

11-1-2012

State v. Widner Clerk's Record Dckt. 39908

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39908-2012

Vol. 1 of 5

SUPREME COURT
OF THE LAW CLERK
STATE OF IDAHO

DANIEL L. WIDNER

Petitioner and

Appellant,

vs.

STATE OF IDAHO,

Respondent.

Appealed from the District Court of the 4th
Judicial District of the State of Idaho, in
and for Elmore County

Hon. LYNN G. NORTON District Judge

SARA THOMAS
STATE APPELLATE PUBLIC DEFENDER

Attorney for Appellant

LAWRENCE G. WASDEN
ATTORNEY GENERAL

Attorney for Respondent

Filed:



39908

39908-2012

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Supreme Court
	)	Case No. 39908-2012
)	
DANIEL L. WIDNER,)	
)	
Defendant/Appellant.)	
_____)	

HON. LYNN NORTON
DISTRICT JUDGE
ELMORE COUNTY

Lawrence G. Wasden
ATTORNEY GENERAL
Statehouse Mail
P.O. Box 83720
Boise, ID 83720-0010

Sara Thomas
STATE APPELLATE PUBLIC DEFENDER
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703

COPY

State of Idaho vs. Daniel L Widner

Date	Code	User		Judge
1/31/2011	NCRF	MELISSA	New Case Filed - Felony	David C. Epis
	PROS	MELISSA	Prosecutor assigned Elmore County Prosecuting Atty	David C. Epis
	AFPC	MELISSA	Affidavit Of Probable Cause	David C. Epis
	HRSC	MELISSA	Hearing Scheduled (Arraignment 01/31/2011 01:00 PM)	David C. Epis
	ARRN	MELISSA	Hearing result for Arraignment held on 01/31/2011 01:00 PM: Arraignment / First Appearance	David C. Epis
	RGHT	MELISSA	Rights (derechos)	David C. Epis
	AON	MELISSA	Acknowledgment Of Notification	David C. Epis
	COMM	MELISSA	Commitment, Order Setting Bond & Conditions of Release	David C. Epis
	NOTH	MELISSA	Notice Of Hearing	David C. Epis
	HRSC	MELISSA	Hearing Scheduled (Attorney Appearance 02/02/2011 11:00 AM)	David C. Epis
2/2/2011	HRHD	MELISSA	Hearing result for Attorney Appearance held on 02/02/2011 11:00 AM: Hearing Held	David C. Epis
	HRSC	MELISSA	Hearing Scheduled (Attorney Appearance 03/03/2011 11:00 AM)	David C. Epis
	ORPD	MELISSA	Defendant: Widner, Daniel L Order Appointing Public Defender Public defender Elmore County Public Defender	David C. Epis
	AFPD	MELISSA	Application For Public Defender/financial Statement	David C. Epis
	ORPD	MELISSA	Order Appointing Public Defender	David C. Epis
	NOTH	MELISSA	Notice Of Hearing	David C. Epis
	CONT	MELISSA	Continued (Attorney Appearance 02/03/2011 11:00 AM)	David C. Epis
	AMEN	MELISSA	Amended Notice of Hearing	David C. Epis
2/3/2011	HRHD	MELISSA	Hearing result for Attorney Appearance held on 02/03/2011 11:00 AM: Hearing Held	David C. Epis
	HRSC	MELISSA	Hearing Scheduled (Preliminary 02/11/2011 02:00 PM)	David C. Epis
	AMEN	MELISSA	Amended Commitment	David C. Epis
	NOTH	MELISSA	Notice Of Hearing	David C. Epis
2/4/2011	NOTS	HEATHER	Notice Of Service	David C. Epis
2/8/2011	BNDS	DANETTE	Bond Posted - Surety (Amount 25000.00)	David C. Epis
	NOTC	DONNA	Notice Of Substitution Of Counsel	David C. Epis
	APER	DONNA	Defendant: Widner, Daniel L Appearance Joseph C. Miller	David C. Epis
	MISC	DONNA	Defendants First Request For Discovery	David C. Epis

State of Idaho vs. Daniel L Widner

Date	Code	User		Judge
2/8/2011	MOTN	DONNA	Motion To Disqualification Without Cause	David C. Epis
2/9/2011	DWOC	ROBIN	Disqualification of Judge-Without Cause	David C. Epis
2/10/2011	CHJG	ROBIN	Change Assigned Judge	George G. Hicks
	WSPE	ROBIN	Waiver Of Speedy Preliminary Examination	George G. Hicks
	HRVC	ROBIN	Hearing result for Preliminary held on 02/11/2011 02:00 PM: Hearing Vacated	George G. Hicks
	STIP	DONNA	Stipulation Motion TO Continue Preliminary Hearing	George G. Hicks
2/16/2011	HRSC	KRISANN	Hearing Scheduled (Preliminary 03/25/2011 02:00 PM)	George G. Hicks
	NOTS	DONNA	Notice Of Service	George G. Hicks
	NOTS	DONNA	Notice Of Service	George G. Hicks
	NOTS	DONNA	Notice Of Service	George G. Hicks
3/1/2011	AFFD	DONNA	Affidavit In Support Of Subpoena Duces Tecum	George G. Hicks
	ORDR	KRISANN	Order to Continue Preliminary Hearing	George G. Hicks
3/10/2011	NOTS	HEATHER	Notice Of Service	George G. Hicks
3/22/2011	NOTS	DONNA	Notice Of Service	George G. Hicks
3/25/2011	AMCO	VICKY	Amended Complaint Filed	George G. Hicks
	HRHD	VICKY	Hearing result for Preliminary held on 03/25/2011 02:00 PM: Hearing Held	George G. Hicks
	BOUN	VICKY	Bound Over (after Prelim)	Richard Greenwood
3/29/2011	OADC	VICKY	Order Holding Defendant To Answer To District Court	George G. Hicks
	INFO	VICKY	Information	George G. Hicks
3/30/2011	CHJG	VICKY	Change Assigned Judge	Richard Greenwood
	HRSC	VICKY	Hearing Scheduled (Arraignment 04/18/2011 09:00 AM)	Richard Greenwood
4/18/2011	PLEA	HEATHER	A Plea is Entered for Charge - NG (137-2732B(A)(1)(A) Drug-Trafficking in Marijuana (1 lb or More but Less than 5 lbs or Consists of 25 to 49 Plants))	Richard Greenwood
	PLEA	HEATHER	A Plea is Entered for Charge - NG (118-3302(9) Weapon-Carry a Loaded Concealed Weapon Without a License While in a Vehicle Inside City Limits)	Richard Greenwood
	DCHH	HEATHER	Hearing result for Arraignment held on 04/18/2011 09:00 AM: District Court Hearing Held Court Reporter: F. Morris Number of Transcript Pages for this Hearing estimated: 4	Richard Greenwood
	HRSC	HEATHER	Hearing Scheduled (Jury Trial 08/03/2011 09:00 AM) 2 days	Richard Greenwood

State of Idaho vs. Daniel L Widner

Date	Code	User		Judge
4/18/2011	HRSC	HEATHER	Hearing Scheduled (Pretrial Conference 07/08/2011 09:00 AM)	Richard Greenwood
5/4/2011	SCHE	HEATHER	Scheduling Order	Richard Greenwood
6/7/2011	MOTN	HEATHER	Motion in Limine	Richard Greenwood
	BREF	HEATHER	Brief in Support of Motion in Limine	Richard Greenwood
6/8/2011	STIP	DONNA	Stipulated Motion To Continue Pre-Trial Conference and Trial	Richard Greenwood
6/13/2011	HRSC	HEATHER	Hearing Scheduled (Status 06/24/2011 09:00 AM)	Richard Greenwood
	NOTH	HEATHER	Notice Of Hearing	Richard Greenwood
6/21/2011	CONT	HEATHER	Continued (Status 07/08/2011 09:00 AM)	Richard Greenwood
6/24/2011	HRSC	HEATHER	Hearing Scheduled (Status 07/01/2011 08:30 AM)	Richard Greenwood
	CONT	HEATHER	Continued (Status 06/24/2011 11:00 AM)	Richard Greenwood
	DCHH	HEATHER	Hearing result for Status scheduled on 06/24/2011 11:00 AM: District Court Hearing Held Court Reporter: F. Morris Number of Transcript Pages for this Hearing estimated: 9	Richard Greenwood
	CONT	HEATHER	Continued (Jury Trial 11/07/2011 09:00 AM) 2 days	Richard Greenwood
	CONT	HEATHER	Continued (Pretrial Conference 10/21/2011 09:00 AM)	Richard Greenwood
	HRSC	HEATHER	Hearing Scheduled (Motion in Limine 08/02/2011 08:30 AM)	Richard Greenwood
6/28/2011	NOTS	DONNA	Notice Of Service	Richard Greenwood
	EXPR	HEATHER	EX PARTE Motion for Order Revoking Defendant's Release on Bond	Richard Greenwood
	AFFD	HEATHER	Affidavit of Lee Fisher	Richard Greenwood
	ORDR	HEATHER	Order Revoking Defendant's Release on Bond	Richard Greenwood
	HRSC	HEATHER	Hearing Scheduled (Motion 07/11/2011 10:00 AM) *Motion to Revoke Defendant's Release on Bond*	Richard Greenwood
	WARB	HEATHER	Warrant Issued - Bench Bond amount: .00 Failure to comply with O/R conditions Defendant: Widner, Daniel L	Richard Greenwood
	STAT	HEATHER	STATUS CHANGED: Inactive	Richard Greenwood
3/30/2011	HRSC	DANETTE	Hearing Scheduled (Arraignment 06/30/2011 01:00 PM)	George G. Hicks
	HRHD	KRISANN	Hearing result for Arraignment scheduled on 06/30/2011 01:00 PM: Hearing Held	George G. Hicks
	COMM	KRISANN	Commitment - Held To Answer	Richard Greenwood

State of Idaho vs. Daniel L Widner

Date	Code	User		Judge
7/5/2011	CONT	HEATHER	Hearing result for Motion scheduled on 07/11/2011 10:00 AM: Continued *Motion to Revoke Defendant's Release on Bond*	Richard Greenwood
	HRSC	HEATHER	Hearing Scheduled (Motion 07/11/2011 11:00 AM) *Motion to Revoke Defendant's Release on Bond*	Temporary Judge
	AMEN	HEATHER	Amended Notice of Hearing	Richard Greenwood
7/11/2011	SCHE	HEATHER	Scheduling Order	Barry Wood
	COMO	HEATHER	Commitment Order Setting Bond and Conditions of Release	Barry Wood
	DCHH	HEATHER	Hearing result for Motion scheduled on 07/11/2011 11:00 AM: District Court Hearing Hek Court Reporter: N. Omsberg Number of Transcript Pages for this Hearing estimated: 5 *Motion to Revoke Defendant's Release on Bond*	Barry Wood
7/12/2011	EXPR	HEATHER	EX PARTE Motion for Transcript	Barry Wood
7/15/2011	ORDR	DONNA	Order for Transcript	Barry Wood
7/20/2011	WART	HEATHER	Warrant Returned Failure to comply with O/R conditions Defendant: Widner, Daniel L	Richard Greenwood
	STAT	HEATHER	STATUS CHANGED: Pending	Richard Greenwood
	SHRT	HEATHER	Sheriff's Return	Richard Greenwood
7/22/2011	CHJG	HEATHER	Change Assigned Judge	Barry Wood
7/26/2011	STIP	HEATHER	Stipulation to Continue Motion in Limine Hearing	Barry Wood
	NOTS	DONNA	Notice Of Service	Barry Wood
8/1/2011	CONT	HEATHER	Hearing result for Motion in Limine scheduled on 08/02/2011 08:30 AM: Continued	Barry Wood
8/4/2011	HRSC	HEATHER	Hearing Scheduled (Motion in Limine 09/13/2011 09:00 AM)	Barry Wood
	ORDR	HEATHER	Order to Continue Motion in Limine Hearing	Barry Wood
8/17/2011	TRAN	HEATHER	Transcript Filed	Barry Wood
8/18/2011	AKOS	HEATHER	Acknowledgment Of Service of Completed Clerks Transcript	Barry Wood
9/2/2011	NOTC	HEATHER	Notice of Intent to Call and Cross-Examine Witnesses	Barry Wood
9/13/2011	DCHH	HEATHER	Hearing result for Motion in Limine scheduled on 09/13/2011 09:00 AM: District Court Hearing Hek Court Reporter: Number of Transcript Pages for this Hearing estimated:	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Motion in Limine 10/11/2011 02:30 PM)	Barry Wood
9/15/2011	NOTS	DONNA	Notice Of Service	Barry Wood

State of Idaho vs. Daniel L Widner

Date	Code	User	Judge
9/21/2011	CONT	HEATHER	Continued (Pretrial Conference 10/21/2011 01:30 PM)
9/30/2011	NOTS	DONNA	Notice Of Service
10/5/2011	STIP	DONNA	Stipulation to Take Judicial Notice of Preliminary Hearing Transcript and for Court to Review Transcript
10/11/2011	CONT	HEATHER	Continued (Pretrial Conference 10/27/2011 11:00 AM)
	HRSC	HEATHER	Hearing Scheduled (Motion in Limine 10/27/2011 11:00 AM)
	DCHH	HEATHER	Hearing result for Motion in Limine scheduled on 10/11/2011 02:30 PM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this Hearing estimated:
10/25/2011	MOTN	HEATHER	Motion to Consolidate with Case No. CR-2011-494 with Case No. CR-2011-493
10/27/2011	DCHH	MELISSA	District Court Hearing Held Court Reporter: D. Cromwell Number of Transcript Pages for this Hearing estimated: 245
11/1/2011	HRHD	MELISSA	Hearing result for Motion in Limine scheduled on 10/27/2011 11:00 AM: Hearing Held
	HRVC	MELISSA	Hearing result for Jury Trial scheduled on 11/07/2011 09:00 AM: Hearing Vacated 2 days
	HRSC	MELISSA	Hearing Scheduled (Status 11/10/2011 10:00 AM)
11/9/2011	ORDR	HEATHER	Supplemental Order on Defendant's Motion to Suppress
11/10/2011	DCHH	HEATHER	Hearing result for Status scheduled on 11/10/2011 10:00 AM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this Hearing estimated:
	HRSC	HEATHER	Hearing Scheduled (Status 11/22/2011 10:00 AM) *Continued*
	STIP	HEATHER	Stipulated Motion to Continue Review Hearing
11/14/2011	NOTH	HEATHER	Notice Of Hearing
11/22/2011	DCHH	HEATHER	Hearing result for Status scheduled on 11/22/2011 10:00 AM: District Court Hearing Held Court Reporter: M. Martorelli Number of Transcript Pages for this Hearing estimated: 16*Continued*
	HRSC	HEATHER	Hearing Scheduled (Entry of Plea 12/19/2011 10:00 AM)
12/19/2011	ORDR	HEATHER	Commitment, Order Setting Bond and Conditions of Release

State of Idaho vs. Daniel L Widner

Date	Code	User		Judge
12/19/2011	PSSA1	HEATHER	Order for Pre-Sentence Investigation Report and Substance Abuse Assessment	Barry Wood
	CHJG	HEATHER	Change Assigned Judge	Lynn G Norton
	HRSC	HEATHER	Hearing Scheduled (Sentencing 03/05/2012 10:15 AM)	Lynn G Norton
	PLEA	HEATHER	A Plea is Entered for Charge - GT (I37-2732B(A)(1)(A) Drug-Trafficking in Marijuana (1 lb or More but Less than 5 lbs or Consists of 25 to 49 Plants))	Lynn G Norton
	PLEA	HEATHER	A Plea is Entered for Charge - GT (I18-3302(9) Weapon-Carry a Loaded Concealed Weapon Without a License While in a Vehicle Inside City Limits)	Lynn G Norton
	DCHH	HEATHER	Hearing result for Entry of Plea scheduled on 12/19/2011 10:00 AM: District Court Hearing Held Court Reporter: M. Martorelli Number of Transcript Pages for this Hearing estimated: 36	Barry Wood
1/12/2012	NOTC	DONNA	Notice Of Change Of Address	Lynn G Norton
	NOTS	DONNA	Notice Of Service	Lynn G Norton
3/5/2012	DCHH	HEATHER	Hearing result for Sentencing scheduled on 03/05/2012 10:15 AM: District Court Hearing Held Court Reporter: P. Tardiff Number of Transcript Pages for this Hearing estimated: 4	Lynn G Norton
	HRSC	HEATHER	Hearing Scheduled (Sentencing 03/21/2012 04:00 PM)	Lynn G Norton
3/21/2012	CAGP	HEATHER	Court Accepts Guilty Plea (I37-2732B(A)(1)(A) Drug-Trafficking in Marijuana (1 lb or More but Less than 5 lbs or Consists of 25 to 49 Plants))	Lynn G Norton
	SNIC	HEATHER	Sentenced To Incarceration (I37-2732B(A)(1)(A) Drug-Trafficking in Marijuana (1 lb or More but Less than 5 lbs or Consists of 25 to 49 Plants)) Confinement terms: Credited time: 20 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 14 years.	Lynn G Norton
	CAGP	HEATHER	Court Accepts Guilty Plea (I18-3302(9) Weapon-Carry a Loaded Concealed Weapon Without a License While in a Vehicle Inside City Limits)	Lynn G Norton
	SNIC	HEATHER	Sentenced To Incarceration (I18-3302(9) Weapon-Carry a Loaded Concealed Weapon Without a License While in a Vehicle Inside City Limits) Confinement terms: Jail: 180 days. Credited time: 20 days.	Lynn G Norton
	STAT	HEATHER	STATUS CHANGED: closed pending clerk action	Lynn G Norton
	BNDE	HEATHER	Surety Bond Exonerated (Amount 25,000.00)	Lynn G Norton
	JDMT	HEATHER	Judgment & Commitment	Lynn G Norton

State of Idaho vs. Daniel L Widner

Date	Code	User	Judge	
3/21/2012	DCHH	HEATHER	Hearing result for Sentencing scheduled on 03/21/2012 04:00 PM: District Court Hearing Held Court Reporter: P. Tardiff Number of Transcript Pages for this Hearing estimated: 45	Lynn G Norton
4/30/2012	NTOA	HEATHER	Notice Of Appeal	Lynn G Norton
	APSC	HEATHER	Appealed To The Supreme Court	Lynn G Norton
	APDC	HEATHER	Appeal Filed In District Court	Lynn G Norton
	STAT	HEATHER	STATUS CHANGED: Reopened	Lynn G Norton
5/3/2012	MOTN	HEATHER	Motion to Modify or Reduce Sentence	Lynn G Norton
	MOTN	HEATHER	Motion for Leave to Withdraw as Counsel of Record	Lynn G Norton
5/15/2012	ORDR	HEATHER	Order Granting Leave to Withdraw as Counsel of Record	Lynn G Norton
5/17/2012	ORDR	HEATHER	Order Conditionally Dismissing Appeal	Lynn G Norton
5/24/2012	MEMO	HEATHER	Memorandum Decision Denying Defendant's Motion to Modify or Reduce Sentence Pursuant to I.C.R. 35	Lynn G Norton
7/2/2012	ORDR	HEATHER	Order Dismissing Appeal	Lynn G Norton
7/26/2012	REMT	HEATHER	Remittitur - Dismissed	Lynn G Norton
	RMAN	HEATHER	Remanded	Lynn G Norton
	STAT	HEATHER	STATUS CHANGED: closed pending clerk action	Lynn G Norton
	MOTN	HEATHER	Motion and Affidavit for Fee Waiver	Lynn G Norton
	APPL	HEATHER	Application for State Appellate Public Defender/Financial Statement	Lynn G Norton
	MOTN	HEATHER	Motion for Reconsideration of Supreme Courts Order Conditionally Dismissing Appeal	Lynn G Norton
8/1/2012	ORDR	HEATHER	Order	Lynn G Norton
8/10/2012	ORDR	HEATHER	Order Appointing Counsel for Appeal	Lynn G Norton
8/23/2012	ORDR	HEATHER	Order	Lynn G Norton
9/17/2012	NOTC	HEATHER	Notice of Transcript Lodged - Motion in Limine	Lynn G Norton
9/20/2012	NOTC	HEATHER	Notice of Transcript Lodged - Entry of Plea	Lynn G Norton

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2	1	31	11	COMPLAINT
3				RIGHTS
4				ACKNOWLEDGMENT OF NOTIFICATION
5				COMMITMENT ORDER SETTING BOND - CONDITIONS
6				NOTICE OF HEARINGS
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8				ORDER APPOINTING PUBLIC DEFENDER
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13	2	4	11	NOTICE OF SERVICE
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17	2	8	11	Motion to Disqualification of Counsel
18	2	9	11	GRANT FOR DISQUALIFICATION
19	2	10	11	ADJOURNMENT OF DISTRICT
20	2	10	11	TRIAL OF JUDICIAL PH.
21	2	10	11	STATUS REPORT - CONTINUOUS PRELIMINARY
22	2	16	11	NOTICE OF SERVICE
23	2	16	11	Adm of Secm
24	2	16	11	Adm of Secm
25	3	1	11	AFFIDAVIT IN SUPPORT OF SUBPOENA DUCED TECUM
26	3	1	11	ORDER TO CONTINUE PRELIMINARY HEARINGS
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28	J	72	11	Adm of Secm
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30	3	30	11	ORDER HOLDING DEFENDANT TO BOND
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33	6	7	11	Motion in Remand
34	6	7	11	Brief in Support of Motion in Remand
35	6	8	11	Stipulated Motion to Continue Preliminary Hearing
36	6	13	11	Notice of Hearing
37	6	25	11	Notice of Service - 4th Supplemental
38	6	28	11	Ex Parte Motion for Order Requiring Defendant's Release on Bond
39	6	28	11	Affidavit of Dep. Sheriff
40	6	28	11	Order Requiring Defendant's Release on Bond
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42	6			COMMITMENT - HTA

	Mo	Da	Year	Description
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57	9	21	11	Amended Notice of Hearing
58	9	20	11	Notice of Service
59	10	5	11	Stipulation to Date Judicial Notice of Testimony
60	10	25	11	Motion to Consolidate Case No CE 2011-494 with Case No CE 2011-4
61	11	9	11	Supplemental Order on Defendants' Motion to Suppress
62	11	10	11	Stipulated Memo to Conduct Jury Hearing
63	11	14	11	Notice of Hearing
64	12	19	11	Commitment Order Setting Bond - Cond of Release
65	12	19	11	Order for Transcripts, Papers & Evaluations
66	1	12	12	Notice of Appearance of Address
67	1	12	12	Notice of Service
68	3	21	12	Orderment - Commitment
69	4	30	12	Notice of Appeal
70	5	3	12	Motion to Modify or Reduce Sentence
71	5	3	12	Motion for Judge to Withdraw as Counsel of Record
72	5	15	12	Order Regarding to Withdraw as Counsel of Record
73	5	17	12	Order Conditionally Dismissing Appeal
74	5	21	12	Memo Dives, Devised Defendants' Petition
75	7	2	12	Order Denying Appeal
76	7	26	12	Permitting
77	7	26	12	Application to State Appellate Public Defender/Strickland
78	7	26	12	Motion & Affidavit for Jury Waiver
79	7	26	12	Motion for Recross Examination of Sup Court's Order
80	8	10	12	Order Appointing Counsel for Appeal
81	8	23	12	Order
82				
83				
84				
85				
86				
87				

FILED

2011 JAN 31 AM 9:45

KRISTINA SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone (208) 587-2144

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

MAGISTRATE DIVISION

)
)
)
In the Matter of the Arrest) Citation No.
Of: Daniel Lee Widner)
)
) **AFFIDAVIT OF PROBABLE**
Defendant.) **CAUSE FOR ARREST**
)
)
)
)

STATE OF IDAHO)
) ss
COUNTY OF ELMORE,)

Ryan Melanese, being first duly sworn, deposes and states:
That I am an authorized Peace officer, and on the 30 day of January, 2011, at
2322 o'clock p.m.,
I had probable cause to believe that Daniel Lee Widner, the defendant herein, committed
the following crime:

Marijuana Drug trafficking

Possession of marijuana

The Probable Cause for defendant's arrest was as follows:

On January 30, 2011 at approximately 2322 hours I was running stationary radar in the 1100 block Sunset Strip, Mountain Home, Idaho, Elmore County, when I identified a car traveling East. The vehicle was in a 35 mph zone and I estimated the vehicle speed at 27 mph. The vehicle was approximately 200 yards from my location. I activated my radar and received a steady, clear and high-pitch tone lasting for 3-5 seconds. I confirmed my estimation with radar at 28 that went to 29 mph when it passed me. This is unusual for the speed zone, so I proceeded to follow the vehicle east. I followed the vehicle and it would not go the posted the speed. The vehicle came to the point where the one lane changed to two (2) lanes and went into the right lane without signaling. I proceeded to follow the vehicle as it turned right onto E. 5th North off of N. Main. The vehicle traveled over the train tracks and came to the t-intersection. The vehicle, bearing Idaho license plate E98155, turned right onto W. 5th North without signaling. I conducted a traffic stop on the vehicle in the 400 block of W. 5th North.

I made contact with the driver on the driver side with the window partially rolled down. I could smell the heavy odor of what I believed, through my training and experience, to be marijuana coming from inside the vehicle. The driver had slow movements has he reached for the documents requested. I asked where they were coming from and was told Reno, Nevada. I could see numerous 5-hour energy drinks inside the vehicle as well as speakers pulled out, carpeting pulled up, and 2 brown boxes in the back seat. I asked the driver if there were any weapons inside the vehicle and he told me no. I asked if there were any drugs inside the vehicle and he told me no. I went back to my patrol car, where I gave dispatch the driver and passenger's information. I waited for backup to arrive and went back to the vehicle where the driver, identified with his Idaho driver's license as Daniel Lee Widner, was instructed to exit the vehicle and come to the rear. While out of the vehicle I asked him again if there were any drugs inside the vehicle and he told me no. I noticed he was really nervous and shaking, which he stated it was do to being cold. I asked him if he would like a coat from inside the vehicle and he told me yes and when I asked Detective Jessup to get it from the vehicle, Widner informed me he did not want it unless he could retrieve it. I asked him why and he told me that there was a baggy of marijuana inside the coat, which belonged to him. I again asked if he had any other drugs inside the vehicle and he told me no. Officer Sterling with the Elmore County Sheriff's Department was now on scene and had his K-9 unit walk around the outside of the vehicle, which the K-9 alerted to drugs on the driver side door. The two (2) brown boxes were removed from the vehicle and the K-9 alerted to one of the boxes. The box was opened and a green leafy plant like substance was found in individual sealed bags. The second box was opened and also contained the plant like green leafy substance, which I believed to be marijuana through my training and experience. Daniel was informed he was being charged with felony possession of marijuana do to the large portion. It was later weighed and resulted in 1339 grms (2.9 pounds). Daniel informed me that he had a loaded 9 mm Handgun in the backseat backpack, which was found within reach of the driver.

Address Home Phone:
Employer's Address:
Work Number:

Dated this 31 Day of January 2011



Peace Officer

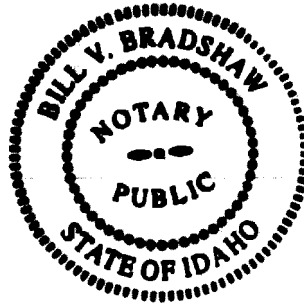
Subscribed and sworn to before me this 31st day of January, 2011



Official Authorized to Administer Oath

Commission expires: Nov. 15th 2016
Residing in: Elmore County

AFFIDAVIT - Page 2



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

Ally Stewart
Daniel Warner

CR-2011-
Docket No. CR-2011-

JUDGE David C Epis DATE January 31, 2011 TIME 1:00
CLERK R. Morton TYPE OF ACTION PC

CR # 1

Lee Fisher NO. 3 NO. 5
Counsel for Prosecutor EC/DMH Counsel for _____
NO. 4 NO. 6
Counsel for Defendant Counsel for _____

Index No's. Phase of Case
109 1. Before the Court with Probable Cause in: Lee Fisher Sworn
3. January 30, 2011, Officer Melanese
3. Probable cause stated: traffic stop K9 alert
Search
1. Probable Cause Found Probable Cause Not Found

Complaint to Issue Defendant In Custody Summons issued

100 Warrant to Issue Bond \$

2

FILED

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

2011 JAN 31 PM 2:18

BARBARA STEELE
CLERK OF THE COURT
DEPT. 1

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

THE STATE OF IDAHO,

Plaintiff,

vs.

DANIEL LEE WIDNER,

DOB [REDACTED]

SSN: [REDACTED]

Defendant.

Case No. CR-2011-494

COMPLAINT - CRIMINAL

PERSONALLY APPEARED Before me this 31st day of January 2011, Lee Fisher, Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho, who, being first duly sworn, complains and says: DANIEL LEE WIDNER, on or about the 30th day of January 2011, in the County of Elmore, State of Idaho, then and there being, did then and there commit the crimes of **TRAFFICKING IN MARIJUANA**, a felony, said crime being committed as follows, to-wit:

ORIGINAL

**TRAFFICKING IN MARIJUANA
Felony, I.C. § 37-2732B(a)(1)(A) and (D)**

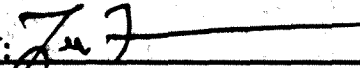
That the Defendant, Daniel Lee Widner, on or about the 30th day of January 2011, in the County of Elmore, State of Idaho, was knowingly in actual and/or constructive possession of more than one pound but less than five pounds of marijuana, a Schedule I controlled substance, all in violation of I.C. § 37-2732B(a)(1)(A) and (D).

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

Said Complainant therefore prays that the Defendant, DANIEL LEE WIDNER, be brought before the Court to be dealt with according to law.

DATED This 31st day of January 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 

Lee Fisher, Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN To before me this 31st day of January 2011.



JUDGE PRESIDING

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

Docket No. CR-2011-

Daniel L. Widner

JUDGE David C Epis DATE January 31, 2011 TIME 1:00

CLERK R. Morton TYPE OF ACTION Arraignment - In Custody

CR NO. # 1

Lee Fisher NO. 3. _____ NO. 5
Counsel for Prosecutor MHEC Counsel for _____

NO. 4. _____ NO. 6
Counsel for Defendant Counsel for _____

Index No's.	Phase of Case
-------------	---------------

1:19 1. Case Called. Advised

4. Understands () Request P.D. * Will Hire Own () Request Continuance () Waives Attorney

Enters Plea Of () Not Guilty () Guilty

3. () No Objection to P.D () Objects to P.D.

1. () P.D. Appointed () Subject to Reimbursement () P.D. Denied () Accepts Plea () Cannot Accept Plea

3. () Recommendations () No Objection to OR release * Comments on Bond Request 100,000

1. () Judgment () OR Release * Remanded. Bond set at: \$ 75,000 Cash or Surety

Atty. appr: February 2, 2011 @ 11:00

1:28

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

5

STATE OF IDAHO

Plaintiff

Case/Claction No. CR 5011-ED
2011 JUN 31 PM 4:15

Commitment Order Setting Bail and Conditions of Release
BARBARA A. FLETCHER
CLERK OF DISTRICT COURT

() Order Releasing each of the Defendants and Setting Conditions of Release

Donnell W. Linder
Defendant

The above-named Defendant having appeared before me this date, and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

- Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.
- Bail is set in the amount of \$ 5000.00 cash or surety.
- Released on his or her own recognizance upon the terms and conditions set forth below.
- Terms and Conditions of Release upon posting bail or upon release on own recognizance:
Defendant will appear at the time and place of the next proceeding in this matter, which shall be 11:20 o'clock PM, on Wednesday the 1st day of July, 2011 in the courtroom of this Court, and if such further court as may be ordered by the Court.
If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.
- Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail to Defendant at such address shall be deemed served upon the Defendant if not returned.
- Defendant shall not violate any law of the State of Idaho, any County charter, or any City or Municipality therein.
- Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.
- Defendant shall not consume alcoholic beverages in excess or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.
- Defendant shall abide by the terms of any so contact order issued in this case.
- Defendant shall submit to () duty random testing for the presence of () alcohol () drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Miscellaneous Probation Office to arrange for testing. Defendant certifies his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.
- Defendant shall attend AA or NA meetings _____ times per week while this case is pending.
- Defendant shall check in () in person () by telephone with the Sheriff of Elmore County at least once a () day () week () month.
- Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release.
- Other: My wife has custody of the car of the car

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court orders which the above-stated matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED:

Dated this 31st day of January, 2011.

[Signature]
Judge

Defendant
ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS
(ORDER-BOND/RELEASE)

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

Docket No. CR-2011-494

Daniel L. Wianer

JUDGE David C Epis DATE February 2, 2011 TIME 11:00

CLERK R. Morton TYPE OF ACTION Atty Appr

CD NO. Courtroom #1

Lee Fisher NO. 3. NO. 5
Counsel for Plaintiff/Prosecutor MHA/EC Counsel for _____

NO. 4. NO. 6
Counsel for Defendant Counsel for _____

Index No's. Phase of Case

11:27 Case Called
Defendant in custody
4. Request Public Defender
3.
1. G. D. Asst. Subj to reimb
Atty Appr: Feb 3, 2011 01:00

11:29

Fourth Judicial District Court, State of Idaho
In and For the County of Elmore
150 South 4th East, Suite #5
Mountain Home, Idaho 83647-3055

8

FILED

2011 FEB -2 PM 3: 06

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Case No: CR-2011-0000494

ORDER APPOINTING PUBLIC DEFENDER

STATE OF IDAHO
Plaintiff,

vs.

Daniel L Widner
1117 NW Foster Dr
Mountain Home, ID 83647

Defendant.

DL: [REDACTED]

The Court being fully advised as to the application of Daniel L Widner, and it appearing to be a proper case,

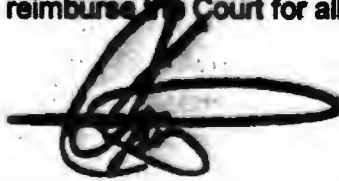
NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

Public Defender's Office
Elmore County Public Defender
290 South 2nd East
Mountain Home ID 83647

Public Defender for the County of Elmore, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Daniel L Widner, in all proceedings in the above entitled case.



