

7-31-2012

State v. Hartzell Clerk's Record Dckt. 39866

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In the
SUPREME COURT
of the
STATE OF IDAHO

STATE OF IDAHO,
Plaintiff-Appellant,

v.

CR2011-8694

PAUL C. HARTZELL,
Defendant-Respondent.

CLERK'S RECORD ON APPEAL

Appealed from the District Court of the
Second Judicial District of the State of Idaho,
in and for the County of Nez Perce

The Honorable JEFF M. BRUDIE

Supreme Court No. 39866

Kenneth J. Jorgensen
Attorney for Appellant

Robert J. Kwate
Kwate Law Office
Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Appellant,)
)
 vs.) Supreme Court No. 39866
)
 PAUL C. HARTZELL,)
)
 Defendant-Respondent.)

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District,
in and for the County of Nez Perce

HONORABLE JEFF M. BRUDIE

KWATE LAW OFFICE
Attorney for Respondent
1502 G St
Lewiston, ID 83501

KENNETH K. JORGENSEN
Attorney for Appellant
P O Box 83720
BOISE, ID 83720-0010

State of Idaho vs. Paul Carey Hartzell

Date	Code	User		Judge
10/24/2011	NCRF	TRISH	New Case Filed-Felony	Greg K. Kalbfleisch
	PROS	TRISH	Prosecutor Assigned April A Smith	Greg K. Kalbfleisch
	AFPC	TRISH	Affidavit Of Probable Cause	Greg K. Kalbfleisch
	IDPC	TRISH	Initial Determination Of Probable Cause	Greg K. Kalbfleisch
	CRCO	TRISH	Criminal Complaint	Greg K. Kalbfleisch
		TRISH	Commitment, Held to Answer	Greg K. Kalbfleisch
	MOTN	TRISH	Motion for No Contact Order	Greg K. Kalbfleisch
	NORF	MEENA	Notification Of Rights-felony	Greg K. Kalbfleisch
	ARRN	MEENA	Arraignment / First Appearance	Greg K. Kalbfleisch
	CHJG	MEENA	Change Assigned Judge	Kent J. Merica
	ORPD	MEENA	Order Appointing Public Defender Kwate Law Office PD 2012	Kent J. Merica
	AFFS	MEENA	Affidavit Of Financial Status Kwate Law Office PD 2012	Kent J. Merica
	HRSC	MEENA	Hearing Scheduled (Preliminary Hearing 11/02/2011 01:30 PM)	Kent J. Merica
	NTHR	TRISH	Notice Of Hearing	Kent J. Merica
	ANCO	TRISH	Acknowledgment Of No Contact Order	Kent J. Merica
	CRNC	TRISH	No Contact Order: Criminal No Contact Order Filed Comment: def to have no contact with Cathlin J Berreth Expiration Days: 731 Expiration Date: 10/24/2013	Kent J. Merica
	BSET	TRISH	Bond Set at 20000.00	Kent J. Merica
10/26/2011	RQDD	JENNY	Request For Discovery-defendant	Kent J. Merica
11/2/2011	MINE	BEV	Minute Entry Hearing type: Preliminary Hearing Hearing date: 11/2/2011 Time: 1:40 pm Courtroom: Court reporter: Minutes Clerk: BEV Tape Number: ctrm 2 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith	Kent J. Merica
	NTHR	BEV	Notice Of Hearing	Kent J. Merica
	CONT	BEV	Hearing result for Preliminary Hearing scheduled on 11/02/2011 01:30 PM: Continued	Kent J. Merica
	CHJG	BEV	Change Assigned Judge	Greg K. Kalbfleisch
	HRSC	BEV	Hearing Scheduled (Preliminary Hearing 11/16/2011 01:30 PM)	Greg K. Kalbfleisch
11/4/2011	RSDP	JENNY	Response To Request For Discovery-plaintiff	Greg K. Kalbfleisch
	RQDP	JENNY	Request For Discovery-plaintiff	Greg K. Kalbfleisch

State of Idaho vs. Paul Carey Hartzell

Date	Code	User	Judge
11/14/2011	RSDD	JENNY	Supplemental Response To Request For Discovery-plaintiff Greg K. Kalbfleisch
11/16/2011	NTHR	MEENA	Notice Of Hearing Greg K. Kalbfleisch
	MINE	MEENA	Minute Entry Hearing type: Preliminary Hearing Hearing date: 11/16/2011 Time: 1:35 pm Courtroom: Court reporter: Minutes Clerk: Cole Tape Number: ctrm 2 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith Greg K. Kalbfleisch
	CONT	MEENA	Continued (Preliminary Hearing 12/07/2011 01:30 PM) Greg K. Kalbfleisch
11/21/2011	RSDD	JENNY	Response To Request For Discovery-defendant Greg K. Kalbfleisch
12/7/2011	MINE	DONNA	Minute Entry Hearing type: Preliminary Hearing Hearing date: 12/7/2011 Time: 1:46 pm Courtroom: Court reporter: None Minutes Clerk: Evans Tape Number: Courtroom3 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith Kent J. Merica
	MINE	MEENA	Minute Entry Hearing type: Preliminary Hearing Hearing date: 12/7/2011 Time: 2:04 pm Courtroom: Magistrate Courtroom #3 Court reporter: Minutes Clerk: Tape Number: Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith Greg K. Kalbfleisch
	BOUN	DONNA	Hearing result for Preliminary Hearing scheduled on 12/07/2011 01:30 PM: Bound Over (after Prelim) Greg K. Kalbfleisch
	HRSC	DONNA	Hearing Scheduled (Arrestment 12/14/2011 09:00 AM) District Court Arrestment Jeff M. Brudie
		DONNA	Notice Of Hearing Jeff M. Brudie
12/8/2011	ORBO	BEV	Order Binding Over Jeff M. Brudie
	APTR	JANET	Application For Transcript Jeff M. Brudie
12/9/2011	INFO	JANET	Information Jeff M. Brudie
	ORTR	JANET	Order Granting Application For A Transcript (Linda Carlton) Jeff M. Brudie

REGISTER OF ACTIONS

State of Idaho vs. Paul Carey Hartzell

Date	Code	User	Judge
12/14/2011	DCHH	TERESA	Hearing result for Arraignment scheduled on 12/14/2011 09:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages
	PLEA	TERESA	A Plea is entered for charge: - NG (118-7905 Stalking-First Degree)
	HRSC	TERESA	Hearing Scheduled (Jury Trial 03/19/2012 09:00 AM)
	HRSC	TERESA	Hearing Scheduled (Final Pretrial 03/07/2012 11:00 AM)
	HRSC	TERESA	Hearing Scheduled (Pretrial Motions 02/29/2012 11:00 AM)
	MINE	TERESA	Minute Entry Hearing type: Arraignment Hearing date: 12/14/2011 Time: 9:21 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: TERESA Tape Number: CRTRM 3 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: Sandra Dickerson
12/15/2011	ORDR	JANET	Order Setting Jury Trial
12/27/2011	TRAN	JANET	Transcript Filed
1/11/2012	RSDP	JANET	2nd Supp Response To Request For Discovery-plaintiff
1/30/2012	RSDP	JANET	3rd Supp Response To Request For Discovery-plaintiff
2/29/2012	DCHH	JANET	District Court Hearing Held Court Reporter:carlton Number of Transcript Pages for this hearing estimated:less than 100 pgs
	HRHD	JANET	Hearing result for Pretrial Motions scheduled on 02/29/2012 11:00 AM: Hearing Held
	MINE	JANET	Minute Entry Hearing type: Pretrial Motions Hearing date: 2/29/2012 Time: 12:18 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: C1 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: Sandra Dickerson
3/2/2012	SMRT	JANET	Summons Returned (Kopper Blunt)

REGISTER OF ACTIONS

State of Idaho vs. Paul Carey Hartzell

Date	Code	User	Judge	
3/7/2012	DCHH	JANET	District Court Hearing Held Court Reporter:carlton Number of Transcript Pages for this hearing estimated:less than 100pgs	Jeff M. Brudie
	HRHD	JANET	Hearing result for Final Pretrial scheduled on 03/07/2012 11:00 AM: Hearing Held	Jeff M. Brudie
	MINE	JANET	Minute Entry Hearing type: Final Pretrial Hearing date: 3/7/2012 Time: 12:05 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: C1 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: Sandra Dickerson	Jeff M. Brudie
3/13/2012	MISC	JANET	Defense Requested Jury Instructions	Jeff M. Brudie
3/14/2012	MOTN	JANET	Motion in Limine	Jeff M. Brudie
	HRSC	JANET	Hearing Scheduled (Motion in Limine 03/15/2012 03:30 PM)	Jeff M. Brudie
		JANET	Notice Of Hearing	Jeff M. Brudie
	SUBP	JANET	Subpoena Issued Cathlin Berreth	Jeff M. Brudie
3/15/2012	HRHD	JANET	Hearing result for Motion in Limine scheduled on 03/15/2012 03:30 PM: Hearing Held	Jeff M. Brudie
3/16/2012	MISC	JANET	Def's 1st Supp Proposed Jury Instructions	Jeff M. Brudie
	HRVC	JANET	Hearing result for Jury Trial scheduled on 03/19/2012 09:00 AM: Hearing Vacated	Jeff M. Brudie
	HRSC	JANET	Hearing Scheduled (Status Conference 03/21/2012 09:00 AM)	Jeff M. Brudie
		JANET	Notice Of Hearing	Jeff M. Brudie
3/19/2012	MINE	JANET	Minute Entry Hearing type: Motion in Limine Hearing date: 3/15/2012 Time: 3:07 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: C1 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith	Jeff M. Brudie

State of Idaho vs. Paul Carey Hartzell

Date	Code	User		Judge
3/19/2012	MINE	JANET	Minute Entry Hearing type: Motion in Limine Hearing date: 3/16/2012 Time: 2:03 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: C1 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith	Jeff M. Brudie
	MOTN	JANET	Motion to Release on Own Recognizance	Jeff M. Brudie
3/20/2012	OPIN	JANET	Opinion and Order on Def's Motion in Limine	Jeff M. Brudie
	GRNT	JANET	Motion Granted	Jeff M. Brudie
3/21/2012	HRHD	JANET	Hearing result for Status Conference scheduled on 03/21/2012 09:00 AM: Hearing Held	Jeff M. Brudie
	DCHH	JANET	District Court Hearing Held Court Reporter:carlton Number of Transcript Pages for this hearing estimated:;less than 100 pgs	Jeff M. Brudie
	AMCO	JANET	Amended Complaint Filed (118-7906 Stalking-Second Degree)	Jeff M. Brudie
	REDU	JANET	Charge Reduced Or Amended	Jeff M. Brudie
	CHJG	JANET	Change Assigned Judge	Jay P. Gaskill
	HRSC	JANET	Hearing Scheduled (Pretrial - County P. D. 04/03/2012 09:30 AM)	Jay P. Gaskill
		JANET	Notice Of Hearing	Jay P. Gaskill
	MINE	JANET	Minute Entry Hearing type: Status Conference Hearing date: 3/21/2012 Time: 9:15 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: C1 Defense Attorney: Kwate Law Office PD 2012 Prosecutor: April Smith	Jay P. Gaskill
4/3/2012	PTMO	DONNA	Pretrial Motion And Order	Jay P. Gaskill
	CONT	DONNA	Continued (Pretrial - County P. D. 05/01/2012 09:30 AM)	Greg K. Kalbfleisch
		DONNA	Notice Of Hearing	Jay P. Gaskill
4/5/2012	APSC	DEANNA	Appealed To The Supreme Court	Jay P. Gaskill
	NTAP	DEANNA	Notice Of Appeal	Jay P. Gaskill
5/1/2012	HRVC	JANET	Hearing result for Pretrial - County P. D. scheduled on 05/01/2012 09:30 AM: Hearing Vacated	Greg K. Kalbfleisch

REGISTER OF ACTIONS

Date: 6/13/2012

Second Judicial District Court - Nez Perce County

User: DEANNA

Time: 09:37 AM

ROA Report

Page 6 of 6

Case: CR-2011-0008694 Current Judge: Jay P. Gaskill

Defendant: Hartzell, Paul Carey

State of Idaho vs. Paul Carey Hartzell

Date	Code	User		Judge
5/8/2012	SCRT	DEANNA	Supreme Court Receipt - Clerk's Record and Reporter's Transcript due at the SC by July 26, 2012	Jay P. Gaskill
	SCRT	DEANNA	Supreme Court Receipt - Clerk's Certificate filed at the SC	Jay P. Gaskill

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED
2011 OCT 24 AM 10 29

PATTY O. WELLS
CLERK OF THE DISTRICT COURT
P. Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,

Defendant.

CASE NO. **CR11-08694**

AFFIDAVIT FOR INITIAL
DETERMINATION OF PROBABLE
CAUSE PURSUANT TO ICR 5(C)

Comes now the undersigned peace officer who on oath deposes and says:

1. Affiant is a duly qualified peace officer serving with the Nez Perce County Sheriff's Office.

2. The above-referenced defendant has been arrested for the crime(s) of: **COUNT I - STALKING, I.C. §18-7905(1)(a), a felony;** without a warrant on , and your affiant asks that a Magistrate, after your affiant lays a Complaint before him, determine whether there is probable cause to believe that said offense has been committed and that the defendant has committed it.

The basis for said arrest is contained within the attached accurate copies of documents on file with the above-referenced law enforcement agency, which said copies are incorporated herein by reference.

[Signature]

SUBSCRIBED and SWORN to before me this 24th day of October 2011.

