, identified and admitted
Tape Counter: 350	State's Exhibit 103, pipe, was marked, identified and admitted
Tape Counter: 353	State's Exhibit 41, 42, 43, photos of handgun, were marked identified and admitted.
Tape Counter: 354	State's Exhibit 44, handgun, was marked, identified and admitted.
Tape Counter: 356	State's Exhibit 88, photo of white substance, was marked, identified, and admitted.
Tape Counter: 357	State's Exhibit 90, baggie of white substance, was marked, identified and admitted.
Tape Counter: 359	State's Exhibit 91, photo of scale, was marked, identified and admitted.
Tape Counter: 400	State's Exhibit 92, diamond scale, was marked, identified and admitted.
Tape Counter: 402	State's Exhibit 108, photo of bong, was marked, identified and admitted.
Tape Counter: 404	State's Exhibit 109, bong, was marked, identified and admitted.
Tape Counter: 405	State's Exhibit 53, photos of bedroom, was marked, identified and admitted
Tape Counter: 406	State's Exhibit 54, photo of living room, was marked, identified and admitted.
Tape Counter: 408	State's Exhibit 55, photo of shotgun, was marked, identified and admitted.
Tape Counter: 409	State's Exhibit 56, photo of shotgun, was marked, identified and admitted.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 411	State's Exhibit 58, shotgun, was marked, identified and admitted.
Tape Counter: 412	State's Exhibit 61, 62, 63 photos of gun, was marked, identified and admitted
Tape Counter: 415	State's Exhibit 65, shotgun, was marked, identified and admitted.
Tape Counter: 416	State's Exhibit 71, photo of hacksaw, was marked, identified and admitted.
Tape Counter: 417	State's Exhibit 72, hacksaw, was marked, identified and admitted.
Tape Counter: 419	State's Exhibit 79, photo of butt stock, was marked, identified and admitted.
Tape Counter: 420	State's Exhibit 80, butt stock, was marked, identified and admitted.
Tape Counter: 421	State's Exhibit 83, photo of bismuth shells, was marked, identified and admitted.
Tape Counter: 422	State's Exhibit 84, camera case and shells, was marked, identified and admitted
Tape Counter: 424	State's Exhibit 94, photo of bag of shells, was marked, identified and admitted.
Tape Counter: 424	State's Exhibit 95, case and shotgun shells, was marked, identified and admitted
Tape Counter: 426	State's Exhibit 97, photo of ammunition, was marked, identified and admitted.
Tape Counter: 427	State's Exhibit 98, ammunition, was marked, identified and admitted
Tape Counter: 429	State's Exhibit 100, photo of marijuana pipe, was marked, identified and admitted.
Tape Counter: 431	State's Exhibit 111, photo of house, was marked, identified and admitted.
Tape Counter: 436	Cross-examination by Ms. Paul.
Tape Counter: 453	Court admonished the jury.
Tape Counter: 456	Court excused the jury.
Tape Counter: 456	Court addressed Counsel regarding the witnesses. Mr. Loeb addressed the court.
Tape Counter: 457	Ms. Paul addressed the court. Mr. Loeb objected to the request of using the Elmo of transcript of testimonies.
Tape Counter: 502	Court will overrule the objection and will allow the Elmo to be used.
Tape Counter: 503	Court inquired of Mr. Loeb regarding counsel for upcoming witnesses.
Tape Counter: 505	Court in recess.

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

JUN 21 2006

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

Date: 6/30/2006  
Time: 12:04 PM  
Page 1 of 3

Fifth Judicial District Court - Twin Falls County

User: YOCHAM

Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Jury Trial Day 3	Minutes date:	06/21/2006
Assigned judge:	G. Richard Bevan	Start time:	08:31 AM
Court reporter:	Virginia Bailey	End time:	08:31 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loebis		
Defense attorney:	Marilyn Paul		

Tape Counter: 911	Court convened.
Tape Counter: 911	Court addressed Counsel.
Tape Counter: 912	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 912	Detective Ryan Howe was duly sworn. Ms. Paul continued with cross-examination.
Tape Counter: 914	Defendant's Exhibit G, photo of shotgun shell, was marked, identified and admitted.
Tape Counter: 915	Defendant's Exhibit L, photo of suitcase on couch, was marked, identified and admitted
Tape Counter: 917	Defendant's Exhibit M, photo of entry way of room, was marked, identified and admitted
Tape Counter: 918	Defendant's Exhibit N, photo of living room, was marked, identified and admitted
Tape Counter: 922	Defendant's Exhibit O, photo of open suitcase, was marked, identified and admitted
Tape Counter: 924	Defendant's Exhibit P, photo of inside of vehicle, was marked, identified and admitted.
Tape Counter: 1003	Re direct by Ms. Gose-Ellis.
Tape Counter: 1004	State's Exhibits 399,385, 384,383, 150, photos of vehicle, was marked, identified and admitted
Tape Counter: 1011	State's Exhibit 56a and 65a, shotgun shells, was marked, identified and admitted.
Tape Counter: 1016	Recross by Ms. Paul.
Tape Counter: 1018	Court excused the jury. Court in recess.
Tape Counter: 1037	Court convened.
Tape Counter: 1038	The jury was brought in.
Tape Counter: 1038	State's 8th witness, Detective Chris Corbitt Fullmer. Detective Fuller was duly sworn and examined by Ms. Craig.
Tape Counter: 1056	State's Exhibit 116, photo of earring, was marked, identified and admitted.
Tape Counter: 1058	State's Exhibit 117, earring, was marked, identified and admitted
Tape Counter: 1059	State's Exhibit 36, photo of blue bandana, was marked, identified and admitted.
Tape Counter: 1100	State's Exhibit 159, blue bandana, was marked, identified and admitted.
Tape Counter: 1103	State's Exhibit 106, photo of beer bottle(44), was marked, identified and admitted.
Tape Counter: 1105	State's Exhibit 107, beer bottle, was marked, identified and admitted.
Tape Counter: 1105	State's Exhibit 120, fingerprint card, was marked, identified and admitted
Tape Counter: 1115	State's Exhibit 77, photo of box with ammo in it (22), was marked, identified and admitted.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

Page 2 of 3

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 1116 State's Exhibit 78,  
Tape Counter: 1117 State's Exhibit 31, gun shell, was marked, identified and admitted.  
Tape Counter: 1117 State's Exhibit 30, photo of countertop with folgers can (2) with gun shell, was marked, identified and admitted  
Tape Counter: 1119 State's Exhibit 32, photo of gun shell, (3), was marked, identified and admitted.  
Tape Counter: 1120 State's Exhibit 33, gun shell, was marked, identified and admitted.  
Tape Counter: 1139 State's Exhibit 125, foam test board of gunshot, was marked, identified and admitted.  
Tape Counter: 1142 State's Exhibit 126, foam test board of gunshot, was marked, identified and admitted.  
Tape Counter: 1144 State's Exhibit 127, foam test board, was marked and identified. Ms. Paul inquired of the exhibit. Detective Fullmer responded. Exhibit 127 is admitted.  
Tape Counter: 1147 State's Exhibit 128, foam test board, was marked and identified and admitted.  
Tape Counter: 1152 State's Exhibit 129, foam test board, was marked, identified and admitted.  
Tape Counter: 1153 State's Exhibit 130, foam test board, was marked, identified. Ms. Paul inquired of the witness. No objection. Exhibit 130 is admitted.  
Tape Counter: 1156 State's Exhibit 131, foam test board, was marked, identified and admitted.  
Tape Counter: 1158 State's Exhibit 132, foam test board, was marked, identified and admitted.  
Tape Counter: 1200 State's Exhibit 122, bag of three shells, was marked, identified and admitted.  
Tape Counter: 1200 State's Exhibit 124, bag of shell and cap from casing, was marked, identified and admitted.  
Tape Counter: 1202 State's Exhibit 123, bag of four shells and cap from casing, was marked, identified and admitted.  
Tape Counter: 1203 State's Exhibit 135, box of bismuth shells, was marked, identified and admitted.  
Tape Counter: 1205 Court requested counsel to step to the bench.  
Tape Counter: 1206 Court addressed the jury. Court will be in recess for the lunch hour.  
Tape Counter: 142 Court convened.  
Tape Counter: 143 The jury was brought in. Counsel stipulated the jury is present and in their proper seats.  
Tape Counter: 143 Court reminded Detective Fullmer of the oath. Ms. Craig continued with the examination of Detective Fullmer.  
Tape Counter: 152 State's Exhibit 133, blue bandana, was marked, identified and admitted.  
Tape Counter: 200 Cross-examination by Ms. Paul.  
Tape Counter: 201 Defendant's Exhibit R, was measurements of house, marked, identified and admitted.  
Tape Counter: 203 Defendant's Exhibit S, map drawing of living room, was marked, identified and admitted.  
Tape Counter: 205 Defendant's Exhibit T, map of house, was marked, identified and admitted.  
Tape Counter: 208 Defendant's Exhibit U, drawing of kitchen, was marked, identified and admitted.  
Tape Counter: 210 Defendant's Exhibit V, drawing of porch area, was marked, identified and admitted.  
Tape Counter: 239 Defendant's Exhibit W, photo of money, was marked, identified and admitted.  
Tape Counter: 257 Ms. Paul requested the witness be available for recall. Court granted the request.  
Tape Counter: 257 Re direct by Ms. Craig

Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

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Case: CR-2006-0000107

*Defendant: Pina, Juan Carlos Fuentes*

Selected Items

Tape Counter: 300

Re cross by Ms. Paul.

Tape Counter: 302

The witness stepped down.

Tape Counter: 303

Court admonished the jury. Court excused the jury for the day.

Tape Counter: 304

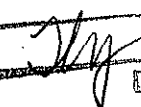
Mr. Loeb addressed the court regarding schedule of this trial.

Tape Counter: 304

Court in recess till 9:00 am tomorrow.

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

JUN 22 2006

By:  Clerk  
Deputy Clerk

Date: 6/30/2006

Fifth Judicial District Court - Twin Falls County

User: YOCHAM

Time: 12:04 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Hearing type:	Jury Trial Day 4	Minutes date:	06/22/2006
Assigned judge:	G. Richard Bevan	Start time:	09:05 AM
Court reporter:	Virginia Bailey	End time:	09:05 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loebbs		
Defense attorney:	Marilyn Paul		

Tape Counter: 913 Court addressed Counsel.

Tape Counter: 914 Ms. Paul addressed the court regarding testimony of a witness. Court addressed Counsel.

Tape Counter: 915 The jury was brought in. Counsel stipulated the jury was present and in their proper places.

Tape Counter: 916 State's 9th witness, Amy Marie Jenkins. Ms. Jenkins was duly sworn and examined by Mr. Loebbs.

Tape Counter: 923 State's Exhibit 443, black and white photo of a man, was marked, identified and admitted.

Tape Counter: 923 Cross-examination by Ms. Paul.

Tape Counter: 926 Defendant's Exhibit X, statement of Amy Jenkins, was marked and identified. Mr. Loebbs objected. Court will not allow Exhibit X to be admitted.

Tape Counter: 928 State's 10th witness, Richard Herman Martin. Mr. Martin was duly sworn and examined by Mr. Loebbs.

Tape Counter: 930 No cross-examination by Ms. Paul. The witness stepped down and was excused.

Tape Counter: 931 State's 11th witness, Detective Curtis Gambrel. Detective Gambrel was duly sworn and examined by Mr. Loebbs.

Tape Counter: 1007 Court excused the jury. Court in recess.

Tape Counter: 1032 Court convened.

Tape Counter: 1032 The jury was brought in. Counsel stipulated the jury was present and in their proper seats.

Tape Counter: 1033 Mr. Loebbs continued examination of the witness, Curtis Gambrel.

Tape Counter: 1034 Ms. Paul requested to voir dire the witness. Mr. Loebbs objected. Court overruled. Ms. Paul voir dired the witness. Mr. Loebbs objected. Ms. Paul gave argument. Court overruled the objection.

Tape Counter: 1036 Mr. Loebbs continued with examination of the witness.

Tape Counter: 1101 Court admonished the jury. Court excused the jury.

Tape Counter: 1102 Mr. Loebbs addressed the court regarding evidence, CD and DVD that is to be submitted.

Tape Counter: 1104 Ms. Paul addressed the court.

Tape Counter: 1105 Court made findings.

Tape Counter: 1107 The jury was brought in. Court noted the jury was present and in their proper seats.

Tape Counter: 1108 Mr. Loebbs continued examination of the witness.



Date: 6/30/2006

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

User: YOCHAM

Time: 12:04 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 1108	State's Exhibit 183 Dvd, 202 or 203, audio CD, will be marked. Court noted for the record.
Tape Counter: 1157	Court in recess for the lunch hour.
Tape Counter: 136	The jury was brought in. Counsel stipulated the jury is present and in their proper places.
Tape Counter: 136	Court reminded Detective Gambrel of the oath that was taken. Ms. Paul continued cross-examination.
Tape Counter: 139	Mr. Loeb's inquired of the witness.
Tape Counter: 214	Re direct by Mr. Loeb's.
Tape Counter: 229	The witness stepped down. Court informed the witness of right of recall.
Tape Counter: 229	Court admonished the jury and excused the jury.
Tape Counter: 230	Court inquired of Mr. Loeb's. Court in recess.
Tape Counter: 243	Court convened.
Tape Counter: 243	Court informed Jeremiah Schmidt of the right to have counsel for this hearing. Mr. Schmidt informed the court he would like to have his attorney present.
Tape Counter: 244	Court addressed Counsel.
Tape Counter: 246	Mr. Loeb's addressed the court.
Tape Counter: 248	The jury was brought in.
Tape Counter: 249	Counsel stipulated the jury was present and in their proper seats.
Tape Counter: 250	Court addressed the jury. The jury was excused for the day.
Tape Counter: 251	<i>Court addressed Counsel regarding the testimony of in custody witnesses.</i>
Tape Counter: 253	Ms. Paul addressed the court.
Tape Counter: 253	Mr. Loeb's addressed the court.
Tape Counter: 254	Court in recess.



Date: 6/30/2006

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

User: YOCHAM

Time: 12:05 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 1113	State's 14th witness, Jay Martindale. Mr. Marindale was duly sworn and examined by Mr. Loeb.
Tape Counter: 1129	State's Exhibits 225, 223, 136, 137, 139, 140, 228, 141, 142, 143, 144, 145, 147, 148, photos, were marked and identified and admitted. State's Exhibit 444, map, was marked, identified and admitted.
Tape Counter: 1149	Court admonished the jury. Court excused the jury.
Tape Counter: 1150	Court in recess.
Tape Counter: 127	Court convened.
Tape Counter: 128	The jury was brought in. Counsel stipulated the jury was present and in their proper seats.
Tape Counter: 128	Mr. Loeb continued with the examination of witness, Jay Martindale.
Tape Counter: 157	Ms. Paul objected to the line of questioning and requested to voir dire the witness. Court granted. Ms. Paul questioned the witness.
Tape Counter: 158	Mr. Loeb continued with examination of the witness.
Tape Counter: 204	Cross-examination by Ms. Paul.
Tape Counter: 228	Court admonished the jury. Court excused the jury. Court in recess.
Tape Counter: 253	Court convened.
Tape Counter: 253	Ms. Paul addressed the court regarding the redacting of the grand jury transcript.
Tape Counter: 254	Mr. Loeb put objections on the record.
Tape Counter: 255	Ms. Paul gave additional argument.
Tape Counter: 256	Court made findings.
Tape Counter: 259	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 259	Ms. Paul continued with cross-examination of the witness, Jay Martindale.
Tape Counter: 415	Re-direct by Mr. Loeb.
Tape Counter: 419	The witness stepped down. Ms. Paul informed the court this witness is subject to recall.
Tape Counter: 421	Court addressed the jury. Court advised the jury this trial will recess for the day and will reconvene on Tuesday, June 27, 2006 at 9:00 am. Court admonished the jury regarding reading the newspaper and watching the local news or discussing this issue with anyone.
Tape Counter: 423	Court excused the jury.
Tape Counter: 425	Court inquired of Mr. Loeb regarding witnesses scheduled for next week. Mr. Loeb responded.
Tape Counter: 425	Court will be in recess till Tuesday June 27, 2006 at 9:00 am



Date: 6/30/2006

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

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Time: 12:05 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 137	Court will take under advisement.
Tape Counter: 137	The jury was brought in.
Tape Counter: 138	Counsel stipulated the jury was present and in their proper places.
Tape Counter: 138	Mr. Loeb's requested State's Exhibit 183, DVD, be published to the jury. State's Exhibit 183, DVD, was marked and identified. State's Exhibit 202, CD, was marked and identified. The DVD was played for the jury.
Tape Counter: 210	Ms. Paul requested dates of the DVD and CD. DVD date is November 29, 2005 and CD is December 16, 2005. Court inquired if the Exhibits 183 and 202 are to be admitted. Ms. Paul had no objection to the admission of the exhibits. State's Exhibits 202, CD, and 183, DVD, are admitted.
Tape Counter: 211	The CD was played for the jury.
Tape Counter: 254	Court addressed the jury. Court in recess.
Tape Counter: 325	Court convened.
Tape Counter: 325	Court addressed Counsel. Mr. Loeb's informed the court of an incident that happened during the break.
Tape Counter: 327	Court addressed the 404(b) evidence. Court will stick with the prior ruling.
Tape Counter: 327	Ms. Paul inquired of the Spanish words that was said to the family by Mr. Pina during the most recent break.
Tape Counter: 330	State's 17th witness, Johnny Shores was duly sworn. Court informed Mr. Shores of his rights. Mr. Fuller is present.
Tape Counter: 331	Mr. Loeb's handed to the court a statement written by the victim's family. Court will mark as Court's Exhibit 3.
Tape Counter: 332	The jury was brought in. Counsel stipulated the jury is present and in their proper places.
Tape Counter: 333	State's 17th witness, Johnny Shores. Mr. Shores was duly sworn and examined by Mr. Loeb's.
Tape Counter: 355	Ms. Paul objected to the line of questioning. Court instructed Mr. Loeb's to reask the question. Mr. Loeb's continued with examination of the witness.
Tape Counter: 358	State's Exhibit 445, drawing of inside of the house, was marked, identified.
Tape Counter: 400	Court instructed the jury to disregard the last answer from the witness.
Tape Counter: 414	Mr. Shores identified the defendant, Juan Pina.
Tape Counter: 416	Court addressed the jury. Court excused the jury.
Tape Counter: 417	State's Exhibits, 446 and 447, letters from Juan Pina, were marked and identified.
Tape Counter: 419	Ms. Paul objected to the letters. Ms. Paul inquired of the witness, Johnny Shores.
Tape Counter: 420	Ms. Paul put objection to the exhibits on the record.
Tape Counter: 420	Mr. Loeb's inquired of the witness, Johnny Shores.
Tape Counter: 421	Mr. Loeb's gave argument regarding the exhibits.
Tape Counter: 424	Ms. Paul gave argument.
Tape Counter: 426	Court will allow the admission of the exhibits. State's Exhibits 446 and 447, letters, will be admitted. Court gave findings.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:05 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 428	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 428	Mr. Loeb's continued with examination of the witness, Johnny Shores.
Tape Counter: 429	State's Exhibits 446, 447, letters will be published to the jury and admitted.
Tape Counter: 430	Cross-examination by Ms. Paul.
Tape Counter: 436	Court addressed the jury. Court excused the jury.
Tape Counter: 437	Mr. Loeb's objected to Defendant's Exhibit Y, court probation terms.
Tape Counter: 438	Ms. Paul put argument on the record.
Tape Counter: 439	Court addressed Counsel. Court will allow the exhibit. Court ordered Ms. Paul to lay foundation of the exhibit.
Tape Counter: 440	Mr. Loeb's addressed the court.
Tape Counter: 441	Ms. Paul gave argument.
Tape Counter: 441	Court addressed Counsel. Court gave findings. Court will not allow the exhibit to admitted.
Tape Counter: 443	Mr. Loeb's requested the Court address the jury regarding Defendant's Exhibit Y.
Tape Counter: 444	Ms. Paul addressed the court. Court addressed Ms. Paul.
Tape Counter: 445	Mr. Fuller addressed the court regarding the Exhibit and any confidential conversations between him and Mr. Shores.
Tape Counter: 447	Ms. Paul addressed the court.
Tape Counter: 448	Mr. Fuller addressed the court.
Tape Counter: 449	Ms. Paul addressed the court.
Tape Counter: 449	Court made findings.
Tape Counter: 451	Ms. Paul requested the court allow the defense to lay foundation of the exhibit. Court noted the objection.
Tape Counter: 452	Ms. Paul continued examination of the witness, Johnny Shores.
Tape Counter: 455	Ms. Paul would renew the admission of the exhibit.
Tape Counter: 455	Court addressed Counsel and will take under advisement.
Tape Counter: 456	The jury was brought in. Court addressed the jury. Court admonished the jury. Court excused the jury till 9:00 am tomorrow.
Tape Counter: 457	Court inquired of Counsel.
Tape Counter: 457	Mr. Loeb's addressed the issue of the family testifying. Mr. Loeb's informed the court of upcoming witnesses.
Tape Counter: 458	Court made findings.
Tape Counter: 500	Court in recess.

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

JUN 28 2006

By

*Tly*

User: YOCHAM

Date: 6/30/2006

Fifth Judicial District Court - Twin Falls County

Time: 12:05 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Hearing type:	Jury Trial Day 7	Minutes date:	06/28/2006
Assigned judge:	G. Richard Bevan	Start time:	08:43 AM
Court reporter:	Virginia Bailey	End time:	08:43 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

Tape Counter: 840 Court addressed Counsel regarding the Defendant's Exhibit Y and Court's Exhibit 3.  
Tape Counter: 842 Ms. Paul gave argument.  
Tape Counter: 848 Mr. Loeb gave argument.  
Tape Counter: 851 Ms. Craig addressed Court's Exhibit 3, apology from Pina to Naranjo's family,  
Tape Counter: 852 Ms. Paul gave final argument.  
Tape Counter: 854 Court in recess.  
Tape Counter: 909 Court convened.  
Tape Counter: 909 Court made findings. Defendant's Exhibit Y will not be admitted.  
Tape Counter: 918 Ms. Paul commented on the objection of the  
Tape Counter: 919 The jury was brought in. Counsel stipulated the jury was present and in their proper places.  
Tape Counter: 920 Court gave the jury an instruction to disregard Defendant's Exhibit Y.  
Tape Counter: 920 Mr. Shores was duly sworn and examined by Ms. Paul.  
Tape Counter: 955 Defendant's Exhibit T-1, map of house, was marked, identified and admitted.  
Tape Counter: 1017 Defendant's Exhibit Z, statement of Johnny Shores, was marked, identified and admitted.  
Tape Counter: 1021 Court addressed the jury. Court in recess.  
Tape Counter: 1044 Court convened.  
Tape Counter: 1044 The jury was brought in. Counsel stipulated the jury was present.  
Tape Counter: 1045 Mr. Loeb had no redirect for this witness.  
Tape Counter: 1045 State's 18th witness, Bertha Naranjo. Ms. Naranjo was duly sworn and examined by Ms. Craig.  
Tape Counter: 1048 No cross-examination by Ms. Paul.  
Tape Counter: 1049 Mr. Loeb informed the court the State will rest it's case.  
Tape Counter: 1058 Ms. Paul requested the court dismiss this case and gave argument.  
Tape Counter: 1100 Mr. Loeb gave argument.  
Tape Counter: 1101 Rebuttal argument by Ms. Paul.  
Tape Counter: 1120 Court will recess for ten minutes.  
Tape Counter: 1120 Court convened.