The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

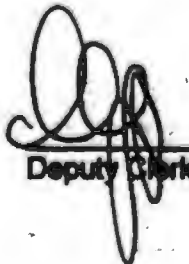
DATED This 2nd day of February, 2011.



Judge

Copies to:

 Public Defender
 Prosecutor



Deputy Clerk

Order Appointing Public Defender

DOC30 10/88

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

Docket No. CR 2011-494

Daniel L. Wiener

JUDGE David C Epis DATE February 3, 2011 TIME 11:00

CLERK R. Morton TYPE OF ACTION Atty Appr

CD NO Courtroom #2

////////////////////////////////////

L. Fisher NO. 3. _____ NO. 5
Counsel for Plaintiff/Prosecutor MH/EC Counsel for _____

M. Crawford NO. 4. _____ NO. 6
Counsel for Defendant PD Counsel for _____

////////////////////////////////////

Index No's.	Phase of Case
1:14	1. Case Called
	to custody
	4. Request Preliminary
	Argument on custody + Bond
	3. Argument
	1. Reduce Bond to 25,000 cash or Surety
	Preliminary February 11, 2011 @ 2:00
	Demanded
1:21	

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

STATE OF IDAHO

Plaintiff,

v.

DANIEL WIDNER
Defendant.

Case/Citation No. CR-2011-41

AMENDED
Documentation, Order Setting Bond and Conditions of Release



() Order Releasing on Own Recognizance and Setting Conditions of Release

The above-named Defendant having appeared before me this date; and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release; and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.

Bail is set in the amount of \$ 25,000.00 cash or surety.

Released on his or her own recognizance upon the terms and conditions set forth below.

Terms and Conditions of Release upon posting bail or upon release on own recognizance:

Defendant will appear at the time and place of the next proceeding in this matter, which shall be 2:00 o'clock P.m. on FRIDAY the 11th day of FEBRUARY, 2011 in the courtroom of this Court, and at such further times as may be ordered by the Court.

(X) If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.

(X) Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail Defendant at such address shall be deemed served upon the Defendant if not returned.

(X) Defendant shall not violate any law of the State of Idaho, any County therein, or any City or Municipality therein.

(X) Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.

(X) Defendant shall not consume alcoholic beverages to excess or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.

() Defendant shall abide by the terms of any no contact order issued in this case.

(X) Defendant shall submit to () daily (X) random testing for the presence of () alcohol () drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Misdemeanor Probation Office to arrange for testing. Defendant retains his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.

() Defendant shall attend AA or NA meetings _____ times per week while this case is pending.

() Defendant shall check in () in person () by telephone with the Sheriff of Elmore County at least once a () day () week () month.

(X) Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release herein.

Other: NO CONTACT WITH ALEX STEWART UNTIL FURTHER

ORDER OF THE COURT

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court before which the above-entitled matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED:

Dated this 3rd day of FEBRUARY, 2011.

Defendant

Judge

ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS (ORDER-BOND/RELEASE)

15

FILED

2011 FEB -8 PM 4: 27

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
e-mail: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,

Plaintiff,

vs.

DANIEL L. WIDNER,

Defendant.

)
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Case No. CR-2011-00494

**NOTICE OF SUBSTITUTION
OF COUNSEL**

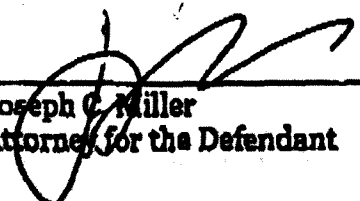
TO: MAGISTRATE JUDGE DAVID EPIS and ELMORE COUNTY PROSECUTORS

PLEASE TAKE NOTICE that pursuant to I.R.C.P. 11 (b)(1), Joseph C. Miller of the firm Miller Law, P.C. is substituted for the public defender as counsel for Defendant, DANIEL L. WIDNER, in the above-entitled matter. Future mailings and contact should be directed to Joseph C. Miller at Miller Law, P.C., 3023 E. Copper Point Dr., Ste. 104, Meridian, ID 83642, T - 287-8787, F - 287-8788.

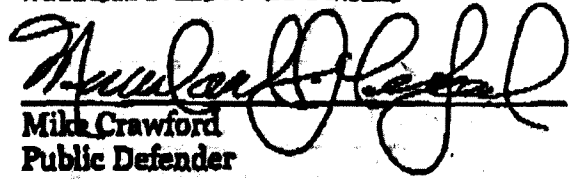
DATED this 8th day of February, 2011.

MILLER LAW, P.C.

RATLIFF LAW OFFICES



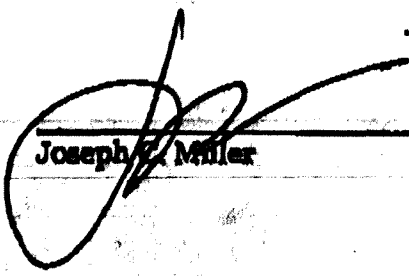
Joseph C. Miller
Attorney for the Defendant



Mike Crawford
Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2011, I faxed a true and accurate copy of this document to the office of the Elmore County Prosecutor at 587-2147 and to Mike Crawford at the office of the Elmore County Public Defender at 587-6940.



Joseph Miller

FILED

2011 FEB -8 PM 5:17

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
e-mail: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,

Plaintiff,

vs.

DANIEL L. WIDNER,

Defendant.

)
) Case No. CR-2011-00494
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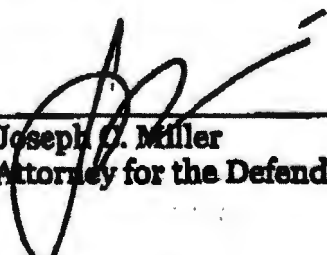
MOTION FOR DISQUALIFICATION
WITHOUT CAUSE

TO: MAGISTRATE JUDGE DAVID EPIS and ELMORE COUNTY PROSECUTORS

COMES NOW the Defendant, DANIEL L. WIDNER, by and through counsel, and respectfully moves the court for an order pursuant to Idaho Criminal Rule 25(a)(1) disqualifying Magistrate Judge David Epis and for the appointment of a new magistrate judge to the case. This motion is made without cause and is not intended to obstruct, hinder or delay the administration of justice in this matter.

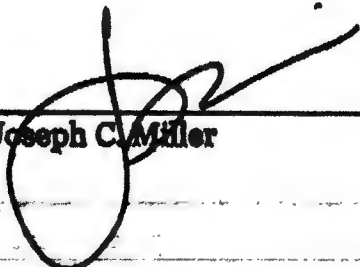
DATED this 8th day of February, 2011.

MILLER LAW, P.C.


Joseph C. Miller
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2011, I faxed a true and accurate copy of this document to the office of the Elmore County Prosecutor at 587-2147.



Joseph C. Miller

FILED 18

2011 FEB -9 PM 1:37

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
e-mail: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,)

Plaintiff,)

vs.)

DANIEL L. WIDNER,)

Defendant.)

Case No. CR-2011-00494

**ORDER FOR DISQUALIFICATION
WITHOUT CAUSE**

The above-entitled matter having come before the court on Defendant's motion, and good cause appearing to grant the motion, therefore,

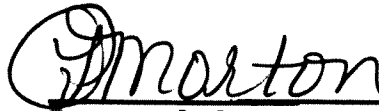
IT IS HEREBY ORDERED that the Honorable Magistrate Judge David Epis is disqualified from presiding over the above-entitled case without cause, pursuant to Idaho Criminal Rule 25(a)(1), and the case will be reassigned to another magistrate judge for preliminary proceedings in the matter.

DATED this 9th day of February, 2011.

David Epis
Magistrate Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 9 day of February, 2011, I faxed true and accurate copies of the foregoing document to the office of the Elmore County Prosecutor at 587-2147 and to defense counsel Joseph C. Miller at 287-8788.



Deputy Clerk

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

FILED 19

2011 FEB 10 AM 8:43
Musta
BARBARA STEELE
CLERK OF THE COURT
DEPUTY

State of Idaho)

vs.)

Daniel L Widner)

Case No: CR-2011-0000494

ASSIGNMENT NOTICE

TO: All Parties appearing herein:

Please take notice that the above-entitled case has been assigned to the Honorable George G. Hicks for all further proceedings herein.

DATED: February 10th, 2011

Barbara Steele
Clerk of the District Court

By: *Musta*
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that the foregoing is a true and correct copy of this Notice of Assignment entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on February 10th, 2011.

ELMORE COUNTY PROSECUTING ATTY
190 SOUTH 4TH EAST
MOUNTAIN HOME ID 83647

_____ Mailed Hand Delivered

JOSEPH C. MILLER
3023 E. COPPER POINT DR. STE 104
MERIDIAN ID 83642

Mailed _____ Hand Delivered

DATED: February 10th, 2011

Barbara Steele
Clerk Of The District Court

By: *Musta*
Deputy Clerk

02:36:30 p.m.

02-09-2011

FILED 20

2011 FEB 10 AM 10:40

Fourth Judicial District Court, State of Idaho
In and For the County of Elmore

BARBARA STEELE
CLERK OF THE COURT
DEPUTY
Barbara Steele

STATE OF IDAHO,
Plaintiff,

vs.

Daniel L. Widner,
Defendant,

Case No: CR-2011-0000494

WAIVER OF SPEEDY
PRELIMINARY EXAMINATION

I, Daniel L. Widner, hereby waive my right to a preliminary hearing within 14 days of my initial appearance, if I am in custody, or within 21 days if I am not in custody. By signing this document I am not waiving my right to the actual preliminary hearing or any other rights that I am entitled to under the United States Constitution or the Idaho Constitution.

DATED This 9 day of February, 2011, at 10 o'clock P.m.

D. Widner
Defendant

WITNESSED:

Magistrate

Witness

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2011, I faxed a true and accurate copy of this document to the office of the Elmore County Prosecutor at 587-2147.



Joseph C. Miller

26

FILED

2011 MAR -1 PM 1:44

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
e-mail: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE.**

STATE OF IDAHO,

Plaintiff,

vs.

DANIEL L. WIDNER,

Defendant.

Case No. CR-2011-00494

**ORDER TO CONTINUE
PRELIMINARY HEARING**

A MOTION WITH GOOD CAUSE having been filed in this matter, the parties having stipulated to the continuance of the preliminary hearing in this matter, therefore

IT IS HEREBY ORDERED that the preliminary hearing heretofore scheduled for Friday, February 11, 2011, at 2:00 p.m. be continued and reset for the 25TH day of ~~February~~ ^{MARCH}, 2011 at 2:00 a.m. ~~(p.m.)~~ in Elmore County Magistrate Court in order to allow Defendant's new counsel additional time to review the evidence and prepare for the hearing.

DATED this 15TH day of February, 2011.

George Hicks
Magistrate Judge

ORIGINAL

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2011, I faxed true and accurate copies of this document to Lee Fisher, Elmore County Deputy Prosecutor, at 587-2147 and to Joseph C. Miller, attorney for Defendant, at 287-8788.

BARBARA STEELE



Deputy Clerk

ELMORE COUNTY

Hand Delivered 3-1-11 Kg

JOSEPH MILLER

U.S. Mail 3-1-11 Kg

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED

2011 MAR 25 PM 1:59

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

THE STATE OF IDAHO,

Plaintiff,

vs.

DANIEL LEE WIDNER,

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

Case No. CR-2011-0000494

AMENDED COMPLAINT - CRIMINAL

PERSONALLY APPEARED Before me this 25th day of March 2011, Lee Fisher,
Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho, who, being first duly sworn,
complains and says: DANIEL LEE WIDNER, on or about the 30th day of January 2011, in the County
of Elmore, State of Idaho, then and there being, did then and there commit the crimes of TRAFFICKING
IN MARIJUANA, Count I, a felony, and CONCEALING A DANGEROUS WEAPON WHILE IN
A MOTOR VEHICLE, Count II, a misdemeanor, said crimes being committed as follows, to-wit:

ORIGINAL

COUNT I
TRAFFICKING IN MARIJUANA
Felony, I.C. § 37-2732B(a)(1)(A) and (D)

That the Defendant, Daniel Lee Widner, on or about the 30th day of January 2011, in the County of Elmore, State of Idaho, was knowingly in actual and/or constructive possession of more than one pound but less than five pounds of marijuana, a Schedule I controlled substance, all in violation of I.C. § 37-2732B(a)(1)(A) and (D).

COUNT II
CONCEALING A DANGEROUS WEAPON WHILE IN A MOTOR VEHICLE
Misdemeanor, I.C. § 18-3302(9) and (14)


That the Defendant, DANIEL LEE WIDNER, on or about the 30th day of January 2011, in the County of Elmore, State of Idaho, did carry a concealed weapon, to-wit: a Ruger pistol, in his immediate vicinity and/or while in a motor vehicle inside the limits of the city of Mountain Home, Idaho, without obtaining a license to carry a concealed weapon, all in violation of I.C. § 18-3302(9) and (14).

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

Said Complainant therefore prays that the Defendant, DANIEL LEE WIDNER, be brought before the Court to be dealt with according to law.

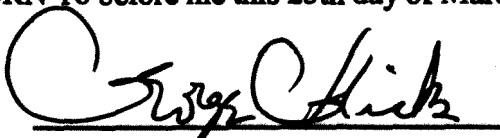
DATED This 25th day of March 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 

Lee Fisher, Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN To before me this 25th day of March 2011.



JUDGE PRESIDING

COURT MINUTES

CR-2011-0000493

CR-2011-0000494

State of Idaho vs. Alex Eamonn Stewart

State of Idaho vs. Daniel L. Widner

Hearing type: Preliminary

Hearing date: 3/25/2011

Time: 2:12 pm

Judge: George G. Hicks

Courtroom: A

Minutes Clerk: VICKY

Defense Attorney: Joseph Miller

Prosecutor: Elmore Prosecuting Atty

2:12 PM 1. CASE CALLED

PARTIES PRESENT

TIME SET FOR PRELIMINARY HEARING

3 & 4. READY TO PROCEED

1. ANY PRELIMINARY MATTERS

3 & 4. NO PRELIMINARY MATTERS

4. WAIVES FORMAL READING OF AMNEDED COMPLAINT ON
CR-2011-494

3. CALLS OFFICER MELANESE

2:15 PM D3. RYAN MELANESE-SWORN

WITNESS IDENTIFIES DEFENDANTS

2:32 PM X4. RYAN MELANESE

2:50 PM RD3. RYAN MELANESE

2:51 PM RX4. RYAN MELANESE

2:52 PM RRD3. RYAN MELANESE

4. NO FURTHER QUESTIONS

2:52 PM 1. WITNESS MAY STEP DOWN

3. CALLS DETECTIVE GRIGGS

2:53 PM D3. RUSSELL GRIGGS-SWORN

3:01 PM STATE'S EXHIBITS #1 AND #2 MARKED, OFFERED

3:03 PM 3. MOVES TO ADMIT STATE'S EXHIBIT #1 AND #2

3:03 PM 4. QUESTION IN AID OF OBJECTION

NO OBJECTION

3:05 PM 1. STATE'S EXHIBITS #1 AND #2 ADMITTED

3. NO FURTHER QUESTIONS

3:05 PM 4. WITNESS MAY STEP DOWN

3:06 PM 1. RECESS TO TAKE UP OTHER MATTERS

3:27 PM BACK ON RECORD

3. REQUESTS COURT TAKE JUDICIAL NOTICE THAT 453.59237 GRAMS
EQUALS 1 POUND

3:28 PM 1. JUDICIAL NOTICE TAKEN

3. CALLS DETECTIVE JESSUP

3:28 PM D3. CHRISTOPHER JESSUP-SWORN

3:31 PM WITNESS IDENTIFIES ALEX STEWART

3:32 PM WITNESS IDENTIFIES DANIEL WIDNER

3:34 PM STATE'S EXHIBIT #3 MARKED OFFERED
MOVES TO ADMIT STATE'S EXHIBIT #3
4. NO OBJECTION

3:35 PM 1. STATE'S EXHIBIT #3 ADMITTED

3:35 PM D3. CHRISTOPHER JESSUP CONT.

3:42 PM STATE'S EXHIBITS #4 AND #5 MARKED, OFFERED

3:48 PM MOVES TO ADMIT STATE'S EXHIBITS #4 AND #5
4. NO OBJECTION

3:48 PM 1. STATE'S EXHIBITS #4 AND #5 ADMITTED
3. STATE'S EXHIBITS #6 AND #7 MARKED, OFFERED

3:49 PM D3. CHRISTOPHER JESSUP CONT.
MOVES TO ADMIT STATE'S EXHIBITS #6 AND #7
4. NO OBJECTION

3:52 PM 1. STATE'S EXHIBITS #6 AND #7 ADMITTED
D3. CHRISTOPHER JESSUP CONT

3:52 PM X4. CHRISTOPHER JESSUP

3:58 PM 3. NO FURTHER QUESTIONS

3:58 PM 1. WITNESS MAY STEP DOWN
3. RESTS
4. NO EVIDENCE

3:59 PM 3. CLOSING ARGUMENT

4:00 PM 4. WAIVES CLOSING ARGUMENT

4:00 OM 1. FINDS PROBABLE CAUSE IN CR-2011-494
FINDS PROBABLE CAUSE IN CR-2011-493
DEFENDANTS BOUND OVER TO THE DISTRICT COURT

ARRAIGNMENT SET FOR

APRIL 18, 2011 @ 9:00 AM

MR. FISHER TO PREPARE ORDERS

DEFENDANTS TO REMAIN FREE ON BOND AS PREVIOUSLY SET

4:04 PM

0032

* Clerk's Note: Exhibits Filed In CR-2011-493

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED

2011 MAR 29 AM 11:58

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
DANIEL LEE WIDNER,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)

Case No. CR-2011-0000494

**ORDER HOLDING DEFENDANT
TO ANSWER**

ON THE 25th day of March 2011, at the hour of 2:00 p.m., the Defendant appeared before the undersigned Magistrate with Joseph C. Miller, Attorney at Law, his attorney of record, this being the time and place set for the preliminary examination herein. The State of Idaho was represented by Lee Fisher, Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho. The Defendant waived the reading of the Complaint on file herein. The Defendant was advised of the right to a preliminary examination, the nature of which was explained to the Defendant. The Defendant thereupon had his preliminary examination.

The Court, being fully advised in the premises, finds that the felony crime of: **TRAFFICKING IN MARIJUANA**, a felony, Count I, as set forth in the Information on file herein, has been committed in Elmore County, State of Idaho, and that there is sufficient cause to believe that the Defendant committed said crime.

ORIGINAL

IT IS THEREFORE ORDERED That the Defendant be and hereby is held to answer to the charges as set forth in the Information on file herein, before a District Judge in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore.

IT IS FURTHER ORDERED That Defendant's bond remain as previously set.

DATED This 27th day of March 2011.


GEORGE O. HICKS, Magistrate Judge

CERTIFICATE OF MAILING

I certify that I mailed a full and true copy of the foregoing
securely sealed in an envelope with postage prepaid, to:

to you on the

Deputy Clerk of the District Court

CERTIFICATE

I certify that I placed a full and true copy of the foregoing in
the packet to:

ORDER HOLDING DEFENDANT TO ANSWER - Page 2

on the day of

Deputy Clerk of the District Court

FILED

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

2011 MAR 29 AM 11:58
BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
DANIEL LEE WIDNER,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)

Case No. CR-2011-0000494

INFORMATION

Lee Fisher, Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho, who, in the name of and by the authority of said State, prosecutes in its behalf, in proper person, comes now before the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore, and gives the Court to understand and be informed that the Defendant is accused by this information of the crimes of: TRAFFICKING IN MARIJUANA, a felony, Count I, and CONCEALING A DANGEROUS WEAPON WHILE IN A MOTOR VEHICLE, a misdemeanor, Count II, upon which felony charge the said Defendant, having duly appeared before a Magistrate on the 25th day of March 2011, and then and there having had his preliminary examination upon said felony charge, was, by said

ORIGINAL

Magistrate, thereupon held to answer before the District Judge of the Fourth Judicial District of the State

of Idaho, in and for the County of Elmore, to said charges, which crimes were committed as follows:

COUNT I
TRAFFICKING IN MARIJUANA
Felony, I.C. § 37-2732B(a)(1)(A) and (D)

That the Defendant, Daniel Lee Widner, on or about the 30th day of January 2011, in the County of Elmore, State of Idaho, was knowingly in actual and/or constructive possession of more than one pound but less than five pounds of marijuana, a Schedule I controlled substance, all in violation of I.C. § 37-2732B(a)(1)(A) and (D).

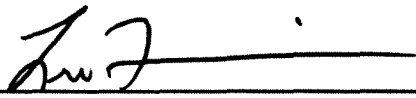
COUNT II
CONCEALING A DANGEROUS WEAPON WHILE IN A MOTOR VEHICLE
Misdemeanor, I.C. § 18-3302(9) and (14)

That the Defendant, DANIEL LEE WIDNER, on or about the 30th day of January 2011, in the County of Elmore, State of Idaho, did carry a concealed weapon, to-wit: a Ruger pistol, in his immediate vicinity and/or while in a motor vehicle inside the limits of the city of Mountain Home, Idaho, without obtaining a license to carry a concealed weapon, all in violation of I.C. § 18-3302(9) and (14).

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

DATED This 28th day of March 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 
Lee Fisher, Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

certify that I have mailed a true and correct copy of the foregoing to the following address: _____

INFORMATION - Page 2

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

HONORABLE RICHARD GREENWOOD

APRIL 18, 2011

COURT MINUTES

THE STATE OF IDAHO,)
)
Plaintiff,) Case No. CR-2011-494
)
vs.) Traff. In Marij. (F)
) Conceal a weapon in a veh (MD)
DANIEL LEE WIDNER,)
)
Defendant.)

APPEARANCES:

Lee Fisher
Deputy Prosecuting Attorney Counsel for State

Joseph Miller
Attorney at Law Counsel for Defendant

CD No. MAIN COURTROOM - NO CD

9:23 a.m. Call of case.

Time and date set for INITIAL ARRAIGNMENT, defendant present, bond posted.

Information and papers filed.

The Court informed the defendant of the charge(s) filed against him being a felony and of the possible penalties which could be imposed.

The Court advised the defendant of his right to counsel at public expense in all the proceedings in this Court.

The Court advised the defendant of his right to appeal from any Judgment entered, to be represented by counsel in said appeal and payment of costs incurred in said appeal at public expense and of the appeal time being forty-two (42) days.

True copy of the Information furnished to the defendant and counsel.

True name of defendant, DANIEL LEE WIDNER.

Formal reading of the Information waived by defendant.

The Court advised the defendant of the different pleas he could enter to the charge(s) set forth in the Information and of the statutory time, not less than one (1) day, he would be entitled to before entering his plea.

Defendant advised that he understood his rights, the charge(s) and the possible penalties that could be imposed.

In answer to the Court, defendant entered a plea of "NOT GUILTY".

Counsel advised that 2 days would be needed for trial.

There being no objection by defendant, the Court set this case for trial before the Court and a JURY TRIAL at 9:00 o'clock a.m. on August 3, 2011; PRETRIAL CONFERENCE set for July 8, 2011 at 9:00 a.m.

Defendant remained out on bond.

9:25 a.m. End.

BARBARA STEELE
Clerk of the District Court

Reporter: F. Morris
Clerk: H. Furst
Reporter's Est. 4 pages

By H. Furst
Deputy Clerk

FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO PH 3:47

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

EMORE A STEELE
CLERK OF THE COURT
DEPUTY
AS

STATE OF IDAHO,
Plaintiff,

Case No. CR-2011-494

v.

SCHEDULING ORDER

DANIEL LEE WIDNER,
Defendant.

This matter came before the court on April 18, 2011 at 9:23 a.m. for an Arraignment of the above named Defendant. The attorneys present were:

For the State: Lee Fisher

For the Defendant: Joseph Miller

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The two (2) day jury trial of this action shall commence before this court on **August 3, 2011 at 9:00 a.m.**
- 2) Notice is hereby given, that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Phillip M. Becker
 Hon. G.D. Carey
 Hon. Dennis Goff
 Hon. George R. Reinhart, III
 Hon. Nathan Higer
 Hon. Daniel C. Hurlbutt, Jr.
 Hon. Linda Copple-Trout

Hon. James Judd
 Hon. Duff McKee
 Hon. Daniel Meehl
 Hon. Barry Wood
 Hon. W. H. Woodland
 Hon. Ronald Schilling
 Hon. Kathryn A. Sticklen
 Any Fourth District Judge

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later

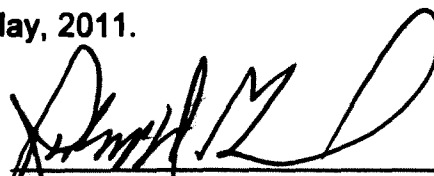
than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **July 8, 2011 at 9:00 a.m.** for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). A courtesy copy of exhibit and witness lists shall also be submitted to the Court via email at rgreenwood@adaweb.net and hfurst@elmorecounty.org.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at rgreenwood@adaweb.net and hfurst@elmorecounty.org. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 4th day of May, 2011.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of May, 2011 I mailed (served) a

true and correct copy of the within instrument to:

**ELMORE COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL**

**ELMORE COUNTY JURY CLERK
HAND DELIVERY**

**JOSEPH MILLER
MILLER LAW, P.C.
3023 E. COPPER POINT DRIVE, SUITE 104
MERIDIAN, ID 83642**

**BARBARA STEELE
Clerk of the District Court**

By 
Deputy Court Clerk

EXHIBIT LIST

Richard D. Greenwood, DISTRICT JUDGE
Heather Furst, DEPUTY CLERK
Fran Morris, COURT REPORTER

CASE NO. CR-2011-494

DATE: August 3, 2011

CASE: STATE OF IDAHO VS.
State's List _____

Daniel Lee Widner
Defendant (s) List _____

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

Exhibit 1

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
email: joe@idahojustice.com
ISBN: 7485

FILED

2011 JUN -7 AM 10:32

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *NS*

Counsel for the Defendant

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2011-00494
)	
vs.	)	MOTION <i>IN LIMINE</i>
)	
DANIEL L. WIDNER,)	
)	
Defendant.)	

TO: DISTRICT JUDGE RICHARD D. GREENWOOD

COMES NOW the Defendant, DANIEL L. WIDNER, by and through counsel, and moves this court pursuant to I.R.E. 104(a) and I.C.R. 12(b) for an order *in limine* excluding all evidence obtained in this matter incident to Defendant's arrest for trafficking in marijuana in violation of Idaho Code § 37-2732B(a)(1)(A) and (D).

This motion is based upon the entire record in this matter and such further documentary and testimonial evidence as may be presented at the hearing, and is supported by Defendant's BRIEF IN SUPPORT OF MOTION *IN LIMINE*, a copy of which is filed herewith.

Oral argument on the motion is requested.

DATED this 2nd day of June, 2011.

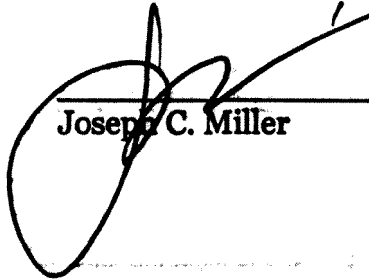
MILLER LAW, P.C.



Joseph C. Miller
Counsel for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2011, I faxed a true and accurate copy of this document to the office of the Elmore County Prosecuting Attorney at (208) 587-2147.



Joseph C. Miller

FILED

2011 JUN -7 AM 10:32

BARBARA STEELE
CLERK OF THE COURT
DEPUTY 15

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
email: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL L. WIDNER,)
)
 Defendant.)

Case No. CR-2011-00494

**BRIEF IN SUPPORT OF
MOTION *IN LIMINE***

TO: DISTRICT JUDGE RICHARD D. GREENWOOD

COMES NOW the Defendant, DANIEL L. WIDNER, by and through counsel, and submits this brief in support of his motion *in limine* in the above-referenced case.

I.

FACTS AND BACKGROUND

On January 30, 2011, Mountain Home Police Officer Ryan Melanese was running stationary radar in the 1100 block of Highway 30 in Mountain Home, Idaho, when he allegedly saw Defendant's vehicle traveling slightly below the speed limit. *Exhibit A, Mountain Home Police Department Incident Report No. 11000252, Reported by Officer Ryan Melanese, 1 (January 31, 2011).* Officer Melanese said he then followed Defendant's vehicle east on

Highway 30 and he claims that Defendant failed to signal where the roadway split from one lane into two lanes. *Id.* Officer Melanese continued to follow Defendant's vehicle to the intersection at N. 2nd West and W 5th North, and claims that Defendant failed to signal as he turned right. *Id.* Officer Melanese pulled Defendant over for the alleged failures to signal. *Id.*

Officer Melanese said that he then approached Defendant's vehicle, and explained to Defendant his reasons for making the stop. *Id.* Defendant admitted that he did not signal because he did not believe he was required to signal. *Id.* at 1-2. Upon making contact with Defendant, Officer Melanese claimed he smelled an odor of marijuana emanating from the car. *Id.* at 2. Officer Melanese asked Defendant if there were any weapons or drugs inside the vehicle, to which Defendant replied that there were not. *Id.* Detective Chris Jessup then arrived on the scene. *Id.* Officer Melanese then instructed Defendant to exit the vehicle and Defendant obeyed. *Id.*

After exiting the vehicle, Defendant began to shake due to the cold weather conditions. *Id.* at 3. Officer Melanese claims he asked Defendant if he would like a coat from inside the vehicle, and Defendant replied that he would if he could be allowed to get it for himself. *Id.* When interrogated as to why he wanted to get the coat himself, Defendant allegedly admitted that there was a baggy of marijuana inside the coat pocket. *Exhibit B, Affidavit of Probable Cause for Arrest*, 1 (January 31, 2011). Following that questioning and Defendant's alleged admission, Officer Melanese claims that Defendant was handcuffed and placed inside Officer Melanese's patrol car and advised of his Miranda rights. *Exhibit A, Report No. 11000252*, Melanese at 3, 5. A K-9 unit then searched the car Defendant had been driving and allegedly alerted officers to the presence of marijuana in the vehicle. *Id.* at 4. Officers found two boxes containing marijuana inside the car. *Id.* Defendant was charged with felony drug trafficking. *Id.* at 5.

II.

ARGUMENTS AND ANALYSIS

A.

All evidence obtained by the Mountain Home Police Department officers must be suppressed due to the invalidity of the traffic stop which led to the search of Defendant's vehicle and Defendant's arrest.

1. Officer Melanese had no reason to follow Defendant's vehicle.

Idaho Code § 49-655 states "No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law." Another section of the code, I.C. § 49-624 states "The driver of a motor vehicle, upon approaching a stationary police vehicle ... shall ... immediately reduce the speed of his vehicle below the posted speed limit, and maintain a safe speed for the road, weather and traffic conditions until completely past the stationary police vehicle or authorized emergency vehicle."

When Officer Ryan Melanese first saw Defendant's vehicle, he estimated it was travelling at 27 miles per hour in a posted 35 miles per hour zone. *Exhibit A, Report No. 11000252, Melanese at 1.* When Officer Melanese used radar to determine the exact speed of the Defendant's vehicle, it showed that the vehicle was travelling at 28 and 29 miles per hour. *Id.* Officer Melanese states in his report that "[t]here were no other vehicles on the roadway" at that time. *Id.*

Defendant's vehicle was clearly not impeding traffic by travelling 6 or 7 miles per hour below the posted speed limit, because as Officer Melanese clearly stated, there were no other vehicles on the road. Defendant was not in violation of the requirements of I.C. § 49-655. In fact, I.C. § 49-655 makes a specific exception allowing reduced speed when it is necessary for "compliance with the law." By driving at a slower rate of speed as he approached where Officer Melanese was parked, Defendant was complying with the law as stated in I.C. § 49-624 which requires drivers approaching stationary police vehicles to drive "below the posted speed limit."

Officer Melanese had no reason to follow Defendant's vehicle on January 30, 2011. When Officer Melanese initially saw Defendant's vehicle, it was travelling slightly below the posted speed limit, which it was required by law to do as it approached Officer Melanese's "stationary police vehicle." Driving below the speed limit is not illegal where it is not impeding traffic, and there was no other traffic on the road, so Defendant's slower driving was clearly not impeding traffic in any way. Officer Melanese could not have had probable cause, nor even a reasonable suspicion, that would give him justification for following Defendant, because Defendant had done nothing wrong.

2. Defendant did not fail to signal at the lane split as no such signal is required.

Idaho Code § 49-808(1) states "No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the

movement can be made with reasonable safety nor without giving an appropriate signal." In a recent Idaho Court of Appeals case, *Burton v. State of Idaho*, the Court found this statute unconstitutionally vague in certain circumstances. 240 P.3d 933, 149 Idaho 746 (Idaho App. 2010).

In *Burton*, Britt Colleen Burton was stopped by an officer for failure to signal when two lanes merged into one lane. *Id.* at 934. It was unclear whether one lane ended at the point of merger or whether both lanes simply joined to become one. *Id.* at 936. Burton argued that I.C. § 49-808(1) was unconstitutionally vague as applied to her. *Id.* at 934-935. The Court reasoned that "when there is no basis to discern that one lane is terminating and the other surviving, but rather the two blend into a single lane, it is not clear that the continued forward movement of a vehicle from either of the two lanes into the emerging lane constitutes a 'move ... right or left' that is subject to the Section 49-808(1) signal requirement." *Id.* at 936. The Court continued on to say that "[t]his vagueness in application occurs because the statute does not specify how much or what type of movement to the left or right is necessary to trigger the duty to signal." *Id.* The Court then concluded that "[i]t is simply not apparent from the language of Section 49-808(1) whether a signal is required when two lanes blend into one. Persons of ordinary intelligence can only guess at the statute's directive in this circumstance. Therefore, the statute is unconstitutionally vague as applied to Burton's conduct."