[Signature]

JUDGE OR CLERK OF COURT

RECEIVED

OCT 24 2011

Law Supplemental Narrative:

		Supplemental Narratives
Seq Name	Date	Narrative
1 Brown Chris	22:50:19 10/22/2011	

NEZ PERCE COUNTY SHERIFF'S DEPARTMENT CAP SHEET
AND CASE DISPOSITION SHEET

DATE: 10/22/2011

IN CUSTODY: [X] YES
[] NO

DEFENDANT:

Name: Paul Carey Hartzell
Address: 2523 8th Avenue # 4, Lewiston, Idaho 83501
Telephone: 208 413 2835
Date of Birth: [REDACTED]
Social Security Number: [REDACTED]

NEZ PERCE COUNTY SHERIFF'S DEPARTMENT CASE NUMBER: 11-N5867
OTHER AGENCIES RELATED CASE NUMBERS: LPD# 11-L14668, CPD# 11-P05558, CPD# 11-P05499
DATE OF INCIDENT: 10/16/2011
TIME OF INCIDENT: 21:11

CHARGES:

1. Stalking in the first degree, I. C. 18-7905(a)

WITNESSES:

1. Det. Clark, LPD
2. Kopper Blunt, P & P
3. Cathlin Berreth
- 4.

EVIDENCE:

1. Asotin County Protection Order between Berreth and Hartzell
2. Photos of message sent to Berreth on 10/16/2011
3. LPD case #11-L14668
4. Audio interview of Hartzell at NPC Jail
5. Written and attached report
- 6.

SUMMARY (PROBABLE CAUSE): On October 16, 2011 Paul Hartzell sent Cathlin Berreth a message to her Facebook account asking her to marry him and expressing how he wants her to bare his children. This is the second violation of an Asotin County protection order issued on 09/26/2011. The first violation occurred on 10/11/2011 when Hartzell sent Berreth flowers at her work and asked her to marry him. He showed up at her residence on 9/15/2011 and at her place of work on 9/23/2011. Berreth has told Hartzell several times that she does not want him to contact her. Berreth fears for her safety and is tired of the continuing harassment. Hartzell's mother, Joyce Hartzell, contacted LPD and advised them she is concerned about her son's behavior and is concerned about Berreth.

RECOMMENDATION: [] WARRANT

[X] SUMMONS

=====

OFFICERS/INVESTIGATORS:

1. Dep. Chris Brown, 2531
- 2.
- 3.

=====

PROSECUTOR to POLICE:

DATE:

- Charges filed
- Warrant
- Referred to Juvenile Services
- Prosecution delayed for further investigation
- Prosecution Declined
- Summons

Assigned Prosecutor:

=====

FURTHER INVESTIGATION REQUESTED:

- 1.
- 2.
- 3.

Police Follow-up due by:

=====

PROSECUTION DECLINED: (EXPLANATION)

=====

CASE DISPOSITION:

- Guilty plea as charged
- Guilty plea to other charge:
- Guilty verdict
- Not Guilty verdict
- Other:

10/23/2011
01:04

Nez Perce County Sheriff
LAW Incident Table:

624
Page: 1

Incident Number: 11-N5867 Attachments
 Nature: CPOR Violation Case Number: 11-N5871 Image:
 Addr= US HIGHWAY 95; top lewiston hill Area: NPC4 LAP AREA, SH3,
 City: Lewiston ST: ID Zip: 83501 Contact: cathlin berreth
 Complainant& 122606
 Lst: BERRETH Fst: CATHLIN Mid: JENNIFER
 DOB: / / SSN: - - Adr= 1113 F ST; COURT SERVICES
 Rac: -W Sx: F Tel: (208)799-3146 Cty: Lewiston ST: ID Zip: 83501

Offense Codes: CPRV Reported: CPRV Observed: CPRV
 Circumstances:
 Rspndg Officers: Brown Chris
 Rspnsbl Officer: Brown Chris Agency: NPC4 CAD Call ID: 1110-1017
 Received By: Bryan CodyAnn Last RadLog: 18:09:12 10/22/2011 24
 How Received: T Telephone Clearance: RPT Written Incident Repo
 When Reported: 16:47:43 10/22/2011 Disposition: CAA Disp Date: 10/23/2011
 Occurrd between: 16:47:43 10/22/2011 Judicial Sts:
 and: 16:47:43 10/22/2011 Misc Entry:

MO:
 Narrative: (See below)
 Supplement: (See below)

=====

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
MI	1947	10/22/2011	Attachment	Attachments
JM	11-J4519	10/22/2011	Stalking	*Arrest/Offense
NM	122606	10/22/2011	BERRETH, CATHLIN JENNIFER	*Complainant
NM	187154	10/22/2011	HARTZELL, PAUL CAREY	Offender
CA	1110-1017	10/22/2011	16:47 10/22/2011 CPOR Violatio	*Initiating Call

Law Incident Case Numbers:

Case Numbers
Seq Number
1 11-N5871

LAW Incident Offenses Detail:

Seq Code	Offense Codes	Amount
1	CPRV Civil Protection Order Violati	0.00

LAW Incident Responders Detail

Seq Name	Unit
1 Brown Chris	31

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
18:09:12 10/22/2011	1	31	24	NPCS3	NPCS	incid#=11-N5867 Assignment Com
18:08:07 10/22/2011	1	31	CMPLT	NPCS3	NPCS	incid#=11-N5867 Reassigned to
17:17:50 10/22/2011	1	31	23	NPCS3	NPCS	incid#=11-N5867 Arrived at Sce
16:52:53 10/22/2011	1	31	ASSGN	NPCS3	NPCS	incid#=11-N5867 Assigned to a

Narrative:

Nez Perce County Sheriff's Department

Date and Time: October 22, 2011 19:52 Hours

Report Type: Stalking

Reporting Officer: Dep. Chris Brown, 2531

On October 22, 2011 at approximately 16:47 hours, Cathlin Berreth contacted the Sheriff's Office regarding a violation of a protection order in place between her and Paul Hartzell that is through Asotin County. Berreth advised Hartzell violated the order and wished to report it.

I contacted Berreth at the Sheriff's Office and asked her to explain the situation. She said she was traveling down the Lewiston Hill today at approximately 16:15 hours when she checked her Facebook page using her cell phone. At that time she saw a message sent to her by Paul Hartzell. In the message Hartzell begins by addressing Berreth as Your Honor and it states it's from Paul C. Hartzell. In the message Hartzell states he met Berreth approximately a year ago and he immediately hoped they would become "friends or as a more intimate type of thing." He said that the more he was around her the more he wanted to be with her. He called Berreth the lady of his dreams. Hartzell said Berreth is "the woman that every man should want to have a family with..." He said he went to her house (occurred on 9/15/11) to "ask her to marry me." He continues and begins directly addressing Berreth and says, "Cathlin please marry me." He says, "Never before have I wanted children until I imagined how beautiful ours could be if you helped me bring them to be." The final sentence in the message reads, "Yes, I have a crush or been obsessed, and have even been a little infatuated but I am a good man with a promising future especially if I had a woman like you I could not lose." Berreth said she is tired of the harassment and fears for her safety. She said she would like something done about the continuing harassment.

After I finished my conversation with Berreth, I examined the protection order between her and Hartzell. In the order it states that Hartzell is restrained from making any communication with her and Berreth's two children including personal, written, or telephone contact and is not to be within 200 feet of her or her children's residence, school, property or place of employment.

I examined Hartzell's recent behavior. On 9/15/2011 Hartzell went to Berreth's residence and attempted to speak with her. He was at her place of employment on 9/23/2011 and has attempted contacted with her via e-mail and phone several times. On 9/26/2011 Hartzell was issued a temporary protection order out of Asotin County. On 10/11/2011 Hartzell was cited by the Lewiston Police Department (LPD) for violating the protection order and told not to contact Berreth. At that time Hartzell had sent flowers and a card expressing his love for Berreth. On 10/12/2011 the protection order was reissued. On 10/12/2011 Joyce Hartzell, Paul Hartzell's mother, contacted LPD because she was concerned about her son's recent behavior. She said her son thinks Berreth is in love with him and they are going to be together. She said she knows this is not possible and is concerned about Berreth. Due to this being Hartzell's

second protection order violation and his pattern of continuing harassment that has caused Berreth to fear for her safety it was decided to arrest Hartzell for stalking in the first degree.

Dep. Egbert, Cpl. Martin and I went to Hartzell's residence to attempt contact. Upon arrival we contacted Hartzell who was standing outside his apartment. Cpl. Martin told Hartzell that he was under arrest for stalking and placed handcuffs on him. We asked him if he needed anything from inside the house and if he needed us to turn anything off inside the residence for him. He said he was not sure so we walked him into the residence and shut off his lights and computers. We also took a plastic bag full of Hartzell's prescription medication per his request. While walking through the residence we observed two full 16 ounce cans of Rolling Rock beer and one unopened 24 ounce can of Twister Tea on a table in the living room. We also observed one open 16 ounce can of Rolling Rock beer on a computer table.

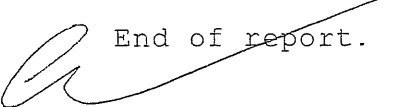
Once Hartzell's house was secure, I escorted Hartzell to Dep. Egbert's vehicle for transportation. He was searched and placed into Dep. Egbert's patrol vehicle. While searching Hartzell, I smelled the odor of alcoholic beverage coming from his person.


Once at the jail Hartzell was turned over to jail staff to begin the booking process. Once the process was completed, I escorted Hartzell to an interview room and read him his rights per Miranda. He said he understood and agreed to speak to me about the incident. I asked him if he knew why he was arrested and he said he had an idea. He said he sent someone flowers and he didn't know where he was suppose to talk to them. I asked him to tell me who he was talking about and he said they were a counselor who was more like a friend. (Berreth was Hartzell's substance abuse counselor). He said it is difficult to talk to her. I asked him if there is a protection order between he and Berreth and he said there is. I asked him if he has violated the protection order before and he said Lt. Clark with LPD served him a citation. I described the message he sent to Berreth on 10/16/2011 and asked him if he was familiar with it. Hartzell said, "I think I've seen it before, yeah." I explained that the message came from his Facebook page and it is a violation of the protection order. He said he understood and that he remembered when he sent it. He said all he was trying to do is apologize and that he wasn't trying to hurt anyone. Once I finished speaking with Hartzell he was turned over to jail staff.

Hartzell is currently on probation with Kopper Blunt. I attempted contact with Blunt and left her a message to contact the Sheriff's Office regarding the situation.

Photos of the message sent and an audio recording of Hartzell's interview were downloaded to Spillman.

End of report.


Dep. Chris Brown, 2531


Reviewing Supervisor

DQ -- From: NCIC (IDNCIC000)

TXT: 1L010410,MRI9293805
ID0350000

***MESSAGE KEY QWS SEARCHES WANTED PERSON FILE FELONY RECORDS REGARDLESS OF EXTRADITION, ALL MISDEMEANOR RECORDS INDICATING POSSIBLE EXTRADITION FROM THE INQUIRING AGENCY'S LOCATION, AND ALL INTRASTATE MISDEMEANOR RECORDS. ALL OTHER NCIC PERSONS FILES ARE SEARCHED WITHOUT LIMITATIONS.

*****WARNING - THE FOLLOWING IS AN NCIC PROTECTION ORDER RECORD. DO NOT SEARCH, DETAIN, OR ARREST BASED SOLELY ON THIS RECORD. CONTACT ENTERING AGENCY TO CONFIRM STATUS AND TERMS OF PROTECTION ORDER*****

MKE/PROTECTION ORDER

ORI/WA0020000 NAM/HARTZELL,PAUL CAREY SEX/M RAC/W POB/FL

DOB/[REDACTED] HGT/509 WGT/200 EYE/BRO HAI/BRO

SMT/MISS R EYB

SOC,

OLN/HARTZPC237BK OLS/WA OLY/2012

BRD/N ISD/20111011 EXP/20121010 CTI/WA002013J

PPN/BERRETH,CATHLIN J PSX/F PPR/W PPB/19721018

PCO/01 - THE SUBJECT IS RESTRAINED FROM ASSAULTING, THREATENING, ABUSING, PCO/HARASSING, FOLLOWING, INTERFERING, OR STALKING THE PROTECTED PERSON AND/OR PCO/THE CHILD OF THE PROTECTED PERSON.

OCA/11A04952

MIS/CONFIRM 5097581668 EXT 2 RESPONDENT IS RESTRAINED FROM KNOWINGLY COMING MIS/WITHIN 200FT OF PETITIONERS HOME AND PLACE OF EMPLOYMENT

DNA/N

ORI IS ASOTIN CO SO ASOTIN 509 243-4717

PPN/BERRETH,EMILY M PSX/F PPR/W PPB/19951125

PPN/BERRETH,RACHEL ANNE PSX/F PPR/W PPB/19990724

PCO/04 - THE SUBJECT IS REQUIRED TO STAY AWAY FROM THE RESIDENCE, PROPERTY, PCO/SCHOOL, OR PLACE OF EMPLOYMENT OF THE PROTECTED PERSON OR OTHER FAMILY OR PCO/HOUSEHOLD MEMBER.

PCO/05 - THE SUBJECT IS RESTRAINED FROM MAKING ANY COMMUNICATION WITH THE PCO/PROTECTED PERSON INCLUDING BUT NOT LIMITED TO, PERSONAL, WRITTEN, OR PCO/TELEPHONE CONTACT, OR THEIR EMPLOYERS, EMPLOYEES OR FELLOW WORKERS, OR PCO/OTHERS WITH WHOM THE COMMUNICATION WOULD BE LIKELY TO CAUSE ANNOYANCE OR PCO/ALARM THE VICTIM.

PCO/08 - SEE THE MISCELLANEOUS FIELD FOR COMMENTS REGARDING THE TERMS AND PCO/CONDITIONS OF THE ORDER.

AKA/HARTZELL,PAUL C

SMT/NM L ARM

SMT/NM R ARM

SMT/SC ABDOM

SMT/SC CHIN

SMT/SC R EYE

SMT/SC R HND

SMT/SC RF ARM

SMT/TAT L ARM

SMT/TAT L SHLD

NIC/H097515664 DTE/20111011 2153 EDT DLU/20111011 2202 EDT

MRI 9293808 IN: NCIC 9180 AT 17:38 22OCT11

OUT: SNEZZ01 241 AT 17:38 22OCT11

FILED

2011 OCT 24 AM 10 28

PATTY O. WOODS
CLERK OF THE DIST. COURT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

Reynolds

CR11-08694

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,

Defendant.

CASE NO.