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Time: 12:05 PM  
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**Fifth Judicial District Court - Twin Falls County**

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Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 1120	Mr. Loeb's gave argument.
Tape Counter: 1123	Ms. Paul gave rebuttal argument.
Tape Counter: 1127	Court instructed the Bailiff to excuse the jury for the lunch hour and inform them we will convene at 1:00 pm
Tape Counter: 1128	Court made findings. Court denied the motion to dismiss. Court made findings regarding the agency issue. Court will address the jury instruction at a later time.
Tape Counter: 1132	Court addressed the matter of the witness of Phillip Warren.
Tape Counter: 1132	Mr. Lammers addressed the court.
Tape Counter: 1134	Ms. Paul addressed the court. Court addressed Counsel.
Tape Counter: 1135	Ms. Paul addressed citations regarding the jury instructions.
Tape Counter: 1140	Mr. Warren was brought up. Court inquired of Mr. Warren regarding the subpoena. Mr. Lammers addressed the court.
Tape Counter: 1141	Mr. Warren informed the court he wished to exercise the right to remain silent.
Tape Counter: 1142	Ms. Paul addressed the court regarding Mr. Warren's right to remain silent and have Mr. Warren inform the jury of his right to remain silent under oath.
Tape Counter: 1144	Ms. Craig gave argument.
Tape Counter: 1148	Ms. Paul gave final argument.
Tape Counter: 1152	Court made findings regarding the defense witness, Phillip Warren.
Tape Counter: 1200	Court will decline the privilege of having Mr. Warren called as a witness.
Tape Counter: 1201	Court in recess.
Tape Counter: 107	Court convened.
Tape Counter: 107	Mr. Joel Peterson was brought in. Mr. Peterson was duly sworn. Court inquired of Mr. Peterson
Tape Counter: 108	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 109	Defendant's 1st witness, Joel Peterson. Mr. Peterson was duly sworn and examined by Ms. Paul.
Tape Counter: 122	Defendant's Exhibit AA, letters, was marked, identified.
Tape Counter: 128	Cross-examination by Mr. Loeb's. Mr. Loeb's requested Defendant's Exhibit AA be admitted. No objection by Ms. Paul. Defendant's Exhibit AA is admitted.
Tape Counter: 131	The witness stepped down. Ms. Paul requested the right to recall this witness.
Tape Counter: 131	Defendant's 2nd witness, Phillip D. Flieger. Mr. Flieger was duly sworn and examined by Ms. Paul.
Tape Counter: 133	Cross-examination by Mr. Loeb's.
Tape Counter: 133	The witness stepped down. Ms. Paul requested the witness be excused.
Tape Counter: 134	Defendant's 3rd witness, Dennis Pullin. Officer Dennis Pullin was duly sworn and examined by Ms. Paul.
Tape Counter: 137	Cross-examination by Mr. Loeb's.
Tape Counter: 138	Redirect by Ms. Paul.



Date: 6/30/2006

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

User: YOCHAM

Time: 12:05 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 139	The witness stepped down and was excused.
Tape Counter: 139	Defendant's 4th witness, Lt. Douglas Hughes. Lt. Hughes was duly sworn and examined by Ms. Paul.
Tape Counter: 141	Defendant's Exhibits, BB and CC, letter written to Hughes and phone records, was marked and identified.
Tape Counter: 143	Cross-examination by Mr. Loeb.
Tape Counter: 144	Re direct by Ms. Paul.
Tape Counter: 145	The witness stepped down and was excused.
Tape Counter: 145	Defendant's 5th witness, Debbie Heck. Ms. Heck was duly sworn and examined by Ms. Paul.
Tape Counter: 148	Court ordered Ms. Heck to answer the question asked by Ms. Paul.
Tape Counter: 152	The witness stepped down and was excused.
Tape Counter: 152	Court in recess.
Tape Counter: 202	Court convened.
Tape Counter: 202	Court inquired of Ms. Paul. Ms. Paul responded.
Tape Counter: 202	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 203	Defendant's 6th witness, Detective Chris Fullmer. Detective Fuller was duly sworn and examined by Ms. Paul.
Tape Counter: 211	Cross-examination by Mr. Loeb.
Tape Counter: 212	Redirect by Ms. Paul.
Tape Counter: 216	The witness stepped down and is excused.
Tape Counter: 216	Defendant's 6th witness, Detective Curtis Gambrel. Detective Gambrel was duly sworn and examined by Ms. Paul.
Tape Counter: 237	Court in recess.
Tape Counter: 248	Court convened.
Tape Counter: 248	The jury was brought back in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 249	Ms. Paul continued with examination of the witness, Curtis Gambrel.
Tape Counter: 251	Defendant's Exhibit DD, DVD, was marked and identified. Mr. Loeb objected to the Exhibit being admitted.
Tape Counter: 253	Court excused the jury.
Tape Counter: 254	Court addressed Counsel regarding the consumption of time.
Tape Counter: 255	Ms. Paul gave argument of impeachment issues.
Tape Counter: 257	Mr. Loeb gave argument.
Tape Counter: 259	Ms. Paul gave final argument.
Tape Counter: 300	Court made findings. Court will allow the DVD of Jay Martindale to be admitted.
Tape Counter: 300	Ms. Paul informed the court there has been some editing done.
Tape Counter: 301	Court made findings. Mr. Loeb gave argument regarding the DVD being played.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:05 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 302	Court will not allow the DVD be published at this time.
Tape Counter: 304	Court will be in recess.
Tape Counter: 331	Court convened.
Tape Counter: 332	Court addressed Counsel.
Tape Counter: 332	Mr. Loeb gave argument on the impeachment issues.
Tape Counter: 335	Ms. Paul gave rebuttal argument.
Tape Counter: 337	Court made findings.
Tape Counter: 338	Court will allow the DVD to be played to the jury. Court will not allow the Pearre, Degarmo and Shores DVD to be played to the jury.
Tape Counter: 340	Ms. Paul addressed the Court. Detective Gambrel stepped down at this time.
Tape Counter: 341	Mr. Pina was duly sworn. Court inquired of Mr. Pina. Mr. Pina informed the court he understood his rights.
Tape Counter: 347	Court will allow the DVD of Jay Martindale to be played to the jury at this time and Mr. Pina will testify tomorrow.
Tape Counter: 350	The jury was brought in. Counsel stipulated the jury was present and in their proper places.
Tape Counter: 350	Court addressed the jury regarding the believability of a witness.
Tape Counter: 352	The DVD of Jay Martindale was played for the jury.
Tape Counter: 439	Court requested counsel approach the bench.
Tape Counter: 440	Court addressed the jury.
Tape Counter: 440	Ms. Paul recalled Detective Chris Fullmer to the stand. Court reminded Detective Fullmer of the oath that was taken earlier today. Ms. Paul inquired of Detective Fullmer.
Tape Counter: 443	No cross by the state. Ms. Paul requested the witness be excused. The witness stepped down and was excused.
Tape Counter: 443	Court addressed the jury regarding the jury being in deliberations. Court provided the jury four separate documents to fill out tonight and bring back tomorrow.
Tape Counter: 446	Court admonished the jury. Court excused the jury for today. Court in recess.
Tape Counter: 455	Court convened.
Tape Counter: 455	Court addressed Counsel. Ms. Paul addressed the court.
Tape Counter: 457	Mr. Loeb had no objection.
Tape Counter: 458	Court addressed Counsel regarding the impeachment issues.
Tape Counter: 501	Mr. Loeb addressed the court. Ms. Paul addressed the court.
Tape Counter: 504	Court read the notes from the jury.
Tape Counter: 504	Court advised counsel if this case rests tomorrow, closing arguments may be early afternoon.
Tape Counter: 505	Court will be in recess.

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 30 PM 12:05

BY Jly CLERK  
DEPUTY User: YOCHAM

Date: 6/30/2006  
Time: 12:10 PM  
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**Fifth Judicial District Court - Twin Falls County**

Minutes Report

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

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Hearing type:	Jury Trial Day 8	Minutes date:	06/29/2006
Assigned judge:	G. Richard Bevan	Start time:	08:31 AM
Court reporter:	Virginia Bailey	End time:	08:31 AM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	Marilyn Paul		

Tape Counter: 854 Court convened. Court informed counsel of issues that has arisen with two of the jurors. Court inquired of Juror Susan Parslow. Ms. Parslow informed the court things were taken care of now.

Tape Counter: 856 Court inquired of Juror Joseph Ratto. Ms. Paul inquired of Mr. Ratto.

Tape Counter: 859 Ms. Paul would like to renew Rule 29 motion.

Tape Counter: 903 Mr. Loeb gave argument.

Tape Counter: 905 Ms. Paul gave final comments.

Tape Counter: 906 Court made findings. Court will deny the motion and this case will proceed to the jury.

Tape Counter: 911 The jury was brought in. Counsel stipulated the jury was present and in their proper seats.

Tape Counter: 911 Defendant's 7th witness, Tracy Perriera. Ms. Perriera was duly sworn and examined by Ms. Paul.

Tape Counter: 917 No cross examination by the State. The witness stepped down. and was excused.

Tape Counter: 918 Ms. Paul recalled Detective Curtis Gambrel. Mr. Gambrel was duly sworn and examined by Ms. Paul.

Tape Counter: 1001 Ms. Paul will play the DVD of interview of Johnny Shores.

Tape Counter: 1021 Court excused the jury.

Tape Counter: 1022 Court addressed Ms. Paul regarding the DVD that is being played.

Tape Counter: 1022 Court addressed Counsel.

Tape Counter: 1023 Court addressed Ms. Paul.

Tape Counter: 1024 Mr. Loeb addressed the Court.

Tape Counter: 1025 Court addressed Counsel. Court in recess.

Tape Counter: 1042 Court convened.

Tape Counter: 1043 Court addressed Counsel.

Tape Counter: 1043 Mr. Loeb addressed the court.

Tape Counter: 1044 The jury was brought in. Counsel stipulated the jury was present and in their proper places.

Tape Counter: 1045 The DVD, interview of Johnny Shores was started for the jury.

Tape Counter: 1048 The DVD, interview of Johnny Shores, was stopped.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:10 PM

Minutes Report

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Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 1049

Defendant's Exhibit FF, interview of Jacob Degarmo, was played for the jury.

Tape Counter: 1056

The DVD of Jacob Degarmo, was stopped.

Tape Counter: 1056

Detective Gambrel retook the witness stand. Ms. Paul continued with examination of the witness.

Tape Counter: 1102

Cross-examination by Mr. Loeb.

Tape Counter: 1120

Redirect by Ms. Paul.

Tape Counter: 1127

The witness stepped down.

Tape Counter: 1128

Court excused the jury for the lunch hour. Court will convene at 12:30 pm. Court excused the jury.

Tape Counter: 1129

Court in recess.

Tape Counter: 1238

IN CHAMBERS

Present: Suzanne Craig, Grant Loeb, Stan Holloway, Marilyn Paul, and court personnel.

Deputy Doug Sugden informed the court as to the incident that happened in the jail during the lunch recess. Deputy Sugden informed the court Mr. Juan Pina refused to come back to court.

Counsel addressed the court. Ms. Paul requested some time to talk to Mr. Pina. Court granted. Court ordered Ms. Paul and Deputy Sugden to inform Mr. Pina the Court ordered Mr. Pina to be present in the courtroom for the remainder of the trial.

Tape Counter: 1243

Court in recess.

Tape Counter: 1253

IN CHAMBERS

Counsel all present along with court personnel.

Ms. Paul informed the court Mr. Pina refused to come to court.

Court read Rule 43 to all present. Court ordered Deputy Sugden and Ms. Paul to order Mr. Pina to be in the courtroom.

Court addressed the instruction that could be given to the jury if Mr. Pina is refusing to come back to court.

Mr. Loeb addressed the issue of Mr. Pina testifying. Court was informed that Mr. Pina will appear in court.

Tape Counter: 105

IN CHAMBERS

Counsel all present along with court personnel. Ms. Jennifer Gose-Ells is also present. Court addressed the issue of Mr. Pina's right to have counsel for the remainder of the trial. Ms. Gose-Ells addressed the court.

Tape Counter: 114

IN CHAMBERS

Court addressed counsel regarding St. vs Reber. Mr. Pina's request to represent himself is denied.

Date: 6/30/2006

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

User: YOCHAM

Time: 12:10 PM

Minutes Report

Page 3 of 4

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

Tape Counter: 120

IN CHAMBERS

Stan Holloway, Marilyn Paul, Grant Loeb, Suzanne Craig and Jennifer Gose-Ells along with court personnel.

*Deputy Doug Sugden informed the court.*

Tape Counter: 132

The jury was brought in. Counsel stipulated the jury was present and in their proper places.

Tape Counter: 133

Court addressed the jury regarding the presence of the

Tape Counter: 133

Ms. Paul informed the court the Defense rests.

Tape Counter: 133

Mr. Loeb informed the court there will be no rebuttal witnesses.

Tape Counter: 133

Court addressed the jury. The jury will be in recess till 3:00pm The jury was excused.

Tape Counter: 134

Court addressed counsel regarding jury instructions.

Tape Counter: 134

Ms. Paul addressed the court regarding jury instructions.

Tape Counter: 135

Court addressed Counsel regarding the charge of Murder.

Tape Counter: 136

Mr. Loeb addressed the jury instructions.

Tape Counter: 140

Court addressed the request by Mr. Loeb. Court will delete the instruction that has already been given to the jury.

Tape Counter: 140

Ms. Paul addressed the court. Court will strike out some wording in instruction #19. Ms. Paul continued to address the court regarding jury instructions.

Tape Counter: 145

Court inquired of Ms. Paul. Ms. Paul responded. Mr. Loeb addressed the court.

Tape Counter: 153

Court addressed Counsel regarding the jury instructions.

Tape Counter: 158

Court in recess.

Tape Counter: 314

Court convened in Courtroom #2.

Tape Counter: 314

Court addressed Counsel.

Ms. Paul informed the court Mr. Pina will be present for the remainder of the trial.

Tape Counter: 315

Court advised Mr. Pina to conduct himself appropriately while in the courtroom and in the presence of the jury. Mr. Pina informed the court appropriate behavior will be followed.

Tape Counter: 319

Court inquired of Counsel regarding the list of movies that will be provided to the jurors. The list will be made a part of the record.

Court will be in recess.

Tape Counter: 324

Court convened in Courtroom 1.

Tape Counter: 325

The jury was brought in. Counsel stipulated the jury was present and in their proper places.

Tape Counter: 325

Court addressed the jury. Court read the final jury instructions.

Tape Counter: 339

Mr. Loeb gave closing arguments.

Tape Counter: 416

Ms. Paul gave closing arguments.

Tape Counter: 515

Court will be in recess.

Tape Counter: 526

Court convened.

DEPT. COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 30 PM 1:39

JURY PANEL

STATE OF IDAHO  
Plaintiff

Mr. GRANT LOEBS  
Attorney

CASE NO. CR-2006-107

JUAN CARLOS FUENTES PINA  
Defendant

Ms. MARILYN PAUL  
Attorney

DATE: June 19th, 2006

BY *JW* CLERK  
DEPUTY

1 Danielle Gietzen	2 Donna Aston	3 Joseph Ratto	4 Nancy Swain	5 Jason Scott	6 Trenton Hill	7 Jeffrey Geer	8 Leigh Josephsen	9 Susan Parslow
10 Mark McGuire	11 Samuel Klucken	12 Janelle Moore	13 Paula Mangini	14 Marilyn Swenson	15 Jerry Aguirre			

ORIGINAL  
TWIN FALLS DISTRICT COURT  
FILED

OFFICE OF THE PUBLIC DEFENDER  
Attorneys at Law  
P. O. Box 126  
Twin Falls, ID 83303  
Telephone # (208) 734-1155  
Fax # (208) 734-1161  
ISB #4444

2006 JUN 29 AM 10:21

BY Jly CLERK  
DEPUTY

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

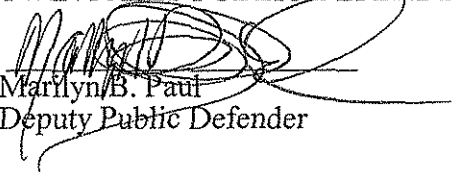
\*\*\*\*\*

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JUAN CARLOS FUENTES-PINA, )  
 )  
 Defendant. )

Case No. CR 06-107  
SUPPLEMENTAL  
JURY INSTRUCTIONS

The Defendant in the above-entitled action respectfully requests the Court  
to include in its instructions to the Jury the following requested Instructions, numbered  
1-2.

DATED This 29 day of June, 2006.

TWIN FALLS PUBLIC DEFENDER  
  
Marilyn B. Paul  
Deputy Public Defender

INSTRUCTION NO. \_\_\_\_\_

In order to find that a felony murder was committed by the party not committing the lethal act, you must first find that the party committing the lethal act was the agent of the charge person and acting in that capacity.

Supplemental Jury Instructions

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



INSTRUCTION NO. \_\_\_\_\_

In order to find that a felony murder was committed by the person not administering the lethal act, you must first find that the person who committed the lethal act and the charged person were acting in concert and that the lethal act was in furtherance of the agreed-upon concerted action.

Defendant's Requested Jury Instruction No. 2  
Given \_\_\_\_\_  
Notified \_\_\_\_\_  
Refused \_\_\_\_\_  
Covered \_\_\_\_\_  
Other \_\_\_\_\_

SUPPLEMENTAL JURY INSTRUCTIONS

**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 on the 29 day of June, 2006.

Betsy Brown

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

2006 JUN 30 AM 11:22

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
*Jon Carlos Fuentes Pina* )  
 Defendant. )

CASE NO. CR 06-107  
 BY [Signature]  
 NOTICE OF SENTENCING HEARING  
 AND ORDER REGARDING PREPARATION  
 FOR SENTENCING HEARING  
 D.O.B.: 5-15-73  
 S.S.N.: 546-86-2722  
 CHARGE: 1st Murder  
 CUSTODY STATUS: In Custody

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 Richard Beran ~~Roger Burdick~~, District Judge, at the Theron Ward Judicial Building, Twin Falls, Idaho, to begin at 9:00 ~~9:00~~ a.m. on the 22<sup>nd</sup> day of September, 2006.

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.
- Sexual Deviance 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 working day before sentencing. These evaluations must be performed by persons approved by the Court or who meet the requirements as set out in the Idaho Code or applicable court rules.

IT IS SO ORDERED THIS 29<sup>th</sup> day of June, 2006  
[Signature]  
 District Judge

Hand delivered:  Prosecutor--yellow  Defense counsel/defendant in open court--pink  P&P--gold



DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUN 30 AM 11:21

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

BY [Signature] CLERK  
DEPUTY

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
)  
Juan Carlos Fuents-Pina, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR. 2006-107

VERDICT

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

**QUESTION NO. 1:** Is the defendant JUAN CARLOS FUENTES-PINA not  
guilty or guilty of First Degree Felony Murder?

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

If you unanimously answered Question No.1 "Guilty," then you should  
simply sign the verdict form and advise the bailiff. If you unanimously  
answered Question No. 1 "Not Guilty," then proceed to answer Question No. 2.

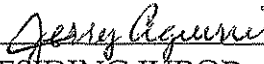
**QUESTION NO. 2:** Is the defendant JUAN CARLOS FUENTES-PINA  
not guilty or guilty of False Imprisonment?

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

\_\_\_\_\_ **Guilty**

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

Dated this 29 day of June, 2006.

  
\_\_\_\_\_  
PRESIDING JUROR

PLAINTIFF (S) EXHIBIT ST

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

JUDGE BEVAN, DISTRICT JUDGE  
TERESA YOCHAM, DEPUTY CLERK  
VIRGINIA BAILEY, COURT REPORTER

CASE NO. CR 06-107

DATE: June 20, 2006

JUN 30 2006 1:33pm

STATE OF IDAHO

VS.