The present case is very similar to *Burton*. Here, Officer Melanese claims that he followed Defendant's vehicle east on Highway 30 to a portion of the roadway where the single eastbound lane splits into two eastbound lanes. *Exhibit A, Report No. 11000252*, Melanese at 1. Officer Melanese claims, and Defendant admits, that Defendant did not signal at the lane split, but proceeded into the new right hand lane. *Id.* at 1-2.

Independent investigation of this particular roadway has shown that in the 296.3 feet of roadway from the 35 miles per hour speed limit sign to the start of the broken white line indicating the lane split, the single lane increases in width from 14 feet wide to 23 feet wide. *Exhibit C, Map of Highway 30 in Mountain Home, Idaho*. As the lane width previous to the lane expansion and split had been 11 feet, it is clear that the Defendant had ample room to maneuver his vehicle into what would become the right lane following the lane split without crossing any road marking lines. *Id.* Defendant did not change lanes, he simply chose to enter the new right-hand lane at the lane split. Defendant did not have to turn in order to proceed in the right lane.

Similar reasoning to that in the *Burton* case can be applied to a situation in which one lane becomes two lanes without any clear indication of whether one lane is continuing with the addition of a new lane, or whether the single lane is simply splitting into two lanes. In the present case, Defendant likely had to make a slight movement to the right in order to continue in the right lane through the lane split, but as the Court stated in the case above, "vagueness in application occurs because **the statute does not specify how much or what type of movement to the left or right is necessary to trigger the duty to signal.**" *Burton* at 936, emphasis added.

Additionally, in *Burton*, the Court said that "the statute [meaning I.C. § 49-808(1)] cannot reasonably be given an utterly literal application to *every* type of side-to-side movement, for a vehicle literally moves to the left or the right when a driver weaves a bit within his or her lane or simply negotiates a bend in the road, but no one would contend that a signal is required in those instances." *Id.*, italicized emphasis in original, bold emphasis added.

Because the statute is "unconstitutionally vague as applied" in circumstances such as *Burton's* and the Defendant's, it does not give an officer a valid reason to stop someone who does not signal at a lane split. Therefore, Officer Melanese's justification for stopping Defendant for failure to signal at the lane split is invalid.

3. Defendant did not fail to signal at the t-intersection as no signal was required.

As cited above, I.C. § 49-808(1) states "No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal." However, as explained above, the Idaho Court of Appeals in *Burton* found that statute unconstitutionally vague in certain circumstances. *Burton* at 936.

After the lane split on the highway, Officer Melanese continued to follow Defendant as Defendant made a legal right turn with a signal from the highway (now N. Main Street) on to E. 5th North Street. *Exhibit A, Report No. 11000252*, Melanese at 1. Officer Melanese then followed Defendant through the turn and to the intersection of N. 2nd West with W. 5th North. *Id.* Independent investigation shows that E. 5th North Street becomes W. 5th North Street at its intersection with N. 2nd West Street. *Exhibit D, Map of Intersection of E./W. 5th North Street and N. 2nd West Street, Mountain Home, Idaho.* Officer Melanese claims that at the

intersection of E. 5th North/W. 5th North with N. 2nd West Street, Defendant made a right turn without signaling. *Exhibit A, Report No. 11000252*, Melanese at 1. However, in the direction that Defendant was travelling, it would have been impossible for him to have made a right turn because there was no street to the right. *Exhibit D, Map of Intersection*. In reality, Defendant was merely continuing on the throughway of the t-intersection. The throughway does curve to the right immediately after the intersection, but Defendant did not make a turn on to any other street. He simply continued on E. 5th North/W. 5th North, the curving throughway.

Drivers are not required to signal at every curve in the road. *Burton* at 936. Defendant was under no obligation to signal as he was continuing on the top horizontal line of the "T" in the t-intersection. The fact that the top line of the "T" curved after the intersection does not create a new obligation for Defendant to signal. Again, it is possible that Officer Melanese interpreted Defendant's continuation through the curve on W. 5th North as "mov[ing] a vehicle right or left upon a highway... without giving an appropriate signal" in violation of I.C. § 49-808(1). However, as discussed above, the Idaho Court of Appeals has found I.C. § 49-808(1) to be unconstitutionally vague in these types of circumstances. *Burton* at 936. More specifically, in *Burton*, the Court said that "the statute [meaning I.C. § 49-808(1)] cannot reasonably be given an utterly literal application to every type of side-to-side movement, for a vehicle literally moves to the left or the right when a driver weaves a bit within his or her lane or simply negotiates a bend in the road, but no one would contend that a signal is required in those instances." *Id.*, italicized emphasis in original, bold emphasis added.

Defendant was "simply negotiat[ing] a bend in the road" as he proceeded on the throughway of the intersection of E. 5th North/W. 5th North and N. 2nd West. As such, he was not required to signal. Therefore, Officer Melanese had no valid justification for stopping Defendant for the alleged failure to signal at the intersection of E. 5th North/W. 5th North and N. 2nd West.

It is clear when the events leading up to Officer Melanese's stop of Defendant on January 30, 2011 are considered as a whole that Officer Melanese was acting in error in both following and stopping Defendant. Officer Melanese had no reason to follow Defendant in the first place, because it is not a violation of any law to travel slightly below the speed limit when doing so does not impede traffic or when approaching a stationary police vehicle. As Defendant was not required by a valid law to signal either at the lane split or at the t-intersection, he had committed no infraction which would justify Officer Melanese's stop.

Because the stop was unjustified, any evidence obtained incident to it is also invalid and should be suppressed.

B.

Defendant's admission that there was marijuana in his jacket pocket must be suppressed because at the time of the admission he had been detained but had not been advised of his Miranda right to remain silent.

In the benchmark case *Miranda v. Arizona*, the United States Supreme Court said, [W]e hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But **unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.**

384 U.S. 436, 478-479, 86 S.Ct. 1602, 1630 (1966), emphasis added.

According to the Supreme Court of Idaho,

[o]nce a suspect has been taken into custody (i. e., once the police have in any way **detained him**), he must be warned of his rights; but that is not all. If the suspect is questioned while no lawyer is present to represent him, then the state must affirmatively show that the suspect made a knowing and affirmative waiver of his rights. Correct warnings and positive waiver-these are absolute prerequisites to the admissibility of any statement made by a suspect during interrogation without the presence of a lawyer.

State of Idaho v. Ross, 449 P.2d 369, 371; 92 Idaho 709, 711 (Idaho 1968), emphasis added.

When asked to determine what constituted a defendant being in "custody" for purposes of Miranda warnings, the Idaho Court of Appeals has considered factors such as whether there was an "unusual police effort used to stop and detain" the defendant, whether the questioning officer's inquiries were "reasonably related in scope to the justification for the stop," whether the detention lasted "longer than ... necessary to effectuate the purpose of the stop," and

whether "the investigative methods employed [were] the least intrusive means reasonably available." *State of Idaho v. Myers*, 798 P.2d 453, 457, 118 Idaho 608, 612 (Idaho App. 1990). In that case, a police officer recognized a motorcyclist, Gary Myers, as someone who had had methamphetamine in his possession on prior occasions, so the officer followed Myers and pulled him over when he failed to signal before making a turn. *Id.* at 454. Additional police officers responded to the stop, and the officers questioned him as to whether he was carrying drugs or drug paraphernalia. *Id.* Myers admitted to having a syringe in his boot, so he was arrested and the officers searched his motorcycle and discovered a container of meth. *Id.* The Court of Appeals overturned the district court's denial of Myers' motion to suppress evidence because his statements "were the product of ... illegal detention." *Id.* at 458.

When the factors for finding that a defendant was "in custody" as discussed in *Myers* are considered in light of the facts in the present case, it is clear that Defendant was "in custody" long before he was advised of his rights. At least four police officers came to the place where Defendant had been pulled over by Officer Melanese. *Exhibit A, Report No. 11000252*, Melanese at 1-5. The response of at least four officers and a drug detecting K-9 unit to the scene seems to be quite an "unusual police effort used to stop and detain" Defendant for a very minor supposed traffic violation. *See Myers* at 457. If there was any question in Defendant's mind that he was "in custody" when originally stopped by Officer Melanese, the presence of such an overwhelming police presence would have removed all doubt. Additionally, the questions Defendant was repeatedly asked about whether there were drugs or weapons in the car, *id.* at 2-3, were not at all "related in scope to the justification for the stop" which Officer Melanese had explained to Defendant was Defendant's failure to signal. *See Myers* at 457. The stop and the ensuing questioning of Defendant and his passenger, as well as the search of the car, took much more time than was "necessary to effectuate the purpose of" a minor traffic stop and were certainly not the "least intrusive means reasonably available" to investigate, because when an investigation is entirely unjustified, no means of conducting it are reasonable or the least intrusive. *See id.*

As the Supreme Court of Idaho indicated in *Ross*, a person has been "taken into custody" when "the police have in any way detained him," and it is at that point that the detainee must be advised of his rights. *Ross* at 371. Officer Melanese, however, did not advise Defendant of his rights, but proceeded to ask him questions about whether there were any drugs or weapons inside the car. *Exhibit A, Report No. 11000252*, Melanese at 2. Later,

Officer Melanese asked Defendant to get out of the vehicle, which Defendant did, and then proceeded to question Defendant further. *Id.* at 2-3. As Defendant stood outside the car, Officer Melanese asked him if he had been smoking marijuana, if the passenger in the car had been smoking marijuana, whether there were any illegal substances in the vehicle, and why Defendant did not want one of the officers to retrieve his jacket from inside the vehicle. *Id.* All of those questions, as well as Defendant's admission that there was a baggy of marijuana in his coat pocket, took place before Defendant was advised of his Miranda rights. *See id.* at 2-6.

It is clear from Officer Melanese's own report that Defendant was repeatedly and extensively questioned about issues unrelated to the traffic stop before being advised of his Miranda rights, but after he had been detained by the police. *See id.* at 2-3. Defendant was in the "custody" of the police starting the moment he pulled over by Officer Melanese. As the Court of Appeals stated in *Meyers*, "[t]he only relevant inquiry is whether a reasonable man in [the defendant's] position would believe that he was deprived of his freedom of movement in a significant way." *Meyers* at 456, emphasis added. The Court of Appeals goes on to say that "statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will." *Id.* at 458, emphasis added. It was clear to Defendant at the time Officer Melanese stopped him, as it would have been to any reasonable person, that his "freedom of movement" had been entirely taken away as he was clearly not free to leave the scene at will. Because Defendant had been illegally detained, and his statements were a product of that illegal detention, those statements are inadmissible.

As the Supreme Court stated in *Ross*, "If the suspect is questioned while no lawyer is present to represent him, then the state must affirmatively show that the suspect made a knowing and affirmative waiver of his rights." *Ross* at 371. There has been no indication by the state that Defendant ever made a "knowing and affirmative waiver of his rights" before he was questioned by Officer Melanese or before admitting that there was marijuana in the pocket of his coat. Further, the state can provide no such evidence as no waiver ever occurred. The record does not include any indication that Defendant ever made an affirmative waiver of his right to an attorney at any time during the traffic stop or the questioning and search that followed. *See Exhibit A, Report No. 11000252, Melanese* at 1-6.

Not only did Officer Melanese fail to advise Defendant of his rights when he was initially

detained, he proceeded to question him outside the presence of an attorney without having received any indication from Defendant that Defendant was willing to waive his right to an attorney. *Id.* Officer Melanese failed to follow the appropriate process for questioning someone who has been taken into custody when he repeatedly asked Defendant questions after detaining him, but before advising him of his Miranda rights, and when he questioned Defendant outside the presence of a lawyer without having previously received an affirmative waiver from Defendant of his right to an attorney. Any evidence obtained as a result of this questioning or Defendant's admissions before being advised of his rights must be suppressed as illegally obtained.

C.

Defendant was subjected to an unreasonable warrantless search and seizure in violation of his Fourth Amendment rights. All evidence obtained as a result of the unreasonable search and seizure must be suppressed.

The Fourth Amendment to the Constitution of the United States of America states "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Idaho Court of Appeals has said, "The stop of a vehicle is a seizure of its occupants and is therefore subject to Fourth Amendment standards." *State of Idaho v. Aguirre*, 112 P.3d 848, 850, 141 Idaho 560, 562 (Idaho App. 2005). The Court of Appeals went on to explain that "[t]he question whether an investigative detention is reasonable requires a dual inquiry into (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* The Court of Appeals also stated that "[w]hen a person is detained, the scope of detention must be carefully tailored to its underlying justification." *Id.* at 851. As the Idaho Court of Appeals pointed out in *Aguirre*, "The United States Supreme Court has stated that an investigative detention 'must be temporary and last no longer than is necessary to effectuate the purpose of the stop.'" *Id.*, quoting *Florida v. Royer*, 460 U.S. 491, 500.

In the *Aguirre* case, a driver, Caytano Aguirre, was pulled over by an officer after being followed for a few miles for failing to make a complete stop before entering a roadway, a minor

traffic infraction. *Id.* at 849-850. After making the stop, "there was no effort made to further pursue the initial purpose of that stop." *Id.* at 852. The officer began questioning Aguirre about subjects completely unrelated to the conduct giving rise to the traffic stop, such as whether there was anything illegal in the vehicle. *Id.* at 851. Two officers in addition to the officer who initiated the traffic stop were present. *Id.* at 850. The officers had a drug dog go around the perimeter of the vehicle, and when the dog alerted, the officers allowed the dog inside the passenger compartment, and then the officers searched the passenger compartment. *Id.* The officers found a handgun in the vehicle, and Aguirre was arrested for illegal possession of a firearm. *Id.* When the district court ordered suppression of evidence, the state appealed. *Id.* at 849. The Court of Appeals upheld the district court's order. *Id.*

Similarly to the defendant in the *Aguirre* case, in the case at hand Defendant was pulled over for a minor traffic violation after being followed by an officer for some distance. *Exhibit A, Report No. 11000252*, Melanese at 1. Just as in *Aguirre*, several additional police officers were at the scene, even though their presence was not necessary for the minor traffic stop. *See id.* at 2-5. Also similar is the fact that shortly after stopping Defendant, Officer Melanese and the other officers at the scene made "no effort to further pursue the initial purpose of that stop," and shifted their questioning and search to an unrelated matter. *Id.* at 2-6. Just as both the district and appellate courts did in *Aguirre*, this Court must suppress the evidence obtained through the unreasonable search and seizure of Defendant.

"The stop of a vehicle is a seizure of its occupants and is therefore subject to Fourth Amendment standards," according to the Idaho Court of Appeals, *Aguirre* at 850, so when Defendant was stopped by Officer Melanese, that clearly constituted a seizure and raised the protection of the Fourth Amendment. At that point, the seizure and ensuing search became subject to the standard of reasonableness which "requires a dual inquiry in to (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* As discussed above, the officer's action was clearly not "justified at its inception" where Officer Melanese had no valid reason to stop Defendant in the first place because Defendant had committed no traffic violations. The search could not be reasonably related to a stop that was never justified to begin with. Additionally, "the scope of detention" was not at all "carefully tailored to its underlying justification," as required by the Court of Appeals in *Aguirre*. *Id.* at 851. The underlying justification for the stop, the supposed traffic violation, was discussed briefly at the

beginning of the stop, and then disregarded as the main focus of the interaction became Officer Melanese's suspicion that there were illegal drugs in the vehicle. *Exhibit A, Report No. 11000252*, Melanese at 2-6. All of the questions about drugs and weapons and the search of the vehicle by the drug detecting dog and the officers were not at all related to an alleged minor traffic violation.

Even if the point of inception at which the officers' actions needed to be justified was considered to be the point to be the point at which Officer Melanese began to suspect the presence of drugs in the car, the search and seizure would still not have been justified. Officer Melanese claimed that he smelled the scent of marijuana coming from the car when he stopped Defendant. *Exhibit A, Report No. 11000252*, Melanese at 2. Two other officers who came to the scene described the smell coming from the vehicle as that of "burnt marijuana." See *Exhibit E, Mountain Home Police Department Supplemental Incident Report No. 11000252*, Reported by Officer Chris Jessup, 1 (February 2, 2011), and *Exhibit F, Mountain Home Police Department Supplemental Incident Report No. 11000252*, Reported by Officer Russell Griggs, 1 (February 2, 2011). However, Officer Melanese did not claim to have seen any other evidence that marijuana had been smoked in the car of by Defendant or his passenger. There was no smoke seen coming from the car when the door was opened. There were no stubs of marijuana cigarettes in sight. Officer Melanese did not mention seeing any drug paraphernalia. Additionally, when Officer Melanese later checked Defendant's tongue for a green residue that would be indicative of having smoked marijuana, there was none. *Exhibit A, Report No. 11000252*, Melanese at 3. The smell of marijuana that Officer Melanese claims to have noticed when he first approached Defendant's vehicle could have come from any number of sources which would not be indicative of having marijuana in the car. As one example, Defendant or his passenger could have had the smell of marijuana on their clothes from having been somewhere where other people were smoking marijuana. Officer Melanese's suspicion that there were drugs in the vehicle was clearly not supported by any of his observations other than what he thought he smelled. The smell, without any other physical evidence, did not justify him in performing a search of the vehicle which was entirely unrelated to the original purpose of the stop.

Officer Melanese did not have probable cause to search Defendant's vehicle until Defendant admitted to having a baggy of marijuana in his jacket pocket. However, when Defendant made that statement, he had not yet been advised of his Miranda right to remain

silent, so the statement is unusable in establishing probable cause because it was obtained illegally. Also, Defendant did not give consent to have his person or his vehicle searched, and even if he had, his consent would have been invalid because he had not been advised of his rights.

When Officer Melanese suspected that there were illegal drugs in Defendant's vehicle, he should have obtained a warrant to search Defendant's vehicle. If he actually had probable cause to believe there were illegal drugs in the car, getting a warrant should have been easy to do. Defendant was in custody and not allowed to leave. There were no exigent circumstances justifying a warrantless search. By not seeking a warrant, Officer Melanese was disregarding the procedure set in place under the Fourth Amendment of the Constitution of the United States for the protection of people's rights.

When an officer detains an individual in violation of that individual's Fourth Amendment rights, the detention is illegal. The Idaho Court of Appeals makes clear in the *Meyers* case that

an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.

Meyers at 457-458. According to the Court in *Meyers*, a detention which does not meet the parameters above is an illegal detention, and "statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will." *Id.* at 458.

When Defendant was pulled over for a minor supposed traffic violation, the detention that followed was clearly illegal. Police held him for much longer than was necessary to effectuate the purposes of the traffic stop, questioned him about topics unrelated to the traffic stop, and employed incredibly intrusive means of investigation. *Exhibit A, Report No. 11000252, Melanese at 2-6.* The intrusive investigation included police forcing Defendant to stand outside on a cold night without allowing him to get his jacket out of the car, searching his person, removing his possessions from the car, running a drug dog around the perimeter of the car and inside of it, and interrogating him before he was advised of his rights and outside the presence of legal counsel. *Id.* The warrantless seizure that took place when Defendant was

pulled over, interrogated, and his person and vehicle were searched was clearly an illegal detention because it violated Defendant's Fourth Amendment right to be free from an unreasonable warrantless search and seizure.

The admissions Defendant made to the police were a direct result of this illegal detention. All of Defendant's statements about anything other than the supposed traffic violation were made while he was being illegally detained and as a direct result of the illegal detention. For example, Defendant never would have admitted to having marijuana in the pocket of his jacket if he had not been forced to stand out in the cold without the jacket while an officer interrogated him as to why Defendant wanted to get the jacket himself. *See Exhibit A, Report No. 11000252, Melanese at 2-3.* That admission was clearly a product of the illegal detention. None of Defendant's statements were "the result of an independent act of free will" which is the only way under *Meyers* that anything Defendant said during the illegal detention could be admissible. *Meyers at 458.* Defendant did not volunteer information that he was not required by the police to give. *See Exhibit A, Report No. 11000252, Melanese at 2-6.*

As the Idaho Court of Appeals said in *Meyers*, statements made by the defendant which were "the product of the illegal detention ... must be suppressed." *Meyers at 458.* All of Defendant's statements about the drugs were a product of illegal detention, and as such, they must be suppressed. All evidence obtained pursuant to Defendant's statements was also obtained illegally and must be suppressed.

III.

CONCLUSION

From the very beginning of the events leading to the arrest of Defendant by Officer Ryan Melanese, the police officers involved made one bad move after another. There was no justifiable reason for Officer Melanese to begin following Defendant's vehicle. Defendant did not commit any traffic violations that would have given Officer Melanese cause to conduct a traffic stop, yet Officer Melanese stopped him, entirely without justification. Then, after Defendant had clearly been detained, he was questioned before being advised of his Miranda rights and outside the presence of lawyer even though Defendant had not made an affirmative waiver of his right to counsel. Defendant's constitutional right to be free from unreasonable search and seizure was violated as he was detained and his person and vehicle were searched when officers did not have a search warrant and did not have probable cause to believe that a

crime was being committed. Any and all evidence obtained due to the unjustified traffic stop, the questioning in violation of Defendant's right to remain silent, and the unreasonable search and seizure must be suppressed.

DATED this 10th day of June, 2011.

MILLER LAW, P.C.



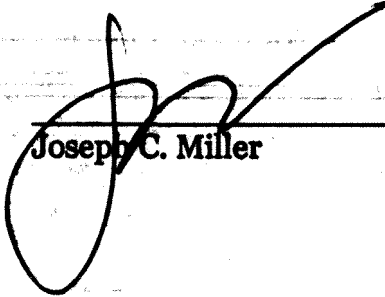
Joseph C. Miller
Counsel for the Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2011., I served true and correct copies of the foregoing document by delivering the same to the following persons, by the method indicated below, pursuant to I.R.C.P.5(f):

Elmore County Prosecutor
190 South 4th East
Mountain Home, ID 83647
Fax: 208-587-2147

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile



Joseph C. Miller

Exhibit A

**Mountain Home
Police Department
INCIDENT REPORT**

11000252

REPORT NUMBER

REPORTED BY 047 MELANESE, RYAN

REPORT FILED 01/31/2011

SYNOPSIS

STEWART, ALEX EAMONN ARREST NO. 2437
DRUG TRAFFICKING (AIDING)

WIDNER, DANIEL LEE ARREST NO. 02438
DRUG TRAFFICKING
POSSESSION OF MARIJUANA

CC: COUNTY PROSECUTOR

NARRATIVE

CASE NO. 11-0252

EVENT NO. 1101300091.A47

OBJECT: ARREST - DRUG TRAFFICKING (AIDING)

STEWART, ALEX EAMONN

ARREST NO. 02437

ARREST - MARIJUANA DRUG TRAFFICKING
POSSESSION OF MARIJUANA

WIDNER, DANIEL LEE

ARREST NO. 02438

On January 30, 2011 at approximately 2322 hours, I was running stationary radar in the 1100 block of Highway 30 in Mountain Home, Idaho. I was pointed in the west direction when I identified a dark colored vehicle traveling east on Highway 30. The vehicle was traveling at a low rate of speed. I estimated the vehicle's speed at 27 mph in a posted 35 mph zone. This was unusual for this speed zone, as it is close to a 45 mph zone. The vehicle did not increase its speed and it was approximately 200 yards from my location. There were no other vehicles on the roadway. I activated my radar, which was set to the stationary position. I received a clear, steady, and high pitched tone lasting for 3-5 seconds. I confirmed my estimation with radar at 28 mph, which increased to 29 mph.

Due to the low rate of speed, I proceeded to follow this vehicle, bearing Idaho license plate [REDACTED]. The vehicle continued east on Highway 30 and came to a portion in the roadway entering into town where it turns into a two (2) lane roadway. The vehicle failed to signal as it entered the right hand lane. I further followed this vehicle as it turned right on E 5th North Street off of N Main Street. The vehicle came to the t-intersection located at N 2nd West and W 5th North and turned right without signaling.

At this time, I conducted a traffic stop. I advised dispatch of my location and approached the driver's side window. There were two (2) occupants inside the vehicle. I identified myself to the driver through a partially opened window. I asked the driver to roll down his window, and he informed me it was broken. I asked him to open the door, which he complied. I told him of my reasons for stopping him. The driver admitted to not using his

**Mountain Home
Police Department
INCIDENT REPORT**

11000252

REPORT NUMBER

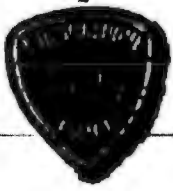
signal; he advised he did not believe he had to signal due to traveling this roadway often. I asked him for his driver's license, proof of insurance, and vehicle registration.

Prior to the driver opening the door, I could smell what I believed to be through my training and experience marijuana coming from the vehicle. When the vehicle's door was open, I could smell the strong odor of what I believed to be marijuana coming from the vehicle. The driver provided me with his driver's license, and I requested the vehicle's registration and insurance. The driver informed me it was not his vehicle, but it was his passenger's vehicle. I asked the passenger for his driver's license, which he gave me.

The driver was identified as DANIEL WIDNER, and the passenger was identified as ALEX STEWART. While the documents were being located, I noticed multiple 5-hour energy drinks inside the vehicle, some were opened and some were closed. I also noticed multiple caffeine bottles, food wrappers, and clothing in the backseat. I also noticed the speakers in the doors, as well as some of the paneling, had been altered or removed, which is consistent with hiding places for weapons and narcotics. I further noticed in the back seat, there were two (2) brown boxes that appeared to be sealed. I asked Widner what was inside the boxes, and he stated microscopes for his children. I asked him if there was any marijuana or other drugs inside the vehicle, and he stated no. I asked him if there were any weapons inside the vehicle and he stated no. I again asked for the insurance verification on the vehicle, and he advised he was unable to locate it.

At this time, I noticed that Widner appeared to be nervous; he was slightly shaking. I told Widner and Stewart to stay in the vehicle, while I went back to my patrol vehicle. I went back to my patrol vehicle and gave dispatch Widner and Stewart's information. They informed me there were no wants or warrants for either of them. They also advised Widner's driver's status was valid. Detective Jessup arrived on scene and I informed him of my observations as well as the scent of marijuana coming from inside the vehicle.

I approached the driver's side of the vehicle, asked Widner to step out of the vehicle, and come back to my location. Widner was wearing a black hat, red shirt, and jeans. He was out of breath and took a couple puffs on his asthma inhaler. I again asked Widner if he found the proof of insurance for the vehicle and he stated no. He stated it was not his vehicle; he advised it was Stewart's vehicle. I advised due to him being in physical control of the vehicle, he needed to make sure the vehicle was insured and registered. Widner stated he was not aware of this. I informed Widner I could smell the odor of marijuana coming from the vehicle and asked him if he had been smoking marijuana, which he replied no. Widner's eyes got really big when this question was asked. I asked him if Stewart had been smoking marijuana, and he stated no. I asked him if there were any illegal substances in the



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vehicle, and he stated no. Every question I asked Widner, he answered very quickly stating, "No, sir". I informed Widner I had a drug dog coming and would be having it go around the outside of the vehicle. I told him if it alerted, the vehicle would be searched for drugs, which he stated he understood.

At this time, I decided to check Widner's sobriety. I told him to put his feet together and hands down to his sides, which he complied. I asked him if he was on any kind of medications, and he stated no. I asked him if had any head injuries which he was seeing a medical doctor for, and he stated no.

HORIZONTAL GAZE NYSTAGMUS

I told Widner to follow the tip of my finger with his eyes and his eyes only. I then performed the Horizontal Gaze Nystagmus test on him. During this test, I noticed slight nystagmus at maximum deviation in both right and left eyes. I was unable to locate any other nystagmus or lack of smooth pursuit.

I asked Widner to show me his tongue in an attempt to find green residue on it, but had negative results. I then told Widner to sit down on the curb, which he complied.

Widner was shaking and I asked if he would like a jacket retrieved from the vehicle, which he told me the white one as long as he retrieved it. I informed him officers would, which he quickly declined us getting it. I informed Widner that Detective Jessup and I could smell the odor of marijuana. Widner put his head down and stated it was in his jacket pocket. I asked him what was in his jacket pocket, and he stated he had a baggy of marijuana in his white jacket, which was located in the back seat. Widner then began to shake violently, and I asked Detective Jessup to retrieve the white jacket from the suspect vehicle. Detective Jessup escorted Widner over to the vehicle, where he produced the baggy from the right pocket of the white jacket. Widner handed me the baggy, and inside the Ziploc bag, there was a green leafy substance, which I believed, through my training and experience, to be marijuana. I could smell the odor of marijuana coming from the baggy as well. I handed the baggy to Detective Jessup for safekeeping.

I placed Widner in front of my patrol vehicle and patted him down for weapons and contraband, with negative results. I took off of Widner's person an inhaler, wallet, and cell phone. I handcuffed him to the rear, checked for proper spacing, and double-locked the handcuffs, per department policy. I placed Widner into the back of my patrol vehicle due to him complaining about being cold.

At this time, Deputy Sterling with the Elmore County Sheriff's Department,



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was on scene with his K-9 drug dog, Hershey. He proceeded to walk Hershey around the exterior of the vehicle. Please refer to Deputy Sterling's report for further details. I then requested Stewart to exit the vehicle. I asked him if there were any drugs inside the vehicle that he was aware of, and he stated no. I asked him if there was any cocaine inside the vehicle, and he stated no. I asked him if there was any heroin inside the vehicle, and he stated no. I asked him if there was any meth inside the vehicle, and he stated no. I asked him if there were any needles inside the vehicle, and he stated no. When Stewart was asked if there was any marijuana inside the vehicle, he stated, "Not that I know of." I told Stewart I could smell the odor of marijuana coming from the vehicle, and I told him he needed to cooperate with my investigation. I again asked him if there were any drugs inside the vehicle, and he stated, "Not that I am aware of." I asked him to sit down on the curb. Stewart then stated he just got his tax return back, and they went to Reno to gamble for the day.

Later on, Deputy Sterling informed me Hershey alerted on the driver's side door of the vehicle. Detective Jessup, Sergeant Griggs, and Deputy Sterling proceeded to search the vehicle for further drugs. The drugs were located in the back seat in the two (2) brown boxes, which were in plain sight. I asked Stewart to stay on the curb while I went to the vehicle. I picked up one (1) of the brown boxes, which had "Prism Microscope, K12, Unleash the Exponential" written on it. The box was very light, which was inconsistent with the weight of a microscope. I shook the box slightly and noticed something light was sliding around the inside of the box. I put the box back in the back seat of the vehicle where it was located. Deputy Sterling then deployed Hershey inside the vehicle.

At this time, Widner informed me there was a loaded 9mm Beretta handgun, with one (1) round chambered, in the vehicle. This gun was located in a red, white and black bag. The gun was black and silver in color, and the serial number for the gun was [REDACTED]. I ran the serial number through dispatch, and they advised the gun was not wanted or stolen. I told Sergeant Griggs about the gun found inside the vehicle. Later while processing the gun, one (1) round was found in the chamber, as well as nine (9) rounds in the magazine, which was inside the gun.

Stewart was placed in the back of my patrol vehicle and he was informed he was not under arrest at this time, but because there was a weapon involved, it was for officer safety purposes. Detective Jessup handcuffed him to the rear, checked for proper spacing, and I double-locked the handcuffs before placing him in the rear seat of my patrol vehicle. The two (2) brown boxes and a black case were removed from the vehicle and placed on the sidewalk. Deputy Sterling deployed Hershey on the boxes, and the dog alerted on one (1) of the boxes and broke it open. The box contained packaged, sealed, green leafy substances, which I believed, through my training and experience, to be the illegal drug of marijuana. The second box was opened and it contained the same kind of packaged marijuana. The narcotics and

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weapon were released to Sergeant Griggs, as well as a rolled dollar amount of \$2,635. The money was located in the red backpack with the weapon. Widner stated this was the money he had been saving from working at Wingers. He stated he was not working there any longer, but he had saved his paychecks for this trip to Reno.

Detective Jessup informed me the vehicle was going to be taken to the Mountain Home Police Department (MHPD) for further processing and review. Please see Detective Jessup's report for further information. Detective Jessup asked Widner to exit the vehicle to be interviewed. Widner was advised of his Miranda Rights when he was taken into custody and placed in the back seat of my patrol vehicle. Sergeant Griggs proceeded to interview Stewart. Please refer to his report for further information. Stewart stated they were at Circus Circus when Widner left for a period of time in the vehicle. Stewart advised he did not know of any illegal drugs inside the vehicle.

After Widner and Stewart were interviewed, I placed them in the rear seat of my patrol vehicle and properly secured their safety belts. I informed dispatch of my beginning mileage and transported them to the Elmore County Detention Center (ECDC). While en route to the ECDC, Widner admitted to being arrested on a previous occasion for drug charges. Widner informed me the last time they stopped was at Winnemucca, where they ate and used the restroom. He stated this was approximately six (6) hours ago. He stated he always gets stopped for "retarded" reasons. I again told Widner of my reasons for stopping him, and he stated he understood. He stated ignorance of the law was no excuse; he stated he now understood the traffic violation.

Once at the ECDC, I gave dispatch my ending mileage and escorted Widner and Stewart inside the facility, where they were released into jail staff custody. I filled out the appropriate paperwork, and informed Stewart and Widner they were being charged with Felony Possession of Marijuana. I also informed Widner he was being charged with a concealed weapons violation. I then cleared the jail.

I met with Detective Jessup and Sgt. Griggs and they told me the \$2635 was tested for drug residue. They advised Deputy Sterling's K-9, Hershey, had alerted to the money. The money was placed into evidence. I was also informed the box that contained the five (5) packages weighed in at 866.3 grams. The second box that contained the three (3) packages weighed in at 472.7 grams. The total weight was 1339 grams, which is 2.9 pounds of packaged weight marijuana. The marijuana also had Widner's name written on it. The marijuana was photographed and placed into evidence for safekeeping. Detective Jessup did a further inventory on the vehicle. Please refer to his report for further information.