INITIAL DETERMINATION OF
PROBABLE CAUSE

The undersigned Magistrate having examined the Affidavit submitted by *Doug McPherson*, along with the attached documents, and the Complaint against the above defendant for the crime(s) of: **COUNT I - STALKING, I.C. §18-7905(1)(a), a felony;** having been laid before the undersigned Magistrate, it is hereby determined by the undersigned Magistrate that there is probable cause to believe that the said offense has been committed, and that the defendant has committed it.

DATED this 24th day of October 2011.


MAGISTRATE

FILED

2011 OCT 24 AM 10 38

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

PATTY O. WOODS
CLERK OF THE DIST. COURT

Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,
D.O.B.: 01/12/1973,
S.S.N.: XXX-XX-1190,

Defendant.

CASE NO. **CR11-08694**

COMPLAINT - CRIMINAL

STATE OF I D A H O)
 : ss.
County of Nez Perce)


PERSONALLY APPEARED Before me this 24th day of October 2011, in the County of Nez Perce, Doug McPherson, who, being first duly sworn, complains and says: that PAUL C. HARTZELL, did commit the following crime(s):

COUNT I
STALKING, I.C. § 18-7905(1)(a), a felony

That the Defendant, PAUL C. HARTZELL, on or about and between the 11th day of October, 2011 and the 16th day of October, 2011 in the County of Nez Perce, State of Idaho, did knowingly and maliciously engage in a course of conduct that seriously alarmed, annoyed or harassed CATHLIN J. BERRETH and is such as would cause a reasonable person substantial emotional distress, to-wit: by repeatedly contacting and/or attempting to contact the victim in person and/or by phone and/or by internet and in violation of a civil protection order issued on September 26, 2011, in Asotin County Case Number DV11-72.

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

Said Complainant therefore prays that PAUL C. HARTZELL be dealt with according to law.



SUBSCRIBED and SWORN to before me this 24th day of October 2011.



MAGISTRATE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

FILED

2011 OCT 24 PM 2 28

STATE OF IDAHO,

Plaintiff,

vs.

Paul Carey Hartzell,

Defendant.

PATTY O. WEE Case No: CR-2011-0008694
CLERK OF THE DIST. COURT

[Handwritten Signature]
COMMITMENT, HELD TO ANSWER
DEPUTY

THE STATE OF IDAHO TO THE SHERIFF OF NEZ PERCE COUNTY, GREETINGS:

An Order having been made this day by me that Paul Carey Hartzell be held to answer upon the charge of Stalking-First Degree committed in said Nez Perce County on or about 10/11/2011, .

Now, YOU, the said sheriff, are commanded to receive the said Defendant into your custody and detain Paul Carey Hartzell until legally discharged, and hereby order that the said Defendant be admitted to bail in the sum of \$ 20,000.

Dated this 24th day of October, 2011.

[Handwritten Signature]
MAGISTRATE

DANIEL L. SPICKLER
Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Nez Perce County, Idaho
Post Office Box 1267
Lewiston, Idaho 83501
Telephone (208) 799-3073
Idaho State Bar No. 7009

FILED
2011 OCT 24 AM 10 28

PATTY O. WEAVER
CLERK OF THE DIST. COURT
Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,

Defendant.

CASE NO. CR11-08694

MOTION FOR NO CONTACT ORDER

COMES NOW, APRIL A. SMITH, Deputy Prosecuting Attorney for Nez Perce County, Idaho, and moves the above-entitled Court to issue a no contact order preventing the above-named defendant from any personal contact, telephone contact, written contact, or contact through third persons with, the alleged victim CATHLIN J. BERRETH, DOB [REDACTED] in the above-entitled action.

DATED this 24th day of October 2011.

April A. Smith

APRIL A. SMITH
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE
MAGISTRATE DIVISION

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
Hartzell, Paul)
)
Defendant,)

NO. CR11-08694 FILED
2011 OCT 24 AM 7 12

NOTIFICATION OF RIGHTS -
FELONY

PATTY O. WILSON
CLERK OF THE DIST. COURT

Reynolds
DEPUTY

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

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

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

Acknowledgement of Rights

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

Date 10/22/11

Defendant's Signature *Paul Hartzell*

FILED

2011 OCT 24 PM 2 28

PATTY O. WEEKS
CLERK OF THE DIST. COURT
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CR11-08694

STATE OF IDAHO,)
)
 Plaintiff,)
 vs.)
 Hartzell, Paul)
)
 Defendant.)
 _____)

CASE NO. _____

AFFIDAVIT OF FINANCIAL STATUS,
APPLICATION FOR PUBLIC
DEFENDER, AND ORDER APPOINTING

This application must be filled out completely before it can be reviewed for assignment of a public defender. All questions must be answered (no exceptions).

- A. Name PAUL HARTZELL Date of Birth 1/11/73
- B. Address 7523 8th AVE #4 Phone 208 413 2885
City LEWISTON State ID Zip 83501
- C. Are you Employed? No Yes _____ Where? _____
- D. Income/Take home pay: Monthly _____ Bi-weekly _____ Weekly _____
- E. Married? No Yes _____ Spouse Name. _____
- F. Spouse Employed? No _____ Yes _____ Where? _____
- G. Spouse's Income/Take home pay: Monthly _____ Bi-weekly _____ Weekly _____
- H. How many children? 0 Ages _____
- I. Debts (per month):
1. Rent \$166 (450) 2. Food _____ 3. Utilities _____
4. Car _____ 5. Medical _____ 6. Credit Cards _____
7. Loan _____ 8. Other _____ 9. Child Support _____
- J. Own Home? No _____ Yes _____ Equity _____
Rent Home? No _____ Yes _____
Live with Parents? No _____ Yes _____

J. Approximate Value Of All Assets And Property:

- 1. Motor Vehicles _____ How Many? _____
Make and Model _____
- 2. Furniture _____
- 3. Sporting Equipment _____
- 4. Guns (how many) _____ Boats _____
- 5. Stocks and Bonds _____ Cash in Bank _____
- 6. Name of Bank _____
- 7. Cash on Hand _____
- 8. Jewelry _____
- 9. Other _____

K. Did you File Federal Income Tax Last Year?

No _____ Yes Amount Filed _____

L. Can You Borrow Money to Pay an Attorney? No Yes _____

I HEREBY ACKNOWLEDGE THAT I MAY BE REQUIRED TO REIMBURSE NEZ PERCE COUNTY FOR THE SERVICES OF THE PUBLIC DEFENDER.

I HEREBY CERTIFY THAT ALL OF THE ANSWERS TO THE FOREGOING QUESTIONS ARE UNDER OATH AND SWEAR THAT THE SAME ARE TRUE AND CORRECT AND IF I HAVE INTENTIONALLY ANSWERED ANY OF SAID QUESTIONS INCORRECTLY I MAY BE PROSECUTED FOR PERJURY.

X 10/23/11
DATE

X [Signature]
DEFENDANT'S SIGNATURE

ORDER

Based upon the information contained in the court record and on the above filed affidavit, the court hereby GRANTS DENIES _____ the defendant's application for a public defender. Curtis is hereby appointed as counsel to represent the defendant in the above-entitled case.

Dated this 24th day of October, 2011.

[Signature]
Judge, Magistrate Division

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State v. Paul C Hartzell JUDGE **GREG KALBFLEISCH**
HEARING TYPE Initial Arraignment CLERK Cole
PLF ATTORNEY _____ TAPE # ctrm 2
DEF ATTORNEY _____ CASE # CR11-8694
OTHERS PRESENT _____ DATE 10-24-11
014110 TIME 1:15 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present with/~~without~~ counsel

Court advises Def of rights and charges

Court sets Preliminary Hearing for 11/2/11 at 1:30 PM

Def requests court appointed counsel and signs Affidavit

Court Appoints Kwate Law to represent Def

Bond: \$20,000

Recess 014702

NCD entered. Caitlin Berneth.

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

PATTY O. WELLS
CLERK OF THE DISTRICT COURT

Skypolds
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Paul C Hartzell
Defendant,

CASE NO. CR11-8694

- NOTICE OF PRELIMINARY CONFERENCE
- NOTICE OF PRELIMINARY HEARING
- NOTICE OF SENTENCING
- NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- PRELIMINARY CONFERENCE to begin at _____, __.m., on the _____ day of _____, 20____.
- PRELIMINARY HEARING to begin at 130 p.m., on the 2nd day of November, 2011.
- SENTENCING to begin at _____, __.m. on the _____ day of _____, 20____.
- HEARING to begin at _____, __.m. on the _____ day of _____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 24th day of Oct, 2011.

BY ORDER OF:

KaubHeisch
Judge

Colic
Clerk

- Copy to Prosecuting Attorney
- Copy handed to Defendant
- Copy mailed to Defendant
- Copy mailed/handed/placed in basket to Defendant's Attorney KWATE LAW

Scanned to Jan

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

FILED

Case No. CR11-8694

STATE OF IDAHO, Plaintiff

vs. Paul C Harwood **NO CONTACT ORDER**

DOB: [REDACTED] PATTY O. WEIKSSN [REDACTED] Eff. July 1, 2009

CLERK OF THE DIST. COURT

The Defendant has been charged with or convicted of violating Idaho Code Section(s):

- 18-901 Assault
- 18-903 Battery
- 18-905 Aggravated Assault
- 18-907 Aggravated Battery
- 18-909 Assault with Intent to Commit Felony
- 18-911 Battery with Intent to Commit Felony
- 18-913 Felonious Administering of Drug
- 18-915 Assault or Battery upon Certain Personnel
- 18-918 Domestic Assault or Battery
- 18-919 Sexual Exploitation by Medical Provider
- 18-6710 Use of Telephone - Lewd/Profane
- 18-6711 Use of Telephone - False Statements
- 18-7905 Stalking (1st *)
- 18-7906 Stalking (2nd *)
- 39-6312 Violation of a Protection Order
- Other: _____

THE COURT, having jurisdiction, and having provided the Defendant with notice of his/her opportunity to be heard, either previously or herein, **ORDERS THE DEFENDANT TO HAVE NO DIRECT OR INDIRECT CONTACT, except through an attorney, WITH THE FOLLOWING PROTECTED PERSON(S):** _____

Cathlin T. Berkeim

The Defendant shall not harass, follow, contact, attempt to contact, communicate with (in any form or by any means including another person), or knowingly go or remain within 300 feet of the protected person(s) or the protected person(s)', property, residence, workplace or school. This order is issued under Idaho Code 18-920, Idaho Criminal Rule 46.2 and Administrative Order 2009-02.

IF THIS ORDER REQUIRES THE DEFENDANT TO LEAVE A RESIDENCE SHARED WITH THE PROTECTED PERSON(S), the Defendant must contact an appropriate law enforcement agency for an officer to accompany the Defendant while the Defendant removes any necessary personal belongings, including any tools required for Defendant's work. If disputed, the officer will make a preliminary determination as to what are necessary personal belongings; and in addition, may restrict or reschedule the time spent on the premises.

NOTICE OF RIGHT TO A HEARING: The Defendant is hereby notified of the right to a hearing before a Judge on the continuation of this Order within a reasonable time of its issuance. To request that hearing, and TO AVOID GIVING UP THIS RIGHT the Defendant must contact the Clerk of Court, Nez Perce County Courthouse, 1230 Main Street, 2nd Floor, Lewiston, ID 83501, 208-799-3040.

A VIOLATION OF THIS ORDER IS A SEPARATE CRIME UNDER Idaho Code 18-920 for which bail will only be set by a judge; it is punishable by up to one year in jail and a \$1,000 fine. If the Defendant has pled guilty to or been found guilty of two violations of Idaho Code 18-920 and/or a substantially conforming foreign criminal violation within five years, then a violation of this order is a felony punishable up to five years imprisonment and a \$5,000 fine. THIS ORDER CAN ONLY BE MODIFIED BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON 10-24-13, OR UNTIL THIS CASE IS DISMISSED.

If another DOMESTIC VIOLENCE PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT (Title 39, Chapter 63 of the Idaho Code), the most restrictive of any conflicting provisions between the orders will control; however, entry or dismissal of another order shall not result in dismissal of this order.

The Clerk of the Court shall give written notification to the records department of the sheriff's office in the county of issuance IMMEDIATELY and this order shall be entered into the Idaho Law Enforcement Telecommunications System.

10/24/11
Date of Order
Date of Service
Date of Service

JUDGE
DEFENDANT/ATTORNEY Signature of Service
OFFICER/AGENCY SERVING (include badge no.)

cc: Arresting Agency, County Sheriff, Victim, Prosecuting Attorney, Defendant/Defendant's Attorney

FILED

2011 OCT 26 PM 12 12

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8461

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	REQUEST FOR DISCOVERY
)	
Paul C. Hartzell,)	
)	
Defendant.)	
)	

TO: THE PROSECUTING ATTORNEY, NEZ PERCE COUNTY, STATE OF IDAHO:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence, and materials:

ONE: Defendant hereby requests pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and I.C.R. 16(a) that the State disclose to the defense any and all exculpatory material and/or exculpatory information in this case. Defendant specifically objects to and rejects any requirement or request that defendant notify the State, in writing or otherwise, of the defenses that he or she is or may be

asserting in this case as a condition of disclosure of such exculpatory information and/or exculpatory material to the defense. Any such precondition for disclosure of exculpatory material and/or exculpatory material and/or exculpatory information violates the 4th, 5th, and 6th Amendments to the United States Constitution, the ruling in Brady v. Maryland, 373 U.S. 83 (1963), I.C.R. 16(a) and (c), attorney-client privilege and the work product doctrine. By this demand for disclosure the defendant demands production of all material and information which the State does not disclose and defendant demands notification of the State's determination to withhold material and information from defendant so that defendant can file a timely motion to compel the disclosure and production of the withheld material and/or information. Without waiving any objection to the State's request that defendant notify the State of defendant's planned defense(s) the State is further notified that a defense in this and every case in which this Request for Discovery is made includes, but is not limited to, the defense that material and/or information withheld by the State was and is exculpatory and if disclosed to defendant would have resulted in defendant's acquittal or dismissal of all charges.

TWO: Permission for the defendant to inspect and copy or photograph any relevant, written, or recorded statements made by the defendant or copies thereof within the possession, custody or control of the state.

THREE: The substance of any relevant, oral statement made by the defendant or copies thereof within the possession, custody or control of the state.