JUAN CARLOS FUENTES PINA

Clerk

Deputy Clerk

NO	DESCRIPTION	DATE	ID.	OFFD	OBJ	ADM
1	CD OF 911 CALL	6-20-06	X	X		X
2	PHOTO OF ALLEY	6-20-06	X	X		X
3	PHOTO OF ALLEY	6-20-06	X	X		X
4	PHOTO OF JACKET	6-20-06	X	X		X
5	JACKET IN BAG	6-20-06	X	X		X
7	PHOTO OF JESSE NARANJO	6-20-06	X	X		X
8	PHOTO OF RED CAR	6-20-06	X	X		X
9	PHOTO OF WOUND (INTESTINES OUT)	6-20-06	X	X		X
10	SHOTGUN WADDING	6-20-06	X	X		X
11	FINGERPRINT CARD	6-20-06	X	X		X
16	PHOTO OF CHIN	6-20-06	X	X		X
17	PHOTO OF FOREHEAD	6-20-06	X	X		X
18	PHOTO OF CHIN	6-20-06	X	X		X
19	PHOTO OF ALLEY (WHITE TRUCK)	6-20-06	X	X		X
20	PHOTO OF GARBAGE CAN	6-20-06	X	X		X
23	PHOTO OF HOUSE WITH VEHICLES	6-20-06	X	X		X
24	PHOTO OF HOUSE IN DARK	6-20-06	X	X		X
25	PHOTO OF HOUSE IN DARK	6-20-06	X	X		X
26	PHOTO OF SHOTGUN SHELL	6-20-06	X	X		X
28	PHOTO OF SHOTGUN SHELL (1)	6-20-06	X	X		X
29	SHOTGUN SHELL	6-20-06	X	X		X
30	PHOTO COUNTERTOP WITH GUN SHELL (2)	6-21-06	X	X		X
31	GUN SHELL	6-21-06	X	X		X
32	PHOTO OF GUN SHELL (3)	6-21-06	X	X		X
33	GUN SHELL	6-21-06	X	X		X
34	PHOTO OF COUNTERTOP	6-20-06	X	X		X
35	SHOTGUN BARREL	6-20-06	X	X		X
36	PHOTO OF BLUE BANDANA	6-21-06	X	X		X
37	PHOTO OF CHAIR (7)	6-20-06	X	X		X

39	PHOTO OF SHOTGUN (8)	6-20-06	✓	X		X
40	SHOTGUN SHELL NOT FIRED	6-20-06	X	X		X
41	PHOTO OF GUN (9)	6-20-06	X	X		X
42	PHOTO OF GUN	6-20-06	X	X		X
43	PHOTO OF GUN	6-20-06	X	X		X
44	HANDGUN	6-20-06	X	X		X
53	PHOTO OF BEDROOM (14)	6-20-06	X	X		X
54	PHOTO OF LIVING ROOM	6-20-06	X	X		X
55	PHOTO OF GUN ON COUCH	6-20-06	X	X		X
56	PHOTO OF GUN	6-20-06	X	X		X
58	SHOTGUN	6-20-06	X	X		X
58A	SHOTGUN SHELL	6-21-06	X	X		X
61	PHOTO	6-20-06	X	X		X
62	PHOTO OF GUN W BANDANA	6-20-06	X	X		X
63	PHOTO OF GUN W/BANDANA	6-20-06	X	X		X
65	SHOTGUN	6-20-06	X	X		X
65 A	SHOTGUN SHELL	6-21-06	X	X		X
71	PHOTO OF HACKSAW	6-20-06	X	X		X
72	HACKSAW	6-20-06	X	X		X
77	PHOTO OF BOX	6-21-06	X	X		X
78	6 SHELLS (BULLETS)	6-21-06	X	X		X
79	PHOTO OF BUTT OF GUN	6-20-06	X	X		X
80	BUTT OF GUN	6-20-06	X	X		X
83	PHOTO OF BISMUTH SHELLS	6-20-06	X	X		X
84	CAMERA CASE WITH SHELLS	6-20-06	X	X		X
88	PHOTO OF WHITE SUBSTANCE	6-20-06	X	X		X
89	PHOTO OF BAG OF DRUGS	6-27-06	X	X		X
90	BAG OF BAGGIES	6-20-06	X	X		X
91	PHOTO OF DIGITAL SCALE	6-20-06	X	X		X
92	DIGITAL SCALE	6-20-06	X	X		X
94	PHOTO OF BAG OF SHELLS	6-20-06	X	X		X
95	CASE AND SHOTGUN SHELLS	6-20-06	X	X		X
97	PHOTO OF GUNS, SHELLS ETC	6-20-06	X	X		X
98	2 BLACK MAGAZINES W/BULLETS	6-20-06	X	X		X
100	PHOTO OF PIPE (37)	6-20-06	X	X		X
101	PHOTO OF SHELLS (36 & 37)	6-20-06	X	X		X
102	RIFLE & HANDGUN CARTRIDGES	6-20-06	X	X		X



103	PIPE	6-20-06	v	X		X
104	PHOTO OF BEER BOTTLE IN SNOW(38)	6-20-06	A	X		X
105	BEER BOTTLE	6-20-06	X	X		X
106	PHOTO OF BEER BOTTLE(44)	6-21-06	X	X		X
107	BEER BOTTLE	6-21-06	X	X		X
108	PHOTO OF BONG & BOTTLE	6-20-06	X	X		X
109	BONG	6-20-06	X	X		X
111	PHOTO OF FRONT OF HOUSE	6-20-06	X	X		X
112	PHOTO OF JEWELRY	6-20-06	X	X		X
113	BAGGIE OF JEWELRY	6-20-06	X	X		X
114	BULLET BOX & PELLETS	6-20-06	X	X		X
115	PLASTIC WADDING	6-20-06	X	X		X
116	PHOTO OF EARRING (6)	6-21-06	X	X		X
117	EARRING	6-21-06	X	X		X
120	FINGERPRINT CARD	6-21-06	X	X		X
122	THREE SHOTGUN SHELLS & CAP	6-21-06	X	X		X
123	BAG OF FOUR SHOTGUN SHELLS	6-21-06	X	X		X
124	SHOTGUN SHELL & CAP	6-21-06	X	X		X
125	FOAM TEST BOARD	6-21-06	X	X		X
126	FOAM TEST BOARD	6-21-06	X	X		X
127	FOAM TEST BOARD	6-21-06	X	X		X
128	FOAM TEST BOARD	6-21-06	X	X		X
129	FOAM TEST BOARD	6-21-06	X	X		X
130	FOAM TEST BOARD	6-21-06	X	X		X
131	FOAM TEST BOARD	6-21-06	X	X		X
132	FOAM TEST BOARD	6-21-06	X	X		X
133	BLUE BANDANA	6-21-06	X	X		X
134	BOX OF BISMUTH SHOTSHELLS	6-21-06	X	X		X
135	PHOTO OF JESSE NARANJO ALIVE	6-23-06	X	X		X
136	PHOTO ENTRY FROM BACK	6-23-06	X	X		X
137	PHOTO OF KITCHEN	6-23-06	X	X		X
139	PHOTO OF CHAIR/COMPUTER	6-23-06	X	X		X
140	PHOTO FRONT LIVING ROOM	6-23-06	X	X		X
141	PHOTO OF SHORES ROOM	6-23-06	X	X		X
142	PHOTO OF SHORES ROOM	6-23-06	X	X		X
143	PHOTO OF BATHROOM	6-23-06	X	X		X
144	PHOTO MARTINDALE'S ROOM	6-23-06	X	X		X
145	PHOTO MARTINDALE'S ROOM	6-23-06	X	X		X
147	PHOTO OF KITCHEN	6-23-06	X	X		X
148	PHOTO OF DOOR	6-23-06	X	X		X

150	PHOTO OF VEHICLE	6-21-06	✓	X		X
159	BLUE BANDANA	6-21-06	△	X		X
183	DVD OF JUAN PINA	6-27-06	X	X		X
202	CD of JUAN PINA	6-27-06	X	X		X
223	PHOTO DOOR WITH BLUE BLANKET	6-23-06	X	X		X
225	PHOTO OF BACK DOOR	6-23-06	X	X		X
228	PHOTO ENTRY TO CHRISTINA'S ROOM	6-23-06	X	X		X
234	PHOTO OF GUNSHOT WOUND	6-20-06	X	X		X
235	CLOSEUP OF GUNSHOT WOUND	6-20-06	X	X		X
383	PHOTO OF VEHICLE	6-21-06	X	X		X
384	PHOTO OF INSIDE OF VEHICLE	6-21-06	X	X		X
385	PHOTO OF STEERING WHEEL	6-21-06	X	X		X
399	PHOTO OF INSIDE OF VEHICLE	6-21-06	X	X		X
443	BLACK & WHITE PHOTO OF MAN(Jay Martindale)	6-22-06	X	X		X
444	MAP	6-23-06	X	X		X
445	MAP OF INSIDE OF HOUSE	6-27-06	X	X		X
446	LETTER TO JOHNNY SHORES	6-27-06	X	X		X
447	LETTER TO JOHNNY SHORES	6-27-06	X	X		X

JUN 30 2006 1:33 pm

**DEFENDANT(S) EXHIBIT LIST**

JUDGE BEVAN, DISTRICT JUDGE  
TERESA YOCHAM, DEPUTY CLERK  
VIRGINIA BAILEY, COURT REPORTER

CASE NO. CR 06-107

DATE: June 20, 2006, 2006

By Jly Clerk  
Deputy Clerk

STATE OF IDAHO

VS.

JUAN CARLOS FUENTES PINA

NO	DESCRIPTION	DATE	ID.	OFFD	OBJ	AD
A	DEATH CERTIFICATE	6-20-06	X	X		X
B	DEATH CERTIFICATE	6-20-06	X	X		X
C	REPORT OF DR. GROBEN	6-20-06	X	X		X
D	PHOTOGRAPH OF HAND	6-20-06	X	X		X
G	PHOTO OF SHOTGUN SHELL(15)	6-21-06	X	X		X
L	PHOTO OF SUITCASE	6-21-06	X	X		X
M	PHOTO OF ENTRY WAY	6-21-06	X	X		X
N	PHOTO OF LIVING ROOM	6-21-06	X	X		X
O	PHOTO OF OPEN SUITCASE (37)	6-21-06	X	X		X
P	PHOTO OF INSIDE OF VEHICLE	6-21-06	X	X		X
R	MEASUREMENTS OF HOUSE	6-21-06	X	X		X
S	DRAWING OF LIVING ROOM	6-21-06	X	X		X
T	DRAWING OF HOUSE	6-21-06	X	X		X
T-1	MAP OF THE HOUSE	6-28-06	X	X		X
U	DRAWING OF KITCHEN	6-21-06	X	X		X
V	DRAWING OF PORCH AREA	6-21-06	X	X		X
W	PHOTO OF MONEY	6-21-06	X	X		X
Y	P & P PROBATION TERMS	6-27-06	X	X		
Z	STATEMENT OF JOHNNY SHORES	6-28-06	X	X		X
AA	LETTERS	6-28-06	X	X		X

BB	LETTERS	6-28-06	X	X		X
CC	CALL DETAIL RECORDS	6-28-06	X	X		X
DD	DVD INTERVIEW EDITED JAY MARTINDALE	6-28-06	X	X		X
EE	DVD INTERVIEW JOHNNY SHORES	6-29-06	X	X		X
FF	DVD INTERVIEW JAKE DEGARMO	6-29-06	X	X		X
GG	TFPF INVENTORY REPORT	6-29-06	X	X		X

**WITNESS LIST**

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

STATE OF IDAHO

VS.

JUAN CARLOS FUENTES-PINA

CASE NO. CR 2006-107

2006  
JUN 30 PM 1:47

COURT OFFICERS:  
JUDGE G. RICHARD BEVAN  
DISTRICT JUDGE  
VIRGINIA BAILEY  
COURT REPORTER  
TERESA L. YOCHAM  
DEPUTY CLERK

*[Signature]*  
CLERK  
DEPUTY

**PLAINTIFF'S WITNESS:**

- 1. Jon Reilly
- 2. Jennifer Smallwood
- 3. Officer Eric Steele
- 4. Dr. Kevin Kraal
- 5. Coronor Dennis Chambers
- 6. Dr. Glen R. Groben
- 7. Detective Ryan Howe
- 8. Detective Chris C. Fullmer

- 9. Amy Jenkins
- 10. Richard Martin
- 11. Detective Curtis Gambrel
- 12. Jeremiah Schmidt
- 13. Deputy Terry Lee Hawkins
- 14. Jay C. Martindale Jr.
- 15. Jacob Degarmo
- 16. Christina Paerre
- 17. Johnny Shores
- 18. Bertha Naranjo

**DEFENDANT'S WITNESSES:**

- 1. Joel W. Peterson
- 2. Phillip D. Flieger
- 3. Dennis Pullin
- 4. Lt. Doug Hughes
- 5. Detective Chris Fullmer

- 6. Detective Curtis Gambrel
- 7. Tracy Perriera
- 8. Detective Curtis Gambrel
- 9.
- 10.

DISTRICT COURT  
TWIN FALLS CO, IDAHO  
FILED

2006 JUL 12 PM 2:22

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

BY Jly CLERK  
DEPUTY


STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JUAN CARLOS FUENTES-PINA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CASE NO. CR 2006-0107

ORDER FOR PREPARATION OF  
REPORTER'S TRANSCRIPT  
AT COUNTY EXPENSE

IT IS HEREBY ORDERED that a Partial Reporter's Transcript of the Jury Trial in the above-entitled matter be prepared at County Expense, as follows: June 29, 2006, proceedings in chambers beginning 12:37 p.m., through and including proceedings in Courtroom 2 beginning at 3:12 p.m.

DATED this 12<sup>th</sup> day of July, 2006.

  
\_\_\_\_\_  
HON. G. RICHARD BEVAN  
District Judge

TWIN FALLS PUBLIC DEFENDERS  
Attorneys at Law  
P.O. BOX 126  
TWIN FALLS, ID 83303-0126  
Telephone: (208) 734-1155  
ISB # 4444

DISTRICT COURT  
TWIN FALLS, IDAHO  
FILED  
ORIGINAL

2006 JUL 19 PM 3:32

BY    ja    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,

Plaintiff,

vs.

JUAN FUENTES-PINA,

Defendant.

Case No. CR 06-107

MOTION TO EXTEND  
TIME FOR FILING OF  
MOTION FOR NEW TRIAL

COMES NOW, the Defendant, by and through counsel, Marilyn B. Paul, and hereby moves for extension of time in which to file a Motion for New Trial. The verdict at trial in this matter was returned on June 28, 2006.

On July 3, 2006, Mr. Pina attempted to file a Motion for New Trial which he had prepared himself. This motion was not accepted by the Court as coming from an individual represented by counsel.


Client in the intervening time between the verdict and July 14, 2006, either refused to meet with me or when he did meet with me refused to converse with me about matters relating to his cases.

It is requested that the time to file a Motion for New Trial be extended so that client is not deprived of this important right in relation to the above-entitled case. It is requested that an enlargement of time be granted, sufficient to allow new appointed counsel if

appropriate for the claims made under the new trial motion, to address Mr. Pina's concerns.

A hearing is requested on this matter.

RESPECTFULLY SUBMITTED this 19 day of July, 2006.



MARILYN B. PAUL  
Public Defender



CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that a true and correct copy of the foregoing MOTION was delivered to the office of the Twin Falls County Prosecuting Attorney on the 19 day of July, 2006.

GRANT LOEBS  
Twin Falls County  
Prosecuting Attorney

Courthouse Mail  
 Fax

Kyle Hoar

2006 JUL 24 AM 11: 20

BY Jly CLERK  
DISTRICT 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-2006-0000107
Plaintiff	)	
	)	<b>ORDER RETURNING</b>
vs.	)	<b>PROPERTY TO</b>
	)	<b>INVESTIGATING LAW</b>
Juan Carlos Fuentes Pina	)	<b>ENFORCEMENT AGENCY</b>
	)	
<u>Defendant(s).</u>	)	

IT IS HEREBY ORDERED that the following exhibit(s) or items be returned to the investigating law enforcement agency in the above-entitled matter for safekeeping.

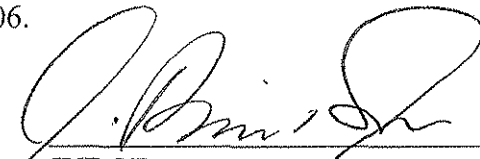
IT IS FURTHER ORDERED that the following exhibit(s) or items may be delivered to the Prosecuting Attorney pending delivery to the investigating law enforcement agency.

IT IS FURTHER ORDERED that the investigating law enforcement agency shall keep these items until the clerk gives the 10 day written Notice of Intent to Destroy Exhibits to all parties.

IT IS FURTHER ORDERED that if the defendant is sentenced to life imprisonment or death, the exhibits must be kept by the investigating law enforcement agency until further order of this court.

- ✓ State's Exhibit 58, gun, 6-20-06, jury trial 6-20-06 Remington Shotgun
- ✓ State's Exhibit 72, hacksaw, jury trial 6-20-06 030
- ✓ State's Exhibit 65, gun, jury trial 6-20-06 Winchester
- ✓ State's Exhibit 44, hand gun with three bullets, jury trial, 6-20-06 020
- ✓ State's Exhibit 123, 5 bullets, jury trial 6-20-06 110
- ✓ State's Exhibit 122, 3 bullets, jury trial 6-20-06 115
- ✓ State's exhibit 40, bullet shell, jury trial 6-20-06 019
- ✓ State's exhibit 78, 6 bullets, jury trial 6-20-06 033
- ✓ State's exhibit 95, 19 bullets, jury trial 6-20-06 044
- ✓ State's Exhibit 33, bullet, jury trial 6-20-06 015
- ✓ State's Exhibit 29, bullet shell, jury trial 6-20-06 013
- ✓ State's Exhibit 109, drug paraphenalia, (homeade bong), jury trial 6-20-06 059
- ✓ State's Exhibit 102, boxes of bullets, jury trial 6-20-06 047
- ✓ State's Exhibit 103, drug pipe, jury trial 6-20-06 048
- ✓ State's Exhibit 90, white crystal rock like substance, jury trial 6-20-06 040
- ✓ State's Exhibit 134, box of bullets bismuth brand, jury trial 6-21-06 120
- ✓ State's Exhibit 92, drug scale, jury trial 6-20-06 041
- ✓ State's Exhibit 84, box of bullets in case, jury trial, 6-20-06 037
- ✓ State's Exhibit 35, shotgun barrell, jury trial, 6-20-06 010
- ✓ State's Exhibit 58a, 2 bullets, jury trial 6-21-06 035a
- ✓ State's Exhibit 98, 2 black gun magazines with bullets and green pouch with magazine with bullets, jury trial, 6-20-06 040
- ✓ State's Exhibit 65a, 3 bullets, jury trial 6-21-06 07B
- ✓ State's Exhibit 124, 1 bullet shell, jury trial 6-21-06 117
- ✓ State's Exhibit 31, bullet, jury trial 6-21-06 014
- ✓ State's Exhibit 80, butt of gun, jury trial 6-20-06 034

DATED this <sup>4<sup>th</sup></sup> ~~2<sup>nd</sup>~~ day of July, 2006.

  
 \_\_\_\_\_  
 JUDGE

Received by: Gracy  
 Agency: Truman Falls Police Evidence  
 Date: 7/27/06

c: Grant Loebbs, Marilyn Paul, TFPD

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

TWIN FALLS CO, IDAHO FILED

2006 JUL 28 PM 3:46

JUDGE Richard Bevan  
CLERK Jessie Graham  
REPORTER Virginia Bailey

CASE # CR 05-107 CR05 9912 CR05 10532  
DATE 7-28-06  
TIME 1:30  
CD 1:35

BY JW  
CLERK DEPUTY

STATE OF IDAHO

VS. Juan Carlos Fuentes Rina DEFENDANT IN CUSTODY

CHARGES:

ARRAIGNMENT  STATUS  CHANGE OF PLEA  SENTENCING  OTHER

APPEARANCES:

Defendant Juan Rina  Pros. Atty Suzanne Craig  
 Def. Atty Suzanne Dunlap  Other

PROCEEDINGS AND ADVISEMENT OF RIGHTS:

- Defendant is informed of the charges against him/her and all legal rights including the right to be represented by counsel
- Defendant advised of effect of guilty plea and maximum penalties
- Defendant indicated he/she understands
- Waived right to counsel  Waived reading of information
- Court appointed Public Defender  Confirmed  Conflict  Court denied Court appointed counsel

ENTRY OF NOT GUILTY: \_\_\_\_\_ Days for trial

Set for Jury Trial  Pretrial  Status \_\_\_\_\_ discovery deadline \_\_\_\_\_

ENTRY OF GUILTY PLEA:  Defendant duly sworn in and testified.

- Charge amended \_\_\_\_\_
- Enters plea freely & voluntarily with knowledge of consequence
- Plea of guilty accepted by Court  Drug Court  Sentencing date \_\_\_\_\_
- Pre-sentence investigation report ordered  Updated  Alcohol eval  Controlled substance eval

BAIL:  Counsel addressed court.

- Released on own recognizance  Bail set at \_\_\_\_\_  Court Compliance Program  Bond condition order signed
- Motion for bond reduction denied  UA \_\_\_\_\_ per week  Reside at \_\_\_\_\_

SENTENCE:  Counsel gave recommendations to the court.

- Penitentiary \_\_\_\_\_ Determinate \_\_\_\_\_ Indeterminate \_\_\_\_\_  Concurrent with \_\_\_\_\_  Consecutive to \_\_\_\_\_
- 120  180 days retained jurisdiction  Probation time \_\_\_\_\_  Withheld judgment
- \_\_\_\_\_ Days discretionary Credit for \_\_\_\_\_ days.
- Standard terms and conditions  Probation fee
- Counseling services  Drug rehabilitation rec. by probation officer  Financial Counseling  Report to aftercare provider
- Level of Probation by probation officer  No association w/individual(s)
- County jail as term of probation \_\_\_\_\_  Suspended county jail \_\_\_\_\_  Work Release if approved
- Fine \_\_\_\_\_ Fine suspended \_\_\_\_\_  Court Costs  Final payment due by \_\_\_\_\_
- Public Defender reimbursement \_\_\_\_\_ ICR33D2 (Prosecutor fee) \_\_\_\_\_  Court Compliance Fee \_\_\_\_\_
- Restitution Amount \_\_\_\_\_ Payments to begin \_\_\_\_\_ at \_\_\_\_\_ per month
- Apologize to victim  No alcohol  Not frequent bars  No drugs(unless prescription)
- Substance abuse evaluation & follow recommendations  Attend AA/NA \_\_\_\_\_ x per  week  month  Sponsor by \_\_\_\_\_
- Job Search  Obtain/maintain fulltime employment or student status  GED to be completed by \_\_\_\_\_
- Polygraph test  Chemical tests  Waive 4th amendment rights to search
- Driving privileges suspended \_\_\_\_\_  Not possess firearms(s) or weapon(s)
- Community service \_\_\_\_\_ hours Within \_\_\_\_\_ days  Advise of address change
- Waive extradition  Comply with all court orders  No further misdemeanors or felonies
- Enroll with Probation and Parole reporter 5 days after returning to U.S. or 48 hours w/n State of Idaho
- Requirement to register as a sex offender  Right to appeal  DNA  Right Thumbprint  Exhibit 1 & 2 (Probation Terms) submitted

Other: Mr. Dunlap will appear on all three cases. Court will vacate these 3rd scheduled for extension for filing for New Trial. Court informed counsel of trial dates & jury trial dates

Court set Aug 11 2006 at 10:30 Per motion for New Trial  
Court ordered Transcript of jury trial. Mr Dunlap to provide order 305

M. LYNN DUNLAP, P.C. SBN 3200  
Attorney at Law  
415 Addison Ave  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2006 JUL 28 PM 4:27

BY \_\_\_\_\_ *EM*  
CLERK  
\_\_\_\_\_  
DEPUTY

Attorney for Defendant

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. )  
)  
)  
CARLOS FUENTES PINA, )  
)  
Defendant, )  
\_\_\_\_\_ )

Case No. CR-06-107  
**MOTION FOR ORDER  
PREPARING PRE-TRIAL  
AND TRIAL TRANSCRIPTS**

Defendant, by and through counsel of record, M. LYNN DUNLAP, hereby moves the above-entitled court for its order for the preparation of the trial and sentencing transcript at the county's expense.

Said transcripts are necessary for the defense of this action.

DATED this 28 day of July, 2006

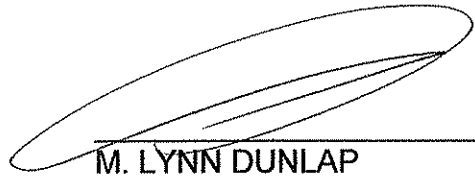
  
\_\_\_\_\_  
M. LYNN DUNLAP  
Attorney for Plaintiff

ORIGINAL

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 28, day of July, 2006 a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

  
M. LYNN DUNLAP

M. LYNN DUNLAP, P.C. SBN 3200  
Attorney at Law  
415 Addison Ave  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074

2006 JUL 31 PM 2:17

BY *Jly* CLERK  
DEPUTY

Attorney for Defendant

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. )  
)  
CARLOS FUENTES PINA, )  
)  
Defendant, )  
\_\_\_\_\_ )

Case No. CR-06-107  
**ORDER FOR PREPARATION  
OF PRE-TRIAL AND  
TRIAL TRANSCRIPTS**

The above-entitled matter having come before the court pursuant to defendant's motion for the preparation of the trial and sentencing transcript, and good cause appearing,

IT IS HEREBY ORDERED:

1. That transcripts of the pretrial motions and trial in the above-entitled matter shall be prepared and provided to the Defendant's counsel.
2. The transcripts are to be prepared at the State's expense.