I cleared the MHPD and went to the ECDC. I informed Widner and Stewart they were being charged with Drug Trafficking due to the amount of marijuana. I

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also advised Widner he was being charged with a misdemeanor charge of Possession of Marijuana. I then cleared the ECDC.

I have nothing further at this time.


Officer Ryan Melanese
Mountain Home Police Department

IM/rh

CC: County Prosecutor

Attachments:

Driver's Status for Alex Stewart
III
Affidavit of Probable Cause for Arrest
Vehicle Registration
Copy of Driver's Status for Alex Stewart

Driver's Status for Daniel Widner
III
Affidavit of Probable Cause for Arrest
Copy of Driver's License for Daniel Widner

Exhibit B

KRISTINA SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
 190 South 4th East
 Mountain Home, Idaho 83647
 Telephone (208) 587-2144

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE
MAGISTRATE DIVISION

In the Matter of the Arrest
 Of: Daniel Lee Widner
 Defendant.

Citation No.

**AFFIDAVIT OF PROBABLE
 CAUSE FOR ARREST**

STATE OF IDAHO)
) ss
COUNTY OF ELMORE,)

Ryan Melanese, being first duly sworn, deposes and states:

That I am an authorized Peace officer, and on the 30 day of January, 2011, at
 2322 o'clock p.m.,

I had probable cause to believe that Daniel Lee Widner, the defendant herein, committed
 the following crime:

Marijuana Drug trafficking

Possession of marijuana

The Probable Cause for defendant's arrest was as follows:

On January 30, 2011 at approximately 2322 hours I was running stationary radar in the 1100 block Sunset Strip, Mountain Home, Idaho, Elmore County, when I identified a car traveling East. The vehicle was in a 35 mph zone and I estimated the vehicle speed at 27 mph. The vehicle was approximately 200 yards from my location. I activated my radar and received a steady, clear and high-pitch tone lasting for 3-5 seconds. I confirmed my estimation with radar at 28 that went to 29 mph when it passed me. This is unusual for the speed zone, so I proceeded to follow the vehicle east. I followed the vehicle and it would not go the posted speed. The vehicle came to the point where the one lane changed to two (2) lanes and went into the right lane without signaling. I proceeded to follow the vehicle as it turned right onto E. 5th North off of N. Main. The vehicle traveled over the train tracks and came to the t-intersection. The vehicle, bearing Idaho license plate E98155, turned right onto W. 5th North without signaling. I conducted a traffic stop on the vehicle in the 400 block of W. 5th North.

I made contact with the driver on the driver side with the window partially rolled down. I could smell the heavy odor of what I believed, through my training and experience, to be marijuana coming from inside the vehicle. The driver had slow movements as he reached for the documents requested. I asked where they were coming from and was told Reno, Nevada. I could see numerous 5-hour energy drinks inside the vehicle as well as speakers pulled out, carpeting pulled up, and 2 brown boxes in the back seat. I asked the driver if there were any weapons inside the vehicle and he told me no. I asked if there were any drugs inside the vehicle and he told me no. I went back to my patrol car, where I gave dispatch the driver and passenger's information. I waited for backup to arrive and went back to the vehicle where the driver, identified with his Idaho driver's license as Daniel Lee Widner, was instructed to exit the vehicle and come to the rear. While out of the vehicle I asked him again if there were any drugs inside the vehicle and he told me no. I noticed he was really nervous and shaking, which he stated it was do to being cold. I asked him if he would like a coat from inside the vehicle and he told me yes and when I asked Detective Jessup to get it from the vehicle, Widner informed me he did not want it unless he could retrieve it. I asked him why and he told me that there was a baggy of marijuana inside the coat, which belonged to him. I again asked if he had any other drugs inside the vehicle and he told me no. Officer Sterling with the Elmore County Sheriff's Department was now on scene and had his K-9 unit walk around the outside of the vehicle, which the K-9 alerted to drugs on the driver side door. The two (2) brown boxes were removed from the vehicle and the K-9 alerted to one of the boxes. The box was opened and a green leafy plant like substance was found in individual sealed bags. The second box was opened and also contained the plant like green leafy substance, which I believed to be marijuana through my training and experience. Daniel was informed he was being charged with felony possession of marijuana do to the large portion. It was later weighed and resulted in 1339 grms (2.9 pounds). Daniel informed me that he had a loaded 9 mm Handgun in the backseat backpack, which was found within reach of the driver.

Address Home Phone:


Employer's Address:

Work Number:

Dated this 31 Day of January 2011


Peace Officer

Subscribed and sworn to before me this 31st day of January, 2011


Official Authorized to Administer Oath

Commission expires: Nov. 15th 2016
Residing in: Elmore County

AFFIDAVIT - Page 2

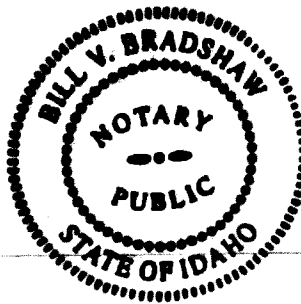


Exhibit C

LANE WIDTH 11'

LANE

LANE W



Exhibit D



Exhibit E



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SUPPLEMENT DATE 02/02/2011
APPROVAL DATE

OFFICER 042 JESSUP, CHRIS
OFFICER

SUPPLEMENT REPORT

CASE NO. 11-0252C

EVENT NO. 1101300091.C42

RE: ORIGINAL REPORT 11-0252; 1101300091.A47; DATED 1/31/2011
SUPPLEMENT REPORT 11-0252; 1101300091.B47; DATED 02/02/2011

SUBJECT: ARREST - DRUG TRAFFICKING (AIDING)

STEWART, ALEX EAMONN

ARREST NO. 02437

ARREST - MARIJUANA DRUG TRAFFICKING
POSSESSION OF MARIJUANA

WIDNER, DANIEL LEE

ARREST NO. 02438

On January 30, 2011 at approximately 2322 hours, I heard Officer Melanese conduct a traffic stop on a vehicle in the 300 block of W 5th North. I went to this location to back up Officer Melanese.

As I arrived at the location of the traffic stop, Officer Melanese was walking back to his patrol vehicle. In speaking with Officer Melanese, he advised me he believed he could smell the odor of marijuana emitting from the vehicle, and he asked me to check and see if I could recognize the odor. I advised Officer Melanese I had requested a K-9 unit to come to our location.

Officer Melanese had the the driver of the vehicle step out to speak with him further. I walked up to the driver's side of the vehicle and began speaking with the male subject who was sitting in the passenger seat of the vehicle. This male subject identified himself to me as ALEX STEWART, who is the owner of the vehicle. As I was speaking to Stewart through the open driver's door window, I detected the odor of what I believed to be burnt marijuana. I went to the passenger side of the vehicle and had Stewart roll down his window. Stewart rolled down his window approximately 4 inches and began speaking with me. I advised Stewart I believed I could smell the odor of marijuana emitting from within the vehicle. I asked Stewart if he or the driver had been smoking marijuana, and he stated no. I asked Stewart if he had been smoking marijuana, he stated no. In speaking with Stewart, he told me he and the driver, who was identified as DANIEL WIDNER, were returning to Mountain Home from a trip to Reno. Stewart stated they went to Reno to gamble.

After speaking with Stewart, I made contact with Officer Melanese, who had removed Widner from the vehicle and was speaking with him in the area between his patrol vehicle and the suspect vehicle. Officer Melanese was performing the Horizontal Gaze Nystagmus test on Widner. Widner then



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requested his jacket from within the vehicle. As Officer Melanese told him we would retrieve the jacket for him, I asked Widner which jacket and where it was located. Widner then stated he did not want the jacket. At this time, I walked back to the vehicle looking inside for any jackets. As I began walking back towards my patrol vehicle Officer Melanese called me back to his location, where he was speaking to Widner.

As I walked back to Officer Melanese, he advised Widner was again requesting his jacket. He advised Widner stated that he had a bag of marijuana inside his jacket pocket. Officer Melanese and I escorted Widner back to the driver's side of the vehicle, where he removed a white hoodie type of jacket from the rear seat of the vehicle and began putting it on. Widner then removed a Ziploc sandwich type of baggie that contained a green leafy plant material and handed it to Officer Melanese. Officer Melanese then gave the baggie to me. I briefly inspected the contents of the baggie, which, through my training and experience, I believed it to be marijuana. I immediately placed the baggie that contained the green leafy plant material in my right side jacket pocket.

Deputy Sterling of the Elmore County Sheriff's Office arrived on scene with his K-9, Hershey. I advised Deputy Sterling of the odor emitting from the vehicle, and the marijuana Widner admitted to having in the vehicle, which was now in my possession. I asked Deputy Sterling if he wanted to run his K-9 around the vehicle. As Deputy Sterling went to retrieve his K-9, I advise Stewart there was going to be a narcotics K-9 working around the vehicle. I told him to remain inside the vehicle and not to make any sounds to distract or interfere with the K-9.

At this time, I stood aside as Deputy Sterling ran his K-9 around the vehicle. Deputy Sterling did advise me of a K-9 alert at the driver's door. Deputy Sterling advised his K-9 was alerting to the presence of a narcotic substance, as he was trained to find, at the driver's side door. It should be noted Deputy Sterling's K-9, Hershey, is a Idaho certified K-9 trained to detect marijuana, heroine, methamphetamine, and cocaine.

After Deputy Sterling advised me of his K-9's alert on the driver's side of the vehicle, I made contact with Stewart. I advised Stewart that the K-9 alerted at the driver's side of the vehicle and asked him to step out of the vehicle, so Deputy Sterling could deploy his K-9 inside the vehicle. Stewart was taken to an area free and clear of the vehicle to allow the K-9 access to the inner passenger compartment of the vehicle. Deputy Sterling and I then went to conduct a safety search of the passenger compartment of the vehicle to insure there was nothing inside that could injure the K-9. On the rear seat of the vehicle, I saw red, black and white backpack lying on the middle of the rear seat, along with a couple of sealed cardboard boxes, CD cases and trash. As I turned the backpack to expose the top area where the zipper was located, I unzipped it and found a handgun and a large amount of US currency, which was wrapped in a rubber band. At this time, I



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advised the other officers of the weapon and the money located in the backpack.

Sergeant Griggs retrieved the backpack, to secure the handgun. I made contact with Stewart, who was seated on the curb area and I asked him to stand. He was then handcuffed, per department policy. I performed a cursory search of Stewart's person for weapons and contraband, with negative results. Stewart was informed he was not under arrest; however, due to the weapon found and the circumstances, he was being handcuffed for officer safety. He was then placed in the rear seat of Officer Melanese's patrol vehicle due to the temperature outside.

As Deputy Sterling removed and secured his K-9, I began searching the passenger compartment of the vehicle. As I searched the front seat passenger area, I noticed there was a lot of trash, which consisted of coke bottles, assorted papers and wrappers, scattered throughout the passenger floorboard and the rear seat floorboard area of the vehicle. The passenger floorboard area did have an overwhelming smell of what I believed to be burnt marijuana.

As I went back to the vehicle to continue the search, I picked up one (1) of the sealed cardboard boxes located in the backseat of the vehicle. One (1) particular cardboard box had a picture of a microscope on it. When I shook the box, it appeared to me that the box contained an item or items not consistent with a microscope. I asked Deputy Sterling if we were to remove the boxes from the vehicle, could he run his K-9 along the area where the boxes would be placed to be searched. The two (2) cardboard boxes, along with a metal briefcase, were placed on the sidewalk in front of the vehicle to allow the K-9 to sniff them. It should be noted these items were placed in front of the vehicle due to a slight breeze which was blowing from the west. This was to ensure there would be no airflow from the vehicle into the area where the items were placed.

Deputy Sterling retrieved his K-9 and ran him along and around the items placed on the sidewalk. Deputy Sterling advised he did have a positive K-9 alert on the very first box on the sidewalk. At this time, Sgt. Griggs went to the box and cut through the middle of the packing tape across the top to ascertain what was inside. Sgt. Griggs immediately stated the box contained several bags of a green leafy plant material which appeared and was consistent to be marijuana; however, the bags with the green leafy plant material were vacuum sealed. Sergeant Griggs opened the second cardboard box, which was sealed. This box also contained packages of a green leafy plant material, which was consistent with marijuana. These packages were also vacuum sealed.

At this time, I removed the two (2) cardboard boxes from the sidewalk area. I then placed the two (2) boxes on the hood of Officer Melanese patrol vehicle with the backpack, which contained the US currency and the handgun,



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which was cleared by Sgt. Griggs. This handgun was a Ruger 9mm, which contained a full magazine and a live round chambered. All of these items were placed in the front seat of my patrol vehicle. In speaking with Sgt. Griggs, it was decided he would drive the suspect vehicle, a 1980 Honda Civic, to the Mountain Home Police Department (MHPD) to continue the search due to the amount of marijuana found inside the vehicle.

After speaking to Sgt. Griggs, I went back to Officer Melanese's patrol vehicle to speak with Widner. I had Widner step out of the vehicle and to the rear so I could speak with him privately. I advised Widner of the items found inside the vehicle, and I asked him if he would be willing to go to the MHPD to speak with me further about them. Widner stated something to the effect of, he had the right to remain silent. At this time, I advised him that he did have the right to remain silent, and I would not speak with him any further. Sgt. Griggs briefly spoke to Stewart, who was seated in the rear seat of Officer Melanese's patrol vehicle. Sgt. Griggs then walked to my location and briefly spoke with Widner. Widner and Stewart were advised of their charges, and Officer Melanese was advised to transport them to the Elmore County Detention Center (ECDC). Officer Melanese was told we would speak to him further about the charges. Stewart and Widner were then transported to the ECDC by Officer Melanese. Sgt. Griggs drove the 1988 Honda Civic to the MHPD and I transported the two (2) boxes of suspected marijuana and the backpack containing the gun and cash to the MHPD.

Upon arriving to the MHPD, I took all of the items into the investigations office, where I began photographing them. Sgt. Griggs arrived and began counting the US currency. I removed the bags of suspected marijuana from the boxes for photographs. After photographing the bags of marijuana, gun, and money, Sgt. Griggs advised he counted \$2635 in US currency from the backpack, which was confirmed by myself to be \$2635.

It should be noted while removing and counting the US currency, Sgt. Griggs and I did utilize latex gloves during the removing and the counting process. We did not want to contaminate the currency located in the backpack. We asked Deputy Sterling to run his K-9 over the US currency. After the US currency was counted and confirmed by Sgt. Griggs and I, Sgt. Griggs retrieved \$2600 in clean US currency from the SIU safe while utilizing latex gloves. He then hid the \$2600 inside the cabinet where fingerprints are taken.

I hid the \$2635 located in the backpack within the evidence room area inside the MHPD. It was placed inside a plastic cabinet which holds latex gloves and other plastic items for packaging purposes. The US currency was allowed to sit inside the secured area for approximately 10 minutes before Deputy Sterling was to search the area with his narcotics K-9.

While waiting the 10 minutes before Deputy Sterling arrived with his



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narcotics K-9, Sgt. Griggs and I returned and began weighing the bags of suspected marijuana from the boxes. I labeled the boxes as Box No. 1 and Box No. 2. Box No. 1 contained five (5) sealed bags of a green leafy plant material suspected to be marijuana, and Box No. 2 held three (3) bags of a green leafy material suspected to be marijuana. Sgt. Griggs then began weighing the bags, as I noted and numbered the amounts. The bags in each box were labeled with a number:

BOX NO. 1

- Bag 1 weighed 274.5 grams
- Bag 2 weighed 146.6 grams
- Bag 3 weighed 149.4 grams
- Bag 4 weighed 150.2 grams
- Bag 5 weighed 145.6 grams

BOX NO. 2

- Bag 6 weighed 196.0 grams
- Bag 7 weighed at 175.7 grams
- Bag 8 weighed at 101.0 grams

The sandwich bag containing the green leafy plant substance suspected to be marijuana removed from Widner's jacket weighed in at 14.8 grams.

The bags were placed back inside the boxes they came from and placed into evidence. The total weight for the bags came to 1339 grams, which is 2.9 pounds. The photographs were submitted to the evidence custodian. A copy of the evidence tag is attached to this report.

I then went to the Sally Port area of the MHPD to complete the search of the vehicle that had been driven to the police department by Sgt. Griggs. On the front seat passenger floorboard, I found a burnt piece of what I knew through my training and experience to be a marijuana cigarette, commonly referred to as a roach. I also noted that there were twelve (12) empty 5 hour energy drinks in the passenger compartment of the vehicle. In the glove compartment, I found a Garmin GPS unit that appeared to be new.

The following items were placed into evidence by myself.

- One (1) box containing five (5) packages of a green leafy plant material weighing 866.3 grams
- One (1) box containing three (3) packages of a green leafy plant material weighing at 472.7 grams
- One (1) Ziploc bag containing green plant material weighing 14.8 grams



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- Power 9mm handgun bearing serial number 330-45480
- 2 bullets (9mm) manufactured by Lellier & Bellot
- (1) piece of a marijuana cigarette commonly called a roach or a blunt, which I located on the floorboard passenger area of the vehicle


I was advised that K-9 Hershey did alert on the money I had hidden in the cabinet and had not alerted on the money hidden by Sgt. Griggs. The Garmin GPS was seized, pending application of a search warrant.

On January 31, 2011 at approximately 1210 hours, I retrieved the two (2) boxes of suspected marijuana accompanied by Lt. Robinson in order to perform a Narco Field Test on a bag or bags of the suspected substance, per the prosecutor's request. I opened Box No. 1 and removed Bag No. 3. I cut open the vacuumed sealed package, removed the Ziploc bag to retrieve the parts and pieces of the substance to perform the Narco test. I utilized Narco Test No. 908. The test was completed per the manufacturer's recommendations. I did note a clear to purple color change and separation after performing the test, which gave a presumptive positive result as to the substance being marijuana.

I then opened Box No 2, removed Bag No. 6, cut open the vacuum seal, and removed another Ziploc bag that contained a green leafy plant substance in order to retrieve particles of the substance for testing purposes. I used Narco Test No. 908, performing the test per the manufacturer's recommendations. I noted a clear to purple color change and then color separation, providing a presumptive positive test as to the substance being marijuana. The two (2) Narcotic Field Test Result forms are attached to this report, along with a copy that was faxed to the prosecutor's office.

Bag No. 3 and Bag No. 6 of the suspected marijuana were returned to their respective boxes, sealed with evidence tape, and returned to the evidence room.

I have nothing further at this time.


Detective Chris Jessup
Mountain Home Police Department

CJ/rh

CC: County Prosecutor



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[REDACTED]

Attachments

- Evidence Tag
- of Idaho Statutes
- Field Test Results
- of Fax

Exhibit F

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**SUPPLEMENT DATE 02/02/2011
APPROVAL DATE**

**OFFICER 036 GRIGGS, RUSSELL
OFFICER**

SUPPLEMENT REPORT

CASE NO. 11-0252D

EVENT NO. 1101300091.D36

**RE: ORIGINAL REPORT 11-0252; 1101300091.A47; DATED 1/31/2011
SUPPLEMENT REPORT 11-0252B; 1101300091.B47; DATED 02/02/2011
SUPPLEMENT REPORT 11-0252C; 1101300091.C42; DATED 02/02/2011**

SUBJECT: ARREST - DRUG TRAFFICKING (AIDING)

STEWART, ALEX EAMONN

ARREST NO. 02437

**ARREST - MARIJUANA DRUG TRAFFICKING
POSSESSION OF MARIJUANA**

WIDNER, DANIEL LEE

ARREST NO. 02438

On January 30, 2011 at approximately 2343 hours, I arrived in the area of W 5th N and N 4th W to possibly assist Detective Jessup and Officer Melanese in reference to Officer Melanese's traffic stop.

I stayed back away from the area for a short period. From my vantage point I could see Officer Melanese had two (2) occupants out of the vehicle. I did notice one (1) was placed in the back seat of Officer Melanese's patrol vehicle. I also noticed Deputy Sterling was on scene. After I watched the second occupant being placed into Officer Melanese's patrol vehicle, I went to their location. The driver, who was identified as DANIEL WIDNER, had a Ziploc bag in his jacket that contained suspected marijuana. As I walked up to the driver's window and looked inside the vehicle, I noticed it was in disarray with a large amount of trash and other items. At that time the driver's window was down and I detected the odor of suspected burnt marijuana emitting from the vehicle. Upon continuing to look in the vehicle, I noticed two (2) brown cardboard boxes in the back seat. The boxes appeared to be taped shut. I also noticed a red and white backpack on the passenger's seat, which Detective Jessup pulled out of the vehicle and advised me there was a loaded 9mm inside the backpack. The backpack was placed on the trunk of the vehicle and at that time I decided to remove the 9mm to clear it and place it in a safe condition.

I pulled a Ruger semi automatic pistol out of the front small pocket of the backpack. I also noticed a roll of money rubber banded together. The roll was approximately the size of a baseball. I removed the 9mm and removed the magazine from the magazine well. I noticed there were bullets in the magazine. I pulled the slide back and a 9mm round ejected from the ejection port, indicating to me the gun was loaded with one (1) in the chamber and ready for use.



**Mountain Home
Police Department
SUPPLEMENTAL INCIDENT REPORT**

11000252

REPORT NUMBER

NARRATIVE

Deputy Sterling previously ran his State Certified K-9 on the vehicle. I was advised Widner was being charged with Possession of a Controlled Substance. With that information, the vehicle was searched at that time. During the search, the cardboard boxes were pulled from the vehicle, along with what I believed to be a CD/cassette briefcase type item. Detective Jessup set the items on the sidewalk. Information received from other officers after they talked with the occupants of the vehicle, was the boxes supposedly contained a microscope and some books. There was a picture of a microscope on one (1) of the boxes but as the box was picked up, it did not appear to be the weight of a microscope. Deputy Sterling ran his State Certified K-9 on the items on the sidewalk (refer to his report for further information). With the results of the K-9 sniff and the occupant having suspected marijuana on his person or in his jacket, I cut open one (1) box. As I shined my flashlight in the top portion of the box, I noticed what appeared to be suspected marijuana packaged in separate packages. The suspected marijuana was in Ziploc bags and then packed inside a plastic material that would be used with a heat sealer. I cut the second box open and noticed more packaged suspected marijuana.

At that time, the suspected marijuana, the gun, the money, and the red and white backpack were maintained by Detective Jessup. With the amount of suspected marijuana found in the boxes, I decided to drive the vehicle to the Mtn. Home Police Department for possible asset forfeiture. I did engage in a conversation on scene with the male passenger who was also the registered owner of the vehicle, identified as ALEX STEWART. I recorded my conversation with Stewart. Prior to asking him any questions I did Mirandize him using the Miranda card I carry. Stewart made a comment that he wanted to talk to a lawyer but he also wanted to know why he was being taken to jail. I explained to him he would probably be charged with Felony Possession With Intent to Deliver due to the amount of marijuana and how it was packaged. I also explained to him there was a gun in the immediate area with the drugs.

I asked Stewart if he wanted to talk to me and he stated yes because he would like to know why he was in trouble. I asked Stewart where they were coming from. He told me he and his friend went to Reno, NV to gamble for a few hours and then came home. I asked him what his friend's name was and he told me Daniel Widner. I asked Stewart how he knew Widner and he told me he knew him in high school and they also go to college together. I asked Stewart if he had any knowledge of the marijuana in the back seat and he told me no. I asked him if they separated at any time while they were in Reno. Stewart said they were in Circus Circus and Widner left for a couple hours and then showed back up. I asked him about the suspected marijuana in the vehicle and he told me he did not know anything about it. I explained to Stewart that this was his vehicle and he was responsible for the items in his vehicle. I told him I did not think he was telling me the truth.

**Mountain Home
Police Department
SUPPLEMENTAL INCIDENT REPORT**

11000252

REPORT NUMBER

NARRATIVE

I asked Stewart if there was any change of clothes in the vehicle. He told me no, they just went to Reno to gamble for a couple hours. I asked him what time he left and he said some time after midnight, between 0200 and 0300 hours. That would have been the night of January 29, 2011 or early morning hours of January 30, 2011. He stated Widner asked him if he wanted to go to a show while they were there but Stewart did not want to because he had to go to work the following day, January 31, 2011. I felt Stewart did not want to talk to me anymore.

I went to Widner and asked him where they were coming from and he told me Reno, NV. He told me they were in Circus Circus to gamble. I asked him if he separated from Stewart at any time and he was a little hesitant to answer. He made a comment something to the effect of, "Yeah." He said he met back up with Stewart at Circus Circus. I asked Widner if Stewart had any knowledge of the marijuana in the vehicle and he told me no. After my conversation with Widner and Stewart they were both placed back in Officer Melanese's vehicle for transport to the Elmore County Detention Center (ECDC).

At that time I drove Stewart's vehicle to the Mountain Home Police Department where I placed it in the Sally Port for further processing. I met with Detective Jessup in our office. While Detective Jessup was present, I used a triple beam balance scale to weigh the packages. There were a total of eight (8) prepackaged bags of marijuana plus the personal use Widner had on him would be bag number 9. In box number 1 there was a total of five (5) prepackaged bags of suspected marijuana. I weighed the five (5) bags on the triple beam scale, then wrote the number of which bag it was, and the total package weight in grams. The first bag had two (2) bags inside of it and had a total package weight of 274.5 grams. Bag number 2 was 146.6 grams. Bag number 3 was 149.4 grams, bag number 4 had 150.2 grams, and bag number 5 had 145.6 grams. I also noticed the words "Medical Use Not for Resale" were written on the bags in marker. There were also different types of marijuana written on the bags such as Jilly Bean and Mazar.

In the second box, bag number 6's weight was 196.0 grams, bag number 7 was 175.7 grams, bag 8 was 101.0 grams; bag 6 - 8 also had 2 bags inside the vacuum sealed bag. Bag number 9, which would have been the personal use bag, was 14.? grams. Upon completion of weighing the bags, Detective Jessup maintained them for packaging as evidence. I took the roll of money rubber banded together, which was in the blue and red backpack with the loaded 9mm and counted it. I did hear Widner on the traffic stop saying something to the effect that money was from his last paycheck when he worked at Wingers. As I unrolled the money, I noticed it was all \$20's, \$10's, and \$5's which I thought was odd for a payroll denomination. I counted a total of \$2635. there were 113 twenty dollar bills, 30 ten dollar bills, and 15 five dollar

**Mountain Home
Police Department
SUPPLEMENTAL INCIDENT REPORT**

11000252

REPORT NUMBER

NARRATIVE

bills. It was decided we would place the money in an unknown area and have Deputy Sterling run his dog in the area to see if he would alert on the money. Prior to counting Widner's money, I did wash my hands and wore rubber gloves.

Upon completion of counting the money, I removed my gloves, washed my hands again, and got a new set of rubber gloves. I counted out \$2600 from our safe, which came from a local bank, to use as sterile money to be placed in the same area for the K-9 search. I placed the money in our booking room area at approximately 0100 hours. I placed Widner's money in a plastic filing cabinet that contained supplies for packaging evidence, such as sharps containers, gloves and such. I placed the money from our safe in a cabinet approximately 10 - 15 feet away. This cabinet is underneath the fingerprinting area, which contained fingerprint cards and other supplies.

At approximately 0113 hours, Deputy Sterling took his State Certified K-9 into the booking room area. Deputy Sterling was not present when I planted the money. He applied his K-9 to the area for a search. I stood back in the hallway watching Deputy Sterling and his dog work. I did notice Hershey alerted on the plastic cabinet by scratching, which indicated to me a positive alert. This is known to me from being a K-9 handler myself for approximately 6 - 7 years. I asked Deputy Sterling if he was going to call that an alert and he redirected his dog where Hershey went back to that area again and scratched on the plastic filing cabinet. Deputy Sterling did call that a positive alert. I told him he needed to continue and he ran Hershey through the rest of the room by the other items located in the room. I watched Hershey when he got to the cabinet where the clean money was. I noticed he sniffed the area a few times and then moved on. With this information I decided to seize the money at that time.

I had Detective Jessup count the money as well. I packaged the money, placed it into a green money envelope, and placed it into an evidence locker for further processing. Detective Jessup maintained custody of the two (2) boxes of marijuana, the firearm, and processed those items into evidence.

During the search of the vehicle, a Garmin Nuvi GPS was located. Upon looking at the GPS, there was an address entered of 9795 Q Street in Live Oak, California 95953. The GPS showed that was the destination point. I checked mileage on Google Maps for directions from Mtn. Home to Live Oak, California; it showed approximately 595 miles with about 10 hours and 47 minutes of driving time. This would have had them traveling through the Reno area. The total mileage on the Garmin GPS was over 1800 miles since it had been activated. With the mileage indicated on Google Maps, it would have been approximately 1190 miles round trip. I also located a phone number of 530-695-2524 in Widner's phone, which 530 is a California area code. I ran an online check of the phone number and did not get a name. It

**Mountain Home
Police Department
SUPPLEMENTAL INCIDENT REPORT**

11000282

REPORT NUMBER


NARRATIVE

did show the carrier service was out of Marysville, California, which is a neighboring town of Live Oak, California. There were a number of phone calls between this number and Widner's cell phone. In searching through the contact list, I found a name attached to that number as Kelly. With the information that Stewart gave me that they left between 0200 and 0300 hours on the night of January 29 or early morning hours of January 30, 2011, that would make a round trip of approximately 21 hours. This led me to believe they may have driven straight to the area of Live Oaks, California and back with possible brief stops along the way.

The cell phone and GPS unit were placed in the security storage area pending further possible investigation.

I filed a Civil Asset Forfeiture notification on the 1988 Blue Honda Civic registered to Alex Stewart, VIN number [REDACTED]. The items claimed by Widner, \$2635 dollars of US currency, the Ruger 9mm SN [REDACTED] and the Garmin Nuvi model 1450, SN [REDACTED], which I am unsure of the ownership, were also included in the civil forfeiture process.

Nothing further.


Detective Sergeant Russell Griggs
Mountain Home Police Department

RG/jp

CC: County Prosecutor

Attachments

Property Invoice
Copy of Fax Confirmation of Forfeiture Notice
Handwritten Notes from Sgt. Griggs
Civil Forfeiture Notification
Vehicle Registration
Handwritten Notes from Sgt. Griggs
Copy of Google Maps
Copy of Jilly Bean and Mazar Marijuana Information

3

2086872147

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06-07-2011

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FILED

2011 JUN -8 PM 12:36

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *J.*

Joseph C. Miller
MILLER LAW, P.C.
El Dorado Professional Center
3023 E. Copper Point Dr., Ste. 104
Meridian, ID 83642
Tel: (208) 287-8787
Fax: (208) 287-8788
email: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,
Plaintiff,

vs.

DANIEL L. WIDNER,
Defendant.

Case No. CR-2011-00494

**STIPULATED MOTION TO
CONTINUE PRE-TRIAL
CONFERENCE AND TRIAL**

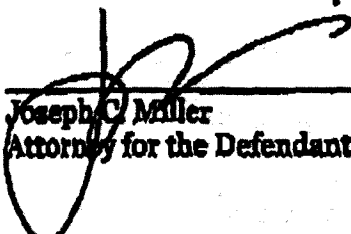
TO: DISTRICT JUDGE RICHARD D. GREENWOOD

COMES NOW the Defendant, DANIEL L. WIDNER, by and through counsel, and affirms that the parties have stipulated to move the court to continue the pre-trial conference currently scheduled in this matter for Friday, July 8, 2011, at 9:00 a.m. and the trial currently scheduled in this matter for Wednesday, August 3, 2011, at 9:00 a.m. due to a pre-existing conflict in defense counsel's schedule and the unavailability of a witness for the hearing on Defendant's motion in limine until the end of July.


DATED this 2nd day of June, 2011.

MILLER LAW, P.C.

ELMORE COUNTY PROSECUTOR



Joseph C. Miller
Attorney for the Defendant



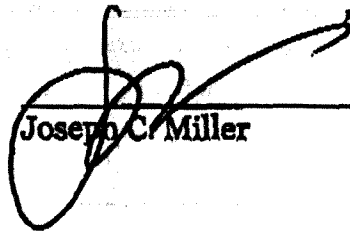
Lee Fisher
Deputy Prosecutor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2011., I served true and correct copies of the foregoing document by delivering the same to the following persons, by the method indicated below, pursuant to I.R.C.P.5(f):

Lee Fisher
Elmore County Prosecutor's Office
190 South 4th East
Mountain Home, ID 83647
Fax: 208-587-2147

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile



Joseph C. Miller

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

HONORABLE RICHARD GREENWOOD

JUNE 24, 2011

COURT MINUTES

THE STATE OF IDAHO,)
)
Plaintiff,) Case No. CR-2011-493
)
vs.) Traff. In Marij. (F)
)
ALEX EAMONN STEWART,)
)
Defendant.)

APPEARANCES:

Lee Fisher
Deputy Prosecuting Attorney Counsel for State

Joseph Miller
Attorney at Law Counsel for Defendant

CD No. MAIN COURTROOM - NO CD

11:18 a.m. Call of case.

Time and date set for STATUS, defendant present.

Court advised counsel that as previously discussed in chambers, we will proceed without a court reporter and rely on the electronic recording equipment.

The Clerk advised that the electronic recording was working as it should be. Counsel advised that they were fine with proceeding with electronic recording.

Defendant's were advised of the their speedy trial rights. Court advised them that if the trial is continued that they would have to waive those rights.

Mr. Widner and Mr. Stewart advised Court that they understood these rights and wished to waive them.

Court granted the motion to continue.

Court reset the matter to October 21, 2011 at 9:00 a.m. for PRE-TRIAL CONFERENCE and November 7, 2011 at 9:00 a.m. for JURY TRIAL.

Court advised counsel that there is a change over in judge's for Elmore County and the trial dates may need to be changed to accommodate the court's calendar. Counsel stated they understood.