FOUR: Permission for the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant and the substance of any relevant, oral statement made by a co-defendant, whether before or after arrest, in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

FIVE: Furnish to the defendant a copy of the prior criminal record of the defendant, if any.

SIX: Permission of the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant.

SEVEN: Permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case or copies thereof within the possession, custody, or control of the prosecuting attorney.

EIGHT: Furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney.

NINE: Furnish to the defendant a written list of the names and addresses of all who may be called by the state as expert witnesses at the trial. For all such expert witnesses, furnish to the defendant a written summary or report of any testimony the state intends to introduce, including a description of each witnesses's opinions, the facts and data for those opinions, and the witnesses's qualifications.


TEN: Furnish to the defendant statements made by the prosecution's witnesses or prosecuting attorney or agents or to any official involved in the investigatory process of the case.

ELEVEN: Furnish to the defendant reports and memoranda made by any police officer or investigator in connection with the investigation or prosecution of the case.

The undersigned further requests permission to inspect and copy said information, evidence, and materials not required to be furnished within fourteen (14) days from receipt of the notice, or at such other time as counsel may agree.

DATED this 25th day of October, 2011.

KWATE LAW OFFICES, PLLC

By 
Nicholas D. Lepire

CERTIFICATE OF SERVICE


I hereby certify that on the 26th day of October, 2011, a true and correct copy of the foregoing instrument was:

Mailed
 Faxed
 Hand Delivered
 Overnight mail

to the following:

Nez Perce County Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Nicholas D. Lepire

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State of Idaho vs. Paul Carey Hartzell JUDGE Kent J. Merica
HEARING TYPE PRELIMINARY HEARING CLERK Nelson
PLF ATTORNEY April A Smith TAPE NO. Chm 2
DEF ATTORNEY Kwate Law Office PD 2012 CASE NO. CR-2011-0008694
OTHERS PRESENT _____ DATE 11/2/2011
TIME 01:30 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

⁴⁰⁰⁰
Def present with / without counsel
Smith present for State

State / Def requests continuance of Preliminary Hearing

Court Orders: Preliminary Hearing continued to : 11-16-11 at 1:30 p. m.

Def waives Preliminary Hearing – Court Binds Def over to District Court

Case set for District Court Arraignment at Assigned to:

Preliminary Hearing held, Proceedings as follows:

Legere - Requests review of bond.

~~11/16/11~~
Court Report presented to the court shows 2
FTAS this year. Is on probation for DUI
and was drinking when this happened.
Remains bond as set.

4207

FILED

2011 NOV -2 P 2:02

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CLERK OF DISTRICT COURT
NEZ PERCE COUNTY

STATE OF IDAHO,

Plaintiff,

vs.

Paul Hartzell
Defendant,

CASE NO. CR11-8694

- NOTICE OF PRELIMINARY CONFERENCE
- NOTICE OF PRELIMINARY HEARING
- NOTICE OF SENTENCING
- NOTICE OF HEARING ON _____

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- PRELIMINARY CONFERENCE to begin at _____, __.m., on the _____ day of _____, 20____.
- PRELIMINARY HEARING to begin at 1:30, p.m., on the 16th day of November, 2011.
- SENTENCING to begin at _____, __.m. on the _____ day of _____, 20____.
- HEARING to begin at _____, __.m. on the _____ day of _____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 2nd day of November 2011.

BY ORDER OF:

- Copy to Prosecuting Attorney
- Copy handed to Defendant
- Copy mailed to Defendant
- Copy mailed/handed/placed in basket to Defendant's Attorney

Mirica
Judge

Nelson
Clerk

Kuato

FILED

2011 NOV 4 PM 12 08

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

PATTY G. WEEKS
CLERK OF THE DISTRICT COURT
Patty Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

 Plaintiff,

vs.

PAUL C. HARTZELL,

 Defendant.

CASE NO. CR2011-0008694

RESPONSE TO REQUEST FOR
DISCOVERY

TO THE ABOVE-NAMED DEFENDANT AND COUNSEL:

COMES NOW, the State in the above-entitled matter, and submits the following
Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney, or the prosecuting attorney's agent have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

3. Defendant's prior criminal record, if any, has been disclosed, made available, or is attached hereto as set forth in Exhibit "B."

4. Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial is set forth in Exhibit "A." Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting

attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

7. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

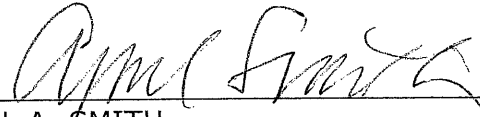
8. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed, made available, or are attached hereto as set forth in Exhibit "B." In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and Brady v. Maryland, 373 U.S. 83 (1963).

9. Wherever this Response indicates that certain evidence or materials have been disclosed, made available, or are attached hereto as set forth in Exhibit "B," such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the defendant. Furthermore, any items which are listed in Exhibit "B" but are not specifically provided, or which are referred to in documents which are listed in Exhibit "B," are available for inspection upon appointment with the Prosecuting Attorney's Office.

10. The State reserves the right to supplement any and all sections of this response if and when more information becomes available.

11. The State objects to requests by the defendant for anything not addressed above on the grounds that such requests are outside the scope AND/OR are irrelevant under I.C.R. 16.

DATED this 3rd day of November 2011.



APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Nicholas D. Lepire
Kwate Law Offices
1502 "G" Street
Lewiston Idaho 83501

DATED this 3rd day of November 2011.



SALENA BERGEN
Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. NAME: DOUG CLARK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
2. NAME: LARRY STUCK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
3. NAME: KOPPER P. BLUNT
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176
4. NAME: LUCAS K. MARTIN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
5. NAME: GREGORY EGBERT
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
6. NAME: CHRIS BROWN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
7. NAME: CATHLIN BERRETH
ADDRESS: Court Services Lewiston, ID 83501
PHONE: (208) 799-3176
8. NAME: JOYCE A. HARTZELL
ADDRESS: 2262 Schaefer Drive Clarkston, WA 99403
PHONE: UNKNOWN

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. One (1) CD-R containing audio, photos, and reports is being Response to Request for Discovery.
AUDIO:
 "11N5867HartwellInterview.WMA"
PHOTOS:
 "11-L14668 185pics 001.jpg" thru "11-L14668 185pics 003.jpg"
 "11N5867 005.jpg" thru "11N5867 008.jpg"
REPORTS:
 "01-18 - REPORTS.tif"
 "19-22 - PRIORS.tif"
 "23-34 - REPORTS - SUPP.tif"
2. Nez Perce County Sheriff's Office Cap Sheet and Case Disposition Sheet, pages 1-2.
3. Nez Perce County Sheriff's Office Law Incident Table, pages 3-4.
4. Nez Perce County Sheriff's Office Narrative Report prepared by Chris Brown, pages 5-6.
5. NCO, page 7.
6. Criminal history, pages 8-18.
7. Priors, pages 19-22.
8. Lewiston Police Department Law Incident Table, pages 23-24.
9. Lewiston Police Department Narrative Report prepared by Doug Clark, page 25.
10. Call comments, pages 26-28.
11. Lewiston Police Department Supplemental Narrative prepared by Doug Clark, page 29.
12. Lewiston Police Department Supplemental Narrative prepared by Larry Stuck, page 30.
13. Lewiston Police Department Supplemental Narrative prepared by Doug Clark, page 31.

14. Main Names Table, pages 32-34.

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2011 NOV 4 PM 12 08

PATTY O. WELLS
CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,

Defendant.

CASE NO. CR2011-0008694

REQUEST FOR DISCOVERY

TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence and materials:

1. Books, papers, documents, photographs, tangible objects or portions thereof, which are within the possession, custody, or control of the defendant, and which the defendant intends to introduce in evidence at trial;

2. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the

defendant intends to call at the trial, when the results or reports relate to testimony of the witness;

3. A list of names and addresses of witnesses the defendant intends to call at trial.

4. Please provide the State with a written summary or report of any expert witness testimony that the Defendant intends to introduce pursuant to Idaho Criminal Rules 702, 703 and 705 at trial or hearing in the above-captioned matter. Said summary must describe the expert's opinions, the facts and data for those opinions and the expert's qualifications. This request shall also include any expert opinions regarding mental health pursuant to Idaho Code Section 18-207.

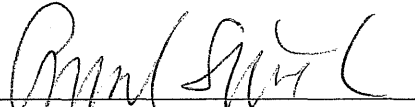
The undersigned further requests permission to inspect and copy said information, within 14 days from the date of this request at the Prosecuting Attorney's Office, Lewiston, Idaho.

REQUEST FOR NOTICE OF DEFENSE OF ALIBI

Pursuant to Idaho Code Section 19-519 and Idaho Criminal Rule 12.1, the Prosecuting Attorney requests that you serve upon his office within ten days of your receipt of this request a written notice of the intention of your client to offer a defense of alibi in the above-referenced matter.

Such notice must state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 3rd day of November 2011.


APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

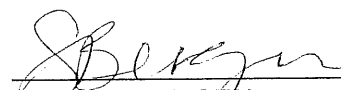
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Nicholas D. Lepire
Kwate Law Offices
1502 "G" Street
Lewiston Idaho 83501

DATED this 3rd day of November 2011.



SALENA BERGEN
Legal Assistant

FILED
2011 NOV 14 PM 4 38
PATTY O. WELLS
CLERK OF THE DISTRICT COURT
Patty O. Wells
DEPUTY

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

 Plaintiff,

 vs.

PAUL C. HARTZELL,

 Defendant.

CASE NO. CR2011-0008694

SUPPLEMENTAL RESPONSE TO
REQUEST FOR DISCOVERY

COMES NOW the undersigned, APRIL A. SMITH, Deputy Prosecuting Attorney for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

2. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 10th day of November 2011.

April A. Smith

APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

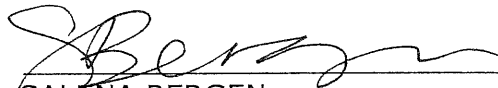
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Nicholas D. Lepire
Kwate Law Offices
1502 "G" Street
Lewiston Idaho 83501

DATED this 10th day of November 2011.



SALENA BERGEN
Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. NAME: DOUG CLARK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
2. NAME: LARRY STUCK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
3. NAME: KOPPER P. BLUNT
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176
4. NAME: LUCAS K. MARTIN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
5. NAME: GREGORY EGBERT
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
6. NAME: CHRIS BROWN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
7. NAME: CATHLIN BERRETH
ADDRESS: Court Services Lewiston, ID 83501
PHONE: (208) 799-3176
8. NAME: JOYCE A. HARTZELL
ADDRESS: 2262 Schaefer Drive Clarkston, WA 99403
PHONE: UNKNOWN
9. **NAME: JOHN TRIPLETT**
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176

10. NAME: RANDY BUTTENHOFF
ADDRESS: Nez Perce County
Information Systems
PHONE: (208) 799-3126

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. One (1) CD-R containing audio, photos, and reports was provided with the Response to Request for Discovery.
AUDIO:
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PHOTOS:
 "11-L14668 185pics 001.jpg" thru "11-L14668 185pics 003.jpg"
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REPORTS:
 "01-18 - REPORTS.tif"
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12. Lewiston Police Department Supplemental Narrative prepared by Larry Stuck, page 30.
13. Lewiston Police Department Supplemental Narrative prepared by Doug Clark, page 31.
14. Main Names Table, pages 32-34.

15. Copies of emails, pages 35-42.

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

NOV 16 P 1:53
MCL

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
 Paul C. Hartzell,)
 Defendant,)

CASE NO. CR11-8694
() NOTICE OF PRELIMINARY CONFERENCE
() NOTICE OF PRELIMINARY HEARING
() NOTICE OF SENTENCING
() NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- () PRELIMINARY CONFERENCE to begin at _____, __.m., on the _____ day of _____, 20____.
- () PRELIMINARY HEARING to begin at 1:30 p.m., on the 7th day of December, 2011.
- () SENTENCING to begin at _____, __.m. on the _____ day of _____, 20____.
- () HEARING to begin at _____, __.m. on the _____ day of _____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 16th day of ~~October~~ November, 2011.

BY ORDER OF:

GREG KALBFLEISCH

Judge

MCL
Clerk

- () Copy to Prosecuting Attorney
- () Copy handed to Defendant
- () Copy mailed to Defendant
- () Copy mailed/handed/placed in basket to Defendant's Attorney
Kwate Law

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

PRELIMINARY HEARING MINUTES

CR-2011-0008694
State of Idaho vs. Paul Carey Hartzell
Hearing type: Preliminary Hearing
Hearing date: 11/16/2011
Time: 1:35 pm
Judge: Greg K. Kalbfleisch
Courtroom: 2
Minutes Clerk: Cole
Defense Attorney: Kwate Law Office PD 2012
Prosecutor: April Smith

013558

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present with / without counsel

April Smith --- present for State

State / Def requests continuance of **Preliminary Hearing**

Court Orders: **Preliminary Hearing** continued to : 12/7/11 at 1:30 p. m.

Def waives **Preliminary Hearing** – Court Binds Def over to District Court

Case set for District Court Arraignment _____ at _____ Assigned to: _____

Preliminary Hearing held, Proceedings as follows:

Defendant previously waived right to speedy preliminary hearing.

013702 Mr. Lepire addresses Court re: bond reduction or OR release.

013724 State – objects. Feels bond is appropriate

013734 Court – on 11/2/11 there was a request for bond reduction and Court denied it.

Shows Mr. Hartzell has 2 prior FTAs and committed this crime while on probation for DUI.

013802 Court – leave bond set

013812 recess

FILED

2011 NOV 21 PM 4 20

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

James

DEPUTY

Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8461

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S RESPONSE TO
	)	REQUEST FOR DISCOVERY
Paul C. Hartzell,)	
)	
Defendant.)	
)	

COMES NOW the defendant, Paul V. Hartzell, in the above-entitled matter, by and through defendant's attorney of record, Nicholas D. Lepire of Kwate Law Offices, PLLC, responds to the plaintiff's request for discovery as follows:

- Books, papers, documents, photographs, tangible objects or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce into evidence at the trial.