DATED this 31 day of July 2006.

*Richard Bevan*  
Richard Bevan  
District Judge

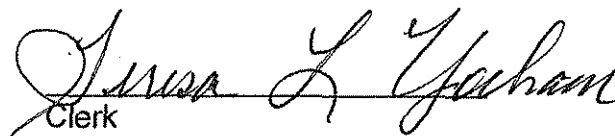
*Carla...*

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 1, day of <sup>August</sup>~~July~~, 2006 a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

M. Lynn Dunlap  
Attorney At Law  
P.O. Box 2754  
Twin Falls, ID 83303-2754

  
Clerk





# IDAHO DEPARTMENT OF CORRECTION

"Protecting You and Your Community" FILED

JAMES E. RISCH  
Governor

THOMAS J. BEAUCLAIR  
Director

2006 AUG -2 AM 11:15

August 2, 2006

BY Jly CLERK  
DEPUTY

Honorable Richard Bevan  
Fifth District Judge  
Twin Falls County Courthouse  
PO Box 126  
Twin Falls, Idaho 83301

RE: FUENTES-PINA, Juan Carlos  
Twin Falls County Case #CR 2006-00107

Your Honor:

The defendant appeared before your Court on or about June 29, 2006, and he was found guilty of the crime of First Degree Murder. A Presentence Investigation Report was ordered at that time and sentencing was scheduled for September 22, 2006.

To date, Mr. Pina has refused to cooperate with the presentence investigation process. This investigator can still complete a PSI, based on information obtained in records held by this department. Should the Court wish to expedite his sentencing, please let me know.

Thank you for your time.

Respectfully submitted,

Brittney Woodard  
Brittney Woodard  
Presentence Investigator

COPIES TO:

Grant Loeb, Prosecuting Attorney  
Marilyn Paul, Defense Attorney  
IDOC File

John A. Bradley  
 Attorney at Law  
 210 E. 5th St. N., Suite 1  
 Burley, Idaho 83318  
 Telephone: (208) 678-1290  
 Fax: (208) 678-0986

DISTRICT COURT  
 TWIN FALLS CO, IDAHO  
 FILED  
 2006 AUG -3 AM 10:48  
 BY *Sly* CLERK DEPUTY

Attorney for Jeremiah Benjamin Schmidt

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-06-107
	)	
Plaintiff,	)	
	)	PETITION FOR ORDER
vs.	)	APPROVING PAYMENT
	)	OF ATTORNEY FEES
JUAN CARLOS FUENTES-PINA,	)	
	)	
Defendant.	)	

The petition of John A. Bradley respectfully shows:

1. He is an attorney of law practicing at Burley, Idaho.
2. He was appointed to represent Jeremiah Benjamin Schmidt, in the above-entitled matter, by the Honorable G. Richard Bevan, District Judge, in the above-entitled matter.
3. Attached hereto and incorporated herein by reference as Exhibit "A" is a billing for legal services rendered in Twin Falls County for and on behalf of Jeremiah Benjamin Schmidt. The legal services were billed at \$50.00 per hour pursuant to the request of the Court at the time the appointment of your petitioner was made.
4. Your petitioner believes and alleges that the work performed

PETITION FOR ORDER APPROVING PAYMENT OF ATTORNEY FEES - 1  
 SchmidtJ.Petition for Order for Atty Fees-TF

on behalf of Jeremiah Benjamin Schmidt was done in a competent professional manner and that the charges made and the hours expended were reasonable and appropriate in light of the seriousness of the matters.

WHEREFORE, your petitioner prays that the Court enter an Order for compensation for your petitioner for legal fees and costs in the sum of \$466.50, and that the Board of County Commissioners of Twin Falls County be ordered to pay said charge.

DATED this 2nd day of August, 2006.

John A. Bradley  
John A. Bradley  
Attorney for Jeremiah B. Schmidt

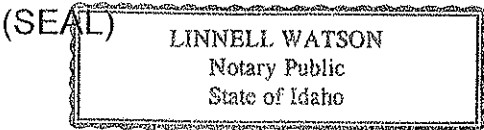
STATE OF IDAHO            )  
  )  
County of Minidoka        )     SS

John A. Bradley, being first duly sworn on oath, deposes and says:

That he is the petitioner in the above and foregoing Petition for Order for Payment of Attorney Fees; that he has read the same and knows the contents thereof and the facts therein stated he believes to be true.

John A. Bradley  
John A. Bradley

SUBSCRIBED AND SWORN to before me this 2nd day of August, 2006.



Linnell Watson  
Notary Public  
Residing at: Burley, Idaho  
My Commission Expires: 10/10/2009

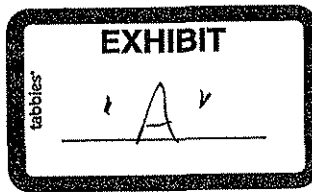
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 22 day of August, 2006, I served a true and correct copy of the foregoing PETITION FOR ORDER APPROVING PAYMENT OF ATTORNEY FEES upon:

Grant Loeb  
Twin Falls Co. Prosecutor's Office  
P.O. Box 126  
Twin Falls, Idaho 83303-4020

Attorney of record in the above-entitled action, by depositing a copy thereof in the United States mail postage prepaid by first class in an envelope addressed to said attorney at the aforesaid address.

  
\_\_\_\_\_  
John A. Bradley



John A. Bradley, Esquire  
Attorney At Law  
210 East 5th St. North, Suite 1  
Burley, ID 83318

Invoice submitted to:  
Jeremiah Schmidt  
c/o Cassia County Commissioners  
Cassia County Courthouse  
1459 Overland Ave.  
Burley ID 83318

August 2, 2006  
In Reference To: Court appointed conflict case - \$55/hr.  
Invoice #13617

Professional services

	<u>Hours</u>	<u>Amount</u>
6/22/06- Meeting with Judge Carlson - re: procedure	0.42	21.00
- T/C with Grant Loeb and defendant	0.33	16.50
- T/C with Grant Loeb and defendant	0.33	16.50
- Meeting with defendant and Dave Haley at jail	2.50	125.00
6/23/06- Travel to and from Twin Falls for trial	2.00	100.00
- Meeting with defendant before trial	1.00	50.00
- Attended trial	2.00	100.00
- Meeting with defendant at jail	0.75	37.50
	<hr/>	<hr/>
For professional services rendered	9.33	\$466.50

7/11/06- Payment - thank you

Balance due

---

---

\$466.50

John A. Bradley  
Attorney at Law  
210 E. 5th St. N., Suite 1  
Burley, Idaho 83318  
Telephone: (208) 678-1290  
Fax: (208) 678-0986

2006 AUG -7 AM 10:32

BY \_\_\_\_\_  
*Jly* CLERK  
DEPUTY

Attorney for Jeremiah Benjamin Schmidt

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-06-107
	)	
Plaintiff,	)	
	)	ORDER
vs.	)	APPROVING PAYMENT
	)	OF ATTORNEY FEES
JUAN CARLOS FUENTES-PINA,	)	
	)	
Defendant.	)	

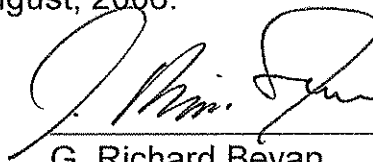
TO: Board of County Commissioners of Twin Falls and Twin Falls County  
Auditor

The petition of John A. Bradley for payment of fees for representation of Jeremiah Benjamin Schmidt in the above-entitled proceedings having been considered by the Court, and an opportunity having been given for the Prosecuting Attorney of Twin Falls County to object to the petition, and no objection having been received, and it appearing to the Court that the Petition for Payment of Fees has been submitted in compliance with the Order of the District

Court in the above-entitled matter, and that the total sum of \$466.50 is a reasonable sum for the services rendered by the petitioner pursuant to the Court's order,

IT IS HEREBY APPROVED by the Court that the Board of County Commissioners of Twin Falls County pay to John A. Bradley, 210 E. 5<sup>th</sup> St. N., Suite 1, Burley, Idaho 83318, the sum of \$466.50 for representation of Jeremiah Benjamin Schmidt.

DATED this 7<sup>th</sup> day of August, 2006.



\_\_\_\_\_  
G. Richard Bevan  
District Judge

ORDER APPROVING PAYMENT OF ATTORNEY FEES - 2

SchmidtJ.Order for Payment of Attorney Fees-TF

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

JUDGE Richard Brown  
 CLERK Theresa Spelman  
 REPORTER Virginia Bailey

CASE # CR 06-109  
 DATE 8-11-06  
 TIME 10:30  
 CD 10:39

2006 AUG 11 PM 1:39  
 BY [Signature]  
 CLERK DEPUTY

STATE OF IDAHO  
 VS.

Juan Carlos Pina

DEFENDANT IN CUSTODY.

CHARGES: \_\_\_\_\_

ARRAIGNMENT     STATUS     CHANGE OF PLEA     SENTENCING     OTHER \_\_\_\_\_

APPEARANCES:

Defendant Juan C. Pina     Pros. Atty Rosemary Emery  
 Def. Atty Lynn Dunlap     Other \_\_\_\_\_

PROCEEDINGS AND ADVISEMENT OF RIGHTS:

- Defendant is informed of the charges against him/her and all legal rights including the right to be represented by counsel
- Defendant advised of effect of guilty plea and maximum penalties
- Defendant indicated he/she understands
- Waived right to counsel \_\_\_\_\_  Waived reading of information
- Court appointed Public Defender     Confirmed     Conflict     Court denied Court appointed counsel

ENTRY OF NOT GUILTY: \_\_\_\_\_ Days for trial

Set for Jury Trial \_\_\_\_\_  Pretrial \_\_\_\_\_  Status \_\_\_\_\_ discovery deadline \_\_\_\_\_

ENTRY OF GUILTY PLEA:  Defendant duly sworn in and testified.

- Charge amended \_\_\_\_\_
- Enters plea freely & voluntarily with knowledge of consequence
- Plea of guilty accepted by Court     Drug Court     Sentencing date \_\_\_\_\_
- Pre-sentence investigation report ordered     Updated     Alcohol eval     Controlled substance eval

BAIL:  Counsel addressed court.

- Released on own recognizance     Bail set at \_\_\_\_\_     Court Compliance Program     Bond condition order signed
- Motion for bond reduction denied     UA \_\_\_\_\_ per week     Reside at \_\_\_\_\_

SENTENCE:  Counsel gave recommendations to the court.

- Penitentiary \_\_\_\_\_ Determinate \_\_\_\_\_ Indeterminate \_\_\_\_\_  Concurrent with \_\_\_\_\_  Consecutive to \_\_\_\_\_
- 120  180 days retained jurisdiction     Probation time \_\_\_\_\_  Withheld judgment
- \_\_\_\_\_ Days discretionary    Credit for \_\_\_\_\_ days.
- Standard terms and conditions     Probation fee
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- County jail as term of probation \_\_\_\_\_  Suspended county jail \_\_\_\_\_  Work Release if approved
- Fine \_\_\_\_\_ Fine suspended \_\_\_\_\_  Court Costs  Final payment due by \_\_\_\_\_
- Public Defender reimbursement \_\_\_\_\_ ICR33D2 (Prosecutor fee) \_\_\_\_\_  Court Compliance Fee \_\_\_\_\_
- Restitution Amount \_\_\_\_\_ Payments to begin \_\_\_\_\_ at \_\_\_\_\_ per month
- Apologize to victim     No alcohol     Not frequent bars     No drugs(unless prescription)
- Substance abuse evaluation & follow recommendations     Attend AA/NA \_\_\_\_\_ x per  week  month  Sponsor by \_\_\_\_\_
- Job Search     Obtain/maintain fulltime employment or student status     GED to be completed by \_\_\_\_\_
- Polygraph test     Chemical tests     Waive 4th amendment rights to search
- Driving privileges suspended \_\_\_\_\_  Not possess firearms(s) or weapon(s)
- Community service \_\_\_\_\_ hours    Within \_\_\_\_\_ days     Advise of address change
- Waive extradition     Comply with all court orders     No further misdemeanors or felonies
- Enroll with Probation and Parole reporter 5 days after returning to U.S. or 48 hours w/n State of Idaho
- Requirement to register as a sex offender     Right to appeal     DNA     Right Thumbprint     Exhibit 1 & 2 (Probation Terms) submitted

Other: Court inquired w/ counsel. Mr. Dunlap addressed the court. Court requested Mr. Emery + Mr. Dunlap to meet informally and then meet w/ the court, informally.





CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 18, day of September 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303



---

M. Lynn Dunlap

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

M. LYNN DUNLAP, P.C. SBN 3200  
Attorney at Law  
415 Addison Avenue  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074  
Attorney for Defendant

2006 SEP 19 PM 4:19

BY Sum  
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 )

Plaintiff, )

-vs- )

JUAN CARLOS FUENTES PINA, )

Defendant. )

Case No. CR-2005-9912  
CR-2005-10532  
CR-2006-0107  
CR-2006- 6176

AFFIDAVIT IN SUPPORT OF  
MOTION TO WITHDRAW

THE STATE OF IDAHO )

County of Twin Falls )

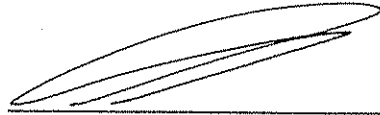
ss.

M. LYNN DUNLAP, being first duly sworn upon oath deposes and says:

1. Affiant is an attorney duly licensed and authorized to practice in the State of Idaho
2. On June 2006, Affiant was appointed as Attorney for record for the Defendant in the above-referenced matter.
3. Affiant is requesting that he be removed as counsel for record for the Defendant as the Defendant has requested.

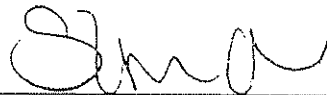
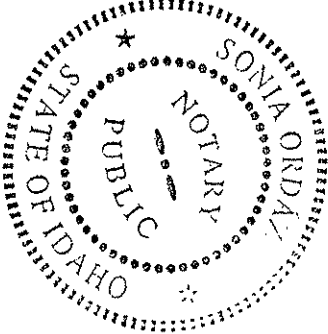
Based upon the above, it is respectfully requested that the above-entitled court allow the Affiant to withdraw as attorney of record for defendant herein.

DATED this 18 day of September, 2006.



M. LYNN DUNLAP

SUBSCRIBED AND SWORN before me this 18 day of September, 2006



NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
Commission Exp. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 18, day of September 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303



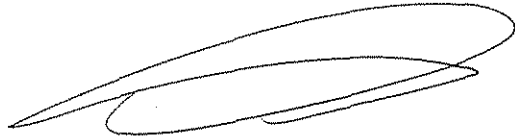
M. Lynn Dunlap



CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 18, day of September 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303



---

M. Lynn Dunlap



4. Examination reveals significant relationships between Defendant and all State witnesses.

5. State witnesses and/or testimony's are not consistent.

6. It appears as though there is a potential collusion of witnesses that may have taken place as well as fabrication.


7. A private investigator is necessary to resolve said issues.

8. Affiant has discussed the situation with Mr. Stuart Robinson. Mr. Robinson has previously been appointed as a private investigator in other Twin Falls matters and has agreed to act in this matter. Defendant has also agreed on Mr. Robinson's appointment. Mr. Robinson charges \$50.00 per hour.

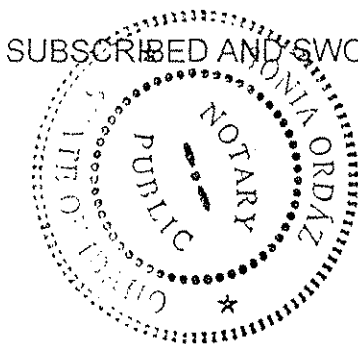
9. Based upon the above referenced issues, Affiant is asking that the court enter an order appointing Mr. Stuart Robinson as the private investigator for the above-referenced matter.


10. Further Affiant Sayeth Not.

DATED this 18 day of September, 2006.

  
\_\_\_\_\_  
M. LYNN DUNLAP  
Attorney for Defendant

SUBSCRIBED AND SWORN before me this 18 day of September, 2006



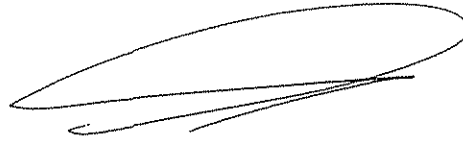
  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission exp. \_\_\_\_\_



CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 18, day of September 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303



---

M. Lynn Dunlap

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2006 SEP 21 PM 3:14

BY \_\_\_\_\_

CLERK

*Teresa Yocham*

User: YOCHAM

Date: 9/21/2006

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

Time: 03:16 PM

Minutes Report

Page 1 of 1

Case: CR-2006-0000107

Defendant: Pina, Juan Carlos Fuentes

Selected Items

---

Hearing type:	Motion for Withdraw	Minutes date:	09/21/2006
Assigned judge:	G. Richard Bevan	Start time:	01:30 PM
Court reporter:	Virginia Bailey	End time:	01:30 PM
Minutes clerk:	Teresa Yocham	Audio tape number:	
Prosecutor:	Grant Loeb		
Defense attorney:	M. Lynn Dunlap		

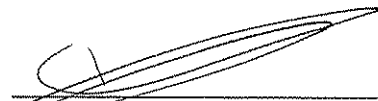
Tape Counter: 151	Court called the motion to withdraw. Mr. Dunlap informed the court the motion to withdraw is withdrawn.
Tape Counter: 152	Court will hear the motion for private investigator. Mr. Dunlap gave argument on the motion.
Tape Counter: 155	Mr. Loeb gave argument on the motion.
Tape Counter: 158	Court gave findings. Court inquired of Mr. Dunlap. Mr. Dunlap responded.
Tape Counter: 200	Court will grant the motion for private investigator in all cases.
Tape Counter: 201	Court informed Counsel a sentencing date would be set before November 28, 2006 if at all possible. Mr. Loeb gave argument. Mr. Dunlap gave argument.
Tape Counter: 205	Court reviewed possible sentencing dates. Court set sentencing for November 17 at 9:00 am.
Tape Counter: 210	Court reviewed the Idaho Code for a motion for new trial. Court made findings. Court will let Mr. Dunlap file amended motion for new trial. Mr. Loeb corrected the court. Mr. Dunlap will file a motion for new trial as the hand written motion that was filed by Mr. Pina was not accepted by the Court.



**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 2, day of October 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303

  
\_\_\_\_\_  
M. Lynn Dunlap

M. LYNN DUNLAP, P.C.  
Attorney at Law  
415 Addison Avenue  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074  
SBN: 3200

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2006 OCT 13 PM 4:39

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

Attorney for Defendant

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-2006-107

Plaintiff, )

**AFFIDAVIT IN SUPPORT  
OF MOTION TO CONTINUE  
AND MOTION FOR  
PSYCHIATRIC TESTING**

-vs- )

JUAN CARLOS FUENTES PINA, )

Defendant. )

STATE OF IDAHO )

:ss

County of Twin Falls )

1. I am the court appointed attorney for the above-referenced Defendant.
2. On or about September 15<sup>th</sup> and September 29<sup>th</sup> of 2006, Scott Rasmussen, Adult Mental Health, Department of Health & Welfare, met with the above-referenced Defendant.
3. The above-referenced Defendant had initially declined to meet with Mr. Rasmussen, and subsequently agreed to meet with Mr. Rasmussen following my advice.

ORIGINAL

4. The Twin Falls County Jail facility had requested Mr. Rasmussen's analyses relative to Mr. Pina's violent behavior in the jail.

5. On or about October 11, 2006, Affiant spoke with Mr. Rasmussen and was advised that Mr. Rasmussen's initial analysis indicated that he did not detect a psychological issue with the Defendant, however, he did see behavioral and thought pattern issues. Mr. Rasmussen further advised Affiant that further assessment was appropriate, which would include a personality assessment inventory, a depression inventory, rational behavior inventory, as well as IQ testing, and other analysis.

6. On or about October 12, 2006, Affiant was able to make contact with Dr. Richard Smith, a licensed and certified psychologist in the Twin Falls area. Affiant's conversation with Dr. Smith indicated that he was willing to perform a mental examination relative to the Defendant, for a complete psychiatric evaluation as well as IQ testing. That Dr. Smith's fees would be approximately \$1,500.00, and may go higher, depending upon the level of cooperation of the above-referenced Defendant. That Dr. Smith would ultimately be able to commence his assessment on or about November 3, 2006.

7. In view of the severity of the charge and sentencing facing Mr. Pina, a life sentence, Affiant firmly believes that absent psychological testing and evaluation, Affiant cannot be properly prepared for sentencing argument on or about November 8<sup>th</sup>, 2006.

8. Affiant has discussed this situation with Grant Loeb, Twin Falls County Prosecuting attorney and was advised that Mr. Loeb concurred that psychological testing would probably be of benefit to the court relative to sentencing. Additionally, Mr. Loeb has advised Affiant that he would not have an objection to a continuance in this matter,

provided, that his office and well as Affiant's office were properly consulted by the Court before selection of a new sentencing date.

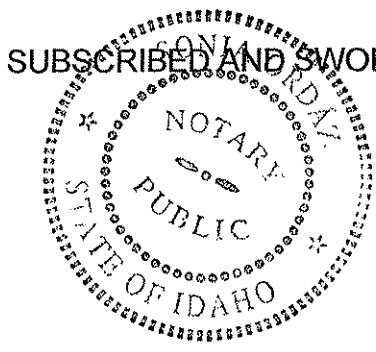
9. Based upon the foregoing Affiant requests that the Sentencing and the above-referenced matter be continued, until access to psychological evaluation is made available to both parties.

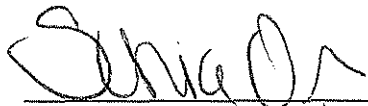
Further Affiant Sayeth Not.

Dated this 13 day of October, 2006

  
M. Lynn Dunlap

SUBSCRIBED AND SWORN before me this 13 day of October, 2006




  
Notary Public For Idaho  
Residing at \_\_\_\_\_  
Commission exp. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 13, day of October, 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant Loebbs  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83301

  
M. Lynn Dunlap

M. LYNN DUNLAP, P.C.  
Attorney at Law  
415 Addison Avenue  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074  
SBN: 3200

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2006 OCT 13 PM 4:39

BY [Signature] CLERK  
DEPUTY

Attorney for Defendant

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-2006-107

Plaintiff, )

**MOTION TO CONTINUE**

-vs- )

JUAN CARLOS FUENTES PINA, )

Defendant. )

COMES NOW, M. Lynn Dunlap, attorney for the above-named Defendant, and moves this Court for its Order continuing the Sentencing currently scheduled for November 8, 2006 at 9:00 a.m. be rescheduled.