Counsel requested a date to hear the Motion in Limine's. Court set the matter to August 2, 2011 at 8:30 a.m.

Defendant remained out.

11:27 a.m. End.

BARBARA STEELE
Clerk of the District Court

Reporter: None
Clerk: H. Furst
Reporter's Est. 9 pages

By H. Furst
Deputy Clerk

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED

2011 JUN 28 AM 9:17

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

THE STATE OF IDAHO,)
Plaintiff,)
vs.)
DANIEL LEE WIDNER,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)

Case No. CR-2011-0000494
**EX PARTE MOTION FOR ORDER
REVOKING DEFENDANT'S RELEASE
ON BOND**

COMES NOW, Lee Fisher, Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho, and hereby moves this Court for its Order revoking Defendant's release on bond and to issue a bench warrant for the arrest of the Defendant. The State requests increased bond in the amount of one hundred thousand dollars (\$100,000.00). This motion is based on I.C.R. 46(e) and (i). This Motion is based upon the Affidavit of Lee Fisher and the exhibits attached thereto, filed contemporaneously herewith. The State requests a hearing on the continued custody of the Defendant at a date and time convenient for court and counsel.

DATED This 27th day of June 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: Lee Fisher
Lee Fisher, Deputy Prosecuting Attorney

EX PARTE MOTION FOR ORDER REVOKING DEFENDANT'S
RELEASE ON BOND-

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June 2011, I served a copy of the foregoing document to the following attorney by hand delivery (interoffice mail) and/or facsimile was served as marked:

Joseph C. Miller
3023 E. Copper Point Dr, Ste 104
Meridian, Idaho 83642


Hand Delivered
 U.S. Mail
 Certified Mail
 Facsimile

Aladdin/Anytime Bail Bonds
80 N Cole Rd.
Boise, Idaho 83704
Facsimile: 323-1666

Hand Delivered
 U.S. Mail
 Certified Mail
 Facsimile

DATED this 27th day of June 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 
Lee Fisher, Deputy Prosecuting Attorney

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED

2011 JUN 28 AM 9:17

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *J*

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

THE STATE OF IDAHO,)
Plaintiff,)
vs.)
DANIEL LEE WIDNER,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)

Case No. CR-2011-0000494
AFFIDAVIT OF LEE FISHER

STATE OF IDAHO)
) SS.:
COUNTY OF ELMORE)

Lee Fisher, Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho,
being first duly sworn, deposes and says:

1. That on the 31st day of January 2011, the above-named Defendant appeared before the Honorable David C. Epis, Magistrate Judge in and for the County of Elmore, upon the charges of **TRAFFICKING IN MARIJUANA, Count I, a felony; and CONCEALING A DANGEROUS WEAPON WHILE IN A MOTOR VEHICLE, Count II, a misdemeanor.** The Court set bond in the amount of seventy-five thousand dollars (\$75,000.00).

2. That on the 3rd day of February 2011, the Defendant again appeared before the Honorable David C. Epis, Magistrate Judge in and for the County of Elmore, for an Attorney Appearance. The Defendant's bond amount was reduced to twenty-five thousand dollars

AFFIDAVIT OF LEE FISHER

(\$25,000). At all times, the Defendant's bond was conditioned on the Defendant having no new law violations and not consuming alcoholic beverages to excess or ingest any substance that might produce a narcotic effect on him. See Commitment, Order Setting Bond and Conditions of Release, and Amended Commitment, Order Setting Bond and Conditions of Release, both attached hereto and marked as Exhibit A.

3. That said Defendant was represented by an attorney licensed to practice law in the State of Idaho during all phases of procedure in the above-entitled matter.

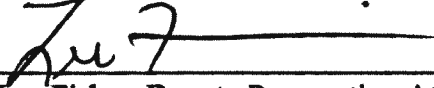
4. That the Defendant has violated the terms of his release, in that he has tested positive for THC. See Affidavit prepared by Probation Officer, Bill Wenner, attached hereto and marked as Exhibit B.

5. The State requests bond in the amount of one hundred thousand dollars (\$100,000.00).

WHEREFORE, Your Affiant prays for an Order of this Court directing the Clerk of this Court, to Issue a Bench Warrant requiring the Defendant to appear before this Court, at which time to show cause why the Defendant's release on bond in this cause should not be revoked.


DATED This 27th day of June 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY



Lee Fisher, Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN To before me this 27th day of June 2011.



Notary Public for Idaho
Residing at Mountain Home, ID
My Commission expires: 7/21/2015



CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June 2011, I served a copy of the foregoing document to the following attorney by the following manner:

Joseph C. Miller
3023 E. Copper Point Dr, Ste 104
Meridian, Idaho 83642

Hand Delivered
 U.S. Mail
 Certified Mail
 Facsimile

Aladdin/Anytime Bail Bonds
80 N Cole Rd.
Boise, Idaho 83704
Facsimile: 323-1666

Hand Delivered
 U.S. Mail
 Certified Mail
 Facsimile

DATED this 27th day of June 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY


BY: 
Lee Fisher, Deputy Prosecuting Attorney

EXHIBIT A

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

STATE OF IDAHO)

Plaintiff,)

Case/Citation No. CR 2011-

Commitment, Order Setting Bond and Conditions of Release

Order Releasing on Own Recognizance and Setting Conditions of Release

Daniel Widner
Defendant.)

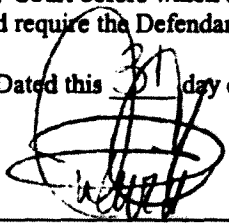
The above-named Defendant having appeared before me this date; and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release; and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

- Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.
- Bail is set in the amount of \$ 75,000.00, cash or surety.
- Released on his or her own recognizance upon the terms and conditions set forth below.
- Terms and Conditions of Release upon posting bail or upon release on own recognizance:
 - Defendant will appear at the time and place of the next proceeding in this matter, which shall be 11:00 o'clock A.m. on Wednesday the 2nd day of February, 2011, in the courtroom of this Court, and at such further times as may be ordered by the Court.
 - If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.
 - Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail Defendant at such address shall be deemed served upon the Defendant if not returned..
 - Defendant shall not violate any law of the State of Idaho, any County therein, or any City or Municipality therein.
 - Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.
 - Defendant shall not consume alcoholic beverages to excess or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.
 - Defendant shall abide by the terms of any no contact order issued in this case.
 - Defendant shall submit to () daily (random testing for the presence of () alcohol () drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Misdemeanor Probation Office to arrange for testing. Defendant retains his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.
 - Defendant shall attend AA or NA meetings _____ times per week while this case is pending.
 - Defendant shall check in () in person () by telephone with the Sheriff of Elmore County at least once a () day () week () month.
 - Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release herein.
 - Other: No contact with Max Stewart until further order of the court

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court before which the above-entitled matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED:

Dated this 30 day of January, 2011


Defendant

Judge

ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS (ORDER-BOND/RELEASE)

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

STATE OF IDAHO)
 Plaintiff,)
)
)
 v.)
)
DANIEL WIDNEK)
 Defendant.)

Case/Citation No. CR-2011-4941
~~AMENDMENT~~
 Commitment, Order Setting Bond and Conditions of Release
 Order Releasing on Own Recognizance and Setting Conditions of Release

The above-named Defendant having appeared before me this date; and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release; and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

- Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.
- Bail is set in the amount of \$ 25,000.00, cash or surety.
- Released on his or her own recognizance upon the terms and conditions set forth below.
- Terms and Conditions of Release upon posting bail or upon release on own recognizance:
 - Defendant will appear at the time and place of the next proceeding in this matter, which shall be 2:00 o'clock P.m. on FRIDAY the 11th day of FEBRUARY, 2011, in the courtroom of this Court, and at such further times as may be ordered by the Court.
 - If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.
 - Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail Defendant at such address shall be deemed served upon the Defendant if not returned.
 - Defendant shall not violate any law of the State of Idaho, any County therein, or any City or Municipality therein.
 - Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.
 - Defendant shall not consume alcoholic beverages to excess or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.
 - Defendant shall abide by the terms of any no contact order issued in this case.
 - Defendant shall submit to daily random testing for the presence of alcohol drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Misdemeanor Probation Office to arrange for testing. Defendant retains his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.
 - Defendant shall attend AA or NA meetings ___ times per week while this case is pending.
 - Defendant shall check in in person by telephone with the Sheriff of Elmore County at least once a day week month.
 - Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release herein.
 - Other: NO CONTACT WITH ALEX STEWART UNLIL FURTHER
ORDER OF THE COURT

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court before which the above-entitled matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED: _____ Dated this 3RD day of FEBRUARY, 2011.

Defendant _____ Judge _____
 ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS
 (ORDER-BOND/RELEASE)
 101

RECEIVED
 10

EXHIBIT B

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE
MAGISTRATE DIVISION

— * —
*
*

STATE OF IDAHO,)

Case No. CR 2011 494

Plaintiff,)

AFFIDAVIT

-vs-)

Daniel Widner)

Defendant.)

— * —
*

STATE OF IDAHO.)

) ss,

COUNTY OF ELMORE,)

Bill Wenner, being first duly sworn, and says:

1. On the 3rd day of February, 2011, the above-named defendant appeared before the Honorable David C Epis, Magistrate Judge in and for the County of Elmore, upon the charges of Drug Trafficking in Marijuana.

2. The Court ordered the defendant to immediately upon release from incarceration report to the Elmore County Misdemeanor Probation Office for random testing.

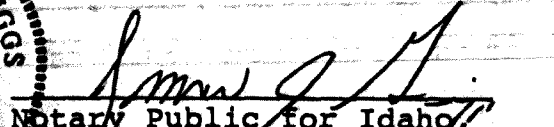
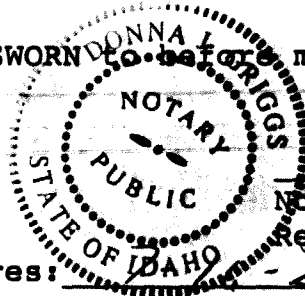
On June 6th, 2011, Mr. Widner tested positive for THC.

DATED THIS 17th day of June, 2011.



Bill Wenner
Misdemeanor Probation Officer

SUBSCRIBED AND SWORN ~~to before~~ me this 17 day of June, 2011.



Notary Public for Idaho
Residing at Mtn. Home, Idaho

Commission Expires: 2016

591-1580

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

2/26/11
BARBARA STEELE
DISTRICT COURT

STATE OF IDAHO)
Plaintiff,)
)
v.)
DANIEL WIDNER)
Defendant.)

Case/Citation No. CR-2011-4
~~AMENDED~~
~~Commitment, Order Setting Bond and Conditions of Release~~
() Order Releasing on Own Recognizance and Setting Conditions of Release

The above-named Defendant having appeared before me this date; and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release; and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

- Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.
- Bail is set in the amount of \$ 25,000.00, cash or surety.
- Released on his or her own recognizance upon the terms and conditions set forth below.
- Terms and Conditions of Release upon posting bail or upon release on own recognizance:
 - Defendant will appear at the time and place of the next proceeding in this matter, which shall be 2:00 o'clock P.m. on FRIDAY the 11th day of FEBRUARY, 2011, in the courtroom of this Court, and at such further times as may be ordered by the Court.
 - (X) If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.
 - (X) Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail Defendant at such address shall be deemed served upon the Defendant if not returned.
 - (X) Defendant shall not violate any law of the State of Idaho, any County therein, or any City or Municipality therein.
 - ~~(X)~~ Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.
 - ~~(X)~~ Defendant shall not consume alcoholic beverages to excess or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.
 - () Defendant shall abide by the terms of any no contact order issued in this case.
 - ~~(X)~~ Defendant shall submit to () daily (X) random testing for the presence of () alcohol () drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Misdemeanor Probation Office to arrange for testing. Defendant retains his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.
 - () Defendant shall attend AA or NA meetings _____ times per week while this case is pending.
 - () Defendant shall check in () in person () by telephone with the Sheriff of Elmore County at least once a () day () week () month.
 - (X) Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release herein.
 - ~~(X)~~ Other: No CONTACT WITH ALEX STEWART UNTIL FURTHER ORDER OF THE COURT

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court before which the above-entitled matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED:

Dated this 3rd day of FEBRUARY, 2011.

Defendant

Judge

ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS (ORDER-BOND/RELEASE)

Identification: DANIEL WIDNER 2656
Collected by: BILL WENNER
Collected: 06/06/2011 11:45AM
Received: 06/13/2011 10:02 AM
Reported: 06/16/2011 12:36 PM

Account #: 103535
Requisition #: 1000722058
Accession #: 110613-50083
Specimen Type: ORAL FLUID

Client: Elmore County Misdemeanor
 150 South 4th East
 Suite 5
 Mountain Home, ID 83647
 Phone: (208)587-2133

Final Result Summary
 • Delta-9-THC detected by GC/MS
 ** See additional comments at the end of this report

• 9018 - AMP/BZO/COC/MAMP/OP/VT-

Drug Tests

Drug	Result	Screening		Confirmation	
		Method	Cutoff	Method	Cutoff
Amphetamines/Methamphetamines	Not detected	ELISA	50 ng/mL		
Benzodiazepines	Not detected	ELISA	20 ng/mL		
Cocaine	Not detected	ELISA	20 ng/mL		
Opiates	Not detected	ELISA	40 ng/mL		
THC (Marijuana)					
THC	DETECTED	ELISA	4 ng/mL		
Delta-9-THC	DETECTED			GC/MS	1 ng/mL

Comments:

Delta-9-THC > 100 ng/mL.

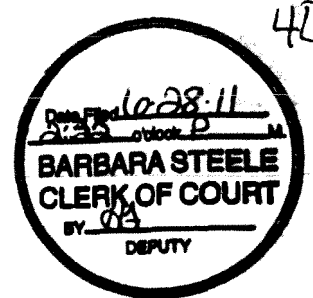
Analytical testing has been performed in accordance to all Redwood Toxicology Laboratory standard operating procedures and final results have been reviewed by laboratory certifying scientists.

Chief Toxicologist: Wayne Ross, M.C.L.S. / MT(AAB)

Method Index

- EA - Enzyme Assay
- EIA - Enzyme-Immunoassay
- ELISA - Enzyme-Linked Immunosorbent Assay
- RIA - Radio-Immunoassay
- TLC - Thin Layer Chromatography
- GC-FID - Gas Chromatography - Flame Ionization Detector
- GC/MS - Gas Chromatography / Mass Spectrometry
- LC/MS/MS - Liquid Chromatography Tandem Mass Spectrometry

Specimens are disposed of as follows: Negatives - after 2 days; Positives - after 6 months.



KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

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

THE STATE OF IDAHO,)
Plaintiff,)
vs.)
DANIEL LEE WIDNER,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)

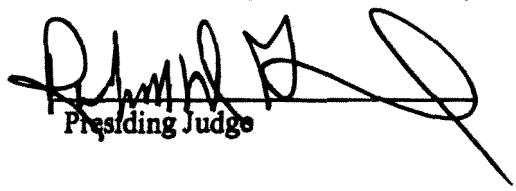
Case No. CR-2011-0000494
ORDER REVOKING DEFENDANT'S
RELEASE ON BOND

THE COURT Having read the Ex Parte Motion for Order Revoking Defendant's Release
filed by the State herein, and finding good cause therefore;

IT IS HEREBY ORDERED That the Defendant's ^{be taken into custody pending} ~~release on bond is hereby REVOKED~~ ^{determined}
_{of the motion} and a warrant shall be issued for Defendant's immediate arrest pending a hearing on the Motion.

IT IS FINALLY ORDERED That the Defendant shall appear at a hearing to ^{determine whether} ~~discuss this~~
_{bail should be denied or increased} ~~matter~~ further on the _____ day of _____ 2011, at _____ o'clock __m.

DATED This 28 day of June 2011, at the hour of 1:06 o'clock P.M.


Presiding Judge

ORIGINAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 28 day of June 2011, I caused a true and correct copy of the foregoing document to be served upon the following people by the following methods.

Elmore County Prosecutor's Office
Mountain Home, Idaho

First Class Mail
 Hand Delivery (Interoffice Mail)
 Facsimile

Joseph C. Miller
3023 E Copper Point Dr, Ste 104
Meridian, Idaho 83642

Hand Delivered
 U.S. Mail
 Certified Mail
 Facsimile


Elmore County Jail
Mountain Home, Idaho 83647

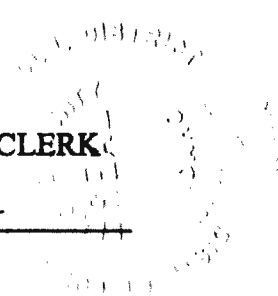
~~First Class Mail~~ Hand Delivered
 Facsimile

Aladdin/Anytime Bail Bonds
80 N Cole Rd.
Boise, Idaho 83704
Facsimile: 323-1666

Hand Delivered
 U.S. Mail
 Certified Mail
 Facsimile

BARBARA STEELE
ELMORE COUNTY CLERK


Deputy Clerk



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

Docket No. CR-2011-494

DAVID WERNER

JUDGE George G Hicks DATE June 30, 2011 TIME 1:00 PM

CLERK K. GARDIN ~~V. Trevathan~~ TYPE OF ACTION ARRAIGNMENT - In Custody

CD NO. A
////////////////////////////////////

LEE FISHER NO. 3. NO. 5
Counsel for Plaintiff / Prosecutor MH/EC Counsel for _____

NO. 4. NO. 6
Counsel for Defendant Counsel for _____

////////////////////////////////////

Index | Phase of Case
No's. |

1:26 | 1. Case Called

| 4. Understands () Request PD () Will Hire Own () Request Continuance () Waives Attorney

| Enters Plea of: () Not Guilty () Guilty

| 3. () No Objection to P.D. () Objects to P.D. () Recommendations

| 1. () P.D. Appointed () Subject to Reimbursement () P.D. Denied () Plea Accepted () Not Accepted

| 3. () Recommendations () No Objection to OR release () Comments on Bond

| 1. () Judgment () OR Release (X) Remanded, To Appear in Court Bond set at \$ _____ Cash or Surety

IN JUDGE GREENWOOD'S COURT

JULY 1st 2011 AT 10:00 AM

1:29 |

Fourth Judicial District Court, State of Idaho

In and For the County of Elmore

FILED

2011 JUN 30 PM 4:49

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

STATE OF IDAHO)
 Plaintiff,)
 vs.)
 Daniel L Widner)
 Defendant.)
)
)
)
)
)
)
)
)

Case No: CR-2011-0000494

COMMITMENT - HTA

DOB: [REDACTED]
 DL: [REDACTED]

THE STATE OF IDAHO TO ELMORE COUNTY SHERIFF DEPARTMENT:

An Order having been made this day by me that Daniel L Widner, be held to answer upon a charge of Drug-Trafficking in Marijuana (1 lb or More but Less than 5 lbs or Consists of 25 to 49 Plants), a Felony Weapon-Carry a Loaded Concealed Weapon Without a License While in a Vehicle Inside City Limits, a Misdemeanor, committed as set forth in the Complaint on file in the above-entitled action, said crime alleged to have been committed in Elmore County, State of Idaho.

YOU, THE SAID Elmore County Sheriff's Department, are commanded to receive him, the said defendant, into your custody, and detain him/her until legally discharged.

The defendant is to be admitted to bail in the sum of \$ No Bond

Next hearing is scheduled for:

Motion on Monday, July 11, 2011 at 10:00 AM
 Judge: Richard Greenwood

DATED This 30th day of June, 2011.

MAGISTRATE JUDGE

Elmore County Detention Faxed Hand Delivered
 Copy to: Defendant Defendant's Attorney Prosecutor

FAXED

44
FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO
2011 JUL 11 AM 11:01

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE
MOREARA STEELE
CLERK OF THE COURT
DEPUTY

STATE OF IDAHO,
Plaintiff,

Case No. CR-2011-494

v.

SCHEDULING ORDER

DANIEL L. WIDNER,
Defendant.

This matter came before the court on June 24, 2011 at 11:18 a.m. for a Status of the above named Defendant. The attorneys present were:

For the State: Lee Fisher

For the Defendant: Joe Miller

The Defendant requested a continuance.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The two (2) day jury trial of this action shall commence before this court on **November 7, 2011 at 9:00 a.m.**
- 2) Notice is hereby given, that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Phillip M. Becker
 Hon. G.D. Carey
 Hon. Dennis Goff
 Hon. George R. Reinhart, III
 Hon. Nathan Higer
 Hon. Daniel C. Hurlbutt, Jr.
 Hon. Linda Copple-Trout

Hon. James Judd
 Hon. Duff McKee
 Hon. Daniel Meehl
 Hon. Barry Wood
 Hon. W. H. Woodland
 Hon. Ronald Schilling
 Hon. Kathryn A. Sticklen
 Any Fourth District Judge

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later

than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **October 21, 2011 at 9:00 a.m.** for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). A courtesy copy of exhibit and witness lists shall also be submitted to the Court via email at rgreenwood@adaweb.net and hfurst@elmorecounty.org.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at rgreenwood@adaweb.net and hfurst@elmorecounty.org. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 11 day of July, 2011.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of July, 2011 I mailed (served) a true and correct copy of the within instrument to:

**ELMORE COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL**

**ELMORE COUNTY JURY CLERK
HAND DELIVERY**

**JOSEPH C. MILLER
3023 E. COPPER POINT DRIVE, SUITE 104
MERIDIAN, ID 83642
U.S. MAIL**

**BARBARA STEELE
Clerk of the District Court**

By 
Deputy Court Clerk

EXHIBIT LIST

Richard D. Greenwood, DISTRICT JUDGE
Heather Furst, DEPUTY CLERK
Fran Morris, COURT REPORTER

CASE NO. CR-2011-494

DATE: November 7, 2011

CASE: STATE OF IDAHO VS.
State's List _____

Daniel Widner
Defendant (s) List _____

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

Exhibit 1

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

STATE OF IDAHO Plaintiff,

v.

Daniel Widner Defendant.

Case/Citation No. CR-2011-495

FILED

2011 JUL 11 PM 12:25

Commitment, Order Setting Bond and Conditions of Release BARBARA STEELE CLERK OF THE COURT DEPUTY

() Order Releasing on Own Recognizance and Conditions of Release

The above-named Defendant having appeared before me this date; and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release; and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

() Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.

Bail is set in the amount of \$ Reinstate previous bond

Released on his or her own recognizance upon the terms and conditions set forth below.

Terms and Conditions of Release upon posting bail or upon release on own recognizance: As previously ordered.

(X) Defendant will appear at the time and place of the next proceeding in this matter, which shall be o'clock m, on the day of 20, in the courtroom of this Court, and at such further times as may be ordered by the Court.

(X) If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.

(X) Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail Defendant at such address shall be deemed served upon the Defendant if not returned.

(X) Defendant shall not violate any law of the State of Idaho, any County therein, or any City or Municipality therein.

() Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.

() Defendant shall not consume alcoholic beverages to excess or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.

() Defendant shall abide by the terms of any no contact order issued in this case.

() Defendant shall submit to () daily () random testing for the presence of () alcohol () drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Misdemeanor Probation Office to arrange for testing. Defendant retains his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.

() Defendant shall attend AA or NA meetings times per week while this case is pending.

() Defendant shall check in () in person () by telephone with the Sheriff of Elmore County at least once a () day () week () month.

(X) Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release herein.

Other: Must have a statement from bondsman that they will reinstate previous bond prior to release. Defendant to be tested today for baseline

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court before which the above-entitled matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED:

Dated this 11th day of July, 2011.

Daniel Widner Defendant

B. Wood Judge

ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS (ORDER-BOND/RELEASE)

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

HONORABLE BARRY WOOD

JULY 11, 2011

COURT MINUTES

THE STATE OF IDAHO,)
)
Plaintiff,) Case No. CR-2011-494
)
vs.) Traff. In Marij. (F)
)
DANIEL L. WIDNER,)
)
Defendant.)

APPEARANCES:

Lee Fisher
Deputy Prosecuting Attorney Counsel for State

Joseph Miller
Attorney at Law Counsel for Defendant

CD No. MAIN COURTROOM - NO CD

11:25 a.m. Call of case.

Time and date set for MOTION TO REVOKE DEFENDANT'S RELEASE ON BOND, defendant present, in-custody.

Mr. Miller advised the Court that the defendant is the manager at Pizza Hunt and attending ITT. On July 5, the defendant attended a concert at the Knitting Factory where he smelled marijuana. He moved to a different location and could still smell the marijuana. He had been told by the misdemeanor probation officer that if he is around the smoke it could lead to a positive test for marijuana. Therefore, defendant left the concert. The next day the defendant was called in for testing which came up positive. Defendant has completed 9 - 11 tests which have all been negative. Mr. Miller requested the defendant be released on previous bond posted with the same conditions as previously ordered.

Mr. Fisher responded that if the defendant is released, request the Court to order the defendant be tested today for a baseline.

Court ordered that if the defendant can provide a letter from the bail bonding agent that it would be willing to reinstate previous bond and if the defendant submits to testing today, he could be released on the same bond.

Defendant remanded back to the custody of the sheriff pending notice from bondsmen and testing.

11:30 a.m. End.

BARBARA STEELE
Clerk of the District Court

Reporter: N. Omsberg
Clerk: H. Furst
Reporter's Est. 5 pages

By H. Furst
Deputy Clerk

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
TELEPHONE: (208) 587-2144
FAX: (208) 587-2147
I.S.B. No. 6090

FILED
2011 JUL 12 PM 2:30

BARBARA STEELE
CLERK OF THE COURT
DEPUTY
Ba

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
DANIEL LEE WIDNER,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)
_____)

Case No. CR-2011-0000494

AND

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
ALEX EAMONN STEWART,)
SSN: [REDACTED])
DOB: [REDACTED])
Defendant.)
_____)

Case No. CR-2011-0000493

EX PARTE MOTION FOR TRANSCRIPT

COMES NOW, The State of Idaho by and through Lee Fisher, Deputy Prosecuting Attorney in and
for the County of Elmore, State of Idaho, and moves this Honorable Court for the preparation of a

EX PARTE MOTION FOR TRANSCRIPT - Page 1

ORIGINAL

transcript of the Preliminary Hearing held in State of Idaho vs. Daniel Lee Widner, case no. CR-2011-0000494, and State of Idaho vs. Alex Eamonn Stewart, case no. CR-2011-0000493, on March 25, 2011. A joint preliminary hearing was held for these cases as they are co-defendants. The cost will be paid by the Plaintiff.

DATED This 12th day of July 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: Lee Fisher
Lee Fisher

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I served a copy of the attached document to the following parties by the following means:

Joseph C. Miller
Attorney at Law
3023 E. Copper Point Drive, ste. 104
Meridian, Idaho 83642

First Class Mail
 Hand Delivery
 Facsimile

DATED this 12th day of July 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 
Lee Fisher

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED
2011 JUL 15 PM 1:58
BARBARA STEELE
CLERK OF THE COURT
DEPUTY *BS*

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

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL LEE WIDNER,)
 SSN: [REDACTED])
 DOB: [REDACTED])
 Defendant.)
 _____)

Case No. CR-2011-0000494

AND

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 ALEX EAMONN STEWART,)
 SSN: [REDACTED])
 DOB: [REDACTED])
 Defendant.)
 _____)

Case No. CR-2011-0000493

ORDER FOR TRANSCRIPT

THE COURT, Having read and considered the State's Motion for Transcript, and good cause appearing; NOW, THEREFORE, IT IS HEREBY ORDERED That a Deputy Clerk of the Elmore County

ORIGINAL

Court prepare a transcript of the joint Preliminary Hearing held in State of Idaho vs. Daniel Lee Widner, case no. CR-2011-0000494, and State of Idaho vs. Alex Eamonn Stewart, case no. CR-2011-0000493, on March 25, 2011.

IT IS FURTHERED ORDERED that the transcript shall be prepared at State's expense.

DATED This 14 day of July 2011.

B. Wood
JUDGE PRESIDING

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I served a copy of the attached document to the following parties by the following means:

Elmore County Prosecuting Attorney
190 S. 4th East
Mountain Home, Idaho 83647

First Class Mail
 Hand Delivery
 Facsimile

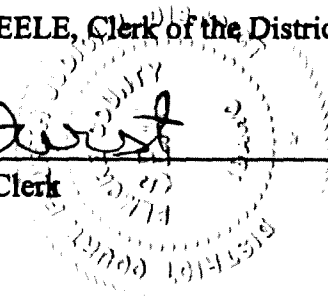
Joseph C. Miller
Attorney at Law
3023 E. Copper Point Drive, ste. 104
Meridian, Idaho 83642

First Class Mail
 Hand Delivery
 Facsimile

DATED this 15th day of July 2011.

BARBARA STEELE, Clerk of the District Court

BY: [Signature]
Deputy Clerk



4

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED
2011 JUL 26 PM 3:42
BARBARA STEELE
CLERK OF THE COURT
DEPUTY *2*

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

STATE OF IDAHO,	)	Case No. CR-2011-0000494
)	
Plaintiff,	)	STIPULATION TO CONTINUE
	)	MOTION IN LIMINE HEARING
vs.)	
)	
DANIEL LEE WIDNER,)	
)	
Defendant.)	
_____)	

COMES NOW, The State of Idaho, by and through Lee Fisher, Elmore County Deputy Prosecuting Attorney, and the Defendant, by and through his attorney of record, Joseph C. Miller, and hereby stipulate to continue the motion in limine hearing currently scheduled for August 2, 2011, at 8:30 o'clock a.m., until September 13, 2011, at 9:00 o'clock a.m. The basis for the stipulation is that the State needs the transcript of the preliminary hearing in order to respond to the motion and to determine what additional testimony, if any, may be needed at the hearing. The transcript was ordered on July 15, 2011, and the clerk has thirty-five days to complete the transcript; thus, the transcript may not be completed until mid-August. Neither party will suffer prejudice due to the delay and the new date will not delay the trial currently scheduled to begin November 7, 2011, in this matter.


2085872147

11:14:26 a.m. 07-26-2011

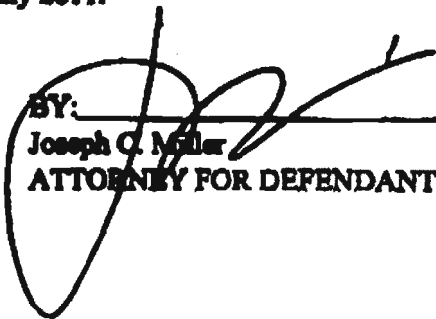
7/8

DATED This 24th day of July 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 
Leo Fisher

DATED This 26th day of July 2011.

BY: 
Joseph C. Miller
ATTORNEY FOR DEFENDANT

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED
2011 AUG -4 PM 12: 09
BARBARA STEELE
CLERK OF THE COURT
DEPUTY *[Signature]*

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

STATE OF IDAHO,	)	Case No. CR-2011-0000494
)	
Plaintiff,	)	ORDER TO CONTINUE MOTION IN
	)	LIMINE HEARING
vs.)	
)	
DANIEL LEE WIDNER,)	
)	
Defendant.)	
_____)	

BASED UPON the stipulation of the parties filed in this matter, and good cause appearing,
IT IS HEREBY ORDERED That the motion in limine hearing currently scheduled for August 2,
2011, at 8:30 o'clock a.m., is hereby VACATED and the motion is reset for hearing at the Elmore County
Courthouse on September 13, 2011, at 9:00 o'clock a.m.

DATED This 1 day of ~~July~~ ^{August} 2011.

BY: *[Signature]*
Presiding Judge

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I served a copy of the attached document to the following parties by the following means:

Elmore County Prosecuting Attorney
190 S. 4th East
Mountain Home, Idaho 83647

First Class Mail
 Hand Delivery
 Facsimile

Joseph C. Miller
Attorney at Law
3023 E. Copper Point Drive, Ste. 104
Meridian, Idaho 83642

First Class Mail
 Hand Delivery
 Facsimile

DATED this 4th day of August 2011.

BARBARA STEELE, Clerk of the District Court

BY: [Signature]
Deputy Clerk

54

FILED

2011 SEP -2 AM 11:45

BARBARA SUELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
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Counsel for the Defendant

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL L. WIDNER,)
)
 Defendant.)

Case No. CR-2011-00494

**NOTICE OF INTENT TO
CALL AND CROSS-EXAMINE
WITNESSES**

COMES NOW the Defendant, DANIEL L. WIDNER, by and through counsel, and hereby notifies the court and all parties involved of his intent to call witnesses and cross-examine the State's witnesses at the hearing currently scheduled in this matter for Tuesday, September 13, 2011, at 9:00 a.m. in the Elmore County District Court. Defendant may call:

1. Terry Murphy, TPM Investigations, P.O. Box 190142, Boise, ID 83719, (208) 855-0378; Mr. Murphy is a private investigator and will testify about police conduct, lane markings, road signage, and road measurements taken at the scenes where police initiated contact with Defendant and where Defendant was stopped.
2. Any of the police officers involved in the stop of Defendant, including but not limited to Officer Ryan Melanese and Detective Chris Jessup.

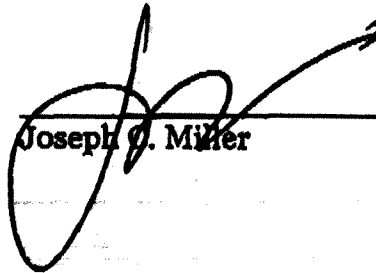
DATED this 2nd day of September, 2011.

MILLER LAW, P.C.

Joseph C. Miller
Counsel for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2011, I faxed a true and accurate copy of this document to the office of the Elmore County Prosecuting Attorney at (208) 587-2147.



Joseph G. Miller

03

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
I.S.B. No. 6090

FILED

2011 SEP -7 PM 1:12

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

STATE OF IDAHO,)	
	)	Case No. CR-2011-0000494
Plaintiff,)	
)	
vs.	)	MEMORANDUM IN OPPOSITION
	)	TO MOTION IN LIMINE
DANIEL LEE WIDNER,	)	AND MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN SUPPORT
Defendant.	)	THEREOF
)	

COMES NOW, The State of Idaho, by and through Lee Fisher, Elmore County Deputy Prosecuting Attorney, and hereby objects to Defendant's Motion in Limine.