RESPONSE: Defendant anticipates offering books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are obtained by defendant through his discovery efforts in the above captioned matter. If additional written documents, photographs, or objects relevant to this matter are discovered and defendant intends to introduce such into evidence at the time of trial, defendant will supplement the response to this request for discovery prior to trial.

2. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when the results or written reports relate to testimony of the witness.

RESPONSE: At present, defendant does not intend to introduce any results or reports of any such examinations or tests in evidence at trial. If results or reports of physical or mental examinations or scientific tests are obtained in connection with this case, or if defendant intends to introduce into evidence at trial any such additional documents which defendant may hereafter acquire, or any documents which may be prepared by witnesses whom defendant intends to call at trial, defendant will supplement the response to request for discovery prior to trial.

3. A list of names and addresses of witnesses whom the defendant intends to call at trial.

RESPONSE: In addition to the witnesses whose names and addresses were provided to the defense in the State's Response to Discovery, the defendant reserves the right to testify on defendant's own behalf at the jury trial. There are no additional witnesses at this time. If and when we do receive a list of additional witnesses, an amended discovery will be made.

4. Please provide the State with a written summary or report of any expert witness testimony that the Defendant intends to introduce pursuant to Idaho Criminal Rules 702, 703 and 705 at trial or hearing in the above-captioned matter. Said summary must describe the expert's opinions, the facts and data for those opinions and the expert's qualifications. This request shall also include any expert opinions regarding mental health pursuant to Idaho Code Section 18-207.

RESPONSE: At present, defendant does not intend to introduce any written summaries or reports of any expert witnesses at trial. If any written summaries or reports are obtained in connection with this case, or if defendant intends to introduce into evidence at trial any such summaries or reports, defendant will supplement the response to request for discovery prior to trial.


REQUEST FOR NOTICE OF DEFENSE OF ALBI Pursuant to Idaho Code Section 19-519 and Idaho Criminal Rule 12.1, the Prosecuting Attorney request that you serve upon his office within ten days of your receipts of this request a written notice of the intention of your client to offer a defense alibi in the above-referenced matter.

Such notice must state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

RESPONSE: Defendant does not offer a defense alibi at this time.

DATED this 21st day of November, 2011.

KWATE LAW OFFICES, PLLC
Attorney for Defendant

By 

Nicholas D. Lepire

CERTIFICATE OF DELIVERY

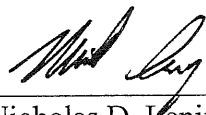
I hereby certify that on the 21st day of November, 2011, a true and correct copy of the foregoing instrument was:

- Mailed
- Faxed
- Hand Delivered
- Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 

Nicholas D. Lepire

COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Preliminary Hearing

Hearing date: 12/7/2011

Time: 1:46 pm

Judge: Kent J. Merica

Courtroom: 3

Court reporter: None

Minutes Clerk: Evans

Tape Number: Courtroom3

Defense Attorney: Kwate Law Office PD 2012 / Nick Lepire

Prosecutor: April Smith

April Smith present representing the State. Nick Lepire present representing Paul Hartzell who is present and currently in the custody of the Nez Perce County jail

014614 State is ready to proceed
 Lepire is ready to proceed; Moves to exclude witnesses; Court grants motion

014640 State calls *Cathlin Berreth*; Sworn in by clerk

014744 State – Direct Exam

014916 Court takes brief recess

015010 Court is back on the record; State continues direct exam of Cathlin Berreth

015650 State’s Exhibit 1 & 2 handed to witness

015709 State moves for admission of State’s Exhibit 1 & 2; Lepire has no objection; Court admits State’s Exhibit 1 & 2
 State’s Exhibit 3 & 4 handed to witness

015829 State moves for admission of State’s Exhibit 3 & 4; Lepire has no objection; Court admits State’s Exhibit 3 & 4

020426 Witness identifies Defendant

020438 State’s Exhibit 5 handed to witness

020504 State moves for admission of State’s Exhibit 5; Lepire has no objection; Court admits State’s Exhibit 5

020610 State ends direct exam

020617 Lepire – Cross Exam of Cathlin Berreth

021937 Lepire ends cross exam; State has no redirect; Witness steps down and is excused (she remained in the courtroom)

021945 State calls *Doug Clark*; Sworn in by clerk

022019 State – Direct Exam

022227 State ends direct exam

022231 Lepire – Cross Exam of Doug Clark

022335 State objects – calls for speculation; Court overrules objection
022358 Lepire ends cross exam; State has no redirect; Witness steps down and is excused

022408 State calls *Christopher Brown*; Sworn in by clerk
022503 State – Direct Exam
022925 State ends direct exam
022930 Lepire – Cross Exam of Christopher Brown
023035 Court addresses Lepire; Lepire continues cross exam
023122 Lepire ends cross exam; State has no redirect; Witness steps down; State rests; Lepire does not have any witnesses to call

023138 State – Argument
023210 Lepire – Argument
023509 Lepire ends argument

023524 Court binds the case over to district court to be heard by Judge Brudie on 12-14-2011 at 9:00 a.m. Court will not reconsider the bond. Judge Brudie will have to decide that matter.
023830 Recess

Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

2011 DEC 7 PM 3 00

STATE OF IDAHO,

Plaintiff,

vs.

Paul Carey Hartzell,

Defendant.

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Donnaalwan
DEPUTY

Case No: CR-2011-0008694

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

**Arraignment
Judge:**

**Wednesday, December 14, 2011 09:00 AM
Jeff M. Brudie**

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, December 07, 2011.

Defendant: Paul Carey Hartzell
2523 8th Ave # 4
Clarkston, WA 99403

Mailed _____ Hand Delivered X NPC Jail

Private Counsel: Kwate Law Office PD 2012
1502 G St.
Lewiston, ID 83501

Mailed _____ Hand Delivered X

Prosecutor: April A Smith

Mailed _____ Hand Delivered X

Dated: Wednesday, December 07, 2011

Patty O. Weeks
Clerk Of The District Court

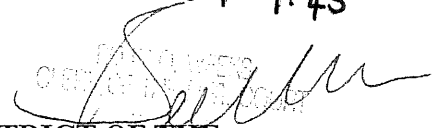
By:

Donnaalwan

Deputy Clerk
DOC22 7/96

FILED

2011 DEC -8 P 1:45



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)
)
 Plaintiff,)
)
 V.)
)
 PAUL C. HARTZELL,)
 D.O.B.: 01-12-1973,)
 S.S.N.: XXX-XX-X190,)
)
 Defendant.)
 _____)

CASE NO. CR-2011-8694
ORDER BINDING OVER

The undersigned Magistrate having **HEARD** the Preliminary hearing in the above entitled matter on the 7th day of December, 2011, and it appearing to me that the offense set forth in the Complaint theretofore filed herein has been committed, and there is sufficient cause to believe the above named defendant guilty thereof.

IT IS HEREBY ORDERED that the said defendant be held to answer the same, and said defendant is hereby bound over to the District Court for trial on the charge(s) of: STALKING, I.C. § 18-7905(1)(a), ONE FELONY COUNT.

DATED this 8th day of December, 2011.


MAGISTRATE

THIS CASE HAS BEEN ASSIGNED TO:

JEFF M. BRUDIE, DISTRICT JUDGE

ORDER BINDING OVER

FILED

2011 DEC 8 PM 4 39

PATTY G WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar #8461

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	APPLICATION FOR TRANSCRIPT
	)	OF PRELIMINARY HEARING
Paul C. Hartzell,)	
)	
Defendant.)	
)	

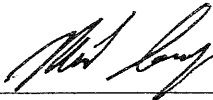
COMES NOW, Nicholas D. Lepire of Kwate Law Offices, PLLC, attorney for the above-named defendant, Paul C. Hartzell, and respectfully shows the Court as follows:

1. That petitioner was appointed on the 24th day of October, 2011, as attorney for the above-named defendant.
2. That a transcript of the preliminary hearing is necessary for trial preparation.
3. That said defendant is indigent and without funds or other resources to pay for the said transcript.

WHEREFORE, petitioner prays that an order be made for the preparation of the said transcript of the preliminary hearing held on December 7, 2011.

DATED this 8th day of December, 2011.

KWATE LAW OFFICES, PLLC
Attorneys for Defendant

By 

Nicholas D. Lepire

CERTIFICATE OF SERVICE

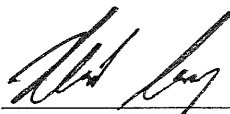
I hereby certify that on the 8th day of December, 2011, a true and correct copy of the foregoing instrument was:

Mailed
 Faxed
 Hand Delivered
 Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 

Nicholas D. Lepire

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2011 DEC 9 PM 12 04

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

CASE NO. CR2011-0008694

Plaintiff,

INFORMATION

vs.

PAUL C. HARTZELL,
D.O.B.: 01/12/1973,
S.S.N.: XXX-XX-1190,

Defendant.

APRIL A. SMITH Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that PAUL C. HARTZELL is accused by this Information of the following crime(s):

COUNT I
STALKING, I.C. § 18-7905(1)(a), a felony

That the Defendant, PAUL C. HARTZELL, on or about and between the 11th day of October, 2011 and the 16th day of October, 2011 in the County of Nez Perce, State of Idaho, did knowingly and maliciously engage in a course of conduct that seriously alarmed, annoyed or harassed CATHLIN J. BERRETH and is such as would cause a reasonable person substantial emotional distress, to-wit: by repeatedly contacting and/or attempting to contact the victim in person and/or by phone and/or by internet and in violation of a civil protection order issued on September 26, 2011, in Asotin County Case Number DV11-72.

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

[Signature]
APRIL A. SMITH
Deputy Prosecuting Attorney

FILED

2011 DEC 9 PM 12 20

PATTY O. WEEKS
CLERK OF THE DIST. COURT

[Handwritten Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2011-08694
)	
Plaintiff,)	
	)	ORDER TO PREPARE
vs.	)	TRANSCRIPT OF
	)	PRELIMINARY HEARING
Paul C. Hartzell,)	
)	
Defendant.)	

The Court having read and passed on the Application for Transcript of Preliminary Hearing and being fully advised in the premises hereof,

IT IS HEREBY ORDERED THAT a transcript be prepared of said preliminary hearing.

DATED this 9 day of December, 2011.

[Handwritten Signature]

Judge

ORDER TO PREPARE
TRANSCRIPT OF
PRELIMINARY HEARING

TRANSCRIPT ASSIGNED TO
 CARLTON
 TOWLER

DATE 12-12-11

ORIGINAL 64

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of December, 2011, I caused a true and correct copy of the foregoing to be delivered to the following:

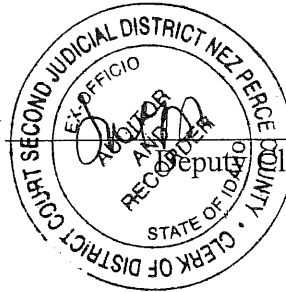
Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
(Court basket)

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501
(Court basket)

Court Reporter
Nez Perce County Court
Post Office Box 896
Lewiston, Idaho 83501
(Court basket)

Patty O. Weeks,
Clerk of the District Court

By



ORDER TO PREPARE
TRANSCRIPT OF
PRELIMINARY HEARING

COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Arraignment

Hearing date: 12/14/2011

Time: 9:21 am

Judge: Jeff M. Brudie

Courtroom: 3

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Tape Number: CRTRM 3

Defense Attorney: Kwate Law Office PD 2012

Prosecutor: Sandra Dickerson

- 92153 Defendant present, in custody, with counsel.
- 82255 Mr. Lepire requests trial setting.
- 82321 Defendant understands the charge and penalties.
State's Information previously filed for the crime of 1st Degree Stalking.
- 82328 Defendant enters plea of not guilty. Jury trial set for 3-19-12 at 9 a.m., pretrial motions along with supporting briefs due 2-3-12, responsive briefing due 2-17-12, pretrial motions will be heard 2-29-12 at 11 a.m. if no motions are filed there will not be a hearing and final pretrial conference set for 3-7-12 at 11 a.m.
- 82533 Mr. Lepire addresses Court re: bond reduction or OR release.
- 92639 Ms. Dickerson addresses the Court.
- 92733 Court leaves bond set at \$20,000.00.
- 92749 Court recess.



FILED

2011 DEC 15 PM 3 25

PATTY O. WEEKS
CLERK OF THE DIST. COURT



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR11-08694
)	
vs.	)	ORDER SETTING JURY TRIAL
	)	AND SCHEDULING PROCEEDINGS
PAUL C. HARTZELL,)	
)	
Defendant.)	
)	

The above-entitled case is hereby scheduled as follows:

JURY Trial shall commence on March 19, 2012 at the hour of 9:00 a.m.;

All pre-trial motions shall be filed on or before February 3, 2012;

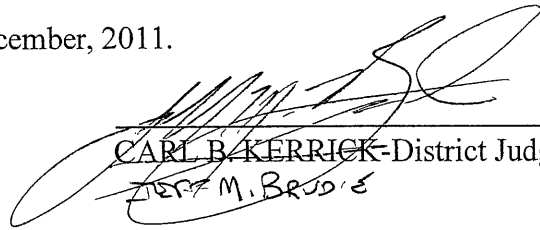
Supporting Briefs due: February 3, 2012;

Responding Briefs due: February 17, 2012;

All pre-trial motions shall be heard at the hour of 11:00 a.m. on Wednesday, February 29, 2012, with the defendant personally present at said hearing. If no motions are filed, there will be no hearing on this date.

Final pre-trial conference and the date and time by which plea bargaining must be completed March 7, 2012, at 11:00 a.m.

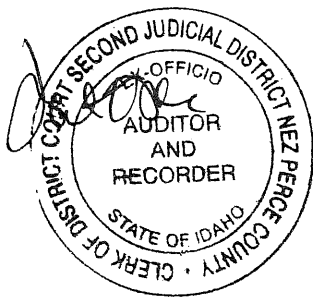
Dated this 15 day of December, 2011.


CARL B. KERRICK-District Judge
~~JEFF M. BRUCE~~

CC to 12-15-11

Pros offic

Wate offic



ORDER SETTING JURY TRIAL AND
SCHEDULING PROCEEDINGS

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2012 JAN 11 AM 11 54

PATTY O. NEZES
CLERK OF THE DIST. COURT
Patty Nez
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,

Defendant.