Based upon the herein attached affidavit.

DATED this 12 day of October, 2006.

[Signature]  
M. LYNN DUNLAP  
Attorney for Defendant



**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 18, day of October, 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83301

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line extending to the right, positioned above a solid horizontal line.

2006 OCT 13 PM 4:39

M. LYNN DUNLAP, P.C.  
Attorney at Law  
415 Addison Avenue  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074  
SBN: 3200

BY \_\_\_\_\_  
CLERK  
*[Signature]* \_\_\_\_\_  
DEPUTY

Attorney for Defendant

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-2006-107
	)	
	)	<b>STIPULATION</b>
	)	<b>PSYCHIATRIC TESTING</b>
Plaintiff,	)	
	)	
-vs-	)	
	)	
JUAN CARLOS FUENTES PINA,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the Defendant, by and through his attorney of record, M. Lynn Dunlap, and the Plaintiff, State of Idaho, by and through Grant Loeb, who hereby agree and stipulate for the Defendant to have a psychiatric test performed.

Dated this 12 day of October, 2006

*[Signature]*  
\_\_\_\_\_  
M. Lynn Dunlap  
Attorney for Defendant

Dated this 13 day of October, 2006



Grant Loeb  
Prosecuting Attorney

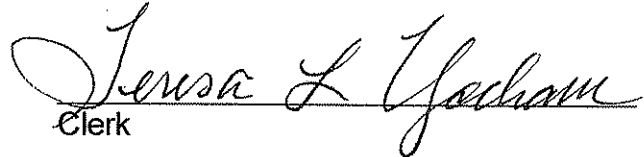


**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 19, day of October, 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant Loebs  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83301

M. Lynn Dunlap  
Attorney At Law  
P.O. Box 2754  
Twin Falls, ID 83303-2754

  
Clerk

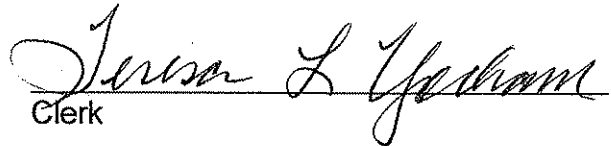


**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 19, day of October, 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant Loebbs  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83301

M. Lynn Dunlap  
Attorney At Law  
P.O. Box 2754  
Twin Falls, ID 83303-2754

  
Clerk

M. LYNN DUNLAP, P.C. SBN 3200  
Attorney at Law  
415 Addison Avenue  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074  
Attorney for Defendant

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2006 NOV -1 PM 4:05

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 )

Plaintiff, )

-vs- )

JUAN CARLOS FUENTES PINA, )

Defendant. )

Case No. CR-2005-9912  
CR-2005-10532  
CR-2006-0107  
CR-2006-6176

**MOTION TO WITHDRAW**

Counsel of record for Defendant, Juan Carlos Fuentes Pina, hereby moves the above-entitled court for its order allowing him to withdraw as counsel of record in the above-entitled matters.

DATED this 1 day of <sup>Nov</sup> ~~October~~, 2006

  
M. Lynn Dunlap  
Attorney for Defendant

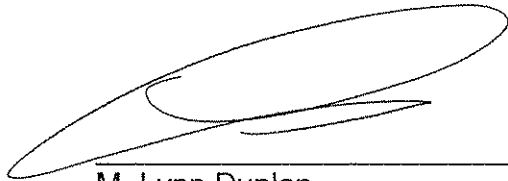
ORIC



CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 1, day of <sup>Nov</sup> ~~October~~ 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loebs  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303



---

M. Lynn Dunlap

M. LYNN DUNLAP, P.C. SBN 3200  
Attorney at Law  
415 Addison Avenue  
P.O. Box 2754  
Twin Falls, ID 83303-2754  
Telephone: 734-5885  
Facsimile: 736-2074  
Attorney for Defendant

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED  
2006 NOV -1 PM 4:05  
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 )  
)  
)  
)  
)  
Plaintiff, )  
)  
-vs- )  
)  
JUAN CARLOS FUENTES PINA, )  
)  
Defendant. )

Case No. CR-2005-9912  
CR-2005-10532  
CR-2006-0107  
CR-2006-6176

**AFFIDAVIT IN SUPPORT OF  
MOTION TO WITHDRAW**

THE STATE OF IDAHO )  
) ss. )  
County of Twin Falls )

M. LYNN DUNLAP, being first duly sworn upon oath deposes and says:

1. Affiant is an attorney duly licensed and authorized to practice in the State of Idaho
2. On June 2006, Affiant was appointed as Attorney for record for the Defendant in the above-referenced matter.
3. On or about October 31, 2006, at approximately 5:00 o'clock p.m., Affiant and the appointed private investigator, Stu Robinson, met with the above-referenced Defendant in the Twin Falls County Jail.

373

4. The Defendant objected to the presence of Mr. Robinson on the basis that he did not feel that Mr. Robinson had performed investigative functions to his satisfaction. Affiant advised the above-referenced Defendant that Mr. Robinson was there to assist the Affiant, not the Defendant, and that he would remain.

5. Affiant advised the above-referenced Defendant that the Court had approved a psychiatric evaluation and that Affiant requested the above referenced Defendant comply with the request of the evaluator, Dr. Richard Smith.

6. The above-referenced Defendant advised Affiant that there would be no psychiatric evaluation, that he would refuse to cooperate or participate in any fashion.

7. Affiant attempted to discuss the trial scheduled for November 28, 2006 with the above-referenced Defendant, the above-referenced Defendant refused to discuss factual background, legal theory, or any form or fashion of the defense relative to that pending trial.

8. The above-referenced Defendant insisted that Affiant file the Motion for New Trial immediately, even if it meant ignoring any and all preparation relative to the trial set for November 28, 2006.

9. Affiant advised the above-referenced Defendant that matters needed to be prioritized, that the Motion for New Trial need not be filed until after sentencing or anytime in between, however the November 28,2006 trial would not go away and had to be prepared for. Affiant further advised the above-referenced Defendant that conviction relative to the pending charges in the November 28,2006 trial would subject him to a sentence between a mandatory minimum of two years and a maximum of fifty-five years.

The above referenced Defendant indicated to Affiant that those charges were not true and refuses to discuss subject matter of those charges any further.

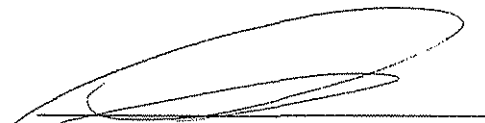
10. Affiant believes that pursuant to Idaho State Case Law, Affiant is the sole determiner of tactics and strategy relative to criminal defense matters and it is solely within his discretion as to when there are items that need to be filed, not the above referenced Defendant.

11. When Affiant advised the above-referenced Defendant of that, Defendant picked up his paperwork and lewd himself from the jail cell, and advised Affiant and Mr. Robinson they were both fired.

12. Affiant believes that the attorney/client relationship has been irretrievably broken, and Affiant can no longer adequately represent the Defendant.

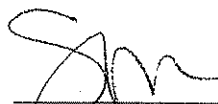
Based upon the foregoing, Affiant requests that he be removed from any and all cases relative to the above referenced Defendant.

DATED this 1 day of November, 2006

  
M. LYNN DUNLAP

SUBSCRIBED AND SWORN before me this 1 day of November, 2006



  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
Commission Exp. \_\_\_\_\_

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 1 day of November 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loebbs  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303

  
\_\_\_\_\_  
M. Lynn Dunlap

Juan Carlos Fuentes Pina  
Twin Falls, County Jail  
P.O. Box 306  
Twin Falls, I. Idaho 83303

October 31, 2006  
DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2006 NOV -1 AM 9:25

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

Honorable District Judge  
B. Richard DEVAN  
Fifth Judicial District Court  
P.O. Box 126  
Twin Falls, Idaho 83303

RE: CASE NO: CR-2006-0107

Your Honor;

Lynn Dunlap was withdrawn from my case after finding a conflict of interest with me, he called me a "cocksucker" because I refuse to plead guilty to remaining charges and talk to a psychiatrist or do a pre-sentence report.

I've already been convicted on lies, and do not have to convict myself further or forced to be compelled to be a witness against myself.

Mr. Dunlap refuses to represent me properly. Even with all the actions filed against me has only been to see me twice. and the second time he called me a "cocksucker" and refused to help me.

I filed a Motion for a new trial on time and I deserve to have it heard, denied or granted so I can use it on appeal:

- 1) BEING called a "Mafia Enforcer" and Photographed with actors IN A MOVIE to jury
- 2) Convicted of kidnapping when there is evidence there was none
- 3) Hiding the fact that "Jesse Narabo" had a run from the jury + he went out back door. and
- 4) Not allowing me to testify - locking me up.

for what EVER REASON the Court wants to deny  
or Motion or Grant it, I presented it AND SO HAVE  
right to a ruling on the MERIT of the Motion  
Also Dunlap Private Investigator, Stuart Robinson  
is giving me legal advice and orders, like telling me  
I have to plead Guilty and that My Motion is  
No good:

He's not a lawyer and is not suppose to be giving  
ME Counsel.

Now that Dunlap has a conflict as I do,  
please Appoint Counsel and direct them to ARGUE  
the Motion and represent me properly.

I am not a cocksucker, nor do I have to  
give any evidence to a psychiatrist or PIP officer  
and Refuse to incriminate myself.

Very Truly Yours

Juan C. Fuentes Pina  
Juan Carlos Fuentes Pina, Defendant.

C.C

I certify I have sent a copy of this  
letter to the Prosecutor Brant Loeb, Twin Falls, I.D.

## Conflict of Interest

I was lied to and deceived by the Public Defenders Office. I was told I could testify in my behalf but the Public Defender's Holloway and Paul had me locked on purpose in a holding cell for three (3) hours while they closed their argument and rested their case, than I was brought to court and told it was to late and I was not permitted to testify.

## Relief

I Request appointment of Counsel outside the Public Defender's Office for:

All Remaining Trials + Proceedings,  
All Appeals, Notice of Appeals and  
sentencing:

I further request that my Trial Record reflect what they did in deceiving me, I have a number of Bailiff's and Deputies who are witnesses

Dated this — day of July, 2006

CASE NO. CR-05-9912

CASE NO. CR-05-10532

CASE NO. CR-06-107

Juan Carlos Pina  
Juan Carlos Pina



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

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

JUDGE Richard Bevan  
CLERK Christina Graham  
REPORTER Magnum Bailey

CASE # CR 06-1076 LR D5 10532, 0369 PM 4:00  
DATE 11-6-06  
TIME 3:30  
CD 3:26  
BY [Signature] CLERK  
[Signature] DEPUTY

STATE OF IDAHO

Juan Carlos Pina  
VS

DEFENDANT IN CUSTODY

CHARGES:

ARRAIGNMENT  STATUS  CHANGE OF PLEA  SENTENCING  OTHER MM to Withdraw

APPEARANCES:  
 Defendant Juan Carlos Fuentes Pina Pros. Atty Grant Loeb (Cmclin at 3:39)  
 Def. Atty Lynn Dunlap  Other \_\_\_\_\_

PROCEEDINGS AND ADVISEMENT OF RIGHTS:

- Defendant is informed of the charges against him/her and all legal rights including the right to be represented by counsel
- Defendant advised of effect of guilty plea and maximum penalties
- Defendant indicated he/she understands
- Waived right to counsel \_\_\_\_\_  Waived reading of information
- Court appointed Public Defender  Confirmed  Conflict  Court denied Court appointed counsel

ENTRY OF NOT GUILTY: \_\_\_\_\_ Days for trial  
 Set for Jury Trial \_\_\_\_\_  Pretrial \_\_\_\_\_  Status \_\_\_\_\_ discovery deadline \_\_\_\_\_

ENTRY OF GUILTY PLEA:  Defendant duly sworn in and testified.

- Charge amended \_\_\_\_\_
- Enters plea freely & voluntarily with knowledge of consequence
- Plea of guilty accepted by Court  Drug Court  Sentencing date \_\_\_\_\_
- Pre-sentence investigation report ordered  Updated  Alcohol eval  Controlled substance eval

BAIL:  Counsel addressed court.  
 Released on own recognizance  Bail set at \_\_\_\_\_  Court Compliance Program  Bond condition order signed  
 Motion for bond reduction denied  UA \_\_\_\_\_ per week  Reside at \_\_\_\_\_

SENTENCE:  Counsel gave recommendations to the court.  
 Penitentiary \_\_\_\_\_ Determinate \_\_\_\_\_ Indeterminate \_\_\_\_\_  Concurrent with \_\_\_\_\_  Consecutive to \_\_\_\_\_  
 120  180 days retained jurisdiction  Probation time \_\_\_\_\_  Withheld judgment

\_\_\_\_\_ Days discretionary Credit for \_\_\_\_\_ days.  
 Standard terms and conditions  Probation fee  
 Counseling services  Drug rehabilitation rec. by probation officer  Financial Counseling  Report to aftercare provider  
 Level of Probation by probation officer  No association w/individual(s)

County jail as term of probation \_\_\_\_\_  Suspended county jail \_\_\_\_\_  Work Release if approved  
 Fine \_\_\_\_\_ Fine suspended \_\_\_\_\_  Court Costs  Final payment due by \_\_\_\_\_  
 Public Defender reimbursement \_\_\_\_\_ ICR33D2 (Prosecutor fee) \_\_\_\_\_  Court Compliance Fee \_\_\_\_\_  
 Restitution Amount \_\_\_\_\_ Payments to begin \_\_\_\_\_ at \_\_\_\_\_ per month

Apologize to victim  No alcohol  Not frequent bars  No drugs (unless prescription)  
 Substance abuse evaluation & follow recommendations  Attend AA/NA \_\_\_\_\_ x per  week  month  Sponsor by \_\_\_\_\_  
 Job Search  Obtain/maintain fulltime employment or student status  GED to be completed by \_\_\_\_\_  
 Polygraph test  Chemical tests  Waive 4th amendment rights to search  
 Driving privileges suspended \_\_\_\_\_  Not possess firearms(s) or weapon(s)  
 Community service \_\_\_\_\_ hours Within \_\_\_\_\_ days  Advise of address change  
 Waive extradition  Comply with all court orders  No further misdemeanors or felonies  
 Enroll with Probation and Parole reporter 5 days after returning to U.S. or 48 hours w/n State of Idaho  
 Requirement to register as a sex offender  Right to appeal  DNA  Right Thumbprint  Exhibit 1 & 2 (Probation Terms) submitted

Other: 3:27 Mr. Pina addressed the court regarding issues for reasons of withdrawal of Mr. Dunlap 3:31 Mr. Dunlap addressed the court, requested to be allowed to withdraw 3:39 Mr. Loeb now present in the courtroom 3:40 Court made findings 3:44 Court will grant Mr. Pina's / Mr. Dunlap's request to withdraw Court will vacate trial set the end of this month 3:45 Mr. Loeb address the court. Court signed the orders



2. Service upon the defendant shall be by personal service, or by certified mail to the last known address most likely to give actual notice to the defendant. Withdrawing counsel shall file proof of service, in affidavit form, with this court.
3. Unless expressly provided in another written order attached hereto, this order shall not serve to vacate or alter the date of any scheduled trial or hearing.


**NOTICE TO DEFENDANT OF RESPONSIBILITIES:**

IT IS FURTHER ORDERED that upon receipt of this order; the Defendant shall forthwith:

1. Employ another attorney who shall file an appearance on your behalf; or
2. File an application for the appointment of the public defender; or
3. Appear in person by filing with the Clerk of Court a written notice signed by you stating how you intend to proceed without counsel.

IT IS FURTHER ORDERED that defendant shall appear, with or without counsel, at all scheduled hearings in this matter. The Clerk of Court, at 736-4173, can be called to confirm court dates.

DATED this 6 day of November 2006

  
Richard Bevan  
District Judge

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 7<sup>th</sup> day of November, 2006, a true and correct copy of the foregoing document was mailed, United States Mail, postage pre-paid, to the following:

Grant P. Loeb  
Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303

Juan Carlos Fuentes Pina  
Defendant  
P.O. Box 306  
Twin Falls, ID 83303-0306

M. Lynn Dunlap  
Attorney At Law  
P.O. Box 2754  
Twin Falls, ID 83303-2754

  
Clerk

Richard V. Smith, Ph.D.

PSYCHOLOGIST

526 M Shoup Avenue West • Twin Falls, Idaho 83301  
Telephone (208) 734-0447 • Fax (208) 734-9975

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2006 NOV -9 PM 1:25

NOTATION  
JUAN CARLOS FUENTES PINA  
NOVEMBER 3, 2006

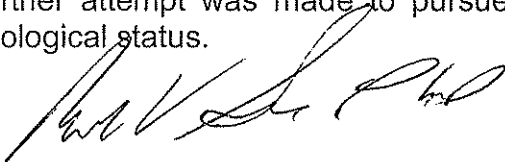
BY \_\_\_\_\_ CLERK  
**CONFIDENTIAL**  
DEPUTY

*CR 10-107*

Pursuant to a Court Order from District Court, Fifth Judicial District, Twin Falls County, State of Idaho, dated 17 Oct 06, by G. Richard Bevan, District Judge, the above-captioned male was seen at the Twin Falls County Jail on this date for psychological evaluation. The circumstance of the evaluation is that the examinee is facing a range of felony charges in Twin Falls County and his attorney had requested a general evaluation as per his psychological status at this point. No specific request for an 18-211 evaluation, nor 19-2522 evaluation was being made, however.

In meeting briefly with the examinee at the Twin Falls Jail facility he indicated to me that he had, "nothing to say" to me, i.e. essentially refusing to be examined.

No further attempt was made to pursue an examination of him. I can offer no opinion as to his psychological status.



Richard V. Smith, Ph.D.  
Psychologist

RVS/wm

- to Carlos

# No. 36T

DISTRICT COURT  
TWIN FALLS CO IDAHO  
FILED THE PEN  
2006 NOV 18 AM 10:40

ON THE DAY OF MY TRANSPORT I WAS TRANSFERRED TO TWIN FALLS COUNTY JAIL GOING TO AWAIT THE BUS.

WHEN I ARRIVED AT TWIN FALLS I WAS PLACED IN A HOLDING CELL BY MYSELF. AFTER AN HOUR OR SO AN OFFICER REMOVED ME FROM THAT CELL INTO THE ONE BY THE GALLERY. THERE WAS A YOUNGSTEEL ALREADY BEING HELD THERE WHEN I ENTERED.

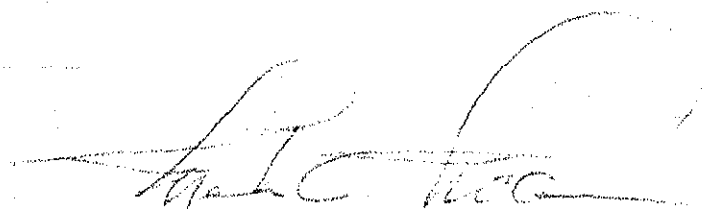
WE STARTED THE USUAL BULLSHIT CONVERSATION THEN IT DRIFTED OVER TO THE PEÑA MURDER TRIAL - NOT HAVING ACCESS TO A NEWSPAPER OR T.V. I WAS UNAWARE THAT A TRIAL HAD EVEN BEGUN. IN ANY EVENT THIS KID STARTED TELLING ME ABOUT HOW HE WAS GOING TO TESTIFY AGAINST PEÑA IN ORDER TO CUT A DEAL WITH THE PROSECUTION TO GET IN WITNESS PROTECTION AND POSSIBLY GET SOME OUTSTANDING CHARGES IN BURLEY DISMISSED.

HE TOLD ME THAT WITHOUT HIM SAYING WHAT HE HAD PLANNED THE PROSECUTION COULDN'T GET A KIDNAPPING, AND WITHOUT THE KIDNAPPING THE STATE COULDN'T PROVE FIRST DEGREE MURDER - THIS IS WHAT THE PROSECUTION TOLD HIM ANYWAY.

HE WENT ON TO SAY THAT HE REALLY DIDN'T SEE PEÑA PULL ANYONE

OUT OF A CAR, BUT THAT HE WAS GOING  
TO SAY WHATEVER IT TOOK TO GET OUT,  
AND TO BOOT, HE SAID WHO GIVES A  
SHIT, PEÑA WAS ONLY A FILTHY MEXICAN,  
THIS HE LAUGHED AT SAYING HE WAS  
TIRED OF THE MEXICANS FUCKING WHITE  
GIRLS AND THIS WOULD BE HIS WAY OF  
GETTING EVEN.

LOOK, I SAY WHAT I SAY BECAUSE  
IT ISN'T RIGHT FOR AN INNOCENT MAN,  
NO MATTER HIS RACE, TO SIT ON DEATH  
ROW, OR IN PRISON BEHIND LIES AND  
HALF-TRUTHS.



P.S. THE JAILS INSIDE MONITORING CAMERAS  
WILL VERIFY MY STATEMENTS — SOMEONE  
NEEDS TO HAVE THEM ADMITTED INTO  
EVIDENCE AND/OR PRESERVED —

I'M NOT SURE THE EXACT DATE OF  
MY TRANSFER OR TRANSPORT BUT  
ALL LOGS SHOULD INDICATE.

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
STATE OF IDAHO

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2006 NOV 17 PM 3:14



G. RICHARD BEVAN  
DISTRICT JUDGE  
TWIN FALLS COUNTY  
(208) 736-4172

BY \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Thy".

CLERK

RESIDENT CHAMBERS  
THERON W. WARD  
JUDICIAL BUILDING  
P.O. BOX 126  
TWIN FALLS, IDAHO 83303-0126

November 17, 2006

Juan Carlos Fuentes-Pina  
Twin Falls County Criminal Justice Facility

RE: Attorney Representation

Dear Mr. Pina:

Pursuant to I.C. 19-856, the court has contacted Andrew Parnes, a criminal defense attorney, to meet with you about your pending legal matters. Mr. Parnes is not sure he will have the time to take-on your cases, but he is willing to meet with you to consider the matter. He should be contacting you sometime next week.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "G. Richard Bevan".

G. RICHARD BEVAN  
District Judge

C: Andrew Parnes  
Grant Loeb, Twin Falls County Prosecutor



NOV 27 2006

By Shirley Clerk  
NOVEMBER 27 2006 Deputy Clerk

Juan Carlos Fuentes Pina  
Twin Falls, County Jail  
P.O. Box 306  
Twin Falls, Idaho 83303

RE: CASE NO: CR-2006-0107

Your Honor;  
"Andrew Parnes" I would like him to  
get my "Murder Case" only. I am o.k.  
with him getting my Murder Case only,  
and the others cases you can get a  
Different Attorney. I am o.k with this  
matter.