BACKGROUND

Defendant is charged with trafficking in marijuana, a felony, and possession of a concealed weapon, a misdemeanor. Defendant was bound over to district court after a contested preliminary hearing on March 25, 2011. The Defendant has filed what is denominated a motion in limine with a supporting brief.

FACTS

Detective Jessup has approximately 240 hours of training as to narcotics investigations, holds an intermediate certificate from the Idaho P.O.S.T. Academy and has completed "just over 1800

ORIGINAL

P.O.S.T. training hours." Transcript of Preliminary Hearing held on March 25, 2011, p. 57 ll. 1-12 (hereinafter Tr. at).¹ He has been with Mountain Home Police Department for 11 years and was a reserve officer in New Mexico prior to that for about four years. See id. at p. 56 ll. 14-24. He is assigned to the Special Investigations Unit which investigates the manufacturing and delivering of controlled substances and had been a detective about one and one-half years as of the preliminary hearing date. See id. at p. 57 ll. 13-21.

According to Detective Jessup's report², on January 11, 2011, Detective Jessup was contacted by a confidential informant ("CI"). The CI advised that the CI had spoken with Daniel Widner and that Daniel had indicated that Daniel was taking a trip to California on either January 14 or January 21 to get his re-supply of marijuana. On January 21, 2011, the CI again contacted Detective Jessup and advised him that the CI believed that the CI had not had any contact with Mr. Widner and that the CI believed that was because Mr. Widner was out of marijuana. Detective Jessup asked the CI to attempt to find out any information about Mr. Widner going to California to re-up. The CI called back about an hour and a half later and advised Detective Jessup that Mr. Widner was in town and it did not appear that Mr. Widner was going to re-up on that date.

On January 26, 2011, Detective Jessup contacted the CI and was advised that the CI believed that Mr. Widner was going to re-up that weekend. On January 29, 2011, Detective Jessup contacted the CI. The CI advised that the CI had not had contact with Mr. Widner but believed that Mr. Widner had gone to California. At approximately 5:36 p.m. on that date, the CI contacted Detective Jessup

¹The Transcript does not directly line up with the numbered lines so the State has used the line that approximates the answer cited to.

²The State intends to elicit testimony at the hearing on Defendant's motion in limine. For purposes of this memorandum, the State relies upon police reports, which have been disclosed to counsel for Defendant, to provide the factual circumstances surrounding the traffic stop and subsequent detention/arrest of Defendant and search of the vehicle.

and advised him that the CI had learned that Mr. Widner was leaving for California at approximately 2:00 a.m. on January 30, 2011, and was due to return late that night or early in the morning on January 31, 2011. On January 30, 2011, Detective Jessup drove past Widner's residence in an attempt to determine which vehicle Mr. Widner was driving. Both of Mr. Widner's vehicles were there. Detective Jessup then contacted the CI to see if the CI had any information about what vehicle Mr. Widner was driving. The CI later called Detective Jessup and advised him that the CI had learned that Mr. Widner had gone to California with his roommate, Alex Stewart, and that they had taken Stewart's vehicle. Detective Jessup knew that Stewart owned a blue 1988 Honda Civic with Idaho license plate E98155. Based on this information, a plan was made to intercept the vehicle when it returned to Mountain Home. Surveillance was conducted and the information was passed on to the next shift's supervisor.

At the preliminary hearing, Officer Melanese of the Mountain Home Police Department testified that he was on duty at approximately 11:22 p.m. on January 30, 2011. Tr. at p. 4 ll. 12-14. He was conducting stationary patrol on Sunset Strip, a/k/a Highway 30, in Mountain Home, Elmore County, Idaho. See id. at ll. 17-21. His attention was drawn to a Honda Civic that was coming into town and traveling at a low rate of speed. See id. at p. 4 l. 22 - p. 5 l. 2. Based on the officer's experience with that roadway, it was unusual for a vehicle to be traveling that slowly. See id. at p. 5 ll. 3-9; p. 23 ll. 20-25. In the area Officer Melanese was on stationary patrol, the speed limit decreases from forty-five to thirty-five miles per hour, and he visually estimated the Honda's speed at twenty-seven miles per hour. See id. at p. 5 l. 20 - p. 6 l. 5. Officer Melanese is certified in the visual estimation of speed and the use of radar. See id. at p. 6 l. 6 - p. 7 l. 13. He confirmed the vehicle's speed with radar at twenty-eight miles per hour. See id. at p. 6 ll. 16-20.

Officer Melanese proceeded to follow the vehicle into town. As the roadway comes into town, it turns from a one-lane to a two-lane roadway. See id. at p. 7 l. 21 - p. 8 l. 3. When the road divided into two lanes, the Honda went into the right lane without signaling. Officer Melanese specifically noted that the vehicle moved to the right in order to enter the right lane when the roadway became two lanes. See id. at p. 39 ll. 9-23. Officer Melanese "continued to follow the vehicle as it turned right off . . . North Main, at this time, on to East Fifth North; going over the tracks, coming to a "T" intersection where the vehicle turned right, without signaling." Id. at p. 8 ll. 3

- 9.

He described the "T" intersection as being one lane of travel that comes to a point where the vehicle either has to turn left or right and Mr. Widner did not signal at that intersection. See id. at p. 39 l. 24 - p. 40 l. 9. He further detailed the "T" intersection as "if you're looking straight forward, you can turn left or you can turn right. But that road ends at that portion; if you were to continue straight, you'd run into—there is a little apartment complex over right there." Id. at p. 34 l. 18-22. Officer Melanese testified regarding this intersection, "You have to decide whether to go left or right. Because you cannot go straight, on that portion of the roadway." Id. at p. 35, ll. 9-12. He further testified, "[I]f you were literally to go straight you would actually leave the road and go into a building." Id. at ll. 13-14. Officer Melanese testified that he stops vehicles that fail to signal at the location where the road goes to two lanes if it is safe to perform a traffic stop. See id. at p. 22 l. 9 - p. 23 l. 18.

After the second failure to signal, Officer Melanese stopped the vehicle for the traffic violations. See id. at p. 8 ll. 14-18. Officer Melanese also suspected that the driver of the vehicle

might be driving under the influence, "due to the time of night . . . based on [his] experience in that portion of the roadway and the speed." Id. at p. 28 ll. 14-17.

Officer Melanese made contact with the driver of the vehicle, identified himself, and asked the driver for his driver's license, registration, and proof of insurance. The officer observed that the driver's window was opened slightly, about two or three inches, and that the driver "was nervous and shaking" as he spoke to the officer. The officer also smelled the odor of marijuana coming from the vehicle. Id. at p. 9 ll. 2-9; p. 9 ll. 20-25. He asked the driver to roll down the window further but was told it was broken. So he asked the driver to open the door so that they could speak with each other more clearly. See id. at p. 9 ll. 13-19. "The odor of . . . marijuana became even stronger as the door was opened on the vehicle." Id. at p. 10 ll. 3-4. The driver was identified as Daniel Widner by his Idaho driver's license. A passenger sitting in the passenger front seat was identified as Alex Stewart by his Idaho driver's license. See id. at p. 10 ll. 6-21. Mr. Widner told Officer Melanese that they were returning from Reno, Nevada. Officer Melanese observed two brown boxes with a microscope emblem, some clothing, caffeine drinks, and five hour energy bottles located throughout the back seat and front seats of the vehicle. See id. at p. 11 ll. 7-19. Some of the energy drinks had been consumed and some were unopened. See id. at p. 11 ll. 20-22. The boxes were located on the backseat. When asked about them, Mr. Widner said that he had purchased them for his children. See id. at p. 11 l. 24 - p. 12 l. 1.

The occupants were unable to provide the officer with proof of insurance for the vehicle. Mr. Widner indicated that the vehicle belonged to Mr. Stewart, which the officer confirmed with the Idaho registration that was provided to him. See id. at p. 12 ll. 2-10. After speaking with the driver, the officer had them wait in the vehicle while he ran their information through dispatch. See id. at p.

12 ll. 12-21. While running the information through dispatch, Detective Jessup arrived at the scene. Officer Melanese advised Detective Jessup of the "reason for the stop as well as informed him that [Officer Melanese] could smell the odor of marijuana coming from the vehicle" and asked Detective Jessup to go up to the vehicle to see if they had been able to locate an insurance card for the vehicle. Id. at p. 12 l. 23 - p. 13 l. 9.

Detective Jessup testified that after he arrived and met with Officer Melanese, he approached the vehicle and spoke with the passenger from the driver's side and the passenger identified himself as Alex Stewart. See id. at p. 58 ll. 1-18. While he spoke with Mr. Stewart, Detective Jessup smelled the odor of burnt marijuana from inside the vehicle. He identified the odor based on his training and experience. See id. at p. 59 ll. 7-17. Detective Jessup switched to the passenger side of the vehicle where he continued to speak with Mr. Stewart. Mr. Stewart told Detective Jessup that he and the driver were returning to town from Reno. See id. at ll. 19-25.

During this time, Officer Melanese reinitiated contact with Mr. Widner and asked him to step out of the vehicle and come to the rear of the vehicle, "off to the shoulder to speak with [Officer Melanese] further." Id. at p. 13 ll. 10-14. Mr. Widner was out of breath at this time and inhaled from his inhaler a couple of times. At that point, Officer Melanese advised that he could smell the odor of marijuana coming from the vehicle and asked if Mr. Widner had been smoking marijuana. See id. at ll. 17-23. Mr. Widner denied the use of marijuana. See id. at ll. 24-25. Officer Melanese then asked if there was any marijuana or any other drug in the vehicle, and Mr. Widner said no. See id. at p. 14, ll. 1-3. Based on his observations, Officer Melanese decided to conduct field sobriety tests on Mr. Widner. Officer Melanese was unable to locate any horizontal gaze nystagmus on the first test and

did not observe any green residue on Mr. Widner's tongue so he ceased the field sobriety tests at that point. See id. at ll. 13-24.

Officer Melanese had Mr. Widner sit "on the curb . . . off of the sidewalk." Id. at p. 15, ll. 1-2. The weather was windy and Officer Melanese indicated it was "pretty cold outside" and Mr. Widner was wearing a long sleeved t-shirt. Mr. Widner started to "shake pretty violently." Id. at ll. 3-12. Mr. Widner appeared to be cold to Officer Melanese. Officer Melanese asked if Mr. Widner wanted a jacket retrieved from the vehicle to which Mr. Widner said yes as long as Mr. Widner could retrieve the jacket himself. Upon advising Mr. Widner that Detective Jessup would retrieve the jacket, Mr. Widner told Officer Melanese that "he [Mr. Widner] did not want it retrieved then." Id. at ll. 17-25. Officer Melanese then asked if there was anything illegal in the jacket, at which time Mr. Widner put his head down and said there was a baggie of marijuana in the jacket. See id. at p. 16 ll. 2-5.

After speaking with Mr. Stewart, Detective Jessup went to where Officer Melanese was speaking with Mr. Widner. Mr. Widner requested a jacket. Detective Jessup asked what jacket was his so that he could retrieve it from the vehicle for Mr. Widner. See id. at p. 60 ll. 1-17. At that point, Mr. Widner stated that he no longer wanted the jacket. See id. at ll. 18-20.

According to Detective Jessup, Officer Melanese later told Detective Jessup that Mr. Widner wanted his jacket again and had admitted that he had some marijuana inside the jacket. See id. at p. 61 ll. 7-10. Detective Jessup, Officer Melanese, and Mr. Widner then walked to the vehicle, where Mr. Widner retrieved the jacket from the backseat, put the jacket on, and removed a plastic baggie with a green plant material from the pocket and handed it to Officer Melanese. Officer Melanese then gave the baggie to Detective Jessup. See id. at ll. 13-19.

Detective Jessup testified that after the baggie was located, a search of the vehicle was then conducted. See id. at p. 62 ll. 21-24.

LAW AND ARGUMENT

I. **A law enforcement officer is free to travel wherever he wishes on a public roadway; thus may follow any vehicle that is operating on a public roadway.**

The Defendant's claim that an officer cannot follow a vehicle traveling on a public street unless some offense has been committed is without merit. Officers are free to travel where they wish on public roadways and may follow a vehicle on a public roadway for any reason or no reason so long as they do not detain the vehicle. In this case, Officer Melanese did not impede the liberty of Mr. Widner and Mr. Stewart to travel as they wished when he followed the vehicle. The Defendant did not and, the State submits, cannot cite to any authority to support this proposition. Since the Defendant has failed to cite to any legal support for his claim, the State will not address this argument further.³

II **The stop was justified based on probable cause and/or reasonable, articulable suspicion.**

The officer had probable cause to stop the vehicle the Defendant was operating. Detective Jessup had received specific information from the CI regarding Mr. Widner going to replenish his supply of marijuana. The CI told the officer when Mr. Widner was leaving and returning and that Mr. Widner was with Mr. Stewart in Mr. Stewart's vehicle, which the officer knew to be a blue Honda Civic. The Honda Civic was not at the residence where Mr. Stewart lived with Mr. Widner.

³The State would note that the Defendant has misinterpreted the requirements of I.C. § 49-624. The obligation only applies when "a stationary police vehicle [is] displaying lights." Here, the officer did not have his lights on as Mr. Widner's vehicle approached the officer. Mr. Widner was not obligated to slow down below the speed limit.

When the vehicle was located, it was late at night on January 30, 2011, and both Mr. Stewart and Mr. Widner were in the vehicle. This corroborated the CI's information. This is a CI that had worked with Detective Jessup previously and had proven reliable. Detective Jessup had passed his information along to the next shift, and Officer Melanese was aware of the information.

An officer with reasonable and articulable suspicion, not even amounting to probable cause, to believe that a crime is being committed can stop a motor vehicle for that crime. See, e.g., State v. Gallegos, 120 Idaho 894, 821 P.2d 949 (Idaho 1991) (holding that officers had reasonable and articulable suspicion based on totality of the circumstances that a crime was being committed and could, therefore, detain the defendant for investigative purposes). See also State v. Linenberger, 2001 Opinion No. 54, No. 36962, (Idaho Ct. App. 2011) (discussing standards for reasonable suspicion including where a tip is given by a confidential informant) ("Where the information comes from a known citizen informant rather than an anonymous tipster, the citizen's disclosure of his or her identity, which carries the risk of accountability if the allegations turn out to be fabricated, is generally deemed adequate to show veracity and reliability") (citations omitted) (a copy of which is attached hereto as Exhibit A). Here, under the totality of the circumstances, law enforcement not only had a reasonable and articulable suspicion but had actual probable cause to believe that the crime of possession of marijuana with intent to deliver was being committed. The officer's stop of the Honda Civic was lawful.

Further, the stop was lawful as a traffic stop. An officer had probable cause to stop a vehicle when the vehicle commits a traffic infraction. Officer Melanese observed two traffic violations that were committed in his presence. First, Mr. Widner failed to signal when he went into the right lane

of traffic when the roadway went from one lane to two lanes. Second, Mr. Widner failed to signal when he came to a "T" intersection and turned right.

Idaho Code section 49-808 states in relevant part:

49-808. Turning movements and required signals. (1) No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.

(2) A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.

This section imposes two separate obligations upon a driver when making a movement upon a highway. State v. Dewbre, 133 Idaho 663, 666, 991 P.2d 388, 391 (Ct. App. 1999). First, the driver has to be able to make the movement with reasonable safety. Id. Second, the driver must give an appropriate signal. Id. The appropriate signal under the circumstances of this case is to give the signal "for not less than one hundred (100) feet traveled by the vehicle before turning." I.C. § 49-808. This situation is distinguishable from the situation in Burton v. State of Idaho. In Burton, the situation at issue involved two lanes that merged into one. See Burton v. State of Idaho, 149 Idaho 746, ____, 240 P.3d 933, 934 (Idaho App. 2010).

Here, one lane was becoming two lanes and Officer Melanese testified that Mr. Widner had to move his vehicle to the right in order to enter the right hand lane at the point where the roadway became two lanes. The statute is not unconstitutionally vague as applied to this situation. Here, Mr. Widner approached a spot where the roadway split into two lanes. He moved the vehicle he was operating to the right to enter the right hand lane. He failed to signal while doing so.

Following the first traffic infraction, Mr. Widner then continued driving to a point where he came to a "T" intersection where he had to turn left or right; he turned right. Once again, he failed to give a signal of his intention to turn right. Mr. Widner violated I.C. § 49-808 on two separate occasions. Officer Melanese had probable cause to stop the vehicle based on these traffic violations. See, e.g., State v. Schmidt, 121 Idaho 381, 825 P.2d 104 (Idaho App. 1992) ("The commission of a traffic offense gives police probable cause to stop a vehicle") (including a string citation of other cases where traffic violations have been found to give law enforcement probable cause to stop a vehicle).

III. The officers had probable cause to search the vehicle.

As discussed above, law enforcement had probable cause to stop the vehicle based on either (1) the information from CI and/or (2) the commission of traffic offense(s) by Mr. Widner, the driver of the Honda Civic. The officers were investigating the report that Mr. Widner had just gone to replenish his supply of marijuana. The officers were entitled based on that information, which had been corroborated, to search the vehicle for marijuana.

Additionally, both Officer Mableson and Detective Jessup testified that they smelled the odor of marijuana coming from the vehicle. In State v. Gonzalez, the Idaho Court of Appeals held that the odor of marijuana by itself is sufficient to give an officer probable cause to search a vehicle. In Gonzalez, a New Mexico trooper stopped a motor home for expired tags. The trooper smelled the odor of raw marijuana and conducted a search of the motor home. The search located twenty to forty pounds of loosely wrapped marijuana in a suitcase. Gonzalez was returned to Idaho to face a charge of conspiracy to possess marijuana. The motor home had been rented in Idaho. State v. Gonzalez,

117 Idaho 518, _____, 789 P.2d 206, 207 (Ct. App. 1990). In finding that the trooper did not need a warrant to search, the Idaho Court of Appeals explained:

Rather, this search comes within the automobile exception to the warrant requirement. The automobile exception applies when there is probable cause to conclude that the vehicle contains evidence of a crime, and exigent circumstances exist due to the vehicle's mobility and likelihood the evidence maybe lost or destroyed. *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *State v. Fowler*, 101 Idaho 546, 617 P.2d 850 (1980). See also *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) (motor home being used for transportation falls under the automobile exception). A warrantless search of a motor vehicle is proper if supported by probable cause. *United States v. Bowman*, 487 F.2d 1229 (10th Cir.1973).

As noted, Gonzales does not dispute the propriety of the officer's stop of the motor home for expired license plates. Nor does he dispute the district court's finding that the officer was trained to recognize by smell the presence of "raw marijuana." "The smell of marijuana alone can satisfy the probable cause requirement for a warrantless search." *State v. Capps*, 97 N.M. 453, 641 P.2d 484, 487 (1982) (emphasis original); accord *United States v. Bowman*, *supra*. An officer may draw reasonable inferences to establish probable cause from related experience and law enforcement training. *State v. Montague*, *supra*. A search warrant was not necessary because motor vehicles are subject to warrantless searches if probable cause exists, leading the officer to believe seizable evidence is contained therein. *State v. Capps*, *supra*; see also *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). The mobile characteristic of a vehicle, such as a motor home, creates exigent circumstances under which a warrantless search is allowed. *United States v. Ross*, 456 U.S. 798, 806-07, 102 S.Ct. 2157, 2163-64, 72 L.Ed.2d 572 (1982).

Id. at 519, 207. The Court of Appeals refined this standard in *State v. Schmadeka* where it held, "[T]he odor of burnt marijuana alone, when recognized by a person or canine qualified to recognize the odor, is only sufficient to establish probable cause for a warrantless search of the portion of the automobile associated with that odor." *State v. Schmadeka*, 136 Idaho 595, 600, 38 P.3d 633, 638 (Ct. App. 2011).

The officers had probable cause to search the passenger compartment of the vehicle based on the odor of marijuana they both detected. In addition, the odor of marijuana provided additional

corroboration of the CI's information. Even without that additional corroboration, law enforcement had probable cause to search the entire vehicle based on the information provided by the CI. The officers were justified in conducting a warrantless search of the vehicle under the automobile exception to the warrant requirement. The motion in limine should be denied.

IV The Defendant's admission to marijuana being in his pocket should not be suppressed.

When a defendant seeks to suppress evidence that is alleged to have been obtained as a result of an illegal seizure, the defendant bears the burden of proving that a seizure occurred. *State v. Page*, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004) (citing *Reese*, 132 Idaho at 654, 978 P.2d at 214). "The test to determine if an individual is seized for Fourth Amendment purposes is an objective one' requiring an evaluation of 'the totality of the circumstances.'" *State v. Willoughby*, 147 Idaho 482, 211 P.3d 91, 95 (2009) (citing *State v. Henage*, 143 Idaho 655, 658, 152 P.3d 16, 19 (2007)).

There is no set time limit for determining when a detention has lasted longer than necessary to effectuate the purpose of a traffic stop; rather, the court is asked to consider the scope of the detention, the law enforcement purpose to be served, and the duration of the stop. *U.S. v. Sharpe*, 470 U.S. 675, 685-86 (1985). The scope of the intrusion permitted varies based upon the particular facts and circumstances of each case. *State v. Ramirez*, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). A detainee's Fourth Amendment rights are not necessarily violated when an officer engages in brief inquiries not otherwise related to the initial purpose of the stop. *State v. Roe*, 140 Idaho 177, 181, 90 P.3d 926, 931 (Ct. App. 2004); see also *State v. Aguirre*, 141 Idaho 560, 563, 112 P.3d 848, 851 (2005) (during the course of a traffic stop, it is not necessarily a Fourth Amendment violation when an officer asks unrelated questions about drugs and weapons).

Furthermore routine traffic stops might turn up circumstances that justify an officer asking further questions unrelated to the stop. State v. Brumfield, 136 Idaho 913, 916, 42 P.3d 706, 709 (Ct. App. 2001); State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct. App. 1990). Observations, general inquiries, and events succeeding the stop may give rise to legitimate reasons for particularized lines of inquiry and further investigation by an officer. *Id.* Thus, the length and scope of the initial detention may be lawfully expanded if there exists objective and specific articulable facts justifying a suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Id.*

The Defendant seeks to suppress his statements that were made after he claims he was in custody and prior to being advised of his *Miranda* rights. Thus, the State understands that the Defendant is not seeking suppression of any statements made prior to the Defendant being taken into custody or any statements made after the Defendant was *Mirandized*. The Defendant identifies only one particular statement made during this time period - the Defendant's admission that he had a baggie of marijuana in his pocket. If other statements are sought to be suppressed, the Defendant should specifically identify those statements.

In this case, the Defendant was shaking violently, the stop occurred just before midnight on January 30, 2011, and it was cold out. The officer asked whether the Defendant wanted his coat. The Defendant answered yes and then, upon being told that Detective Jessup would retrieve the jacket, changed his mind in spite of his violent shaking and the cold night. Clearly this is not custodial interrogation. It had nothing to do with any crime, much less with the crime being investigated. Officer Melanese, no doubt finding the Defendant's response odd given the Defendant was "shaking pretty violently", asked whether there was anything illegal in the jacket, to which the Defendant said

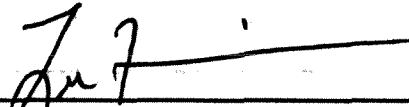
yes. This was a voluntary interaction with the officer. The Defendant could have just as easily answered that he changed his mind or that he was no longer cold. Instead, the Defendant chose to tell the officer there was a baggie of marijuana in his jacket. The statement should not be suppressed.

CONCLUSION

The Defendant's motion should be denied in its entirety.

DATED This 7th day of September 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 

Lee Fisher

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I served a copy of the attached document to the following parties by the following means:

Joseph C. Miller	___	Hand Delivered
ATTORNEY AT LAW	___	U.S. Mail
3023 E. Copper Point Drive, Ste. 104	___	Certified Mail
Meridian, Idaho 83642	___	Next Day Delivery
Facsimile (208) 287-8788	X	Facsimile

DATED this 2th day of September 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: Lee Fisher
Lee Fisher

EXHIBIT A

State v. Linenberger, 36962 (IDCCR)

STATE OF IDAHO, Plaintiff-Respondent,

v.

HOWARD W. LINENBERGER, Defendant-Appellant.

No. 36962

Court of Appeals of Idaho

September 2, 2011

2011 Opinion No. 54

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County, Hon. Lanning L. Haynes, District Judge.

Judgment of conviction for possession of a controlled substance with intent to deliver, affirmed.

Larry D. Purviance, Hayden, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lovello, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Howard W. Linenberger appeals from his judgment of conviction for possession of a controlled substance with intent to deliver. Specifically, Linenberger asserts that the district court erred by denying his motion to suppress. For the reasons set forth below, we affirm.

I. FACTS AND PROCEDURE

On October 10, 2008, a police detective received a report of suspected drug activity on a boat docked in a marina. The reporting party stated that the boat had docked several times in the past week, and he had observed several people come and go to the boat, each staying only a few minutes and one leaving that day barely able to walk. The citizen informant described the male he suspected of selling drugs from the boat and provided boat identification. The detective determined the boat belonged to Linenberger.

Based on this information, the detective and two police officers went to the marina. The detective stepped onto the boat, knocked on the door, and announced who he was. When Linenberger answered, the detective smelled an odor he associated with methamphetamine coming from the cabin. The detective asked Linenberger to step to the dock

so they could talk. The detective asked if he could conduct a pat-down search for weapons and Linenberger consented. Linenberger admitted he had a rifle in his right pocket. Upon searching that pocket, the detective found a cylinder that he believed might contain methamphetamine. The detective removed the cylinder and placed it on the ground. Linenberger thereafter admitted there was methamphetamine on the boat and gave consent to search the boat and Linenberger also told the detective that the cylinder contained methamphetamine. The detective searched the boat and found methamphetamine along with numerous items associated with the manufacture and sale of methamphetamine. The detective arrested Linenberger for possession of a controlled substance with intent to deliver. I.C. § 37-2722A(1)(A).

Linenberger filed a motion to suppress evidence, and the district court denied the motion. Linenberger entered a conditional guilty plea to the charge of possession of a controlled substance with intent to deliver and reserved his right to appeal the denial of the motion to suppress. The district court accepted Linenberger's guilty plea and sentenced him to a unified term of twelve years, with a minimum period of confinement of four years, and retained jurisdiction. Linenberger appeals.

II. ANALYSIS

Linenberger argues that the district court erred by denying his motion to suppress. Specifically, Linenberger asserts that all evidence should be suppressed because the detective entered Linenberger's boat, claimed him, conducted a pat-down search for weapons and searched his boat, all in violation of Linenberger's Fourth Amendment rights.

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Addison*, 129 Idaho 559, 951, 916 P.2d 1294, 1296 (Id. App. 1996). For instance, the reasonableness of a given search or seizure is a question of law over which we exercise independent review. *State v. Morris*, 131 Idaho 562, 565, 961 P.2d 653, 659 (Id. App. 1998). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 103, 897 P.2d 983, 987 (1995); *State v. Schweert*, 132 Idaho 781, 789, 979 P.2d 659, 662 (Id. App. 1999).

Linenberger asserts that the detective illegally entered Linenberger's boat when the detective boarded the boat without permission and knocked on the door. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. *Payton v. New York*, 445 U.S. 573, 585 (1980).

Courts have extended Fourth Amendment protection to the curtilage, which is the area or building immediately adjacent to a home which a reasonable person may expect to remain private even though it is accessible to the public. *State v. Ripoudt*, 123 Idaho 287, 272, 846 P.2d 918, 923 (Id. App. 1992). However, the presence of a police officer within the curtilage does not, by itself, result in an unconstitutional intrusion. *State v. Clark*, 136 Idaho 308, 313, 559 P.2d 344, 349 (Id. App. 1983). Just as there is an implied invitation for citizens to access a home by using driveways or pathways to the entry, police with legitimate business are entitled to enter areas of the curtilage that are implicitly open to public use. *Id.* A criminal investigation is a legitimate societal purpose as any other undertaking that would normally take a person to another's front door. *Ripoudt*, 123 Idaho at 272, 846 P.2d at 923. Therefore, when the police come onto private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places ordinary visitors could be expected to go, observations made from such vantage points are not

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covered by the Fourth Amendment. *Id.*

Linerberger was using his boat as a residence at the time the detective knocked on the door. Therefore, it is appropriate to analogize Linerberger's boat to a home. Just as a pathway to the entry of a home is considered curtilage and impliedly open to public use, when the detective used the pathway to the door of Linerberger's boat to knock and initiate contact as part of a criminal investigation, the detective did no more than enter the curtilage of Linerberger's home, impliedly open to public use. Further, there must be means by which police can knock on the door of a boat to initiate some sort of contact with the occupants. Otherwise, the boat would unreasonably be rendered a police-free zone. Accordingly, the district court was correct to conclude that, by doing no more than walking to the front door of Linerberger's boat to knock, the detective did not make an unconstitutional entry.

Linerberger also argues that, when the detective ordered him to step to the dock, Linerberger was illegally detained because the detective did not possess sufficiently reliable information that established a reasonable suspicion of criminal activity. Not all encounters between the police and citizens involve the seizure of a person. *Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Jordan*, 122 Idaho 771, 772, 839 P.2d 38, 39 (Ct. App. 1992). Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen may a court conclude that a seizure has occurred. *State v. Fry*, 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct. App. 1997). A seizure does not occur simply because a police officer approaches an individual on the street or other public place, by asking if the individual is willing to answer some questions or by putting forth questions if the individual is willing to listen. *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Florida v. Royer*, 460 U.S. 491, 497 (1983). Unless and until there is a detention, there is no seizure within the meaning of the Fourth Amendment and no constitutional rights have been infringed. *Royer*, 460 U.S. at 498. Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and ask to examine identification. *Fry*, 122 Idaho at 102, 831 P.2d at 944. So long as police do not convey a message that compliance with their requests is required, the encounter is deemed consensual and no reasonable suspicion is required. *Id.*

The United States Supreme Court, in *United States v. Mendonhall*, 446 U.S. 544, 554 (1980) stated:

Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

Accounting for all of the surrounding circumstances, the critical inquiry when determining whether a seizure has occurred is whether a reasonable person would have felt free to disregard the police, decline the officer's request, or otherwise terminate the encounter. *State v. Page*, 140 Idaho 841, 843-44, 103 P.3d 464, 466-67 (2004).

The district court determined that the testimony of the detective and police officers was credible and that Linerberger had been asked, not ordered as Linerberger claimed, to step to the dock to talk. Further, the detective testified that neither the detective nor the two other police officers displayed weapons or physically touched Linerberger. Taking into account all of the surrounding circumstances, a reasonable person would have felt free to decline the detective's request and terminate the encounter. Therefore, the district court did not err by concluding Linerberger was not detained within the meaning of the Fourth Amendment.

Even assuming Linerberger was detained, an investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *State v. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2009). Reasonable suspicion must be based

on specific, articulable facts and the rational inferences that can be drawn from those facts. *Terry*, 392 U.S. at 21; see also *Sheldon*, 139 Idaho at 983, 88 P.3d at 1223. The quantity and quality of information necessary to establish reasonable suspicion is less than that necessary to establish probable cause. *Alabama v. White*, 488 U.S. 325, 330 (1980). Still, reasonable suspicion requires more than a mere hunch or "intuitive and unparticularized suspicion." *United States v. Sokolow*, 460 U.S. 1, 7 (1983). Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop. *United States v. Cortez*, 449 U.S. 411, 417-18 (1981); *Sheldon*, 139 Idaho at 983, 88 P.3d at 1223.

Reasonable suspicion may be supplied by an informant's tip or a citizen's report of suspect activity. Whether information from such a source is sufficient to create reasonable suspicion depends upon the content and reliability of the information presented by the source, including whether the informant reveals his or her identity and the basis of the informant's knowledge. See *White*, 488 U.S. at 331; *Illinois v. Gates*, 462 U.S. 213, 233-34 (1983); *Adams v. Williams*, 407 U.S. 143, 146-47 (1972). An anonymous tip, standing alone, is generally not enough to justify a stop because an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity. *Florida v. J.L.*, 529 U.S. 286, 290 (2000); *White*, 488 U.S. at 333. However, when the information from an anonymous tip bears sufficient indicia of reliability or is corroborated by independent police observations, it may provide justification for a stop. *White*, 488 U.S. at 331-32. Where the information comes from a known citizen informant rather than an anonymous tipster, the citizen's disclosure of his or her identity, which carries the risk of accountability if the allegations turn out to be fabricated, is generally deemed adequate to show veracity and reliability. *Gates*, 462 U.S. at 233; *Williams*, 407 U.S. at 146-47; *State v. O'Brien*, 96 Idaho 548, 552, 531 P.2d 1193, 1197 (1975); *State v. Peterson*, 133 Idaho 44, 47, 881 P.2d 1154, 1157 (Ct. App. 1989); *Dunlap v. State*, 128 Idaho 801, 807, 884 P.2d 134, 140 (Ct. App. 1995).

Here, when the detective and police officers went to the marina, they did so based on a citizen informant's call. The reporting party, an employee of the marina, stated that the boat had docked several times in the past week and he had observed several people come and go to the boat, each staying only a few minutes and one leaving that day barely able to walk. The citizen informant also described the male he suspected of selling drugs from the boat and provided boat identification. Based on this information, the detective and two police officers went to the marina. The detective stopped onto the boat and inquired on the dock. When Linerberger answered, the detective smelled an odor he associated with methamphetamine coming from the cabin. He also verified that Linerberger matched the description provided by the informant. The citizen informant's tip, corroborated by the detective's independent observations, provided sufficiently reliable information that established a reasonable suspicion of criminal activity. Therefore, even assuming Linerberger was detained, his detention was justified under the Fourth Amendment.