CASE NO. CR2011-0008694

SECOND SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY

COMES NOW the undersigned, APRIL A. SMITH, Deputy Prosecuting Attorney for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

2. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 10th day of January 2012.



APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

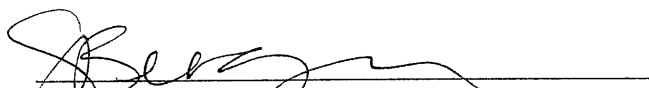
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing SECOND SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Nicholas D. Lepire
Kwate Law Offices
1502 "G" Street
Lewiston Idaho 83501

DATED this 10th day of January 2012.



SALENA BERGEN
Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. NAME: DOUG CLARK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
2. NAME: LARRY STUCK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
3. NAME: KOPPER P. BLUNT
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176
4. NAME: LUCAS K. MARTIN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
5. NAME: GREGORY EGBERT
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
6. NAME: CHRIS BROWN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
7. NAME: CATHLIN BERRETH
ADDRESS: Court Services Lewiston, ID 83501
PHONE: (208) 799-3176
8. NAME: JOYCE A. HARTZELL
ADDRESS: 2262 Schaefer Drive Clarkston, WA 99403
PHONE: UNKNOWN
9. NAME: JOHN TRIPLETT
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176

10. NAME: RANDY BUTTENHOFF
ADDRESS: Nez Perce County
Information Systems
PHONE: (208) 799-3126

11. NAME: SEAN SCANLON
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. One (1) CD-R containing audio, photos, and reports is being Response to Request for Discovery.
AUDIO:
 "11N5867HartwellInterview.WMA"
PHOTOS:
 "11-L14668 185pics 001.jpg" thru "11-L14668 185pics 003.jpg"
 "11N5867 005.jpg" thru "11N5867 008.jpg"
REPORTS:
 "01-18 - REPORTS.tif"
 "19-22 - PRIORS.tif"
 "23-34 - REPORTS - SUPP.tif"
2. Nez Perce County Sheriff's Office Cap Sheet and Case Disposition Sheet, pages 1-2.
3. Nez Perce County Sheriff's Office Law Incident Table, pages 3-4.
4. Nez Perce County Sheriff's Office Narrative Report prepared by Chris Brown, pages 5-6.
5. NCO, page 7.
6. Criminal history, pages 8-18.
7. Priors, pages 19-22.
8. Lewiston Police Department Law Incident Table, pages 23-24.
9. Lewiston Police Department Narrative Report prepared by Doug Clark, page 25.
10. Call comments, pages 26-28.
11. Lewiston Police Department Supplemental Narrative prepared by Doug Clark, page 29.
12. Lewiston Police Department Supplemental Narrative prepared by Larry Stuck, page 30.
13. Lewiston Police Department Supplemental Narrative prepared by Doug Clark, page 31.
14. Main Names Table, pages 32-34.

15. Copies of emails, pages 35-42.

16. **All Contacts Report, pages 43-50.**

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2012 JAN 30 PM 4 31

PATTY O'NEILL
CLERK OF DISTRICT COURT
Patty O'Neill
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

PAUL C. HARTZELL,

Defendant.

CASE NO. CR2011-0008694

THIRD SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY

COMES NOW the undersigned, APRIL A. SMITH, Deputy Prosecuting Attorney for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

2. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 30th day of January 2012.

April A. Smith

APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE


I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing THIRD SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Nicholas D. Lepire
Kwate Law Offices
1502 "G" Street
Lewiston Idaho 83501

DATED this 30th day of January 2012.



SALEENA BERGEN
Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. NAME: DOUG CLARK
ADDRESS: Lewiston Police Department
1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
2. NAME: LARRY STUCK
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1224 "F" Street Lewiston, ID 83501
PHONE: (208) 746-0171
3. NAME: KOPPER P. BLUNT
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PHONE: (208) 799-3176
4. NAME: LUCAS K. MARTIN
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PHONE: (208) 799-3131
5. NAME: GREGORY EGBERT
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
6. NAME: CHRIS BROWN
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131
7. NAME: CATHLIN BERRETH
ADDRESS: Court Services Lewiston, ID 83501
PHONE: (208) 799-3176
8. NAME: JOYCE A. HARTZELL
ADDRESS: 2262 Schaefer Drive Clarkston, WA 99403
PHONE: UNKNOWN
9. NAME: JOHN TRIPLETT
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176

10. NAME: RANDY BUTTENHOFF
ADDRESS: Nez Perce County
Information Systems
PHONE: (208) 799-3126
11. NAME: SEAN SCANLON
ADDRESS: Nez Perce County Court Services
1113 "F" Street Lewiston, ID 83501
PHONE: (208) 799-3176
12. **NAME: JAY COLVIN**
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street Lewiston, ID 83501
PHONE: (208) 799-3131

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. PAUL C. HARTZELL
NEZ PERCE COUNTY CASE NO. CR2011-0008694

1. One (1) CD-R containing audio, photos, and reports was previously provided with the Response to Request for Discovery.
AUDIO:
 "11N5867HartwellInterview.WMA"
PHOTOS:
 "11-L14668 185pics 001.jpg" thru "11-L14668 185pics 003.jpg"
 "11N5867 005.jpg" thru "11N5867 008.jpg"
REPORTS:
 "01-18 - REPORTS.tif"
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13. Lewiston Police Department Supplemental Narrative prepared by Doug Clark, page 31.
14. Main Names Table, pages 32-34.

15. Copies of emails, pages 35-42.
16. All Contacts Report, pages 43-50.
17. **Copies of certified service returns, pages 51-53.**

COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Pretrial Motions

Hearing date: 2/29/2012

Time: 12:18 pm

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: C1

Defense Attorney: Kwate Law Office PD 2012

Prosecutor: Sandra Dickerson

121824 Def present for pt motions. Case is set to go forward.

Mr. Lepire relays case is proceeding.

Crt reviews file. Case will proceed to trial on 3/19/12.

Mr. Lepire req release on OR or bond reduction.

122012 State's position has not changed.

122023 Crt comments. Crt reviews bond. Crt leaves bond in place and denies motion for reduction.

JMS

FILED

10:29 02/29/12

State of Idaho 2012 MAR 2 AM 8 59
Nez Perce County Sheriff
Civil Division PATTY O. WELLS
Lewiston, ID 83501 CLERK OF THE DIST. COURT

Process Number: 12-C563

Court Number: CB201108694

I, Dale Buttrey, of Nez Perce County Sheriff do hereby certify that I received the within and foregoing Subpoena-Criminal on 28th day of February, 2012, and that I served the same on:

KOPPER PENNEY BLUNT (Witness)
1113 F ST; COURT SERVICES JUVE PROBATION
Lewiston, ID 83501
Served on: 29th day of February, 2012 at 09:00:00 by McPherson Doug
Served to: KOPPER BLUNT Witness
1113 F ST; COURT SERVICES JUVE PROBATION
Lewiston, ID 83501

Returned on the 29th day of February, 2012

I also certify that I endorsed on the said copy the date of service, signed my name, and added my official title thereto.

Dated the 29th day of February, 2012

Fees:
Service: 0.00
Mileage: 0.00
Other : 0.00
Total : 0.00

Dale Buttrey, Sheriff
Nez Perce County Sheriff, Idaho
BY: [Signature]
Authorized Representative
Civil Division

ATTENTION:

Please call 1-208-740-7060 **ON THE DAY BEFORE** you are to appear in Court, to confirm that trial and/or hearing is still on the Court Schedule.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho)

Plaintiff,)

vs.)

Paul C. Hartzell,)

Defendant.)

Case No. CR 2011-08694

SUBPOENA

12-0563
RECEIVED
HOUR 1324 A.M. (P.M.)

FEB 28 2012

NEZ PERCE COUNTY SHERIFFS OFFICE
LEWISTON, IDAHO 83501

BY: *yl*

THE STATE OF IDAHO TO:

Kopper Blunt-61266
Nez Perce County Services
1113 F Street
Lewiston, Idaho 83501

You are hereby commanded to appear before the District Division of the above entitled court at Lewiston, Idaho, on the 19th day of **March, 2012, at 9:00 o'clock a.m.** as a witness in the above entitled action.

You are further commanded to bring with you the following items and documents: All files, reports and documentation relating to the above named individual.

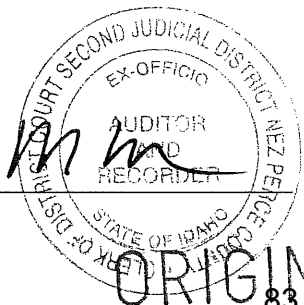
You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of the court and that the aggrieved party may recover from you the sum \$100 and all damages which he may sustain by your failure to attend as a witness.

DATED this 27th day of February, 2012.

BY ORDER OF THE COURT.

PATTY O. WEEKS,
Clerk of the District Court

Patty O. Weeks
Deputy



ORIGINAL 83

COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Final Pretrial

Hearing date: 3/7/2012

Time: 12:05 pm

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: C1

Defense Attorney: Kwate Law Office PD 2012

Prosecutor: Sandra Dickerson

120523 Def present for final pt conf.

Counsel relays case is proceeding to trial on 3/19/12.

Crt will pull panel for trial.

120620 Recess



FILED

2012 MAR 13 PM 4 26

PATTY O. WHEELS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8461

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S PROPOSED
	)	JURY INSTRUCTIONS
Paul C. Hartzell,)	
)	
Defendant.)	

COMES NOW the defendant, Paul C. Hartzell, by and through his attorney of record, Nicholas D. Lepire of Kwate Law Offices, PLLC, hereby submits the attached proposed Jury Instruction Numbered 1 through 6.

DATED this 13th day of March, 2012.

KWATE LAW OFFICES, PLLC
Attorney for Defendant

By *[Signature]*

CERTIFICATE OF SERVICE


I hereby certify that on the 13th day of March, 2012, a true and correct copy of the foregoing instrument was:

- Mailed
- Faxed
- Hand Delivered
- Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 

FIRST DEGREE STALKING

INSTRUCTION NO. 1

In order for the defendant to be guilty of Stalking in the First Degree, the state must prove each of the following:

1. On or about and between October 11, 2011, and October 16, 2011
2. in the state of Idaho
3. the defendant Paul Hartzell
4. intentionally and maliciously engaged in a course of conduct
5. that seriously alarmed, harassed, or annoyed Cathlin Berreth

AND

6. was such as would cause a reasonable substantial emotional distress

AND

7. that the actions constituting the offense were in violation of a protection order issued

in the State of Washington

AND

8. that the Washington protection order was issued based on the immediate and present danger of physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of an adult by a person with whom the adult has had or is having a dating relationship.

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

Comment

Assimilated from Idaho Code § 18-7905, Idaho Code § 18-7906, Idaho Code § 39-6303(1), Idaho Code § 39-6306, and Idaho Code § 39-6306(1).

INSTRUCTION NO. 2

"Malice" and "maliciously" mean the desire to annoy or injure another or the intent to do a wrongful act.

Comment

I.C. § 18-101(4). The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

INSTRUCTION NO. 3

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Course of conduct does not include constitutionally protected activity.

Comment

I.C. § 18-7905(d).

This instruction should be given only if the defendant is charged with Stalking by harassing.

DATING RELATIONSHIP

INSTRUCTION NO. 4

“Dating Relationship” means a social relationship of a romantic nature. Factors to be considered in deciding whether a dating relationship exists include:

1. The nature of the relationship,
2. the length of time the relationship has existed,
3. the frequency of interaction between the parties; and
4. the time since termination of the relationship.

Comment

I. C. § 39-6303(2)

FAMILY MEMBER

INSTRUCTION NO. 5

“Family Member” means spouses, former spouses, persons related by blood, adoption or marriage.

Comment

I. C. § 39-6303(3)

HOUSEHOLD MEMBER

INSTRUCTION NO. 6

“Household ” means a person who reside or resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

Comment

I. C. § 39-6303(8)



Kwate Law Offices

A Professional Limited Liability Company

1502 G Street
Lewiston, Idaho 83501
(208) 746-7060
(208) 746-2660 fax

Robert J. Kwate
Attorney at Law

Nicholas D. Lepire
Attorney at Law

FAX COVER SHEET

Date : March 14, 2012
To : Janet
Of : Nez Perce County Courthouse
Fax # : 208-799-3058
From : Nicholas D. Lepire

Total pages including cover sheet: 3

For missing or illegible pages please telephone (208) 746-7060 and speak to Michelle.

ORIGINAL:

- Will not be sent
- Will be sent via U.S. Mail Service
- Will be delivered
- Will be filed with the Court & copies mailed to you via U.S. Mail Service
- Other:

Notes: **Re: Paul C. Hartzell, Case No. CR 2011-08694**

PLEASE FILE. THANK YOU! ☺

The pages in this facsimile transmission contain confidential information from Kwate Law Offices, PLLC. This information is intended solely for use by the individual or entity named as recipient thereof. If you are not the intended recipient, be aware that any disclosure, copying, distributing or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so that we may arrange for the retrieval of this transmission at no cost to you. If you do not receive all of the described materials or have missing or illegible pages, please telephone immediately at the number indicated above.

FILED
2012 MAR 14 AM 8 48
 PATTY O. WEAVER
 CLERK OF THE DIST. COURT
Patty O. Weaver
 DEPUTY

Nicholas D. Lepire
 Kwate Law Offices, PLLC
 1502 G Street
 Lewiston, Idaho 83501
 Telephone: (208) 746-7060
 Fax: (208) 746-2660
 Idaho State Bar #8461

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE


State of Idaho,	)	Case No. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	MOTION IN LIMINE
)	
Paul C. Hartzell,)	
)	
Defendant.)	

COMES NOW the defendant, Paul C. Hartzell, by and through his attorney of record, Nicholas D. Lepire of Kwate Law Offices, PLLC, and hereby moves to exclude from evidence at the trial of this matter any and all testimony and evidence regarding the Washington issued Protection Order.

This motion is based upon the grounds that it should not be admitted until proper foundation is made, and that it is irrelevant. The defense also requests the opportunity to be heard on this motion before trial in this matter.

DATED this 14th day of March, 2012.