M. Fuentes Pina

2006 DEC -5 PM 4: 30

BY *[Signature]* 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, )  
)  
Plaintiff, )  
)  
vs. )  
)  
JUAN CARLOS FUENTES PINA, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR 2006-0107

**ORDER APPOINTING  
SUBSTITUTE COUNSEL  
PURSUANT TO I.C. §19-856**

This matter is before the court on the court's own motion after the recent withdrawal of M. Lynn Dunlap as the Defendant's attorney. Due to the conflicts between the County's Public Defender's office, as well as conflicts between all regular conflict public defenders and the above-noted Defendant, and pursuant to the authority of Idaho Code §19-856, GOOD CAUSE exists to appoint **ANDREW PARNES, P.O. Box 5988, Ketchum, Idaho, 83340**, as Conflict Public Defender for the Defendant in the above-noted case only.

Mr. Parnes has the same functions with respect to the Defendant as the attorney for whom he is substituted. Mr. Parnes is entitled to reasonable compensation as agreed upon. He shall be paid monthly, and is ordered to submit his billings to the court for approval on a monthly basis.

DATED This 5<sup>th</sup> day of December, 2006.

*[Signature]*  
G. RICHARD BEVAN  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 5<sup>th</sup> day of December, 2006, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

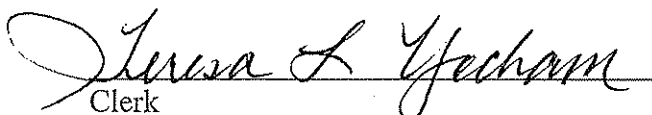
Juan Carlos Fuentes- Pina  
Twin Falls County Jail  
 U.S. Mail  
 Hand delivered - Jail  
 Faxed  
 Court Folder

Grant Loeb  
Twin Falls County Prosecutor  
 U.S. Mail  
 Hand delivered  
 Faxed  
 Court Folder

Marilyn Paul  
Twin Falls County Public Defender  
 U.S. Mail  
 Hand delivered  
 Faxed  
 Court Folder

Andrew Parnes  
Attorney at Law  
P.O. Box 5988  
Ketchum, ID 83340  
 U.S. Mail  
 Hand delivered  
 Faxed  
 Court Folder

Twin Falls County Commissioners  
 U.S. Mail  
 Hand delivered  
 Faxed  
 Court Folder

  
Clerk

ANDREW PARNES, ISB #4110  
Attorney at Law  
671 First Avenue North  
Post Office Box 5988  
Ketchum, Idaho 83340  
Telephone: 208-726-1010  
Facsimile: 208-726-1187

Attorney for Defendant

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2006 DEC 18 PM 2: 15

BY \_\_\_\_\_  
CLERK  
*JHP*  
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-2006-0107
	)	
vs.	)	MOTION TO CONTINUE
	)	
JUAN CARLOS FUENTES PINA,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW defendant, Juan Carlos Fuentes Pina, by and through his attorney of record, and hereby moves this Court for a continuance of the sentencing now set for January 4 and 5, 2007, to a time convenient to the Court and counsel at least three weeks beyond the date now set.

Good cause exists for this motion as set out in the Affidavit of Counsel attached to


MOTION TO CONTINUE

Page 1

this motion.

Oral argument is not requested on this motion.

December 18, 2006.



Andrew Parnes  
Attorney for Defendant

MOTION TO CONTINUE

Page 2

## AFFIDAVIT OF ANDREW PARNES

I, Andrew Parnes, being duly sworn, hereby state as follows:

1. I am currently counsel of record for Mr. Pina in the above-entitled case and was appointed by the Court on December 5, 2006. I did not represent Mr. Pina at his trial in this case.

2. Since being appointed, I have met with Mr. Pina and have begun review of the trial transcripts which were provided to me by prior counsel. I have almost completed review of the transcripts.

3. Given the length of the prior proceedings and the necessity of preparing both for sentencing and a possible motion for new trial, I cannot be ready for a sentencing hearing in this first degree murder case by the date now set.

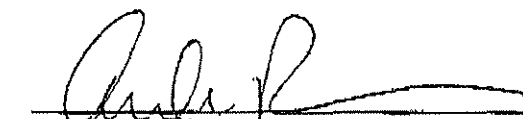
4. Moreover, I have travel plans to visit my elderly mother in New York City from December 26 to December 31, 2006. These plans were made before I was appointed in this case.

5. I further have a reply brief due on or before December 26, 2006, in a non-capital federal habeas case pending in the Ninth Circuit Court of Appeals; an opening brief in a state appellate case due on January 4, 2007, on which I am co-counsel (an extension of time has been requested in that case); and an opening brief due on January 4, 2007, in an appeal in the State of California.

6. Having almost completed my review of the transcript, I believe I will need at least three weeks beyond the date now set in this case to be prepared for the sentencing and possible motion for new trial.


7. I have spoken with Grant Loeb, Twin Falls Prosecuting Attorney, who has no objection to a continuance. He and I agreed on a number of possible new dates; however, after consulting this Court's Clerk, it is not certain that those dates are available to the Court. I therefore request an informal telephone status conference to discuss available dates for rescheduling the sentencing hearing in this matter.

DATED this 18<sup>th</sup> day of December, 2006.

  
Andrew Parnes

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of December, 2006.

S  
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A  
L

  
Notary Public for Idaho  
Residing at Blaine County  
Commission expires 7-27-11

CERTIFICATE OF SERVICE

I, Rebecca B. Dittmer, hereby certify that I am employed in the County of Blaine, Idaho; I am over the age of eighteen years and not a party to this action; my business address is 160 Second Street East, Ketchum, Idaho 83340; on December 18, 2006, I served a true and correct copy of the Motion to Continue to the following person in the manner noted:

Grant Loeb  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

       By depositing a copy of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.

       By hand delivering a copy of the same to the office of said attorney at his office in Twin Falls, Idaho.

       By sending a facsimile copy of the same to said attorney at his facsimile number: 736-4020.

Rebecca B. Dittmer  
Rebecca B. Dittmer



ANDREW PARNES, ISB #4110  
Attorney at Law  
671 First Avenue North  
Post Office Box 5988  
Ketchum, Idaho 83340  
Telephone: 208-726-1010  
Facsimile: 208-726-1187

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2007 JAN 30 PM 1:05

BY  CLERK  
DEPUTY

Attorney for Defendant

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-2006-0107
	)	
vs.	)	MOTION TO CONTINUE
	)	SENTENCING
JUAN CARLOS FUENTES PINA,	)	
	)	
Defendant.	)	
_____	)	


COMES NOW defendant, Juan Carlos Fuentes Pina, by and through his attorney of record, and hereby moves this Court for a continuance of the sentencing now set for February 13, 2007, to a time convenient to the Court and counsel at least four weeks beyond the current date.

Good cause exists for this motion as set out in the Affidavit of Counsel attached to

this motion. Undersigned counsel has spoken with Grant Loeb, Prosecuting Attorney, who has no objection to the requested continuance.

Oral argument is not requested on this motion.

Dated: January 30, 2007.



Andrew Parnes  
Attorney for Defendant

## AFFIDAVIT OF ANDREW PARNES

I, Andrew Parnes, being duly sworn, hereby state as follows:

1. I am currently counsel of record for Mr. Pina in the above-entitled case and was appointed by the Court on December 5, 2006. I did not represent Mr. Pina at his trial in this case.

2. Since being appointed, I have met with Mr. Pina numerous times, completed review of the transcripts, drafted a motion for new trial, and conducted preparation for the sentencing hearing.

3. I believe it is necessary to engage an expert to assist in preparation for the sentencing hearing. Mr. Pina concurs in that decision.

4. I will be filing a motion for new trial within the next two weeks, and that motion can be heard before sentencing if the Court so desires.

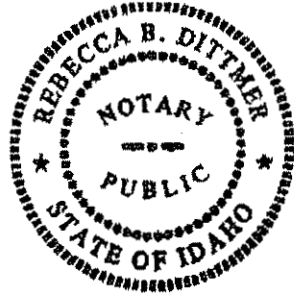
5. I have spoken with Grant Loebbs, Twin Falls Prosecuting Attorney, who has no objection to a continuance and is agreeable to having a telephone status conference to discuss available dates for the hearing on the motion for new trial and the sentencing hearing.

DATED this 30th day of January, 2007.

  
Andrew Parnes

SUBSCRIBED AND SWORN TO before me this 30th day of January, 2007.

S  
E  
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L



Rebecca B. Dittmer  
Notary Public for Idaho  
Residing at Blaine County  
Commission expires 7-27-11

CERTIFICATE OF SERVICE

I, Rebecca B. Dittmer, hereby certify that I am employed in the County of Blaine, Idaho; I am over the age of eighteen years and not a party to this action; my business address is 671 First Avenue North, Ketchum, Idaho 83340; on January 30, 2007, I served a true and correct copy of the Motion to Continue to the following person in the manner noted:

Grant Loeb  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

- By depositing a copy of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.
- By hand delivering a copy of the same to the office of said attorney at his office in Twin Falls, Idaho.
- By sending a facsimile copy of the same to said attorney at his facsimile number: 736-4020.

*Rebecca B. Dittmer*  
Rebecca B. Dittmer

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2007 FEB -2 PM 4: 54

BY \_\_\_\_\_ CLERK  
*[Signature]* 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, )  
 )  
 vs. )  
 )  
 JUAN CARLOS FUENTES PINA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-2006-0107

ORDER CONTINUING  
SENTENCING

UPON MOTION of defendant, Juan Carlos Fuentes Pina, by and through his  
attorney of record, AND GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the sentencing now set in this matter for February  
13, 2007, be continued to the 20 day of April, 2007, at the hour of  
9:00 A.m.

DATED: 2.2, 2007.

*[Signature]*  
\_\_\_\_\_  
G. RICHARD BEVAN  
District Judge

JUAN C. Fuentes Plata  
Twin Falls County Jail

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2007 FEB -20 AM 10:35  
BY 1-26

CLERK  
DEPUTY

Barry Wood,  
Administrative District Judge  
Fifth Judicial District

I would like let you know that  
MR. MARK BERRY: Attorney is not my  
Attorney on this "CASE 06-107" the only  
CASE'S MR. MARK BERRY is appoint is on the  
following CASE NO. CR 2006-0174 CR-2005-9912  
CR 2005-10532 CR 06-9481 HE is only  
appoint on those CASE'S. NOW ON, 06-107  
CASE. The attorney for that CASE is  
MR. ANDREW FARNES. From Ketchum, I.d. is  
REMAIN counsel for the "Defendant" in  
CASE NO. CR 2006-0107

Thank you  
Mr. Farnes

~~Stamps~~  
Guerry

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2007 JAN 10 PM 3:30

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, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JUAN CARLOS FUENTES PINA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

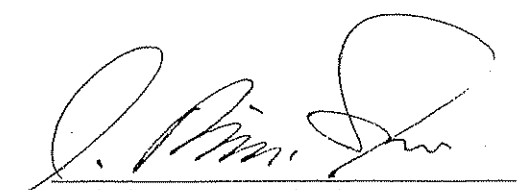
Case No. CR 2006-6176  
CR 2005-9912  
CR 2005-10532

**ORDER APPOINTING  
SUBSTITUTE COUNSEL  
PURSUANT TO I.C. §19-856**

This matter is before the court on the court's own motion after the recent withdrawal of M. Lynn Dunlap as the Defendant's attorney. Due to the conflicts between the County's Public Defender's office, as well as conflicts between all regular conflict public defenders and the above-noted Defendant, and pursuant to the authority of Idaho Code §19-856, GOOD CAUSE exists to appoint **MARK GUERRY**, of the firm **WEBB, WEBB & GUERRY**, as Conflict Public Defender for the Defendant in the above-noted cases. Mr. Parnes will remain counsel for the Defendant in Case No. CR 2006-0107.

Mr. Guerry has the same functions with respect to the Defendant as the attorney for whom he is substituted.

DATED This 10<sup>th</sup> day of January, 2007.

  
\_\_\_\_\_  
G. RICHARD BEVAN  
District Judge



CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of January, 2007, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

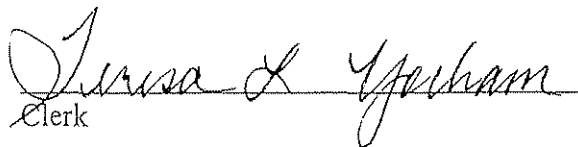
Juan Carlos Fuentes- Pina ( ) U.S. Mail  
Twin Falls County Jail ( ) Hand delivered  
( ) Faxed  
() Court Folder

Grant Loeb ( ) U.S. Mail  
Twin Falls County Prosecutor ( ) Hand delivered  
( ) Faxed  
() Court Folder

Marilyn Paul ( ) U.S. Mail  
Twin Falls County Public Defender ( ) Hand delivered  
( ) Faxed  
() Court Folder

Mark Guerry ( ) U.S. Mail  
Webb, Webb & Guerry ( ) Hand delivered  
P.O. Box 1768 ( ) Faxed  
Twin Falls, ID 83303-1768 () Court Folder

Tim Williams ( ) U.S. Mail  
Conflict Public Defender ( ) Hand delivered  
P.O. Box 282 ( ) Faxed  
Twin Falls, ID 83303-0282 () Court Folder

  
Clerk

ANDREW PARNES, ISB #4110  
 Attorney at Law  
 671 First Avenue North  
 Post Office Box 5988  
 Ketchum, Idaho 83340  
 Telephone: 208-726-1010  
 Facsimile: 208-726-1187

DISTRICT COURT  
 TWIN FALLS CO. IDAHO  
 FILED

2007 FEB 16 AM 8:51

BY *[Signature]* CLERK

DEPUTY

Attorney for Defendant

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-2006-0107
	)	
vs.	)	MOTION FOR NEW TRIAL
	)	
JUAN CARLOS FUENTES PINA, <sup>↓</sup>	)	
	)	
Defendant.	)	
_____	)	

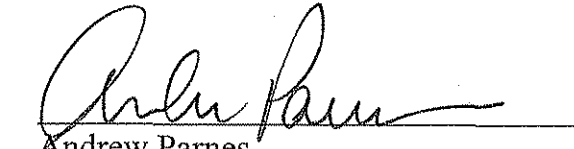
The defendant, Juan Carlos Fuentes Pina, by and through his counsel of record, Andrew Parnes, hereby moves this Court for a New Trial pursuant to Idaho Criminal Rules, Rule 34 and I.C. § 19-2406.

Good cause exists for this motion in that the Court erred in its decisions of law during the course of the trial and misdirected the jury in a matter of law.

This motion is based upon the papers and pleadings on file in this matter, the transcript of the jury trial and proceedings held in this case, the arguments set forth in the

attached memorandum and any argument to be presented at hearing on this motion.

DATED: February 15, 2007.

  
Andrew Parnes  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Andrew Parnes, hereby certify that I am employed in the County of Blaine, Idaho; I am over the age of eighteen years and not a party to this action; my business address is 671 First Avenue North, Ketchum, Idaho 83340; on February 16, 2007, I served a true and correct copy of a Motion for New Trial to the following person in the manner noted:

Grant Loeb  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

\_\_\_\_\_ By depositing a copy of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.

\_\_\_\_\_ By hand delivering a copy of the same to the office of said attorney at his office in Twin Falls, Idaho.

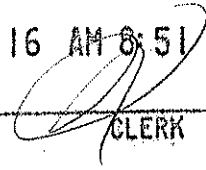
By sending a facsimile copy of the same to said attorney at his facsimile number: (208) 736-4120.

  
Andrew Parnes

ANDREW PARNES, ISB #4110  
 Attorney at Law  
 671 First Avenue North  
 Post Office Box 5988  
 Ketchum, Idaho 83340  
 Telephone: 208-726-1010  
 Facsimile: 208-726-1187

DISTRICT COURT  
 TWIN FALLS CO. IDAHO  
 FILED

2007 FEB 16 AM 8:51

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

Attorney for Defendant

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-2006-0107
	)	
vs.	)	MOTION FOR RELEASE
	)	OF PROPERTY
JUAN CARLOS FUENTES PINA,	)	
	)	
Defendant.	)	
_____	)	

The defendant, Juan Carlos Fuentes Pina, by and through his counsel of record, Andrew Parnes, hereby moves this Court for an order releasing a vehicle described as a 1992 Buick and its contents, seized when Mr. Pina voluntarily surrendered in this case.


Good cause exists for the release of this vehicle in that it is not evidence which may be used in any further criminal proceedings, and there is no basis for further retention of this vehicle. At Mr. Pina's trial, a photograph of the vehicle was introduced in evidence without objection from Mr. Pina; none of the contents remaining in the

vehicle were introduced in evidence at that trial. Mr. Pina plans to have his family sell the vehicle and send the proceeds of the sale to his minor daughter in Texas.

Further, Mr. Pina is prepared to stipulate that a photograph of the vehicle and its contents may be introduced in any further criminal proceedings against him in lieu of the actual car and its contents.

WHEREFORE, it is requested that this Court order that the vehicle and its contents be released to Lauro Pina, Mr. Pina's brother.

DATED: February 15, 2007.

  
Andrew Parnes  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Andrew Parnes, hereby certify that I am employed in the County of Blaine, Idaho; I am over the age of eighteen years and not a party to this action; my business address is 671 First Avenue North, Ketchum, Idaho 83340; on February 15, 2007, I served a true and correct copy of a Motion for Release of Property to the following person in the manner noted:

Grant Loeb  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

\_\_\_\_\_ By depositing a copy of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.

\_\_\_\_\_ By hand delivering a copy of the same to the office of said attorney at his office in Twin Falls, Idaho.

X By sending a facsimile copy of the same to said attorney at his facsimile number: (208) 736-4120.

  
Andrew Parnes

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2007 MAR -7 PM 1:59

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

GRANT P. LOEBES  
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. )  
)  
JUAN CARLOS FUENTES-PINA, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR 06-107

STATE'S OBJECTION TO DEFENDANT'S  
MOTION FOR NEW TRIAL AND  
MEMORANDUM

The Twin Falls County Prosecuting Attorney, Grant P. Loebes, objects to Defendant's Motion for New Trial dated February 15, 2007. Defendant's Motion for New Trial is based on Idaho Criminal Rule 34 and Idaho Code § 19-2406. Defendant sets forth four reasons in his request for new trial, and each are without merit and do not warrant a new trial, as shown below.

STATE'S OBJECTION TO  
MOTION FOR NEW TRIAL - 1

ORIGINAL



### Legal Standard

Idaho Criminal Rule 34 states that the court may grant a new trial on the motion of a defendant if required in the interest of justice. Idaho Code § 19-2406 sets forth the actual grounds permitting the new trial. Idaho Criminal Rule 34 does not provide an independent ground for a new trial, but rather states the standard that the trial court must apply when it considers the statutory grounds. *State v. Cantu*, 129 Idaho 673, 931 P.2d 1191 (1997).

The question of whether the interest of justice requires a new trial under the circumstances of a particular case is directed to the sound discretion of the trial court. *State v. Olin*, 103 Idaho 391, 648 P.2d 203 (1982). A court does not abuse its discretion with regard to the granting of a new trial unless a new trial is granted for a reason that is not delineated in the code or unless the decision to grant or deny a new trial is manifestly contrary to the interest of justice. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S.Ct. 3295 (1990).

### **The Court did not Err in Denying Defendant's Untimely Motion to Represent Himself**

A defendant has a right to self-representation under the Sixth Amendment. *Faretta v. California*, 422 U.S. 806, 817-836, 95 S.Ct. 2525, 2532-2541 (1975). The right to self-representation, however, is not absolute. *State v. Reber*, 138 Idaho 275, 276, 61 P.3d 632, 633 (Idaho App. 2002); citing *Martinez v. Court of Appeal of California*, 528 U.S. 152, 161-62, 120 S.Ct. 684, 690-91 (2000). The request for self representation must be timely. *Id.* A motion for self-representation is timely if made prior to the commencement of meaningful trial proceedings.

*Id.*, citing *U.S. v. Oakey*, 853 F.2d 551, 553 (7<sup>th</sup> Cir.1988). Impanelment of a jury is a meaningful trial proceeding; thus, a motion for self-representation after jury impanelment is untimely. *State v. Reber* at 633, citing *U.S. v. Schaff*, 948 F.2d 501, 502 (9<sup>th</sup> Cir.1991). See also *U.S. v. Oakey*, 853 F.2d 551, 553 (7<sup>th</sup> Cir.1988); *United States v. Smith*, 780 F.2d 810 (9<sup>th</sup> Cir. 1986); *U.S. v. Lawrence*, 605 F.2d 1321 (4<sup>th</sup> Cir. 1979), cert. denied, 444 U.S. 1084, 100 S.Ct. 1941 (1980); *Fritz v. Spalding*, 682 F.2d 782, 784 (9<sup>th</sup> Cir 1982).

Where the request for self-representation is untimely, it may be granted in the trial court's discretion. *State v. Reber* at 663, citing *U.S. v. Oakey* at 553. In the *Reber* case, the trial court agreed with the state in that the timing of the motion was inappropriate, but did not express further rationale for its denial. The Court on appeal stated that although the district court did not express a rationale for its denial, the district court did not abuse its discretion in denying Reber's motion for self-representation made after the jury impanelment and during the second day of trial.

The law set forth in the *Reber* case is the current state of law on this issue in Idaho. There is no requirement, despite Defendant's claim, that the court must balance the timeliness of the request with any concerns about potential delay in the trial proceedings.

On day 10 of the jury trial, while Defense was presenting its case, and after considerable effort to get Defendant to return to court, Defendant told the court through security that he would only be present in court if he could represent himself at that point. Tr. 1616-1617. The court then was required to consider the request for self-representation, along with the issue of how to proceed when Defendant refused to come to court.

This time frame is certainly well beyond that contemplated in the *State v. Reber* decision,

or the many other decisions found in both the 9<sup>th</sup> Circuit and others, which held that a motion for self-representation made any time after jury impanelment may be considered untimely. The court in this case clearly recognized that the decision was a discretionary call at that point in the trial, and that a defendant must make, voluntarily and intelligently, an election to conduct his own defense in a timely manner. Tr. 1621. The court then determined that the Defendant's refusal to represent himself was untimely, and denied the request. The court clearly followed the law as stated in *Reber*, determined that the decision was one of discretion, and that the request for self-representation was not timely. The motion on this issue should be denied.

#### **Defendant Waived his Right to Testify**

Defendant argues that he did not waive his right to testify, and that he should have been called as a witness or waived his right on the record. Defendant, in this case, was in fact told by the court that he had the right to testify. Tr. 1503-1505. The judge explained that the Defendant had the right to testify and a right to remain silent. Defendant stated that he wished to testify. Tr. 1505. The court then told Defendant that he would testify on the next day, if he still wished to do so. Tr. 1506. Defendant's attorney told the court that she would proceed with the presentation of testimony from her client the next day after one other witness. Tr. 1516. Defense counsel also said that she wanted the jurors to physically see a scar on Defendant's hand. Tr. 1517. Defendant was present for all of this discussion.