Linerberger additionally argues that the pat-down search for weapons conducted by the detective was impermissible because Linerberger did not voluntarily consent to it. A search conducted with consent that was voluntarily given is an exception to the warrant requirement of the Fourth Amendment. *Schneidloth v. Rustenoko*, 412 U.S. 218, 219 (1973); *State v. Dominguez*, 137 Idaho 681, 683, 82 P.3d 325, 327 (Ct. App. 2002). It is the state's burden to prove, by a preponderance of the evidence, that the consent was voluntary rather than the result of duress or coercion, direct or implied. *Schneidloth*, 412 U.S. at 222; *State v. Hansen*, 138 Idaho 791, 794, 89 P.3d 1052, 1057 (2003); *Dominguez*, 137 Idaho at 683, 82 P.3d at 327; *State v. Fleenor*, 133 Idaho 652, 654, 889 P.2d 784, 786 (Ct. App. 1995). An individual's consent is involuntary if his or her will has been overcome and the individual's capacity for self-determination critically impaired. *Schneidloth*, 412 U.S. at 225. In determining whether a subject's will was overcome in a particular case, the court must assess the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation. *Id.* at 228. Thus, whether consent was granted voluntarily, or was a product of coercion, is a factual determination to be based upon the surrounding circumstances, accounting for subtly coercive police questions and the possibly vulnerable subjective state of the party granting the consent to a search. *Id.* at 228; *Hansen*, 138 Idaho at 794, 89 P.3d at 1057; *Dominguez*, 137 Idaho at 683, 82 P.3d at 327.

The trial court is the proper forum for the careful sifting of the unique facts and circumstances of each case necessary in determining voluntariness. *Schreckhoff*, 412 U.S. at 233. Even though the evidence may be equivocal and somewhat in dispute, if the trial court's finding of fact is based on reasonable inferences that may be drawn from the record, it will not be disturbed on appeal. *State v. Jaborra*, 143 Idaho 94, 97, 137 P.3d 491, 494 (Ct. App. 2006). In short, whether consent to a search is voluntary is a question of fact, and our standard of review requires that we accept a trial court's factual findings unless they are clearly erroneous. *Hansen*, 138 Idaho at 705, 99 P.3d at 1055; *State v. McCull*, 135 Idaho 895, 896, 28 P.3d 1222, 1223 (2001). Findings will not be deemed clearly erroneous if they are supported by substantial evidence in the record. *State v. Senoos*, 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct. App. 1999).

Linerberger asserts that, because the message to him was clear—either cooperate with the search, go to jail, or be charged with a crime—his consent to the pat-down search was not voluntary. The district court concluded that, based on the totality of the circumstances, Linerberger's ability to give consent to search his pockets was, in no way, overcome by the detective's conduct and his capacity for self-determination was not critically impaired. This finding is supported by substantial evidence in the record that the detective, who the district court found to be credible, made no threats or promises in exchange for the consent to search. Linerberger was not handcuffed or restrained during this encounter with the detective and no guns were drawn. Therefore, the district court's finding that Linerberger's consent to the pat-down search was voluntary was not clearly erroneous. Accordingly, evidence obtained as a result of the detective's legal pat-down search was admissible.¹¹

Linerberger's final argument is that the consent he gave to the detective to search his boat was invalid, and, therefore, the search of his boat was in violation of the Fourth Amendment. Linerberger cites two cases to support the proposition that, because he had been illegally detained and illegally frisked at the time he consented, his consent to the search of his boat was the product of those previous constitutional violations and therefore invalid. *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Tulett*, 143 Idaho 112, 175 P.3d 801 (Ct. App. 2007). However, as previously discussed, Linerberger was not detained, much less illegally detained, by the detective and was not illegally frisked for weapons. Therefore, Linerberger's argument that his consent to search his boat was invalid because it was the product of previous constitutional violations fails.

Linerberger alternatively argues that, because the detective promised that Linerberger would not go to jail or be arrested if he cooperated, Linerberger's consent to search his boat was not voluntary. The detective told Linerberger that he had been watching the boat, contacted some of the people coming out, and stated that "nobody has to go to jail. This doesn't have to be a big deal today." While this may have been a ruse, the district court concluded, based on the detective's credible testimony, the use of the ruse did not amount to a promise or threat, was proper police conduct to put Linerberger at ease without the use of weapons or coercion, and did not overbear Linerberger's will or critically impair his capacity for self-determination. Again, no threats or promises were made in exchange for the consent to search. Linerberger was not handcuffed or restrained during this encounter with the detective, and no guns were drawn. Therefore, the district court's finding that Linerberger voluntarily consented to the detective's search of Linerberger's boat is supported by substantial evidence in the record and not clearly erroneous. As such, any evidence obtained as a result of the valid search of Linerberger's boat was admissible.

III. CONCLUSION

The district court's findings that the detective's entry onto Linerberger's boat was legal, that his alleged detention, if any, was valid because it was supported by reasonable suspicion, and that the subsequent pat-down search for weapons and search of Linerberger's boat did not violate his Fourth Amendment rights, were supported by substantial evidence. The district court did not err in denying Linerberger's motion to suppress. Accordingly, his judgment of conviction for possession of a controlled substance with intent to deliver is affirmed.

Judge LANSING and Judge GUTIERREZ, CONCUR.

Notes

¹¹ Because we find that Linerberger's consent to the detective's pat-down search was voluntarily given, we need not address Linerberger's alternative argument that the pat-down was impermissible because the detective lacked reasonable suspicion to violate of the Fourth Amendment.

CR-2011-0000493/CR-2011-494
State of Idaho vs. Alex Eamonn Stewart
State of Idaho vs. Daniel Widner

Judge: Barry Wood
Hearing type: Motion in Limine
Hearing date: 9/13/2011
Time: 9:04 a.m.
Courtroom: Basement
Court reporter: Penny Tardiff
Minutes Clerk: Heather Furst
Defense Attorney: Joseph Miller, Attorney at Law
Prosecutor: Lee Fisher, Elmore Prosecuting Atty

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ELMORE
District Court Criminal Minute Entry - Motion in Limine

Court calls case at time noted above, confirms the true and correct name of defendant's, who are also present personally. (OR) (On Bond)

Parties stipulating to do this case and Mr. Widner CR-2011-494 together.

Mr. Miller stated all evidence gathered by the State should be dismissed.

- The stop conducted on 1/30/11, was invalid;
- Officer Melanese had no valid reason to stop the defendant's;
- Any evidence gathered after that should be thrown out;
- Once stop was effectuated and other officers joined Melanese there was a warrantless search conducted;
- Officers should have obtained a warrant;
- Violation of his client's rights;
- Evidence obtained during search should be suppressed.

Court why aren't you calling it a Motion to Dismiss under Rule 12? Mr. Miller stated it fits under Pre-trial Motion's.

Mr. Fisher waives opening.

Mr. Miller calls Officer Melanese.

Ryan Melanese (sworn)

9:10 Direct examination of Officer Melanese by Mr. Miller.

9:56 a.m. Objection by Mr. Fisher - we have reached past what the motion itself is.

Mr. Miller responds. Part of the argument of warrantless search, one of the factor's is the prolonged nature of the stop.

Court overrules the objection.

9:57 a.m. Direct examination of Officer Melanese continued by Mr. Miller.

10:11 a.m. No further questions by Mr. Miller.

Court inquired as to where drug dog alerted and where was the marijuana found.

10:13 a.m. Additional question by Mr. Miller of Officer Melanese.

10:14 Recess.

10:21 a.m. Back on record.

Mr. Miller stated he has a few witnesses.

Mr. Fisher stated he may have 2 hours of testimony.

Court stated we will go until 10:30 and then take up other matters and then get back to this matter. Court understands that this is a criminal matter and understands that the defendant's have a right to present evidence. Court stated that once the smell of marijuana was detected, that changed the whole situation. Police officer's are paid to be suspicious. This case is all about the stop - we should focus on that.

Court continued matter to October 11 at 2:30 p.m.

10:31 a.m. End Minute Entry.

Attest:


Heather Furst
Deputy Clerk

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KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
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I.S.B. No. 6090

FILED

2011 OCT -5 PM 4:22

BARBARA STEELE
CLERK OF THE COURT
DEPUTY
[Signature]

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

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
DANIEL LEE WIDNER,)
)
Defendant.)
_____)

Case No. CR-2011-0000494
STIPULATION TO TAKE JUDICIAL
NOTICE OF PRELIMINARY HEARING
TRANSCRIPT AND FOR COURT TO
REVIEW TRANSCRIPT

COMES NOW, The State of Idaho, by and through Lee Fisher, Elmore County Deputy Prosecuting Attorney, and the Defendant, by and through his attorney of record, Joseph C. Miller, and hereby stipulate to the Court taking judicial notice of the preliminary hearing transcript filed in this matter on August 17, 2011, for consideration as evidence as to the Defendant's motion in limine. Further, the parties stipulate to the Court reviewing the transcript.

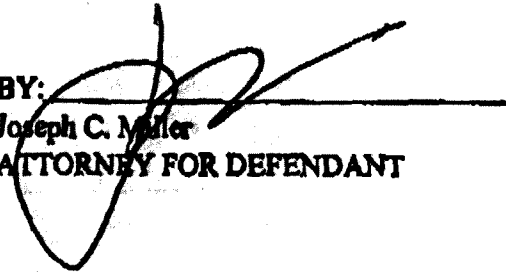
DATED This 5th day of October 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: *[Signature]*
Lee Fisher
Elmore County Deputy Prosecuting Attorney

ORIGINAL

DATED This 5th day of October 2011.

BY: 
Joseph C. Miller
ATTORNEY FOR DEFENDANT

CR-2011-0000493

State of Idaho vs. Alex Eamonn Stewart

CR-2011-494

State of Idaho vs. Daniel Widner

Judge: Barry Wood

Hearing type: Motion in Limine

Hearing date: 10/11/2011

Time: 2:29 p.m.

Courtroom: Basement

Court reporter: Mia Martorelli

Minutes Clerk: Heather Furst

Defense Attorney: Joseph Miller

Prosecutor: Lee Fisher, Elmore Prosecuting Atty

Exhibits in co-dependant's
file (CR-2011-493)

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

District Court Criminal Minute Entry – Continued Motion in Limine

Court calls case; parties present with counsel.

Continuation of Motion in Limine. Court finds that this a to a Motion to Suppress.
Continuance from September 13, 2011.

Evidence presented earlier of Officer Melanese.

Parties spoke in chambers prior to this hearing.

No motion under rules of evidence to exclude witnesses. Mr. Miller asked if the
investigator could be in here? Mr. Fisher had no objection.

Court stated that parties noted procedural basis; according to State's memorandum has
2 basis for traffic stop (failure to signal in two places and defendants were driving blue
Honda that a CI stated the defendant's had gone out of state to "re-up" their supply
defendants were driving slower than posted speed (suspicious of impaired driver) and
based on CI they wanted to intercept this vehicle. If the State's puts on proof of
evidence for traffic stop then let Court make a ruling on that. Mr. Miller asked if we will
confine testimony to this only right now. Court stated yes.

Court noted that the clerk emailed the transcript to him and he did read it. Court also
read the defendant's brief and Burton case.

Officer Melanese placed back on witness stand.

Officer Ryan Melanese (re-sworn)

2:37 p.m. Cross examination of Officer Melanese by Mr. Fisher.

State's exhibit's 1 through 5 provided to witness for identification.

Cross examination of Officer Melanese continued by Mr. Fisher.

Mr. Fisher moves for admission of State's Exhibit's 1 through 5; no objection from Mr. Miller; Court admits State's Exhibit's 1 through 5.

State's Exhibit 6 and 7 provided to witness for identification.

Cross examination of Officer Melanese continued by Mr. Fisher.

Mr. Fisher moves for admission of State's Exhibit 6 and 7; no objection from Mr. Miller; Court admits State's Exhibit 6 and 7.

State's Exhibit 8 through 11 provided to witness for identification.

Cross examination of Officer Melanese continued by Mr. Fisher.

Mr. Miller objects to clarity. Mr. Fisher stated he would ask for admission of exhibit's – that might help.

Mr. Fisher moves for admission of State's Exhibit's 8, 9 and 10; no objection from Mr. Miller; Court admits State's Exhibit 8, 9 and 10.

2:51 p.m. Cross examination of Officer Melanese continued by Mr. Fisher.

Mr. Fisher moves for admission of State's Exhibit 11; no objection from Mr. Miller; Court admits State's Exhibit 11.

Court inquired with regard to Exhibit 7. Officer Melanese stated the car in the picture is parked on N. 2nd West.

2:54 p.m. Cross examination of Officer Melanese continued by Mr. Fisher.

State's Exhibit's 12 and 13 provided to witness for identification.

Cross examination of Officer Melanese continued by Mr. Fisher.

Mr. Fisher moves for admission of State's Exhibit 12 and 13; no objection by Mr. Miller; Court admits State's Exhibit 12 and 13.

Court inquired about State's Exhibit 13 – the road depicted is W. 5th North turning into N. 2nd West.

State's Exhibit 14 and 15 provided to witness for identification.

Cross examination of Officer Melanese continued by Mr. Fisher.

Mr. Fisher moves for admission of State's Exhibit 14 and 15. Court stated this is inconsistent with prior testimony. Mr. Miller does not object to the photos but does object to the characterization.

Parties do not agree with segment of highway on Exhibit 7 a different name. Both parties agree where vehicle is N 2 W; disagreement is what the road is characterized as it makes right hand turn (right of parked vehicle in the exhibit). Dispute is if defendant's needed to signal.

Court admits State's Exhibit 14 and 15.

3:07 p.m. No further questions from the State at this time.

Re-direct examination of Officer Melanese by Mr. Miller.

Objection by Mr. Fisher with regards to relevance; Mr. Miller thinks it bears on relevance whether officer issues prior tickets for same offense. Court rules objective finding is relevant – sustain objection.

3:18 p.m. Re-direct examination of Officer Melanese continued by Mr. Miller.

3:19 p.m. No further questions from Mr. Miller.

Re-cross examination of Officer Melanese by Mr. Fisher.

3:20 p.m. No further questions from Mr. Fisher.

Re-direct examination of Officer Melanese by Mr. Miller.

3:22 p.m. No further questions from Mr. Miller.

Re-cross examination of Officer Melanese by Mr. Fisher.

3:24 p.m. No further questions of Officer Melanese by Mr. Fisher.

Court inquires as to why he read the preliminary transcript? State responded that the transcript had substantiative evidence. Court noted that the witness mentioned viewing

his video. Mr. Miller stated they have no motion to admit the video. No objection to admit video though. State had not planned to admit the video.

3:30 p.m. Witness steps down.

Mr. Miller calls Terry Murphy.

Terry Murphy (sworn). Terrance Patrick Murphy – legal name for the record.

3:31 p.m. Direct examination of Mr. Murphy by Mr. Miller.

Defendant's Exhibit A provided to witness for identification.
Direct examination of Mr. Murphy continued by Mr. Miller.

Mr. Miller moves for admission of Defendant's Exhibit A; Mr. Fisher would like additional foundation with regard to handwritten notations. Mr. Miller stated if we proceed, he will provide foundation. Court asked that foundation be provided first.

Direct examination of Mr. Murphy continued by Mr. Miller.

3:47 p.m. Mr. Miller moves for admission of Defendant's Exhibit A. Mr. Fisher inquired in lieu of an objection. State has no objection; Court admits Defense Exhibit A.

Court inquires of witness regarding Defense Exhibit A.

Direct examination of Mr. Murphy continued by Mr. Miller. Mr. Miller had witness provided with Defendant's Exhibit A.

Defense exhibit's B through J provided to witness for identification.

3:52 p.m. Break.

4:07 p.m. Back on record.

Direct examination of Mr. Murphy continued by Mr. Miller.

Objection by Mr. Fisher as to relevance; Mr. Miller stated relevance shows traffic pattern in the area. Court will allow but it will not have any weight on decision.

Direct examination of Mr. Murphy continued by Mr. Miller.

Mr. Miller moves for admission of Defense Exhibit D, E and F; Mr. Fisher has no objection if used for illustrative purposes; Mr. Miller stated they are not admitted for

illustrative purposes. Court overruled the objection. Court admits Defense exhibit D, E and F.

Direct examination of Mr. Murphy continued by Mr. Miller.

Defense exhibit A given back to witness for testimony.

Direct examination of Mr. Murphy continued by Mr. Miller.

Defense Exhibit K provided to witness for identification.

Direct examination of Mr. Murphy continued by Mr. Miller.

Defense exhibit's L through T (R left out) provided to witness for identification.

4:29 p.m. Direct examination of Mr. Murphy continued by Mr. Miller.

Mr. Miller moves for admission of Defense Exhibit K; no objection from Mr. Fisher; Court admits Defense Exhibit K.

Direct examination of Mr. Murphy continued by Mr. Miller.

Defense exhibit K provided to witness for questioning.

Direct examination of Mr. Murphy continued by Mr. Miller.

Mr. Miller moves for admission of Defense Exhibit L through T minus R; no objection from Mr. Fisher; Court admits Defense Exhibit L, M, N, O, P, Q, S, and T.

No further questions by Mr. Miller.

4:40 p.m. Cross examination of Mr. Murphy by Mr. Fisher.

Defense Exhibit O provided to witness for questioning.

Cross examination of Mr. Murphy continued by Mr. Fisher.

Defense Exhibit S provided to witness for questioning.

Cross examination of Mr. Murphy continued by Mr. Fisher.

4:46 p.m. No further questions.

Witness steps down.

Court stated that based on information presented today

Court stated the information presented here my finding would be I would like to talk first about the West 5th East 5th North North 2nd Street West matter as depicted on Defense Exhibit's K, L, M, N, O, P, Q, S and T. First make the statement and finding that I do not find it instructive or dispositive one way or the other about whether East 5th North turns into North 2nd West for a short distance before it turns into West 5th North or whether East 5th North turns into West 5th North immediately at the railroad tracks as has been testified here. There is evidence on both sides. Officer Melanese said that East 5th North turns into North 2nd West for a short distance before it becomes West 5th North, however, this witness on the stand (Mr. Murphy) here today as well as the Google Earth picture admittedly ordinarily the inscriptions from Google Earth on Defense Exhibit K would be hearsay but there was no objection to the printed West 5th North. Information on Exhibit K, so I take that as substantive evidence together with the hearsay statement from the Street Department guy at City Hall which was not objected to who as I understand said this was West 5th North. The best I can say is there is conflicting evidence. That is not instructive. What is instructive are two other things 1. There is in fact a stop sign at North 2nd West which by implication would mean the absence of a stop sign on East 5th North where it turns into either West 5th North or North 2nd West depending on how you want to interpret the street is intended to be a through street. Otherwise there would be a stop sign there. In addition to that if one looks to the photographs which in particular, Defense Exhibit N and Defense Exhibit O, and Defense Exhibit P, together with the State's Exhibit's which essentially show the same thing, in particular State's Exhibit 7 show the rounding curve and the picture of the sidewalk depicted on Defense Exhibit O and State's Exhibit 7 show the gradual winding around of the sidewalk and so I will find that for the vehicle travelling in the direction of both the defendant's and the police officer in this case took, they would never be a circumstance requiring a signal while turning to the right. Obviously, if coming from the direction the defendant's and the police officer were and they wanted to turn left by the stop sign onto North 2nd West they would be required to signal under 49-801(8). That's my finding that there is no requirement to signal at that last intersection immediately before the traffic stop in this case.

The middle intersection where the defendant's turned right at Taco John's there was a signal according to the transcript of the preliminary hearing and that intersection is not an issue.

The first intersection which is the lane widening on Sunset Boulevard going in the easterly or southeasterly direction from the Interstate towards the town of Mountain Home past the location where the officer was running stationary radar and as depicted in Defense Exhibit A. My findings are that if one looks at Defense Exhibit A and one looks at the upper left hand corner of the picture the lane width is 11 feet. Down at the point to the southeast to the point where the dotted line begins separating the two eastbound lanes, that width is 23 feet. So another words, in the distance depicted on Exhibit A the lane width goes from 11 feet to more than double that distance to 23 feet. The distance measured from the 35 mph sign to where the start of the broken line, I find to be 296.3 feet (that's uncontradictive) and the witness on the stand (Mr. Murphy) estimated somewhere between another 330 to 350 feet, somewhere between 34 feet and 54 feet is where the start of the lane width is 11 feet would be. Somewhere greater than 300 feet out to 350 feet, that lane goes from a width of 11 feet to 23 feet before it divides. My finding would be depending on the conduct of the car approaching the dotted line whether a signal is required under 49-808 would be dependent upon the driving conduct of the driver in the car. Another words, if one were coming from down by where the lane width is 11 feet and positioned the car to aim for the so-called right hand half of that lane in the 100 yards or so that is, one would never have to vary the course of the car to get into the right hand lane. If one positioned the car back by where Sagebrush Street comes in, towards the left lane, one could easily get to the left lane with never having to move the car as that word is contemplated in the statute 49-808. It's a matter as Judge Graton says in his concurring opinion beginning on page 750, it's a matter of common sense. So, clearly depending on the position of the vehicle in relation to where the two lanes start, one could be close enough to that position but one would have to be, for instance if they were on the right hand side of the 23 foot width and wanted to move into the left hand side, then to safely accomplish that one would have to signal to go left. If one were over on the left hand side and wanted to get into the right hand or so-called passing lane one would have to signal to accomplish that under the statute.

All of the evidence here is – there's a little bit of conflict in the Officer's testimony about the so-called movement of the defendant's car. Although I would find under the totality of all of the evidence including the live testimony here today is that there wasn't any movement that would require signaling. With that said, I want to be real clear about something, the State had the opportunity to establish with this video to show exactly what happened. The Court asked specifically about the video when the witness said, "We have a video of it," That would show definitively what the driving pattern of the defendants were or were not assuming the accuracy of the video. That was declined and I make no further comment on other than I have to take the testimony for what it

is. Based upon a totality of that, my finding would be how the defendant's positioned the vehicle, they did not and were not required to signal to get into the right hand lane because the totality of the evidence is the vehicle was positioned such that they just guided the car towards. Make a finding that there is no basis to stop the defendant's car for a violation of 49-808 for failure to signal at either of those two intersections under the facts presented here. We will have to schedule a time to finish the Motion hearing on any other theories you may have.

Mr. Fisher stated for the record, during the recess he spoke with defense counsel and were in the process of trying to get a redacted copy of the video since it goes far beyond the stop to present to the Court and were stipulated to.

Mr. Miller stated they had discussed it but do not have a redacted copy at this point.

Court stated that if they intended to have me reserve that finding until the redacted copy is obtained, Court is happy to do that. I didn't know that when I made my comments or I wouldn't have said what I just said. If that is the agreement, then I will retract my statement and we will get to redacted video.

Mr. Miller hated to have the Court retract its finding's, since it is in the Defense's favor, there was a discussion between the prosecutor and defense during the break about admitting the video. At that point Mr. Miller didn't have an objection.

Court will retract that portion of finding and will get the redacted video when we resume and see what it shows. Trial is set for November 7, 2011.

Mr. Fisher stated that Mr. Miller has to be here on Thursday for a separate trial. If we can get a redacted copy done by then, and give him a chance to review, can the parties then stipulate to submit the video in the meantime?

Court stated that was fine. Court will be out of the office. It was apparent that we were not going to finish this hearing today. Trial starts November 7th if it goes. The Pre-Trial is set presently for October 21, 2011. **Court set the matter over to October 27, 2011 at 11:00 a.m. with the Pre-Trial also.** Court instructed parties that the hearing must be finished that day.

Counsel agreed with the new hearing and Pre-Trial date.

Court asked if the video can be presented prior to October 27th date. Court would like to watch it October 17th when he is here next. Mr. Fisher stated he would.

Mr. Miller wanted to make a quick point in relation to the Court watching the video. He directed the Court and the prosecutor to a statement out of Burton the Court had previously read. The statement at 936, "Court said the statute referring to 49-808(1), cannot reasonably be given an utterly literal application to every type of side to side movement for a vehicle literally moves to the left or the right when a driver weaves a bit within his or her lane or simply negotiates a bend in the road but no one would contend that a signal is required in those instances. Mr. Miller asked the Court to consider that statement in watching the video. Even if there is some movement within the signal lane, prior to the dotted lane as long as the person is not crossing the dotted lane that that movement would be allowed.

Court clearly understood that. There is a two-part test when you have to signal. One, when it can be done safely and clearly here the officer's following these people. So if they dart for instance, that's my word, get right up to one lane and dart over into the other, then that would trigger the requirement to signal. But they are already right at the double line or the dotted line and then move over, arguably depending on what it looks like in the video would be required to signal. If they are way back and gradually move over, there can be some movement in the lane, as long as it's far enough away so it's clear which lane they are electing so as to not create a safety issue, then there wouldn't be a signal requirement. Fact dependent on the first intersection. There is no fact dependent on the second as long as they were going direction these people were going. That to me is clearly a through street.

5:04 p.m. End Minute Entry

Attest:



Heather Furst
Deputy Clerk

60

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY
190 South 4th East
Mountain Home, Idaho 83647
Telephone: (208) 587-2144 ext. 503
Facsimile: (208) 587-2147
ISB No. 6090

FILED
2011 OCT 25 PM 3:33
BARBARA STEELE
CLERK OF THE COURT
DEPUTY

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

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL LEE WIDNER,)
 SSN: [REDACTED])
 DOB: [REDACTED])
 Defendant.)
 _____)

Case No. CR-2011-0000494

**MOTION TO CONSOLIDATE
CASE NO. CR-2011-0000494 WITH
CASE NO. CR-2011-0000493**

AND

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 ALEX EAMONN STEWART,)
 SSN: [REDACTED])
 DOB: [REDACTED])
 Defendant.)
 _____)

Case No. CR-2011-0000493

**COMES NOW, The State of Idaho, by and through Lee Fisher, Elmore County Deputy
Prosecuting Attorney, and hereby moves this Court to consolidate these two cases. The State brings this**

ORIGINAL

Motion pursuant to I.C.R 13, which states: "Rule 13. Trial together of complaints, indictments and informations. The court may order two (2) or more complaints, indictments or informations to be tried together if the offenses, and the defendants if there is more than one (1), could have been joined in a single complaint, indictment or information. The procedure shall be the same as if the prosecution were under such single complaint, indictment or information."

The State alleges that all charges in these two cases are inseparably bound together. In this case, Mr. Stewart and Mr. Widner were found together in Mr. Stewart's vehicle with Mr. Widner driving. A search of the vehicle located trafficking amounts of marijuana and a firearm. All charges arise out of this single incident on January 30, 2011.

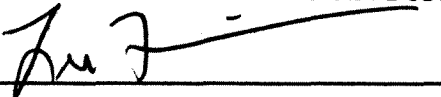
"A court may order two or more complaints, indictments, or informations to be tried together if the offenses could have been joined in a single complaint, indictment, or information. I.C.R. 13. Two or more offenses may be joined in a single complaint, indictment, or information if they are based on the same act or transaction, or on two or more acts or transactions connected together, or constitute parts of a common scheme or plan. I.C.R. 8(a). Whether joinder is proper is determined by what is alleged, not by what the proof eventually shows. *State v. Cochran*, 97 Idaho 71, 73, 539 P.2d 999, 1001 (1975)." *State v. Cook*, 144 Idaho 784, 790, 171 P.3d 1282, 1288 (Ct. App. 2007).

The State asserts that the charges could have been charged in the same complaint. The charges occurred on the same date, involved the same parties, and involve the same sequence of events. Therefore, the State alleges that the cases are inextricably entwined and should be joined.

Wherefore, the State respectfully requests that the Court grant the motion to join these matters under the earlier case number, CR-2011-0000493.

DATED This 25th day of October 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: 

Lee Fisher
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on today's date, I served a copy of the attached document to the following parties by the following means:

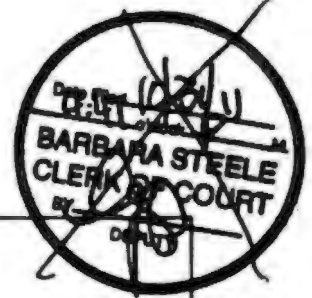
Joseph C. Miller
Attorney at Law
3023 E. Copper Point Drive, ste. 104
Meridian, Idaho 83642
Facsimile: (208) 287-8788

First Class Mail
 Hand Delivery
 Facsimile

DATED this 25th day of October 2011.

KRISTINA M. SCHINDELE
ELMORE COUNTY PROSECUTING ATTORNEY

BY: Lee Fisher
Lee Fisher



CR-2011-0000493/CR-2011-494
State of Idaho vs. Alex Eamonn Stewart
State of Idaho vs. Daniel Wisner

Hearing type: Motion in Limine
Hearing date: 10/27/2011
Time: 11:36 a.m.
Judge: Barry Wood
Courtroom: #A
Court reporter: Dianna Cromwell
Minutes Clerk: Melissa Paradise
Defense Attorney: Joseph Miller
Prosecutor: Lee Fisher, Elmore Prosecuting Atty

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ELMORE**
District Court Criminal Minute Entry - Continued Motion in Limine and Pretrial Conference

11:36 a.m. The Court calls case; parties now present with counsel.

Continuation of Motion in Limine from October 11, 2011 and also scheduled for Pretrial Conference.

Defense apologizes for being late.

Parties ready to proceed.

Agreement of the parties for Court to view DVD.

The Court has watched the video on Clerk's computer.

States Exhibit 16 marked and Admitted into evidence.

The Court has reviewed Idaho Code 49-808 and case Burton Vs. State of Idaho.

The Court finds the following after watching video: It was dark, approaching vehicle coming towards the officer's vehicle when camera turned on. Officer turns around and begins following 'suspect' vehicle. 'Suspect' meaning vehicle that eventually is stopped. This vehicle never leaves their lane of travel. Car aims to the right side of the road as it opens it up. Enters right lane of divided or split highway. Split by dotted white line. Paralleling fog line. Officer parallels double yellow line. Officer does not signal to change to left lane. Enters left lane. Neither vehicle changes lane. Aimed to go right or go left, no movement requiring 49-808 signal. Once officer is in the left lane, following suspect vehicle by Taco Johns, suspect vehicle signals to make right turn. Officer follows over the Railroad tracks. A third vehicle approaches from left up to the stop sign. At this point the officer vehicle does signal, suspect vehicle does not signal. Both on previous findings and by DVD, road takes sweeping right-hand

turn, not requiring a signal based on 49-808. The Court will grant the State's finding on Motion. Parties ready to proceed on remaining motion?

Parties agree that it is a Warrant-less stop.

Mr. Fisher - State will address findings as part of secondary motion.

Mr. Miller - if allowed opening statement, will proceed quickly.

The Court will hear evidence first so as not to confuse with information given in opening statements. Received tip?

Mr. Fisher - Confidential informant.

Mr. Miller - If allowed closing statement, mostly will be argument. Do not have much evidence to present.

The Court noted that the first basis for the stop was the failure to signal. Second basis was tip received as that provided a legal rationale to stop the vehicle.

Agree or disagree - that if police did not have legal reason to stop vehicle that rest of the items will be resolved.

The State calls Detective Jessup.

11:49 a.m. Direct Examination by the State of Detective Christopher Jessup (Sworn).

Mr. Miller stipulates to expertise, we are not in front of a jury, Defense can stipulate to these facts.

Mr. Fisher: will ask questions as to expertise as needed.

Testimony given regarding confidential informant.

12:03 p.m. Mr. Miller: Objection, calls for hearsay.

The Court overruled objection citing State Vs. Marvin Bishop. Hearsay allowed for purposes of allowing officer basis for the stop. Not going on the truth of the matter, just on why these people did what they did.

12:04 p.m. Direct Examination of Officer Jessup by the State continued.

State has no further questions.

12:08 p.m. Cross Examination of Officer Jessup by Mr. Miller.

12:10 p.m. State objects to question on Rule 509. Information may lead to reveal identity.

The Court inquired to clarify. The State does not intend to call informant as a witness.

The Court relies on State Vs. Swindle 148 Idaho 61 Court of Appeals case from 2009 and State Vs. Shane Martin Bishop, January 30, 2009. Both say same thing. Citing Adams Vs. Williams U.S. 143 and White decision of 407-U.S. 143. Information provided to Officer, referred to as a 'tip'. The Court cited the rule, known informant established. Goes to night in question, basis of his/her knowledge and whether the location of the informant is known and information based on first-hand observation, subject to immediate cooperation from Police, informant has previously provided reliable and predictive information and if the informant could be criminally charged if information was false. Officer previously established informant was stopped earlier, marijuana tested, provided the buy, reliable information previously given. This is the Courts ruling.

12:17 p.m. Cross Examination of Officer Jassup by Mr. Miller continued.

12:44 p.m. Court noted understanding of all parties to limit questioning to the basis for the stop, we are well beyond the stop. Clarification on prior agreement of the parties, the State previously limited questioning up to the time of the stop.

Mr. Fisher - Correct, Your Honor.

12:46 p.m. Mr. Miller - understands and will pull back questioning.

No further questions from Mr. Miller for this witness.

12:47 p.m. Re-Direct Examination of Officer Jassup by the State.

12:48 p.m. Mr. Miller objection, leading.

The Court overrules the objection.

12:48 p.m. Re-Direct Examination of Officer Jassup by the State continued.

No further questions from the State.

No further questions from the Defense.

12:52 p.m. Witness steps down.

The State calls Officer Melanese.

12:53 p.m. Officer Ryan Plass Melanese (sworn).

No further questions from the State.

12:57 p.m. Cross Examination of Officer Melanese by Mr. Miller.

No further questions from the Defense.

1:00 p.m. Re-Direct Examination of Officer Melanese by the State.

The State: Honda Accord or Honda Civic?

Mr. Miller: Objection, leading. The officer's already testified to that.

The Court sustains the objection, may re-phrase the question.

1:01 p.m. Re-Direct Examination of Officer Melanese by the State continued.

Witness given report filed for review to refresh memory. Identified vehicle as Honda Civic, blue in color.