KWATE LAW OFFICES, PLLC

By 
Nicholas D. Lepire

CERTIFICATE OF SERVICE


I hereby certify that on the 14th day of March, 2012, a true and correct copy of the foregoing instrument was:

- Mailed
- Faxed
- Hand Delivered
- Overnight mail

to the following :

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Nicholas D. Lepire

2012 MAR 17 11:11 AM
Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501
PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

STATE OF IDAHO,
Plaintiff,
vs.
Paul Carey Hartzell,
Defendant.

FILED
2012 MAR 14 AM 11:11
PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

Case No: CR-2011-0008694
NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion in Limine Thursday, March 15, 2012 03:30 PM
Judge: Jeff M. Brudie

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, March 14, 2012.

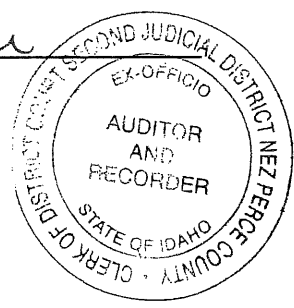
Defendant: Paul Carey Hartzell
 2523 8th Ave # 4
 Clarkston, WA 99403
 Mailed _____ Hand Delivered *initials*

Private Counsel: Kwate Law Office PD 2012
 1502 G St.
 Lewiston, ID 83501
 Mailed _____ Hand Delivered *initials*

Prosecutor: April A Smith
 Mailed _____ Hand Delivered *initials*

Dated: Wednesday, March 14, 2012
Patty O. Weeks
Clerk Of The District Court

By: *Jeff M. Brudie*
Deputy Clerk
DOC22 7/96





Kwate Law Offices

A Professional Limited Liability Company

RECEIVED MAR 14 2012

CSO

1502 G Street
Lewiston, Idaho 83501
(208) 746-7060
(208) 746-2660 fax

Robert J. Kwate
Attorney at Law

Nicholas D. Lepire
Attorney at Law

FAX COVER SHEET

*I faxed it already.
CSO*

Date : March 14, 2012
To :
Of : Nez Perce County Courthouse
Fax # : 208-799-3058
From : Nicholas D. Lepire

To p

Total pages including cover sheet: 2

For missing or illegible pages please telephone (208) 746-7060 and speak to Michelle.

ORIGINAL:

- Will not be sent
- Will be sent via U.S. Mail Service
- Will be delivered
- Will be filed with the Court & copies mailed to you via U.S. Mail Service
- Other:

Notes: **Re: Paul C. Hartzell, Case No. CR 2011-08694**

PLEASE ISSUE AND FAXBACK TO ME AT 208-746-2660 AS SOON AS YOU CAN!! THANK YOU!

The pages in this facsimile transmission contain confidential information from Kwate Law Offices, PLLC. This information is intended solely for use by the individual or entity named as recipient thereof. If you are not the intended recipient, be aware that any disclosure, copying, distributing or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so that we may arrange for the retrieval of this transmission at no cost to you. If you do not receive all of the described materials or have missing or illegible pages, please telephone immediately at the number indicated above.

ATTENTION:

Please call 1-208-746-7060 ON THE DAY BEFORE you are to appear in Court, to confirm that trial and/or hearing is still on the Court Schedule.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho	)	Case No. CR 2011-08694
)	
Plaintiff,)	
	)	SUBPOENA
vs.)	
)	
Paul C. Hartzell,)	
)	
Defendant.)	

THE STATE OF IDAHO TO: Cathlin Berreth
 Nez Perce County Services
 1113 F Street
 Lewiston, Idaho 83501

You are hereby commanded to appear before the District Division of the above entitled court at Lewiston, Idaho, on the 15th day of March, 2012, at 3:30 o'clock p.m. as a witness in the above entitled action.

You are further commanded to bring with you the following items and documents: All files, reports and documentation relating to the above named individual.

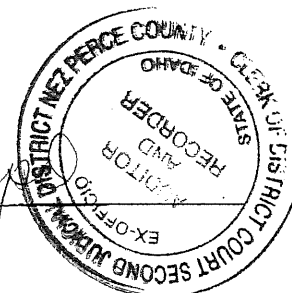
You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of the court and that the aggrieved party may recover from you the sum \$100 and all damages which he may sustain by your failure to attend as a witness.

DATED this 14th day of March, 2012.

BY ORDER OF THE COURT.

PATTY O. WEEKS,
 Clerk of the District Court

Cindy J. Ocampo
 Deputy



COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Motion in Limine

Hearing date: 3/15/2012

Time: 3:07 pm

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: C1

Defense Attorney: Kwate Law Office PD 2012

Prosecutor: April Smith

30759 Def present for motion in limine. Crt reviews motion and jury trial. Crt relays after reading jury instructions he would proceed at trial under a bifurcated charge.

30953 State has also reviewed the jury instructions and would intend to proceed that way also.

31031 Mr. Lepire presents concerns re the scope of course of conduct and presents statement.

31119 Crt comments.

Mr. Lepire relays specifically under charges and reviews dates, Protective Order was issued in WA on 10/10 and the dates of the allegations were 10/11-10/16.

31217 State reviews case law and presents argument.

31345 Crt addresses motion before court today.

31359 Mr. Lepire presents argument.

31759 State will stip as to facts read by Mr. Lepire for purposes of this hearing.

31818 Mr. Lepire presents argument.

33101 Crt reviews Mr. Lepire's argument.

33141 Mr. Lepire agrees with court's review.

33229 Crt q Mr. Lepire re language.

33255 Mr. Lepire reviews definitions and WA law.

33829 State presents argument re anti-harassment protective order, which was given from WA.

34143 Mr. Lepire presents further argument.

34838 Crt presents comments. Crt takes motion under advisement.

Crt does grant mtn in limine and WA protective order will not be relevant under the State's case in chief but would be in the 2nd set of bifurcation.

349645 State relays Crt's ruling could possibly be dispositive of trial set on Mon.

35005 Crt is aware of that. Recess

COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Motion in Limine

Hearing date: 3/16/2012

Time: 2:03 pm

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: C1

Defense Attorney: Kwate Law Office PD 2012

Prosecutor: April Smith

20312 Crt on record. Def is not present. Crt addresses motion in limine.

20405 Crt reviews charge of felony. Crt reviews WA Protective Order. Crt reviews Stipulation re facts by the State and copies of WA order for protective-harassment and statues allowing order.

20935 Crt finds WA order is not a protective order as defined under Idaho Law.

Crt grants motion in limine under statutory interpretation. Crt will issue a written ruling. Crt wanted counsel to be aware of ruling prior to jury trial. Crt q counsel.

21132 State will probably appeal and requests time to review.

Crt will include language in order.

State agrees.

Crt q counsel whether Def is in custody under this case.

Counsel relays Def is in custody under this case.

21251 Crt vacates trial. Crt sets status conf on 3/21/12 at 9:00.

State will inform the Crt of intention re appeal at that time.

21414 Recess.

Off record. Crt will mark documents submitted by Mr. Lepire as exhibits for purposes of the motion in limine hearing.

JMB

FILED

2012 MAR 16 AM 8 48

PATTY O. WEEB
CLERK OF THE DIST. COURT

Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8461

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S FIRST SUPPLEMENTAL
	)	PROPOSED JURY INSTRUCTIONS
Paul C. Hartzell,)	
)	
Defendant.)	
)	

COMES NOW the defendant, Paul C. Hartzell, by and through his attorney of record,
Nicholas D. Lepire Kwate Law Offices, PLLC, hereby submits the attached Supplemental Proposed
Jury Instruction Number 7.

DATED this 16th day of March, 2012.

KWATE LAW OFFICES, PLLC
Attorney for Defendant

By

Nicholas D. Lepire

CERTIFICATE OF SERVICE

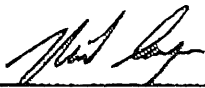
I hereby certify that on the 16th day of March, 2012, a true and correct copy of the foregoing instrument was:

- Mailed
- Faxed
- Hand Delivered
- Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 

Nicholas D. Lepire

VIOLATION OF A PROTECTION ORDER

INSTRUCTION NO. 7

In order for the defendant to be guilty of Violation of a Protection Order, the State must prove each of the following:

1. On or about and between October 11, 2011, and October 16, 2011
2. in the state of Idaho
3. the defendant Paul Hartzell
4. had notice of a Washington issued protection order

AND

5. contacted Cathlin Berreth.

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

Comment

Idaho Code § 39-6312

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

2012 MAR 16) PM 2:36 Case No: CR-2011-0008694

STATE OF IDAHO,
Plaintiff,
vs.
Paul Carey Hartzell,
Defendant.

PATTY O WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY
NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Status Conference Wednesday, March 21, 2012 09:00 AM
Judge: Jeff M. Brudie

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Friday, March 16, 2012.

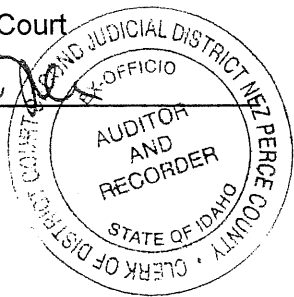
Defendant: Paul Carey Hartzell
 2523 8th Ave # 4
 Clarkston, WA 99403
 Mailed _____ Hand Delivered *Yes*

Private Counsel: Kwate Law Office PD 2012
 1502 G St.
 Lewiston, ID 83501
 Mailed _____ Hand Delivered —

Prosecutor: April A Smith
 Mailed _____ Hand Delivered —

Dated: Friday, March 16, 2012
Patty O. Weeks
Clerk Of The District Court

By: *[Signature]*
Deputy Clerk
DOC22 7/96



FILED

2012 MAR 19 AM 9 31

Nicholas D. Lepire
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8461

PATTY Q. WEEPS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2011-08694
)	
Plaintiff,)	
)	
vs.	)	MOTION TO RELEASE
	)	ON OWN RECOGNIZANCE
Paul C. Hartzell,)	
)	
Defendant.)	

COMES NOW the defendant, Paul C. Hartzell, by and through his attorney of record Nicholas D. Lepire of Kwate Law Offices, PLLC, and hereby moves the court for an order releasing the defendant from the Nez Perce County Jail on his own recognizance.

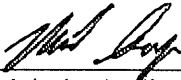
This motion is based on the following:

1. The defendant has been in custody since October 22, 2011, according to the Nez Perce County Inmate List.
2. On March 16, 2012, Judge Brudie verbally ordered that the defendant's charge be reduced to a Misdemeanor.

MOTION TO RELEASE
ON OWN RECOGNIZANCE

DATED this 19th day of March, 2012.

KWATE LAW OFFICES, PLLC

By 
Nicholas D. Lepire

CERTIFICATE OF SERVICE

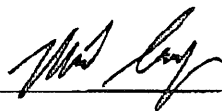
I hereby certify that on the 19th day of March, 2012, a true and correct copy of the foregoing instrument was:

- Mailed
- Faxed
- Hand Delivered
- Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 

FILED

2012 MAR 20 AM 11 23

PATTY O. WEEKS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

THE STATE OF IDAHO,)	
	)	CASE NO. CR11-08694
Plaintiff,)	
)	
v.	)	OPINION AND ORDER ON
	)	DEFENDANT'S MOTION IN
PAUL C. HARTZELL,	)	LIMINE AND ORDER
	)	REDUCING CHARGE
Defendant.)	
_____)	

This matter is before the Court on Defendant Paul Hartzell's Motion in Limine. The Court heard oral arguments on the Motion on March 15, 2012. The Defendant was represented by attorney Nicholas D. Lepire. The State was represented by deputy prosecutor April A. Smith. The Court, having read the motion and the applicable Idaho and Washington statutes, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL BACKGROUND

Defendant Hartzell was charged with Stalking in the First Degree pursuant to I.C. § 18-7905(1)(a), the State having alleged in its Information that Hartzell committed the crime of stalking “in violation of a civil protection order issued on September 26, 2011, in Asotin County Case Number DV11-72”, making it a felony offense. Idaho Code § 18-7905(1)(a) provides:

A person commits the crime of stalking in the first degree if the person violates section 18-7906, Idaho Code, and:

- (a) The actions constituting the offense are in violation of a temporary restraining order, protection order, no contact order or injunction, or any combination thereof;

I.C. § 18-7905(1)(a).

The civil protection order at issue in the instant matter was obtained in the State of Washington under Revised Code of Washington (“RCW”) § 10.14.080, which allows a petitioner to seek a civil protection order upon an allegation of harassment, without regard to the relationship, if any, between the parties to the petition and with no allegation of domestic violence. Idaho has no similar or equivalent statute. Under Idaho law, a civil protection order may be obtained only upon allegations of domestic violence and requires the parties to the petition to have been in a dating relationship or be “household members”, which is defined as persons who have resided together or have a child in common. I.C. §§ 39-6303 and 39-6304. A protection order under Idaho law is defined in I.C. § 39-6303.

“Protection order” means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued:

- (a) Pursuant to this chapter;
- (b) In another jurisdiction pursuant to a provision similar to section 39-6306, Idaho Code; or
- (c) In any criminal or civil action, as a temporary or final order (other than a support or child custody order), and where the order was issued in a response to a criminal complaint, petition or motion filed by or on behalf of a person seeking

protection, and issued after giving notice and an opportunity to respond to the person being restrained.

I.C. § 39-6303(8).

Consistent with I.C. § 39-6303, Idaho Code § 18-7906, which sets forth the elements of stalking and provides definitions relevant to the offense, includes the term “family or household member” and defines it to mean a spouse, former spouse, a person with whom the victim has a child in common, a person with whom the victim had a dating relationship, or a person living in the same residence as the victim. I.C. § 18-7906(2)(b). In the instant matter, the State concedes Hartzell and the alleged victim were never in a dating relationship, never resided together, were never married, and have never had a child in common. The State further concedes the alleged victim could not have obtained a civil protection order under Idaho law and concedes there is no Idaho statute similar to the Washington statute which allowed the alleged victim to obtain the civil protection order the State relies on to bring the stalking charge against Defendant Hartzell within the felony provision of I.C. § 18-7905.