The next day, after the noon break when Defendant was supposed to testify, he refused to come to court. Tr. 1607. This information was relayed to the court by the deputy who was

transporting Defendant, who described Defendant's conduct and language. When told it was time to go to court to continue his trial, Defendant said, "Fuck you. I'm not going to court. Just give me my 3X jumpsuit, it's a mistrial, I want a new attorney." Tr. 1608. The court then ordered Defendant to appear at his trial. Tr. 1609. Defense counsel stated that she wished to confer with Defendant again, and the court security officer explained the concern that Defendant may need to be restrained due to his extreme conduct. Tr. 1608-1609. Defense counsel went to the jail for about 10 minutes, and told Defendant of the judge's order to appear. Tr. 1611. The transporting deputy also relayed the court's order to Defendant. Tr. 1612. After a renewed attempt to have her client come to court, Defense counsel returned and told the court that Defendant continued to refuse to come to court. Tr. 1609-1611.

The court correctly relied on *Idaho Criminal Rule 43* and *State v. Elliot*, and ruled that further progress of a trial shall not be prevented and a defendant shall be considered to have waived his right to be present whenever a defendant, initially present, is voluntarily absent after the trial has commenced. The court found that Defendant purposely waived his right to be present by refusing to come to court, ripping off his regular clothing, asking for jail clothing, telling jail staff that he would not go, and refusing to come to court after being advised of the court's order to appear at his trial. Tr. 1609 and 1612. The court also stated that it would be less prejudicial to let Defendant not attend the proceeding than to force him to come to court bound and gagged, although the court recognized that as an option. Tr. 1609-1610.

Defendant had been in court throughout his trial and was aware he was the next witness to testify, and would be the last defense witness. He had been advised of his rights the previous day.

However, just prior to the time that he was supposed to testify, he refused to appear and testify. The State brought up the issue of the Defendant's desire to testify on the day before, in light of his refusal to come to court. Tr. 1615. The court determined that Defendant was refusing to speak to his lawyers, that Defendant knew he was scheduled to testify, and Defendant had knowingly waived that right. Tr. 1615-1616. (It is unknown at this time if Defendant's attorneys warned him that refusal to come to court would prevent him from testifying.)

Defendant's refusal to come to court continued for two and a half hours. The court ordered the trial to reconvene without Defendant. The Court instructed the jury that Defendant's presence or absence was not relevant to determining his guilt or innocence. During the time that Defendant was refusing to come to court, defense counsel rested. Tr. 1625. Defendant chose to come back to court just prior to jury instructions and closing arguments. He asked for a conference with the court, to inform the court that he wished to come back to court and that he would conduct himself appropriately. Defendant did not indicate a desire to testify. Tr. 1628-1632. Defendant sat at the table with his counsel as the court instructed the jury, counsel gave closing arguments, and the jury was excused to deliberate. At no time did Defendant mention testifying until *after* the jury was excused to deliberate. Even then, he did not make a motion or a request for the judge to rule on, but rather screamed "mistrial" and yelled, "Why didn't I testify," and complained that the court was "prejudiced." Tr. 1719. The court did not restrict Defendant's right to testify in any way.

This case is unlike any of those cited by Defendant in his motion to dismiss. Defendant knew he had the right to testify, as seen in the record, because he told the court he planned to

testify. His testimony was scheduled, with the Defendant present, for the next day. (The very time he refused to come to court.) In *Owens v. United States*, 236 F.Supp.2d 122, 142, the issue was that the defendant was not informed by his counsel that he had the right to testify. This is not the issue in this case. A defendant's right to testify does not require an on-the-record waiver. *Aragon v. State of Idaho*, 114 Idaho 758, 763, 760 P.2d 1174, 1179 (1988), citing *People v. Simmons*, 140 Mich.App. 681, 364 N.W.2d 783 (1985).

This motion should be denied due to Defendant's refusal to come to court, which was properly considered by the court at that time to be a waiver of his right to testify. Further, the court did not, in fact, rule that Defendant could not testify. The court told him he could testify, and he refused to come to court until after both parties had rested. He did not renew his request to testify and he was not called to testify by his attorney. Therefore, the court cannot have made an error if there was no ruling, or even a request for a ruling, at trial.

A defendant instructed of his right to refuse to testify, who then exercises that right by refusing to come to court and saying he was not coming to court, cannot be allowed to then claim his right to testify was violated.

In the alternative, the motion should be denied on this issue because it is not properly an issue to be raised in a motion for a new trial. Previously, this issue has been raised in Idaho as either a question of effective assistance of counsel, or as a question of deprivation of a fundamental constitutional right to testify. *State v. Darbin*, 109 Idaho 516, 522, 708 P.2d 921, 927 (Idaho App 1985). As in *Darbin*, there are facts not in the record that must be further developed in the analysis of this issue. This issue is more appropriate for a post conviction relief

motion, because a factual inquiry must be made regarding out-of-court conversations between Defendant and his attorneys that are currently beyond the reach of the parties due to attorney/client privilege.

### **The Court's Jury Instructions Were Properly Given**

Defendant argues that the jury should not have been given instructions that stated the jury was not to consider the lesser included offense of false imprisonment until after they had unanimously acquitted Defendant of the felony offense of kidnapping. Defendant's primary argument appears to be that while that is, actually, the law in Idaho, that is *should* not be the law, and that the Court should not have followed Idaho Code § 19-2132(c) nor *State v. Raudenbaugh*, 124 Idaho 758, (1993).

The court did not err as a matter of law on this issue or misdirect the jury. The court followed well-settled law in the state of Idaho on this matter.

Further, Defendant did not object at the time of jury trial regarding this instruction, and therefore this motion should also be dismissed under Idaho Criminal Rule 30(b).

### **The Prosecutor did not Engage in Improper Closing Argument**

Defendant argues that the Prosecutor engaged in improper closing argument, constituting a denial of due process. This is not a ground for a new trial under Idaho Code § 19-2406. The motion for a new trial on this issue must be denied based on Idaho Code § 19-2406.

Additionally, during closing arguments, Defendant did not object to any statement made

by the Prosecutor. The court made no ruling on this issue, nor was it asked to. Therefore, this issue is not properly brought under Idaho Code § 19-2406, and must be dismissed.

Second, the Prosecutor did not engage in any misconduct. Defendant's Memorandum takes the Prosecutor's statements out of context. The Prosecutor was not arguing or implying that Defendant did not have a right to remain silent. Instead, the Prosecutor was responding to the Defense Attorney's argument that Defendant was the only one charged with Accessory to Murder based upon his lies to police. The Prosecutor responded that, initially, all of the people in the house at the time of the crime lied, and that the difference between Defendant and the other witnesses was that they ultimately told the truth, whereas the Defendant did not. This argument mirrored the testimony of Detective Gambrel, which was admitted without objection and through questions by defense counsel. Tr 1698-1699. The Prosecutor was in no way commenting on Defendant's failure to testify, and it is clear that he was not asking the jury to "consider Mr. Pina's exercise of his Fifth Amendment right with includes the right to stop talking to the police at any time," as stated by Defendant.

Likewise, Defendant's Memorandum misquotes the Prosecutor by implying that the Prosecutor alleged gang involvement in this case. The Defense attorney first mentioned organized crime in jury selection as she repeatedly asked prospective jurors about their view of "The Sopranos." Tr. 248 and 271. She followed up on this theme in her opening statement where she said,

"Here are some of the people you're going to be meeting: The young ambitious drug dealer, the lead of the group; his drugged-out, gun-loving lieutenant, the second in command; the guy who is kind of the stolen property guy, the guy who goes out and finds



property to steal, particularly guns, that's kind of his role; the trainee, the person who's being instructed in the organization; and the guy outside the group."

Tr. 328-329. She left the jury to ponder who these people in the "organization" would be. She repeated the phrase, "Birds of a feather flock together" often. During the closing arguments, Defense attorney finally told the jury who all of these people in "the organization" were - referring to witnesses in the case. Tr. 1665.

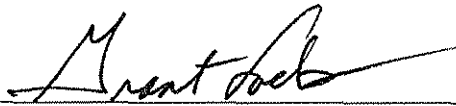
To refute this characterization of an organized gang with a puppet master, the Prosecutor used a wide range of pictures of movie actors, even including a cartoon picture. The Prosecutor, in fact, was using the pictures to show the ridiculousness of the Defendant's argument that the people involved, including the eyewitnesses, were some type of "organization." Tr. 1691-1693. In addition, the word "enforcer" initially came from Defendant, not the Prosecutor. This argument is without merit, and should be dismissed. (Incidentally, the Prosecutor did not compare Defendant with the Marlon Brando character from "The Godfather." The photo of Marlon Brando was used to show that it was ridiculous to compare the fool, Philip Warren, who the defense accused of being the unseen force behind "the organization," to Brando's character in "The Godfather." Tr. 1691 Line 12.)

### **Conclusion**

For the reasons stated above, Defendant's Motion for New Trial is without merit. Each of the arguments fail. In the alternative, several of the arguments are inappropriate for a motion for a new trial under Rule 34 and Idaho Code § 19-2406. If these issues have any merit, which the

State believes they do not, they are appropriate only for a post-conviction relief motion where proper evidence can be produced. There were no errors made by the judge or the Prosecutor, and therefore they cannot be cumulative errors as argued by Defendant. The State Objects to the Motion and requests that the Court dismiss the Motion in its entirety.

DATED this 6<sup>th</sup> day of March, 2007.



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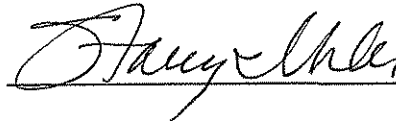
GRANT P. LOEBS  
Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of March, 2007, I caused a true and correct copy of STATE'S OBJECTION TO DEFENDANT'S MOTION FOR NEW TRIAL AND MEMORANDUM to be delivered to the following:

Andrew Parnes  
Attorney at Law  
671 First Avenue North  
Post Office Box 5988  
Ketchum, Idaho 83340

U.S. Mail and Fax

  
\_\_\_\_\_

ANDREW PARNES, ISB #4110  
Attorney at Law  
671 First Avenue North  
Post Office Box 5988  
Ketchum, Idaho 83340  
Telephone: 208-726-1010  
Facsimile: 208-726-1187

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

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

Attorney for Defendant

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-2006-0107
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR NEW TRIAL
JUAN CARLOS FUENTES PINA,	)	
	)	
Defendant.	)	
_____	)	

INTRODUCTION

This memorandum will address the following bases for the grant of a new trial in this matter: 1) the court erred in its consideration of defendant's motion for self-representation and denied him his right to be present at the consideration of this motion; 2) the defendant's right to testify on his own behalf was denied; 3) the court mis-instructed the jury on the law, thereby denying the jury the right to return a lesser verdict; and, 4) the prosecutor engaged in misconduct during closing argument.

1. The Denial of the Defendant's Right to Represent Himself

A defendant in a criminal case has a Sixth Amendment right to represent himself throughout the proceedings as long as he voluntarily and intelligently elects to do so. *Faretta v. California*, 422 U.S. 806 (1975); *State v. Lankford*, 116 Idaho 860 (1989). A defendant need not show good cause for his desire to exercise that right. Violation of this right mandates reversal per se without consideration of prejudice. See, *State v. Hoppe*, 139 Idaho 871 (2004); *McKaskle v. Wiggins*, 465 U.S. 168 (1984.)

“The role of the trial court is simply to ensure that where the defendant waives that right to counsel he or she does so knowingly and intelligently.” *Lankford*, 116 Idaho at 865. In *Lankford*, the defendant was represented by appointed counsel and *in the middle of trial* requested that he be permitted to act as his own counsel. The trial court then conducted a colloquy pursuant to *Faretta*, and the defendant was permitted to conduct an examination of a prosecution witness. Midway through that examination, Lankford decided to have counsel take over. The Idaho Supreme Court found no error in this procedure and held that the trial judge had acted properly regarding the assertion of the defendant's right to represent himself.

While a defendant has a right to represent himself, that right can be waived if not timely made. The Idaho Courts have held that a motion made during trial does not have to be automatically granted, unlike a motion made before trial. *State v. Reber*, 138 Idaho 275 (Ct. App. 2002.) However, in all cases, the court is required to conduct a thorough inquiry of the defendant on the record. See, e.g. *United States v. Peppers*, 302 F.3d 120, 133 (3<sup>rd</sup>

Cir. 2002), relying in part on *United States v. Stubbs*, 281 F.3d 109 (3<sup>rd</sup> Cir. 2002)

[involving a mid-trial request for self-representation].

In this case, the Court initially understood its responsibility under the law and indicated Mr. Pina would be brought before the Court and the proper *Faretta* inquiry would be conducted.

Counsel, from my way of thinking, the defendant has a constitutional right to represent himself. I don't believe I can, from here, ad hoc rule that he has waived that right based on his conduct. I believe I have to bring him up and make a *Faretta* inquiry for pro se litigants as to his desires, his purposes for this, if they are dilatory, if he's trying to delay these proceedings, or has some other ulterior motive, those kind of things, also to make sure that if he does this, what the risks are, what it means in terms of where we are in the case, and that you have had time, Ms. Paul, to speak with him prior to us having this hearing.

(Tr. 1618.)

However, when the prosecution presented a case citation, the Court abandoned this proper procedure, reviewed the *Reber* case, and proceeded to rule on the motion outside Mr. Pina's presence and without making any *Faretta* inquiry of Mr. Pina. (Tr. 1619-1620.)

This procedure violated both *Faretta* and the principle that the Court cannot proceed in the absence of the defendant without a waiver of his presence. In this case, Mr. Pina specifically informed the Court that he would immediately appear at his trial if he was permitted to represent himself. (Tr. 1617.) Despite this request and his prior good behavior in front of the jury, the Court did not bring him back to conduct the *Faretta* inquiry.

While *Reber* stands for the proposition that during trial the request for self-representation is a matter of judicial discretion, this Court failed to exercise any discretion, ruling instead that the motion was denied because it was untimely. (Tr. 1622.)

In *Reber*, the trial court conducted an inquiry of the defendant in the middle of trial and elicited the basis for his request. Reber requested only that he be permitted to cross-examine the witnesses, but desired for his counsel to conduct the remainder of the trial because it was outside his area of knowledge. *Reber*, 138 Idaho at 277.

The appellate court concluded that although the trial court had expressed no rationale for its decision, the trial court's concern about the timing of the motion, coupled with "Reber's acknowledgment of his limitations in the law," supported a finding that the trial court did not abuse its discretion. *Ibid.*

As the *Reber* court noted, the question is whether the trial court perceived its decision as one of discretion, whether the court acted within the boundaries of such discretion, and whether the court reached its decision by an exercise of reason. *Id.* at 278.

In contrast to the trial court's actions in *Reber*, this Court erred by failing to balance the timeliness of the request with any reasons for the request or any concerns about potential delay in the trial proceedings. Instead, this Court ruled that solely because the motion was untimely it would be automatically denied and that the defendant did not even need to be present to hear consideration of the motion. "I don't think I have to have him here or go through a *Faretta* inquiry, because it's irrelevant to me; it's untimely." (Tr. 1622.)

Even in *Reber* and the two cases it relied upon, *United States v. Oakley*, 853 F.2d 551 (7<sup>th</sup> Cir. 1988) and *United States v. Smith*, 780 F.2d 810 (9<sup>th</sup> Cir. 1986), the defendant was provided an opportunity to inform the court of his reasons for requesting self-representation. Moreover, in *Oakley*, the defendant did not make a clear request to represent himself, asking instead for hybrid-counsel which is not a constitutionally protected right. In *Smith*, the defendant told the court that he would need additional time to prepare for trial and that a continuance would be required. Furthermore, there was a history of delay by the defendant, and the Court held that his motion was made for the purpose of delay.

None of these factors are at issue here, as the Court did not even provide Mr. Pina an opportunity to present the court with his reasons or his willingness to proceed immediately. Therefore, these errors require that this Court grant the motion for new trial on this ground.

## 2. The Defendant's Right to Testify Was Violated

### A. Mr. Pina did not waive his right to testify

It is well-settled that a defendant has the absolute right to testify at his trial (*Rock v. Arkansas*, 483 U.S. 44 (1987)) and that the decision whether to testify belongs solely to the defendant and cannot be waived by counsel. *Wainwright v. Sykes*, 433 U.S. 72, 93 (1997) (Burger, C.J. concurring) ["Only such basic decisions as to whether to plead guilty, waive a jury, or testify in one's behalf are ultimately for the accused to make."]. In this case, Mr. Pina was sworn in on June 28, 2006, near the end of the trial, and questioned



about his decision to testify at trial. (Tr. 1503-1506.) He stated unequivocally that he desired to testify. (Tr. 1505.)

Yet, he was never called as a witness and did not personally, on the record, waive his right to testify. The trial court made no inquiry of Mr. Pina regarding any change of mind regarding his right to testify after Mr. Pina specifically informed the court he planned to testify at trial. By not having Mr. Pina appear at the time of the *Faretta* motion, the court never informed Mr. Pina that by failing to appear in court thirty minutes later, at 1:30 p.m. on June 29, 2006, Mr. Pina would waive his right to testify.

At that point, it was clear there was a complete breakdown of the attorney-client relationship, and the appointed attorneys were not representing Mr. Pina in his desire to represent himself and testify on his own behalf. When the ruling on the *Faretta* motion was made, trial counsel requested that Mr. Pina be informed of the Court's ruling by the bailiff. (Tr. 1622-23.) The Court was thereafter informed by the bailiff that upon being told of the Court's ruling, Mr. Pina said he would not appear in court. When Mr. Pina appeared in Court before final arguments, the Court did not inquire if Mr. Pina understood that the defense had rested without his testimony. (Tr. 1628.) As the case was being submitted to the jury, Mr. Pina asked the Court why he had not been permitted to testify. (Tr. 1719.) The Court did not address the matter further at that time.

In this situation, the trial court should have inquired of Mr. Pina whether he intended to reverse his decision about providing testimony, and whether he intended by not coming to court to waive that right to testify. Instead, the court permitted his counsel to proceed in

Mr. Pina's absence; and immediately upon appearing in court, his counsel rested without calling Mr. Pina or asking for a delay to speak with him about testifying.<sup>1</sup>

Here, Mr. Pina made an explicit statement of his intention to testify. After that point, it became incumbent on the trial court to inquire of Mr. Pina about his continued desire to testify. However, the record is devoid of any such inquiry of Mr. Pina by the Court.

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution guarantee a defendant the right to testify at trial on his own behalf. *Rock v. Arkansas, supra*. "Even more fundamental to a personal defense than the right of self-representation . . . is an accused's right to present his own version of events in his own words." *Id.* at 52. "There is no rational justification for prohibiting the sworn testimony of the accused, who above all others may be in a position to meet the prosecution's case." *Ferguson v. Georgia*, 365 U.S. 570, 582.

Idaho courts, as well as the federal courts, also hold that the right to testify is personal to the defendant. See, e.g. *Aragon v. State*, 114 Idaho 758 (1988) and *State v. Hoffman*, 116 Idaho 689 (Ct. App. 1989); *United States v. Curtis*, 742 F.2d 1070 (7<sup>th</sup> Cir. 1984), *cert. denied*, 475 U.S. 1064 (1986).

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<sup>1</sup>While such actions may be the basis for a claim of ineffective assistance of counsel, that claim cannot be raised on a motion for new trial. *State v. Lopez*, 139 Idaho 256 (Ct. App. 2003). Mr. Pina does not waive his right to bring such a claim at a future date in the appropriate legal proceeding.

Generally, there is no requirement in this state that the trial court obtain an express on-the-record waiver of a defendant's decision not to testify. See, *Aragon v. State*, 114 Idaho at 763. Yet, in Idaho, the Courts have held that it might be "salutary" to do so (*State v. Hoffman*, 116 Idaho at 691); and the court did give such an advisement to Mr. Pina when he informed the Court that he was going to testify. (Tr. 1504-05.) Accord, *United States v. Pennycooke*, 65 F.2d 9, 10 (3<sup>rd</sup> Cir. 1995). But cf. *People v. Curtis*, 681 P.2d 504 (Colo. 1984) [rejected in *Aragon*]; *State v. Neuman*, 371 S.W.2d 77 (W.Va. 1988); *Culberson v. State*, 412 So.2d 1184 (Miss. 1982) and *Tachibana v. State*, 900 P.2d 1293 (Haw. 1995).<sup>2</sup>

Whether the rule in *Aragon* should be overturned need not be decided by this trial court. Contrary to the situations in *Aragon*, *Hoffman*, and *Darbin*, Mr. Pina made clear to this Court that he wanted to testify and that he did not intend to waive that right. (Tr. 1503 and 1719). Under these circumstances, the general *Aragon* rule is not controlling, and this Court had a duty to make sure Mr. Pina personally, knowingly and voluntarily waived that right.

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<sup>2</sup>Just this week in the highly publicized trial of Lewis "Scooter" Libby, "Presiding U.S. District Judge Reggie B. Walton asked Libby, Cheney's former chief of staff, if he knew he had a right to testify in his defense and if had declined of his free will. 'Yes, sir,' Libby said in a barely audible voice." ("Neither Cheney nor Libby Will Testify," By Carol D. Leonnig and Amy Goldstein, Washington Post Staff Writers, Tuesday, February 13, 2007; 3:30 PM.)

In *United States v. Pennycooke*, 65 F.3d at 11, the Third Circuit first held that there was no general duty for the trial judge to obtain an explicit waiver from the defendant. The Court then continued to examine the exception to this rule.

Nevertheless in exceptional, narrowly defined circumstances, judicial interjection through a direct colloquy with the defendant may be required to ensure that the defendant's right to testify is protected. . . . Thus, the court cautioned trial courts to "carefully consider a defendant's request to exercise his or her constitutional rights, particularly the right to testify." *Id.* Where, in furtherance of trial strategy, defense counsel nullifies a defendant's right to testify over the defendant's protest, the defendant clearly has been denied the right to testify. In such a case, it may be advisable that the trial court inquire discreetly into the disagreement and ensure that constitutional rights are not suppressed wrongly.

*Ibid.*, citing *Ortega v. O'Leary*, 843 F.2d 258 (7<sup>th</sup> Cir.), *cert denied*, 488 U.S. 841 (1988); accord, *Crawley v. Kentucky*, 107 S.W.3d 197 (Ky. 2003).

Here, Mr. Pina stated under oath that he intended to testify at trial. There is no record that he was told by the Court that if he failed to appear in court after the lunch recess he would waive his right to testify. Finally, after closing arguments, Mr. Pina again questioned why he was not permitted to testify.

In light of these circumstances, the Court had a duty to inquire, on the record, whether Mr. Pina understood by his actions and those of his counsel that he was voluntarily and knowingly giving up his right to present his testimony to the jury. The federal cases of *United States v. Joelson*, 7 F.3d 174 (9<sup>th</sup> Cir. 1995) and *United States v. Pino-Noriega*, 189 F.3d 1089 (9<sup>th</sup> Cir. 1999) demonstrate the appropriate steps to be taken when a court is confronted with a similar situation.

In *Joelson*, the defendant indicated that he had a disagreement with counsel about testifying. The court entered into a specific colloquy with the defendant, warning him of the potential dangers in testifying. After the district court told the defendant that he had a right to testify defendant was given an opportunity to confer with counsel to finalize that decision. "After Joelson conferred with his attorney, the attorney stated that the defense would not be presenting any evidence and Joelson did not object or ask to testify." *United States v. Joelson*, 7 F.3d at 10. There, the appellate court concluded that there had been a waiver of the right to testify and an assent with the attorney's statement to the court that no testimony would be presented.

In contrast, Mr. Pina stated under oath that he would testify; this Court made no inquiry regarding any change of heart and did not inform Mr. Pina that his brief absence from trial would result in a waiver of this "fundamental constitutional right;" and Mr. Pina objected to the failure to call him as a witness in the case. Therefore, there can be no finding that Mr. Pina waived this right.

In *Pino-Norriega*, the question presented was "when a defendant who wishes to testify must speak up to assert that right." *United States v. Pino-Norriega*, 189 F.3d at 1095. Pino-Norriega did not inform the judge until the jury had reached a verdict that he wanted to testify. At the close of evidence and argument, the judge addressed the defendant, and after the return of the verdict questioned the defendant as to why he then had not asked to testify. Finding that the trial judge had the discretion to re-open evidence at any time, the appellate court concluded that under the circumstances where there was no

prior request to testify and the first request was made *after* the return of the verdict, the defendant's failure to request to testify prior to the return of the verdict constituted a waiver of his right to testify and the court had not abused its discretion in so ruling. The court did not reach the question of when an earlier assertion of the right might be too late.

In Idaho, the trial judge has discretion to reopen a case before the jury returns with its verdict. "Granting or refusing a motion to reopen a case for the purpose of taking further or additional evidence, after it has been submitted for decision, but before entry of judgment, rests in the discretion of the trial judge." *State of Idaho, ex Rel., Ohman, v. Ivan H. Talbot Family Trust*, 120 Idaho 825 (1991).

Of course, Mr. Pina made his intention to testify clear, never waived that right, and asked again to testify before the jury began deliberations, at a point when this Court could have reopened the evidence to protect this fundamental right or could have obtained a knowing and voluntary waiver of that right. Because this Court did neither, error of constitutional magnitude occurred.

B. Reversal is required under any standard of review

Courts throughout the country are split on the standard of review when a defendant's right to testify has been violated. Some courts hold that because this error implicates a basic and fundamental constitutional right to testify, this error is not subject to harmless error analysis but is reversible per se. See, e.g. *Owens v. United States*, 236 F.Supp.2d 122, 143 (Dist. Mass. 2002) ["The Court cannot imagine a context wherein providing the jury with the opportunity to hear a defendant's side of the story, observe his demeanor, and

make character assessments would not be critical.”] “A defendant's right to testify in a criminal proceeding against him [is] so basic to a fair trial that its infraction can never be treated as a harmless error....” *United States v. Butts*, 630 F.Supp. 1145, 1148 (D. Me. 1986). See, also, *State v. Dauzart*, 769 So.2d 1206 (La. 2000) [automatic reversal required where trial judge denied defendant’s right to testify because it was made after close of defense case]; *State v. Hampton*, 818 So.2d 720 (La. 2002) [applying structural error analysis to issue].

Others hold that the “harmless error” concept adopted in *Chapman v. California*, 386 U.S. 18 (1967), is the proper measure of the standard. *Chapman* requires reversal for the error unless the prosecution proves that the error was harmless beyond a reasonable doubt. See, e.g., *Quarels v. Kentucky*, 142 S.W.2d 73 (Ky. 2004); *Martinez v. Ylst*, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991); *People v. Solomon*, 560 N.W.2d 651 (Mich. App. 1996).<sup>3</sup> The United States Supreme Court has not specifically ruled on this issue.

Idaho has only examined this issue in the context of ineffective assistance of counsel and has held that a harmless error standard is applicable in that context. See, *State v. Darbin*, 109 Idaho 516 (Ct. App. 1985); *State v. Hoffman*, 116 Idaho 689 (Ct. App. 1989)<sup>4</sup> and *Cootz v. State*, 129 Idaho 360 (Ct. App. 1996). None of these cases involved a

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<sup>3</sup>Where the issue arises in the context on a claim of ineffective assistance of counsel, which is not at issue here, some courts have applied the reasonable probability standard set out in *Strickland v. Washington*, 468 U.S. 668 (1984). See, e.g. *Johnson v. Texas*, 169 S.W.2d 223 (Tex. App. 2005) and cases cited therein.

<sup>4</sup>*Hoffman* was decided on a motion for new trial based upon ineffective assistance of counsel before this type of claim was excluded from a new trial motion.

situation where the right to testify was restricted by the trial court after the defendant asserted his intent to testify at trial. Rather, each case involved a direct allegation that the defendant's attorney provided ineffective assistance of counsel. Nor did any of these cases explicitly reject the per se reversal standard. In *Darbin*, the court examined whether the claim of the denial of the right to testify *through the actions of counsel*, should be tested under the higher harmless error standard or the "reasonable probability" standard of *Strickland*. The *Darbin* court adopted the more stringent test discussed and did not address per se reversal.

Thus, in Idaho, Mr. Pina contends that the standard of review presented in this case is unresolved; however, whichever standard is employed, Mr. Pina is entitled to relief. As the Ninth Circuit states in *Martinez v. Ylst*, 951 F.2d at 1157, "it is only the most extraordinary of trials in which a denial of the defendant's right to testify can be said to be harmless beyond a reasonable doubt."

Here, Mr. Pina was charged with felony murder even though the uncontested evidence is that Johnny Shores shot Jesse Naranjo. There is no physical evidence connecting Mr. Pina to the shooting or the kidnap charge. The prosecutor admitted as much in closing argument, saying "no physical evidence that could possibly be presented will tell you what Carlos Pina did that day in kidnapping Jesse Naranjo. Only those people who were there can tell you that." (Tr. 1654.) The testimony about the kidnap comes entirely from four witnesses who themselves are involved in illegal acts surrounding the incident. As the prosecutor conceded, "We have a house full of drug users, drug dealers, among whom the



defendant is included. We have a house full of teenage fools who do drugs, deal stuff and play with guns, and they think all that's just cool." (Tr. 1657.) The prosecutor also commented on Mr. Pina's failure to testify: "He stuck to his lie, even when confronted with evidence, and *he then refused to talk any more about it, and that was that.*" (Tr. 1698 (emphasis added).)

Mr. Pina, being a witness to the shooting, is the only person who could provide critical evidence to refute the allegation that Mr. Naranjo was being detained against his will by Mr. Pina. The witnesses made new allegations of Mr. Pina making Jesse Naranjo kiss his feet which had not been mentioned at the time of Mr. Pina's statements to Detective Grambrel. Moreover, Mr. Pina was the only witness who could rebut the testimony of Bertha Naranjo (Tr. 1388) and explain his statement to her. Because he was a critical witness to what happened inside the house before Mr. Shores did the shooting, the prosecution cannot sustain its burden of proving that the error of denying Mr. Pina the right to testify was harmless beyond a reasonable doubt, and a new trial should be granted.

3. The Court's Jury Instructions Improperly Invaded the Province of the Jury

A defendant's right to due process in the criminal context is essentially the right to defend himself against the charges the state has brought against him. As a result, the right to confront and cross-examine witnesses and to present a defense is fundamental to a defendant's due process rights. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). "It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of

a penal code against the imposition of a harsher punishment.” *Bell v. United States*, 349 U.S. 81, 83 (1955).

In the instant case, Mr. Pina was charged with felony murder, with the underlying felony being kidnapping. One argument presented by Mr. Pina’s defense counsel in closing argument was that he was not guilty of the underlying felony kidnapping charge, and thus, he was not guilty of felony murder. (RT 1683-1684.) At trial, the jury was instructed on both felony kidnapping and the lesser offense of false imprisonment. The jury was also instructed that it could not begin to *consider* the lesser included offense until *after* it had unanimously acquitted Mr. Pina of the greater offense of kidnapping.<sup>5</sup> This “acquittal-first” instruction deprived Mr. Pina of his due process right to present a defense by precluding the jury from considering his defense of the false imprisonment charge.

Idaho Code section 19-2132(c) states, “If a lesser included offense is submitted to the jury for consideration, the court shall instruct the jury that it may not consider the lesser included offense unless it has first considered each of the greater offenses within which it is included, and has concluded in its deliberations that the defendant is not guilty of each of such greater offenses. See 1988 *Idaho Sess. Laws ch. 327*. This statute was first interpreted by the Idaho Supreme Court in *State v. Raudenbaugh*, 124 Idaho 758, 762 (1993). The Court held that the plain language of section 19-2132(c) “clearly requires an

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<sup>5</sup>The court instructed the jury, “If your unanimous verdict is that the defendant is not guilty of felony first-degree murder, you must acquit him of that charge. In that event you must next consider the included offense of false imprisonment. (RT 1638-1639 [Instruction No. 25].)

affirmative conclusion of the jury that the defendant is not guilty of each greater offense before considering a lesser included offense. The jury may reach this conclusion only by unanimity.” Thus, the Court upheld the instruction that the jury “may not consider the lesser included offense unless it ‘has concluded in its deliberations that the defendant is not guilty of each of [the greater offenses within which it is included].” *Ibid.*<sup>6</sup>

Although this type of “acquittal first” instruction has been approved by other jurisdictions, it has been widely criticized as a method of structuring jury deliberations and has accordingly been rejected in a number of jurisdictions in favor of a rule allowing the jury greater freedom in considering lesser included charges:<sup>7</sup> “[T]he ‘acquittal first’

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<sup>6</sup>Prior to the enactment of I.C. §19-2132, Idaho did not appear to follow the acquittal first rule. See e.g., *State v. Charboneau*, 116 Idaho 129, *cert. denied*, 493 U.S. 922 (1989), overruled on other grounds by, *State v. Card*, 121 Idaho 425 (1991); and *State v. Enno*, 119 Idaho 392 (1991).

<sup>7</sup>See *Dresnek v. State*, 697 P.2d 1059, 1064 (Alaska Ct. App.) (allows jurors to deliberate on greater and lesser in any order but prohibits returns on verdicts on lesser offenses without first returning a verdict on the greater offense), *aff'd*, 718 P.2d 156 (Alaska 1985), *cert. denied sub nom. Spierings v. Alaska*, 479 U.S. 1021, (1986); *Bragg v. State*, 453 So.2d 756, 759 (Ala. App. 1984); *People v. McGregor*, 635 P.2d 912, 914 (Colo. App. 1981); *Zackery v. State*, 257 Ga. 442, 443 [360 S.E.2d 269, 270-271] (1987); *Alexander v. State*, 247 Ga. 780, 784-785 [279 S.E.2d 691, 695] (1981); *State v. Korbelt*, 231 Kan. 657, 661-662 [647 P.2d 1301, 1305] (1982); *People v. Woods*, 416 Mich. 581, 609-610 [331 N.W.2d 707, 719-720] (1982) *certiorari denied sub nom. Michigan v. Alexander*, 462 U.S. 1134 (1983); *People v. Mays*, 407 Mich. 619, 623 [288 N.W.2d 207, 208] (1980); *People v. Hurst* (1976) 396 Mich. 1, 10 [238 N.W.2d 6, 10, 82 A.L.R.3d 235]; *People v. Johnson*, 83 Mich. App. 1, 6-10 [268 N.W.2d 259, 263-264] (1978); *State v. Muscatello*, 57 Ohio App.2d 231, 251-252 [387 N.E.2d 627, 641-642] (1977); *Tarwater v. Cupp*, 304 Ore. 639, 645 [748 P.2d 125, 128] (1988); *State v. Allen*, 301 Ore. 35, 39-40 [717 P.2d 1178, 1180-1181] (1986). The majority of federal jurisdictions that have considered the issue have concluded that, given the tactical advantages of either a strict acquittal-first instruction or a disagreement instruction, either may be given at defendant’s option. (See *United States v. Tsanas*, 572 F.2d 340, 344, (2d Cir.) *cert.*

instruction exacerbates the risk of coerced decisions, a risk that is probably inherent in any jury deliberation.” *Oregon v. Allen*, 301 Ore. 35; 717 P.2d 1178.

For example, in *State v. Ogden*, 35 Or. App. 91, 98, 580 P.2d 1049 (1978), a divided court of appeals overruled previous authority adhering to the acquittal-first rule. Holding that it was prejudicial error to instruct a jury that it must first acquit the defendant of the charged offense before it could consider a lesser included offense; the majority concluded that it was proper for a court to instruct a jury they are first to consider the charge in the accusatory instrument, and if they cannot agree upon a verdict in that charge they are to consider the lesser included offenses. *Ogden*, 35 Or. App. at 98.

High courts in Arizona and Washington have similarly concluded that their acquittal-first instructions improperly invaded the province of the jury and have adopted the “consider first” rule allowing a jury to consider lesser included charges without first acquitting of the greater charge. See *Arizona v. Le Blanc*, 186 Ariz. 437; 924 P.2d 441 [overruling *State v. Wussler* and holding that the “acquittal first” instruction was error]; *State v. Labonowski*, 117 Wn.2d 405; 816 P.2d 26 [adopting the “consider first” rule].

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*denied*, 435 U.S. 995 (1978); *United States v. Butler* (D.C. Cir. 1971) 455 F.2d 1338, 1340 [147 App.D.C. 270]; *Fuller v. United States*, 407 F.2d 1199, 1227 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1120; *United States v. Roland* (2d Cir. 1984) 748 F.2d 1321, 1323-1325; *United States v. Hanson* (8th Cir. 1980) 618 F.2d 1261, 1265-1266, *cert. denied*, 449 U.S. 854; *Catches v. United States* (8th Cir. 1978) 582 F.2d 453, 458-459; *United States v. Jackson*, 726 F.2d 1466, 1469 (9th Cir. 1984); but see 1 Devitt & Blackmar, *Federal Jury Practice and Instructions: Civil and Criminal* (3d ed. 1977) §18.05, p. 582.)

This rationale has been adopted by California courts which have held that although a court may restrict a jury from *returning a verdict* on a lesser included offense before acquitting on a greater offense, the court may not preclude a jury from *considering lesser offenses* before acquitting on a greater offense. See *People v. Kurtzman*, 46 Cal.3d 322, 329-330 [trial court advisement to jury “No, you must unanimously agree on the second degree murder offense before *considering* voluntary manslaughter” improperly interfered with the jury’s deliberations and unfairly coerced it into returning guilty verdict on higher degree of homicide than might otherwise have been the case].

Although Mr. Pina acknowledges that *Raudenbaugh, supra*, has interpreted section 19-2132(c) as requiring a strict “acquittal first” sequence in juror deliberations, and that this precedent will likely be perceived as controlling by this Court, by raising this claim Mr. Pina respectfully submits that the *Raudenbaugh* holding is questionable in light of the above authority. Because the plain language of section 19-2132(c) could also be read to allow the sequence of deliberation approved by the California courts and discussed in *Kurtzman*, Mr. Pina raises this claim to preserve the question for further review. See e.g., *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 77 (1990) [the rule of *stare decisis* dictates that controlling precedent be followed unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice;” *stare decisis* does not require the Court to continue an incorrect reading of the statute] and *Greenough v. Farm Bureau Mut. Ins. Co.*, 142 Idaho 589 (2006).

Moreover, because the *Raudenbaugh* Court was not presented with facts similar to the instant case, *Raudenbaugh* is not controlling. Here, the instructions containing the elements of kidnapping and false imprisonment were strikingly similar. The court instructed that in order for Mr. Pina to be guilty of kidnapping, the state must prove that Mr. Pina “seized or confined Jesse Naranjo, with the intent to cause Jesse Naranjo without authority of law, to be in any way held to service or kept or detained against his will.” (RT 1638 [Instruction No. 23].) To find Mr. Pina guilty of false imprisonment the court instructed the jury that the state must prove that Mr. Pina “unlawfully violated the right of Jesse Naranjo to come and go or to stay when or where Jesse Naranjo wanted.” (RT 1639 [Instruction No. 26].)

Because of this similarity, an instruction allowing the jury to consider the lesser included charge of false imprisonment during its deliberations on the greater charge, but nevertheless requiring that the jury not *return a verdict* on a lesser included charge unless it has unanimously agreed that Mr. Pina was not guilty on the greater, was critical to defense counsel’s argument. This is because a reasonable jury could find the elements of both offenses satisfied by the same facts.

For example, if the jury found that Mr. Pina prevented Mr. Naranjo from leaving, the jury could reasonably conclude that this act alone constituted kidnapping, because Mr. Naranjo was “detained” against his will. Likewise, had the jury been permitted to consider both charges at the same time, the jury also could have reasonably concluded that this act

“unlawfully violated the right” of Mr. Naranjo “to come and go” as he pleased and thus constituted false imprisonment.

By instructing the jury that it could not begin to consider the false imprisonment charge until it had acquitted Mr. Pina of felony murder, the court prohibited the jury from considering the defense argument of false imprisonment. Without the ability even to consider this argument, the jury was effectively coerced into rendering a guilty verdict on the greater offense.<sup>8</sup> This preemptive foreclosure of the jury’s consideration of a defense argument was improper and prejudicial in light of the particular facts of this case and violated Mr. Pina’s due process rights. Accordingly, the “acquittal first” instruction was unconstitutional in this case, and a new trial should be granted.

4. The Prosecutor Engaged in Improper Closing Argument

A prosecutor’s argument violates the federal constitution when it comprises a pattern of conduct so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process. See, e.g., *Donnelly v. DeChristoforo*, (1974) 416 U.S. 643 (1974); *Darden v. Wainwright*, 477 U.S. 168, 181 (1986).

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<sup>8</sup>In his closing argument, the prosecutor forcefully argued to the jury that the law absolutely prohibited the jury from thinking about Mr. Pina’s defense of false imprisonment until they unanimously acquitted him of felony kidnapping:

Now the included offense of false imprisonment, . . . , is something you will never consider if you find Mr. Pina guilty of what he’s been charged with. You’ll never ever consider it. . . . You never, ever, ever get to the [false imprisonment] until after 12 of you agree that he is not guilty.

(RT 1687-1688.)

A. Improper comment on failure to testify and right to remain silent

During closing, the prosecutor made the following argument:

Mr. Pina was charged initially with that (accessory) because he lied. He stuck to his lie, even when confronted with evidence, and *he then refused to talk any more about it, and that was that*. Others continued to talk and eventually told the truth.

(Tr. 1698 (emphasis added).)

Detective Grambrel obtained two statements from Mr. Pina which were introduced at trial. (Tr. 821-831.) Detective Grambrel advised Mr. Pina of his right to remain silent pursuant to *Miranda* before taking each statement. (Tr. 821, 826.)

Once a defendant has been told of his right to remain silent, his subsequent silence cannot be used against him at trial under the Fifth and Fourteenth Amendments to the United States Constitution. *Doyle v. Ohio*, 426 U.S. 610 (1976). Nor is it permissible for the prosecutor to comment on a defendant's failure to testify at trial. *Griffin v. California*, 380 U.S. 609 (1965).

The prosecutor's comment on Mr. Pina's refusal to talk "any more" violates both constitutional principles, as it improperly asked the jury to consider Mr. Pina's exercise of his Fifth Amendment right which includes the right to stop talking to the police at any time. This is especially egregious because the comment asked the jury to contrast Mr. Pina to the other witnesses who kept talking and in the prosecutor's mind "eventually told the truth." Moreover, this comment directed the jury to consider the fact that Mr. Pina did not testify at trial, once again in light of the other witnesses who came forward before the jury.



It is conceded that no objection was raised by trial counsel; however, the denial of the constitutional right to remain silent and not testify is fundamental error and thus can be considered by this Court without prior objection. See, e.g. *State v. Dougherty*, 142 Idaho 1, 4, 121 P.3d 416, 419 (Ct. App. 2005) and *State v. Poland*, 116 Idaho 34, 36, 773 P.2d 651, 653 (Ct. App. 1989). Furthermore, the comment can be considered demonstrating that the denial of Mr. Pina's right to testify discussed above was not harmless beyond a reasonable doubt.

B. Improper gang reference

In the rebuttal argument, the prosecutor referred to a set of pictures identifying each of the prosecution witnesses. (Tr. 1693.) The prosecutor then showed a picture of Marlon Brando in the Godfather and then said Mr. Pina was the "enforcer." Reference to gangs and gang membership is "highly inflammatory." See, e.g., *People v. Cox*, 809 P.2d 351, 372 (Cal. 1991) and *United States v. Rodriguez*, 925 F.2d 1049 (7<sup>th</sup> Cir. 1991). This type of argument especially when there is no evidence of organized gang involvement during the trial is prejudicial and warrants reversal.

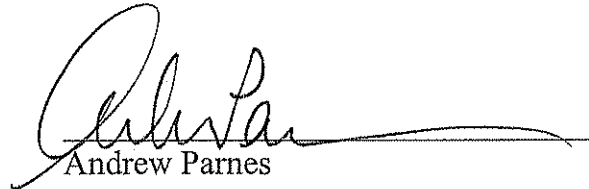
5. Cumulative Error

Given the numerous errors in this case which go to the fundamental rights of a criminal defendant to represent himself and to testify on his own behalf, Mr. Pina is entitled to a new trial based on the cumulative nature of the errors, even if this Court should hold that each one separately does not warrant relief. *State v. Sheahan*, 139 Idaho 267, 286 (2003).

CONCLUSION

For the foregoing reasons, Mr. Pina is entitled to a new trial in this matter.

DATED: February 15, 2007.

  
Andrew Parnes  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Andrew Parnes, hereby certify that I am employed in the County of Blaine, Idaho; I am over the age of eighteen years and not a party to this action; my business address is 671 First Avenue North, Ketchum, Idaho 83340; on February 15, 2007, I served a true and correct copy of a Memorandum in Support of Motion for New Trial to the following person in the manner noted:

Grant Loeb  
Twin Falls County Prosecuting Attorney  
P.O. Box 126  
Twin Falls, ID 83303-0126

- By depositing a copy of the same in the United States mail, postage prepaid, at the post office at Ketchum, Idaho.
- By hand delivering a copy of the same to the office of said attorney at his office in Twin Falls, Idaho.
- By sending a facsimile copy of the same to said attorney at his facsimile number: (208) 736-4120.

  
\_\_\_\_\_  
Andrew Parnes