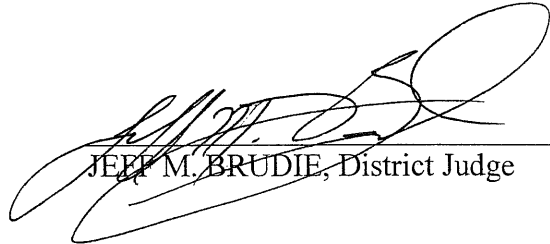
Idaho Code § 18-7905(1)(a) includes no language that would bring within the statute a protection order from a foreign jurisdiction that has no similar provision under Idaho law.¹ Therefore, the Court finds the State’s charge of Stalking in the First Degree is based on a protection order that was obtained under a foreign statute for which there is no similar Idaho statute, the foreign protection order does not fall within the language of I.C. § 18-7905(1)(a) and, as a result, the foreign protection order cannot form the basis for a charge of Stalking in the First Degree under I.C. § 18-7905(1)(a).

¹ Had the State’s pleading alleged a violation of a Washington no contact order, the Court’s analysis may have reached a different conclusion. However, given the record in the matter, that question is left to another day.

ORDER

Defendant Hartzell's Motion in Limine is hereby GRANTED and the charge of Stalking in the First Degree is hereby reduced to Stalking in the Second Degree pursuant to I.C. § 18-7906(1) over the objection of the prosecutor.

Dated this 20 day of March 2012.



JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON DEFENDANT'S MOTION IN LIMINE was:

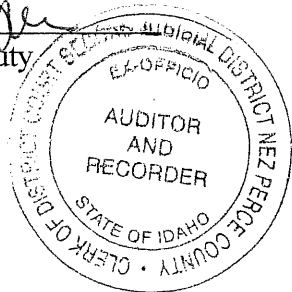
✓ DELIVERED by the undersigned at Lewiston, Idaho, this 20 day of March 2012, to:

April Smith
Lewiston, ID 83501

Nick Lepire
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: [Signature]
Deputy



OPINION AND ORDER ON DEFENDANT'S
MOTION IN LIMINE

COURT MINUTES

CR-2011-0008694

State of Idaho vs. Paul Carey Hartzell

Hearing type: Status Conference

Hearing date: 3/21/2012

Time: 9:15 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: C1

Defense Attorney: Kwate Law Office PD 2012

Prosecutor: April Smith

91554 Def present for status conf. Crt reviews file and hearing on pretrial motions.

State relays they have contacted the AG's office and they requested to review file in relation to filing an appeal. State requests Crt hold case in abeyance pending review.

Crt will not hold. Crt relays case is now a misd charge. This court's order is appealable even if the case is remanded to Mag Division. Crt remands case to mag crt and will set pretrial conf.

State presents concerns re Def pleading guilty to misd in the meantime.

Crt addresses Def re no contact order.

State presents statement.

Crt releases Def on OR.

92329 Recess

JMB

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED
2012 MAR 21 PM 12:55

STATE OF IDAHO,
Plaintiff,
vs.
Paul Carey Hartzell,
Defendant.

Case No: CR-2011-0008694

PATTY O. WEEKS
CLERK OF THE DIST. COURT
NOTICE OF HEARING
[Signature]
DEPUTY

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Pretrial - County P. D. Tuesday, April 03, 2012 09:30 AM
Judge: Jay P. Gaskill

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, March 21, 2012.

Defendant: Paul Carey Hartzell
2523 8th Ave # 4
Clarkston, WA 99403
Mailed _____ Hand Delivered

Private Counsel: Kwate Law Office PD 2012
1502 G St.
Lewiston, ID 83501
Mailed _____ Hand Delivered

Prosecutor: April A Smith
Mailed _____ Hand Delivered

Dated: Wednesday, March 21, 2012
Patty O. Weeks
Clerk Of The District Court

By: *[Signature]*
Deputy Clerk
DOC22 7/96

SECC JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF NEZ PERCE
PRETRIAL MOTION, ORDER, AND JUDGMENT

E STATE OF IDAHO VS. PAUL C. HARTZELL

CASE NO. CR2011-0008694

ADDRESS: 2522 8th Avenue, #4 Lewiston, ID 83501

D.O.B. [REDACTED] S.S.N. [REDACTED]

BOOKET NO. AGENCY: Nez Perce County Sheriff's Office

D.L.N. KB152753C

FILED

2012 APR 3 AM 9 58
Cheri Metcalf
PATTY O. [REDACTED]
CLERK OF THE DIST. COURT

The prosecutor or defendant moves the Court as follows:

- For a bench warrant; defendant failed to appear.
- bond set at \$ _____
- any existing bond forfeited.
- For default judgment; defendant failed to appear
- To amend the charge to a violation of Idaho Code _____
- To set this matter on 5-1-12, at _____ for: PTC DEPUTY
- continuance with waiver of speedy trial Trial by court or by jury
- To dismiss the charge in the interests of justice.
- Posted bond of \$ _____ be forfeited and the case closed.
- I waive my right to Jury Trial

STATE'S APPEAL
DEADLINE IS
5-1-12

Defendant understands the consequences of a guilty plea:

- The plea is voluntary. Defendant has been informed of maximum and minimum penalties.
- Defendant waives the right against compulsory self-incrimination, the right to trial by jury and the right to confront witnesses against defendant. Defendant has been informed of the nature of the charge. NO promises have been made other than the plea bargaining agreement set out below. Defendant understands that this court IS NOT bound by the agreement. Defendant gives up the right to appeal the judgment. Defendant understands that he/she has the right against compulsory self-incrimination during any court ordered evaluation.

MY CONSTITUTIONAL RIGHTS WERE GIVEN TO ME AT ARRAIGNMENT. I UNDERSTAND THOSE RIGHTS AND GIVE THEM UP. I PLEAD GUILTY TO THE CHARGE(S) SET FORTH ABOVE. I ADMIT TO THE TRUTH OF THE ALLEGATIONS AND AGREE TO THE RECOMMENDED SENTENCE.

I. Plea bargain and/or RECOMMENDED sentence:

Fine \$ _____ / \$ _____ suspended Jail _____ / _____ suspended Community Service _____

Probation _____

With the following recommendations:

- Report to the Probation Department within 48 hours of today's date.
- Commit no Crime.
- Sign a probation agreement and abide by all the terms and conditions of that Agreement.
- Notify the Court, in writing, of any change of address.
- Obtain alcohol evaluation
- Refuse no evidentiary test for the presence of drugs or alcohol
- Other _____

Driver's License Suspension _____

Restitution to be paid in the sum of \$ _____ to _____.
Restitution to be paid in monthly installments of \$ _____ / month beginning _____ and to be paid in full on or before end of defendant's probationary period. Restitution to be paid to the Nez Perce County Clerk of the Court, P.O. Box 896, Lewiston, ID 83501, or at the window on the second floor of the Nez Perce County Courthouse in the form of a money order and/or cashier checks.

OTHER: _____

No Contact Order vacated. No Contact Order remain in effect w/ _____

DATED 4-3-12

DEFENDANT'S SIGNATURE Paul Hartzell

DEFENSE ATTORNEY [Signature]

PROSECUTOR [Signature]

APPROVED DENIED BOND EXONERATED

DATED 4/11/12 0403-12

MAGISTRATE JUDGE [Signature]

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

STATE OF IDAHO,

Plaintiff,

vs.

Paul Carey Hartzell,

Defendant.

)
)
) **FILED**
)
) Case No: GR-2011-0008694
) **2012 APR 3 AM 9 58**
) **NOTICE OF HEARING**
) CLERK OF THE DIST. COURT
) *Cheri Metcalf*
)
DEPUTY

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Pretrial - County P. D. Tuesday, May 01, 2012 09:30 AM
Judge: Greg K. Kalbfleisch

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Tuesday, April 03, 2012.

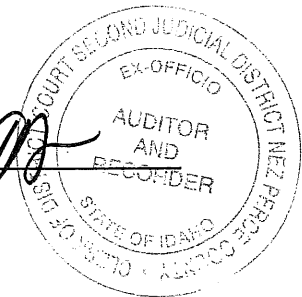
Defendant: Paul Carey Hartzell
2523 8th Ave # 4
Clarkston, WA 99403
Mailed _____ Hand Delivered

Private Counsel: Kwate Law Office PD 2012
1502 G St.
Lewiston, ID 83501
Mailed _____ Hand Delivered

Prosecutor: April A Smith
Mailed _____ Hand Delivered

Dated: Tuesday, April 03, 2012
Patty O. Weeks
Clerk Of The District Court

By: *Donna Williams*
Deputy Clerk
DOC22 7/96



LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

FILED

2012 APR 5 PM 2 58

PATTY STEVENS
CLERK OF THE DISTRICT COURT
DEPUTY
[Handwritten Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR NEZ PERCE COUNTY

STATE OF IDAHO)

Plaintiff-Appellant,)

vs.)

PAUL CAREY HARTZELL,)

Defendant-Respondent.)

Case No. CR-2011-08694

NOTICE OF APPEAL

TO: PAUL CAREY HARTZELL, THE ABOVE-NAMED
RESPONDENT, NICHOLAS D. LEPIRE, KWATE LAW OFFICES, PLLC, 1502 G
STREET, LEWISTON, IDAHO 83501 AND THE CLERK OF THE ABOVE-
ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the
above-named respondent to the Idaho Supreme Court from the OPINION AND
ORDER ON DEFENDANT'S MOTION IN LIMINE AND ORDER REDUCING

CHARGE, entered in the above-entitled action on the 20th day of March 2012, the Honorable Jeff M. Brudie presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(5), I.A.R.

3. Preliminary statement of the issue on appeal: Whether the district court erred when it reduced the state's charge from a felony to a misdemeanor based on the conclusion that out-of-state protection orders do not apply to enhance the crime under the Idaho stalking statute.

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript:

(a) Hearing on Hartzell's motion in limine held March 15, 2012
(Linda Carlton, reporter, anticipated length less than 50 pages)

(b) Hearing on Hartzell's motion in limine held March 16, 2012
(Linda Carlton, reporter, anticipated length less than 50 pages)

(c) The state further requests that the preliminary hearing transcript already prepared be included in the appellate record as an exhibit.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is being served on each

reporter of whom a transcript has been requested as named below at the address set out below:

LINDA CARLTON
Court Reporter
Nez Perce Courthouse
P.O. Box 896
Lewiston, Idaho 83501

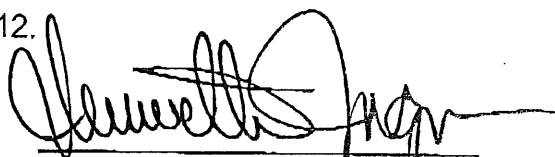
(b) That arrangements have been made with the Nez Perce County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 5th day of April 2012.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 5th day of April 2012, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

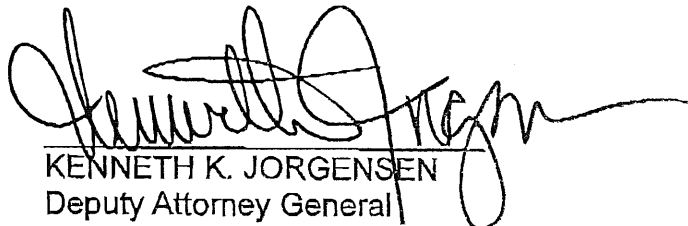
THE HONORABLE JEFF M. BRUDIE
Nez Perce County Courthouse
P.O. Box 896
Lewiston, Idaho 83501

APRIL A. SMITH
Nez Perce County Prosecutor's Office
P.O. Box 1267
Lewiston, Idaho 83501

NICHOLAS D. LEPIRE
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

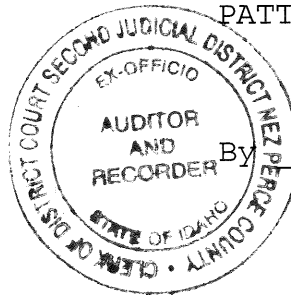
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)
)
 Plaintiff-Appellant,)
)
 vs.) Supreme Court No. 39866
)
) CERTIFICATE OF EXHIBITS
)
 PAUL C. HARTZELL,)
)
 Defendant-Respondent.)

I, Patty O. Weeks, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, do hereby certify that the following list is a list of the exhibits offered or admitted and which have been lodged with the Supreme Court.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Court this 1 day of June 2012.

PATTY O. WEEKS, Clerk



[Signature]
Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,
Plaintiff-Appellant,
vs.
PAUL C. HARTZELL,
Defendant-Respondent.

Supreme Court Case No. 39866

CLERK'S CERTIFICATE

I, PATTY O. WEEKS, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That all documents, x-rays, charts, and pictures offered or admitted as exhibits in the above-entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record
2. That the following will be submitted as an exhibit to the record:

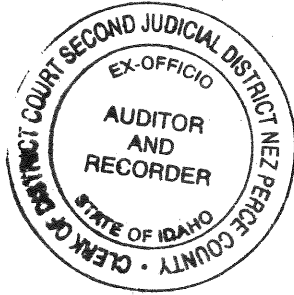
CLERK'S CERTIFICATE

Preliminary Hearing Transcript dated December 7, 2011

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court this 1st day of June 2012.

PATTY O. WEEKS, Clerk

By *William J. Gunn*
Deputy Clerk



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,
Plaintiff-Appellant,
vs.
PAUL C. HARTZELL,
Defendant-Respondent.

Supreme Court Case No. 39866

CERTIFICATE OF SERVICE

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

CLERK'S RECORD

REPORTER'S TRANSCRIPT

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

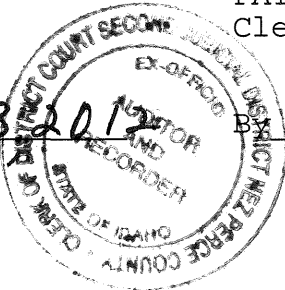
KWATE LAW OFFICE
kwatelaw@clearwire.net
ATTORNEY FOR RESPONDENT
BOISE, ID

KENNETH J. JORGENSEN
patricia.miller@ag.idaho.gov
ATTORNEY FOR APPELLANT
BOISE, ID

PATTY O. WEEKS
Clerk of the District Court

Date of Service

June 13 2012



Debra R. Gunn
Deputy Clerk

CERTIFICATE OF SERVICE