1:02 p.m. Re-Cross Examination of Officer Melanese by Mr. Miller.

No further questions from the Defense.

1:05 p.m. Re-Redirect Examination of Officer Melanese by the State .

No further questions from the State.

1:06 p.m. Witness steps down.

Nothing further from the State.

Nothing further from the Defense.

1:06 p.m. Closing Argument from the State as to why Motion should be denied.

1:08 p.m. Closing Argument from the Defense requesting Motion be granted as Court has ruled that stop was not valid.

The Court clarified that the Court's ruling that the stop was not valid based on the failure to signal only. We are here to determine if the stop was valid based on information from the C.I.

Closing Argument continued by Defense. Warrant was not sought for search. Not enough information given to meet Bishop ruling as to the reliability of the informant.

1:19pm The Court clarified that we are here to determine valid reason to stop vehicle

Mr. Miller argued that he sees the situation as illegal stop and illegal search.

The Court respectfully disagrees. In Civil litigation, cannot talk damages until liability is determined.

Closing Argument continued by Mr. Miller.

1:20 p.m. The Court finds that identify known to the Police. Significance, information provided to Police, could be criminally responsible if information found to be false. Testimony that contact with C.I. was made on 26, 27, 29th and 30th. C.I. had two prior possession charges. Information received from C.I. that Widner did not take his car, went in vehicle with Stewart. Stewart's vehicle was known to law enforcement. Where travelled or which state returning from irrelevant. The fact is that Defendants went to get marijuana. Shift Supervisor was notified. Analysis based on totality of all circumstances and collective knowledge doctrine. Cited Van Dorem case. Officers did not have basis to stop vehicle on signal. Officers did have reasonable suspicion based on the totality of all circumstances culminating on contact with the C.I. and the prior knowledge of Defendant's vehicle. Initially, Officer Melanese noticed an impaired driver, then later realized vehicle was one noted. Ruling is that there is basis for the stop.

1:26 p.m. Off the record.

Conference held in chambers, ready to proceed.

2:02 p.m. Back on the record.

The Court recalled the cases and clarified there two defendants with the 2 cases consolidated.

The State moves to admit DVD Exhibit. Exhibit 17 Marked and offered.

2:04 p.m. The Court admitted Exhibit 17.

2:05 p.m. The State played the video (DVD; Exhibit 17) for the Court.

2:19 p.m. Video concluded.

The State marked Exhibit 17 disc with sharpie marker.

Clerk noted Exhibit 16 disc marked with sharpie marker, previously admitted into evidence.

The State rests.

Defense calls Officer Melanese (Sworn).

The Court noted when Exhibit 17 was played. Certain words scattered, there is no transcript, but could not hear everything clearly. Pieces of video were not audible.

2:23 p.m. Direct Examination of Officer Melanese by Mr. Miller.

State noted that video was reviewed previously with the witness so he would be able to testify to it.

2:26 p.m. Direct Examination of Officer Melanese by Mr. Miller continued.

Did not read Miranda rights prior to Mr. Widner admitting marijuana in his jacket. Defendants detained, were not allowed to leave the scene.

2:33 p.m. Objection by the State.

Mr. Miller re-phrased question.

2:34 p.m. Objection by the State, calls for a legal conclusion.

The Court sustained the objection, but witness already answered question.

Marijuana in found in the car was in sealed box, in sealed plastic packaging.

2:39 p.m. Objection from the State.

Mr. Fisher inquired of the witness, submitted objection.

Mr. Miller argued it is for the truth of the matter. Nothing further.

2:40 p.m. Cross Examination of Officer Melanese by the State.

2:41 p.m. Re-direct Examination of Officer Melanese by Mr. Miller.

2:43 p.m. Objection from the State, foundational.

Question withdrawn by Mr. Miller, nothing further.

2:43 p.m. Witness steps down.

Defense calls Officer Jessup (previously sworn).

2:44 p.m. Direct Examination of Officer Jessup by Mr. Miller.

Deputy Sterling and his canine officer assisted in searching the vehicle. Defendant's statements made prior to Miranda rights.

Defense has nothing further.

2:57 p.m. Cross Examination of Officer Jessup by the State.

2:57 p.m. Mr. Miller objects to answer, ask that it be stricken from the record.

Argument from the State.

The Court noted if offered for the truth of the matter, then it should be stricken. If offered to show what officer did next, is not hearsay. The Court does not understand the purpose of the question in relation to anything else.

The State has no further evidence.

The Court would then sustain objection and it should be stricken.

State asked for clarification on which part of answer would be stricken.

The Court inquired of the witness.

The Defense and the State rest.

3:01 p.m. Closing argument from the State on conducting search.

3:02 p.m. Closing argument from the Defense on whether the warrant-less search that yielded the marijuana was valid or not. Determined by the Court that the stop was valid, but at issue is whether they get to conduct a search. Statement should be suppressed. Search was unreasonable, ask for evidence to be suppressed.

The Court inquired on whether there was evidence with regard to the canine officer. Is there prior information in the record.

Mr. Fisher read Officer Griggs' testimony from Preliminary Hearing transcript.

The Court inquired as to the Miranda rights of the Defendant.

3:16 p.m. Final argument from the State.

3:17 p.m. The Court has already determined from the prior record that the stop of the vehicle was not valid, but that it was valid from the information from the C.I. and totality of all information. The Court does not have the case cite in front of me, when the person hands over their license to the officer, they cannot drive without a valid license so the authority of the stop with the overhead lights and the lack of license that the Defendants were not free to go. The situation changes when the Officer smelled marijuana. Officer Melanese testified previously and when the door was opened when the window did not roll down, the smell was stronger. Both officers said the same thing. The Officers may have had marijuana on the brain, officers are paid to be suspicious. The basis for the stop of the car was suspicions. And with smell suspicions were heightened. Vehicle driving 27 mph in a 45 or 35, well under the speed limit. Testimony from Officer that initial alert was due to the low speed and possibly impaired driver, did not realize until after turn that the license plate was identified as car at shift meeting. Can bring the drug dog when the smell marijuana, other officers can respond, no legal requirement that they can't show up. Question asked by the Defense if they could have done things different, i.e. warrant. Question here is whether or not the conduct of the police is supported by the law and is constitutional. The Court's determination is that the Officer is not required to immediately Mirandize. Investigative questions asked as seen on Exhibit 17 video. The Court's determination is the search was lawful. The Motion to Suppress is denied. The Court will take one other look at case law. Open to counsel to present any further case citations regarding time for Mirandizing.

Mr. Miller requests time to discuss with clients.

The State would submit to vacate and reset as possible resolution may be reached.

Mr. Miller agrees to vacate.


Mr. Stewart and Mr. Widner waive rights to speedy trial.

Jury Trial set for November 7 -8, 2011 vacated.

Status Hearing set for November 10, 2011 at 10:00am

3:31 p.m. End Minute Entry.

Attest



Melissa Paradis
Deputy Clerk

FILED

2011 NOV -9 PM 2:14

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

BARBARA J. JOHNSON
CLERK OF THE COURT
DEPUTY
WJ

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL LEE WIDNER,)
)
 Defendant.)

Case No. CR-2011-494

SUPPLEMENTAL ORDER ON DEFENDANT'S MOTION TO SUPPRESS

1. On October 27, 2011, the Court concluded the Evidentiary Hearing on the Defendant's Motion to Suppress.
2. On November 4, 2011, Mr. Miller submitted to the Court a Memorandum Decision and Order from the Fifth Judicial District of Idaho in the case of State of Idaho vs. Sean T. Ciocca.
3. After further research, the Court finds and concludes that the relevant legal determination comes from State v. James, 148 Idaho 574. More specifically, that the investigatory traffic stop of Mr. Widner did not transform into a custodial detention requiring *Miranda* warnings until Mr. Widner told the officer of the marijuana in his coat pocket and was thereafter placed under arrest.

SUPPLEMENTAL ORDER ON DEFENDANT'S MOTION

The Motion to Suppress on this basis is DENIED.

IT IS SO ORDERED.

Dated: November 9, 2011

B Wood

Barry Wood,
Senior District Judge

CLERK'S CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing document was sent to the following:

Elmore County Prosecutor's Office
Mountain Home, Idaho 83647
INTERDEPARTMENTAL MAIL

Joseph Miller
Hand Delivery

Dated this 9th day of November, 2011.

BARBARA STEELE
Clerk of the District Court

By Churst
Deputy Clerk

SUPPLEMENTAL ORDER ON DEFENDANT'S MOTION

CR-2011-0000493/CR-2011-0000494
State of Idaho vs. Alex Eamonn Stewart/Daniel Widner

Hearing type: Status
Hearing date: 11/10/2011
Time: 11:12 a.m.
Judge: Barry Wood
Courtroom: Main
Court reporter: Dianna Cromwell
Minutes Clerk: Heather Furst
Defense Attorney: Joseph Miller (NOT Present)
Prosecutor: Lee Fisher, Elmore Prosecuting Atty

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ELMORE
District Court Criminal Minute Entry - STATUS**

Court calls case at time noted above, confirms the true and correct name of defendant, who are not present personally. (OR) (On Bond)

Court noted that a Supplemental Order on Motion to Suppress was filed.
Court received a Stipulation filed this morning to continue proceedings; Court is reluctant to do that;

Mr. Fisher does not object to set over.

Court set November 22, 2011 at 10:00 a.m. for STATUS.

Mr. Fisher to advise counsel and notice to be sent out.

11:13 a.m. End Minute Entry.

Attest: 
Heather Furst
Deputy Clerk

6

FILED

2011 NOV 10 AM 9:53

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
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3023 E. Copper Point Dr., Ste. 104
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ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL WIDNER,)
)
 Defendant.)

Case No. CR-2011-00494

**STIPULATED MOTION TO
CONTINUE REVIEW HEARING**

TO: DISTRICT JUDGE BARRY WOOD

COMES NOW the Defendant, DANIEL WIDNER, by and through counsel, and affirms that the parties have stipulated to move the court to continue the review hearing currently scheduled in this matter for Thursday, November 10, 2011, at 10:00 a.m. to give defense counsel additional and adequate time to discuss the State's offers of settlement with Defendant and Defendant's family. Speedy trial has already been waived by Defendant on the record.

DATED this 10th day of November, 2011.

MILLER LAW, P.C.

ELMORE COUNTY PROSECUTOR

Joseph C. Miller
Attorney for the Defendant

Lee Fisher
Deputy Prosecutor

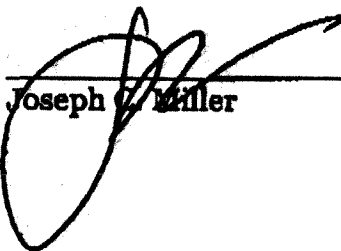
ORIGINAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2011., I served true and correct copies of the foregoing document by delivering the same to the following persons, by the method indicated below, pursuant to I.R.C.P.5(f):

Lee Fisher
Elmore County Prosecutor's Office
190 South 4th East
Mountain Home, ID 83647
Fax: 208-587-2147

- U.S. Mail, postage prepaid
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Joseph Miller

CR-2011-0000493

State of Idaho vs. Alex Eamonn Stewart

Hearing type: Status

Hearing date: 11/22/2011

Time: 10:31

Judge: Barry Wood

Courtroom: Main

Court reporter: Mia Martorelli

Minutes Clerk: Heather Furst

Defense Attorney: Joseph Miller

Prosecutor: Lee Fisher, Elmore Prosecuting Atty

CR-2011-0000494

State of Idaho vs. Daniel Widner

Hearing type: Status

Hearing date: 11/22/2011

Time: 10:31 a.m.

Judge: Barry Wood

Courtroom: Main

Court reporter: Mia Martorelli

Minutes Clerk: Heather Furst

Defense Attorney: Joseph Miller

Prosecutor: Lee Fisher, Elmore Prosecuting Atty

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ELMORE
District Court Criminal Minute Entry**

Court calls case at time noted above, confirms the true and correct name of defendant(s), who are also present personally. (DR) (On Bond)

Parties present.

Mr. Miller informed the Court that he has met with his clients and have reached a resolution. The agreement is as follows:

Daniel Widner:

State will not file an enhancement for use of firearm;

The defendant will enter a conditional plea; allowing him to exercise his right of appeal;

The State will object to suspending the sentence;

Defendant will plead guilty to Trafficking in Marijuana (Felony) and Concealed Weapon (MD);

Order a Substance Abuse evaluation and Pre-sentence Investigation;

Fine of \$5000.00 for the felony charge;

Court costs;

On the Misdemeanor charge waive fine and court costs;
Felony charge and underlying sentence of 3 years fixed + 12 years indeterminate = 15 years total;
On the Misdemeanor charge 180 days jail to run concurrent to felony;
Sentence to be imposed;
Restitution to be determined for the testing of the marijuana;
Offer to be withdrawn if defendant fails to appear for hearings;
Offer void if defendant is charged with any new violations or if prior convictions are found that the State did not know about;
At sentencing the State can set forth basis for charges and may present victim statements;
Defense is free to argue for less.

Defendant is accepting offer with right to appeal and argue for less.

Mr. Fisher concurred with representation. Mr. Fisher noted since this is a conditional plea, it should be done in writing.

Court set matter over to December 19 2011 at 10:00 a.m. for ENTRY OF PLEA.

Alex Stewart:
Reduce charge to Possession with Intent to Deliver;
State will not file conspiracy charges
Mr. Stewart will agree to testify truthfully against Winder if Winder proceeded to trial;
Defendant will enter a conditional plea to reserve his right to appeal;
State will oppose request to suspend sentence
Substance abuse evaluation and Pre-Sentence Investigation to be ordered prior to sentencing;
State will object to a request for a Withheld Judgment;
Fine of \$5000.00
Court costs;
Public Defender reimbursement for any time the Public Defender represented the defendant;
Underlying sentence of 2 years fixed + 3 years indeterminate = 5 years total; State recommending suspension and have the Court retain jurisdiction;
Restitution to be determined for testing of marijuana
Offer to be withdrawn if defendant fails to appear for hearings;
Offer void if defendant is charged with any new violations or if prior convictions are found that the State did not know about;
Defense is free to argue for less;

Court set matter for Change of Plea at December 19, 2011 at 10:00 a.m.

Court is inclined to have Stewart re-appointed Public Defender to get second opinion since Mr. Miller is representing both parties and the defendant has agreed to testify against co-defendant.

Mr. Miller agreed with Court.

Court appointed Public Defender to represent Mr. Stewart and set a **STATUS CONFERENCE** on December 6, at 9:00 a.m. Court directed the defendant to contact Mr. Ratliff's office immediately.

Mr. Miller asked if Mr. Stewart meets with the Public Defender and still wants to go with the deal will he be still be represented by the Public Defender's Office? Court stated he would let the defendant speak with the Public Defender about this issue.

Court let parties know that Judge Norton would be the Sentencing Judge.

10:47 a.m. End Minute Entry.

Attest: 
Heather Furst
Deputy Clerk

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

STATE OF IDAHO
Plaintiff,

Case/Citation No. CR-2011-944 ED

v.

Commitment, Order Setting Bond and Conditions of Release
 Order Releasing on Own Recognizance and Conditions of Release
2011 DEC 19 PM 4:14
BARBARA STEELE
CLERK OF THE COURT
DEPUTY AS

Daniel L. Widner
Defendant.

The above-named Defendant having appeared before me this date; and the Court having made inquiry concerning reasonable bail for said Defendant, or release on his or her own recognizance, and appropriate conditions of any release; and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that said Defendant is:

- Committed to the custody of the Sheriff of Elmore County, pending the posting of bond as hereinafter provided, and upon the further terms and conditions set forth below.
- Bail is set in the amount of \$ _____, cash or surety.
- Released on his or her own recognizance upon the terms and conditions set forth below.
- Terms and Conditions of Release upon posting bail or upon release on own recognizance: As previously ordered.
 - Defendant will appear at the time and place of the next proceeding in this matter, which shall be _____ o'clock _____ m, on _____ the _____ day of _____, 20____, in the courtroom of this Court, and at such further times as may be ordered by the Court.
 - If Defendant fails to so appear and is apprehended in a jurisdiction outside the State of Idaho, he or she hereby waives extradition to the State of Idaho.
 - Defendant shall at all times advise the court clerk and his or her attorney (if any) of any changes in his or her mailing address and telephone contact number. Any and all Notices or other Court documents that may be sent by U.S. Mail Defendant at such address shall be deemed served upon the Defendant if not returned..
 - Defendant shall not violate any law of the State of Idaho, any County therein, or any City or Municipality therein.
 - Defendant shall not carry any weapon, concealed or otherwise, upon his or her person.
 - Defendant shall not consume alcoholic beverages ~~or~~ or ingest any substance that might produce a narcotic effect on him or her, other than those prescribed for Defendant by a person authorized to prescribe medications.
 - Defendant shall abide by the terms of any no contact order issued in this case.
 - Defendant shall submit to () daily () random testing for the presence of () alcohol () drugs in his or her blood, breath, saliva, or urine. Immediately upon release, Defendant shall report to the Elmore County Misdemeanor Probation Office to arrange for testing. Defendant retains his or her right not to give evidence of a crime against him or herself, but if Defendant refuses to submit to testing when requested, he or she subjects himself or herself to revocation of bail.
 - Defendant shall attend AA or NA meetings _____ times per week while this case is pending.
 - Defendant shall check in () in person () by telephone with the Sheriff of Elmore County at least once a () day () week () month.
 - Defendant shall immediately notify the court clerk if there is any change in any of the representations made by Defendant in connection with his or her application for release herein.
 - Other: _____

Defendant is hereby notified that upon violation of the above conditions, or upon the receipt of additional information bearing upon the reasonableness of the bail or conditions herein, any Court before which the above-entitled matter is pending may modify or revoke this Order and return the Defendant to custody and require the Defendant to give additional bail.

REVIEWED AND ACCEPTED:

Dated this 19th day of December, 2011.

[Signature]
Defendant

[Signature]
Judge

ORDER RE: COMMITMENT/BAIL/TERMS AND CONDITIONS (ORDER-BOND/RELEASE)

- RESET
- RESET for 19-2524 request after initial order

ORIGIN OF THIS DOCUMENT TO DOC

Assigned: _____
 Assigned: _____ Due Date: _____

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF ELMORE
 ORDER FOR PRESENTENCE REPORT AND EVALUATIONS**

FILED
 2011 DEC 19 PM 4:15

THE STATE OF IDAHO,)
) Plaintiff,)
 vs.)
Daniel L. Widner)
 (First) (MI) (Last))
) Defendant.)

CASE NO. CR 2011-494 BARBARA STEELE
 CLERK OF THE COURT
 CHARGE(S): Trafficking Marijuana (F)
Concealing A Dangerous Weapon (M)

On this day of 19th December, 2011, a Pre-sentence Investigation Report was ordered by the Honorable
Barry Wood for Judge Lynn Norton to be completed for Court appearance on the 5th day of March
2012 at Mountain Home, Idaho, at 10:15 a.m.

EVALUATIONS TO BE DONE: Copy of each Evaluation to be sent to Presentence Investigation Office to be included with PSI
 Under IC 19-2524 assessments(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant
 to (IC 19-2524(4)):

Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment (PSMH1 ROA code); and/or
 Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment (PSSA1 ROA code)

Other non-§ 19-2524 evaluations/examinations ordered for use with the PSI:

Sex Offender Domestic Violence Drug & Alcohol Mental Health Evaluator: _____
 No evaluations are ordered. (PSI01 ROA code)

DEFENSE COUNSEL: Joseph Miller PROSECUTOR: Lee Fisher

THE DEFENDANT IS IN CUSTODY: NO YES If so, where: _____

PLEA AGREEMENT: State recommendation:
 WHJ / JOC _____ Probation _____ PD Reimb _____ Fine _____ ACJ _____ Restitution _____ Other: _____

..... Date: _____ Signature: _____

DEFENDANT'S INFORMATION: _____ DO YOU NEED AN INTERPRETER? YES NO

Name: Daniel Widner Male Female RACE: Caucasian Hispanic Other
 Address: 1117 NW Foster City: Mtn. Home State: Id ZIP: 83647
 Telephone: 208 591-1580 Message Phone: N/A Work Phone: N/A
 Employer: Pizza Hut Work Address: Mountain Home
 Date of Birth: 3/25/1986 Social Security Number: 560-99-2656
 Name & Phone Number of nearest relative: Ken & Terry Widner 208-599-0293
 Date of Arrest: _____ Arresting Agency: _____

You must check in at the PSI office at 2161 Old Penitentiary Road to sign preliminary release forms within 24 hours of court today. Remember to bring completed Pre-sentence Investigation Questionnaire to interview to be scheduled with PSI.

CR-2011-0000494

State of Idaho vs. Daniel L Widner

Hearing type: Entry of Plea
Hearing date: 12/19/2011
Time: 11:56 a.m.
Judge: Barry Wood
Courtroom: Main
Court reporter: Mia Martorelli
Minutes Clerk: Heather Furst
Defense Attorney: Joseph Miller
Prosecutor: Elmore Prosecuting Atty

Time and date set for ENTRY OF PLEA, defendant present.

Defendant is charged with:
Trafficking in Marijuana (F)
Concealing a Dangerous Weapon (MD)

Mr. Miller the defendant will enter a conditional plea to both charges.

Felony Penalties:
Court costs
Restitution
15 years prison
50,000.00 fine
Part A - fixed period of 1 year to be served.

Misdemeanor penalties:
6 months jail
1000.00 fine
Court costs
Restitution

Under Rule 11 on conditional pleas; defendant may enter a conditional plea with written reservations. Need to have that in writing.

Court allowed Mr. Miller to write out what he is reserving for now and then asked that he formalize with heading later today and submit to court.

Defendant (DANIEL L. WIDNER) sworn and examined as a witness in own behalf and for information of the Court.

Defendant advised that he understood his rights, the charge(s) and the possible penalties that could be imposed.

COURT MINUTES - DECEMBER 19, 2011
Page - 1

The Court advised the defendant that by pleading GUILTY, he would be giving up his constitutional right to a trial by jury and the right to confront witnesses and accusers and the privilege against self incrimination. Further advised that the Court is not bound by the negotiations of counsel at sentencing.

Mr. Miller stated the agreement for the record:
Condition plea to Trafficking and Concealed Weapons as charged;
State will recommend:
Felony charge - Fine of 5000; court costs
Prison term of 15 years with 3 years fixed and 12 years indeterminate;
Restitution be left open or amount to be determined;
State ask for imposition;

Misdemeanor charge - Waive fine and costs
180 days jail to run concurrent to Felony

Any new charges or if defendant fails to appear or reset for trial - offer will be withdrawn

Defense is free to argue for less.

Mr. Fisher concurred and added that PSI and Substance Abuse evaluation be ordered.

Defendant agrees.

In answer to the Court, defendant entered a plea of "GUILTY" to Count I - Trafficking in Marijuana and Count II - Concealing a Dangerous Weapon.

The Court found that the defendant understood the rights he would be giving up by his plea of guilty and that he understands that the Court is not bound by the negotiations of counsel at the time of sentencing in this matter.

The Court accepted the defendant's plea of "GUILTY"; and directed the clerk to enter said plea.

The Court ordered a presentence report and restitution report and continued this matter to March 5, 2012 at 10:15 a.m. for SENTENCING with Judge Norton.

Court ordered that the defendant not consume any alcohol; no drugs; violate no new laws.

12:32 p.m. End.

Clerk of the District Court

By *A. Just*
Deputy Clerk

68

FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

2012 MAR 21 PM 5:23

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *NS*

1
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5
6 THE STATE OF IDAHO,

7 Plaintiff,

8 vs.

Case No. CR-2011-494

9 DANIEL L. WIDNER,

JUDGMENT & COMMITMENT

10
11 Defendant.

12 SSN: [REDACTED]
13 DOB: [REDACTED]

14
15 On the 21st day of March, 2012, before the Honorable Lynn G. Norton, District
16 Judge, personally appeared Lee Fisher, Deputy Prosecuting Attorney for the County of
17 Elmore, State of Idaho, and the defendant with his attorney, Joseph Miller, for the
18 pronouncement of judgment in this case.

19
20 The defendant has been convicted upon a plea of guilty to the offenses of
21 Trafficking in Marijuana, Count I, FELONY, I.C. § 37-2732B(a)(1)(A) and (D); and
22 Concealing a Dangerous Weapon while in a Motor Vehicle, Count II, MISDEMEANOR,
23 I.C. § 18-3302(9) and (14), of the Information. The Court asked the defendant if he had
24 any legal cause to show why judgment should not be pronounced against him. No
25 objection was made by either the State or the Defense to the entry of judgment.
26

27
28 IT IS FURTHER ADJUDGED that the defendant is guilty as charged and
29 convicted; that the offense for which the defendant is adjudged guilty herein was
committed on or about the 30th day of January, 2011.

1 IT IS ADJUDGED that the defendant is sentenced pursuant to Idaho Code §19-
2 2513 to the custody of the Idaho State Board of Correction to be held and incarcerated by
3 said Board in a suitable place for a period of time as follows:
4

5 For a minimum fixed and determinate period of confinement of one (1) year; with
6 the fixed minimum period followed by an indeterminate period of custody of up to
7 fourteen (14) years, for a total term not to exceed fifteen (15) years, on Count I.
8

9 Pursuant to Idaho Code §18-309, the defendant shall be given credit for the time
10 already served in this case in the amount of twenty (20) days.

11 IT IS FURTHER ORDERED that the defendant shall pay a fine of five thousand
12 dollars (\$5,000.00), restitution for law enforcement costs in the amount of six hundred
13 dollars (\$600.00) joint and several with co-defendant, Alex Stewart. Defendant shall remit
14 court costs totaling two hundred and sixty-five dollars and fifty cents (\$265.50) consisting of
15 seventeen dollars fifty cents (\$17.50); Criminal Justice Fee of ten dollars (\$10.00); P.O.S.T.
16 Fee of ten dollars (\$10.00); ISTARS Fee of ten dollars (\$10.00); Peace Officer Temporary
17 Disability Fee of three dollars (\$3.00); Victim's Compensation Fund in the amount of seventy-
18 five dollars (\$75.00); Drug Hotline Fee pursuant to I.C. § 37-2735A in the amount of ten
19 dollars (\$10.00); Drug Case Fee of thirty dollars (\$30.00); Emergency Surcharge Fee of one
20 hundred dollars (\$100.00). The defendant is to pay up to \$100.00 for Presentence
21 Investigation Report pursuant to I.C. § 19-2516;
22
23
24


25
26 Count II: (Misdemeanor)

27 The defendant shall serve one hundred-eighty (180) days, with credit for twenty
28 (20) days served in the Elmore County Jail, to run concurrently with Count I. The
29 defendant waived court costs due to indigency.

1 IT IS FURTHER ORDERED that the defendant be committed to the custody of
2 the Sheriff of Elmore County, Idaho, for delivery forthwith to the custody of the Idaho
3 State Board of Correction at the Idaho State Penitentiary or other facility within the state
4 designated by the State Board of Correction.
5

6 IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this
7 Judgment and Commitment to the said Sheriff, which shall serve as the commitment of
8 the defendant.
9

10 Done in open court this 21st day of March, 2012.

11
12
13 
14 LYNN G. NORTON
15 District Judge
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CERTIFICATE OF MAILING

I hereby certify that on this 21st day of March, 2012, I mailed (served) a true and correct copy of the within instrument to:

**ELMORE COUNTY PROSECUTOR
INTER DEPT MAIL**

**ELMORE COUNTY JAIL
INTER DEPT MAIL**

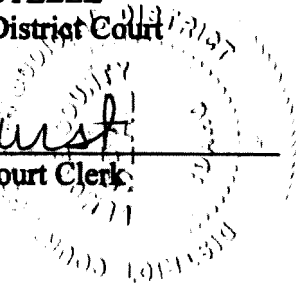
**DEPARTMENT OF CORRECTION
VIA - EMAIL**

**PROBATION & PAROLE
VIA - EMAIL**

**Joseph Miller
MILLER LAW, P.C.
5223 W. Overland Road
Boise, ID 83705
U.S. MAIL**

**BARBARA STEELE
Clerk of the District Court**

By: *[Signature]*
Deputy Court Clerk



CR-2011-0000494

State of Idaho vs. Daniel L Widner

Hearing type: Sentencing

Hearing date: 3/05/2012

Time: 9:58 a.m.

Judge: Lynn G Norton

Courtroom: Main

Court reporter: Penny Tardiff

Minutes Clerk: Heather Furst

Defense Attorney: Joseph Miller

Prosecutor: Lee Fisher, Elmore Prosecuting Atty

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ELMORE
District Court Criminal Minute Entry - Sentencing**

Court calls case at time noted above. Confirms the true and correct name of the defendant, who is also present personally (Released on Bond)

Court has received PSI and alcohol evaluation. Mr. Miller has not had a chance to review with his client. Would like a set over.

Court set matter over for SENTENCING on March 21, 2012 at 4:00 p.m.

10:02 a.m. End Minute Entry.

Attest:



Heather Furst

Deputy Clerk

CR-2011-0000494

State of Idaho vs. Daniel L Widner

Hearing type: Sentencing

Hearing date: 3/21/2012

Time: 4:38 PM

Judge: Lynn G Norton

Courtroom: Main

Court reporter: Penny Tardiff

Minutes Clerk: Donna Griggs

Defense Attorney: Joseph Miller

Prosecutor: Lee Fisher Elmore Prosecuting Atty

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ELMORE
District Court Criminal Minute Entry - Sentencing**

Court calls case at time noted above. Confirms the true and correct name of the defendant, who is also present personally (Released on Bond)

The Court reviews the file for the record. Pursuant to I.C. 19-2510, the defendant was previously informed by the Court as to the nature of the information that was filed in this matter and the maximum penalties as to each count. Further, pursuant to I.C. 19-2510 there is no legal cause claimed why judgment should not be pronounced in this matter.

Mr. Fisher has reviewed and has nothing to change in PSI

Mr. Miller noted correction criminal history charge, 2 different charges on page 3, one shows dismissed and one shows charged; page 1 of GAIN says married, he is not married has one child of his own.

Court noted that this charge shows dismissed in ISTARs. Court will not consider this charge.

Mr. Miller noted page 2 no high school or GED, defendant has a high school diploma. Graduated, in 2004.

Mr. Fisher noted PSI came over in a weird way and doesn't have everything in his copy. Court provided GAIN report to Mr. Fisher for his review.

Court asked Mr. Widner if he has reviewed PSI defendant has nothing for the court to change.

Mr. Fisher has no impact statements only argument.

The State makes a sentencing recommendation:

- Fine of \$ 5000 court cost
- Restitution \$ 600 joint and several with co-defendant Alex Stewart
- Underlying sentence 3+12 =15 pursuant to plea agreement
- Court Cost

The defendant, through his counsel, makes a sentencing recommendation:

- Ready to take accountability

- Wants to appeal motion
- Gainfully employed, would like to continue education
- One malicious injury to property as a juvenile, other violations are traffic violations
- One possession that was dismissed, no other drug charge on record
- No significant criminal history
- Owned up to being addicted to marijuana
- Did go with intent to get marijuana for himself; different mutual friend that had medical marijuana card
- Realizes it was wrong
- \$2600.00 was his own money from an insurance claim
- Loaded gun in car was his, he was robbed 2 years ago and in fear for family made it a habit to carry gun
- Did have a permit filled out didn't get it filed.
- Enrolled in creative options for his drug habit but he does not have certificates
- Not a hardened criminal.
- Asking for the Court to have compassion. Would like to take responsibility clean up life and move on
- 1+4= 5 years Underlying Sentence; suspend in favor of a rider.
- Request Withheld judgment be granted.
- Give a chance at probation to live a normal life and regular job.
- If jail and prison are imposed time be suspended before the appeal filed.
- Random UA testing was clean 1 test failed.

The Defendant addresses the Court:-

- Sorry for his crime.
- Was his drug addiction that cause the pain to his family and children
- Learned that he can live without marijuana
- Signed up for classes and would like to continue doing them
- Was arranged to go to Reno and get the marijuana and bring back to Idaho.

The Court comments, having reviewed the contents of the file, considered the objectives of sentencing, the nature of the offense, the character of the defendant, the reasonableness of the sentence, discusses the sentencing options and imposes sentence as follows:

SENTENCE IMPOSED:

Count I guilty as charged and convicted

Imposition of 1+4= 15

\$ 5000.00 fine

\$ 600.00 restitution joint & several with co/defendant Alex Stewart

\$ 265.50 in court cost

Count II:

180 days jail with credit for 20 days served. To run concurrently with Count I

Court cost waived do the indigent of defendant

1. Future discretionary jail time (as ordered).
2. Reimbursements, polygraph examinations, GED or employment requirements (as ordered)
3. Treatment participation as ordered

Parties are instructed to return all outstanding copies of the PSI or APSI and/or evaluations to the Clerk to be destroyed or sealed within the file.

The Defendant is advised of his right to appeal the judgment of the Court within forty two (42) days from today.

The Department of Corrections has 14 days in which to pick up the defendant and take into custody from the County Sheriff. The Defendant is remanded to the Sheriff for delivery to the Department of Corrections and/or to serve county jail.

5:17 End Minute Entry

Attest


Dana Griggs
Deputy Clerk

60

FILED

2012 APR 30 PM 3:42

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Joseph C. Miller
MILLER LAW, P.C.
Pioneer Square
5223 W. Overland Rd.
Boise, ID 83705
Tel: (208) 287-8787
Fax: (208) 287-8788
email: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 DANIEL L. WIDNER,)
)
 Defendant/Appellant.)

Case No. CR-2011-00494

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND ITS ATTORNEYS,
KRISTINA SCHINDELE, CANYON COUNTY PROSECUTOR, LAWRENCE G.
WASDEN, IDAHO ATTORNEY GENERAL, STATEHOUSE, BOISE, IDAHO 83720,
ALL COURT REPORTERS, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, DANIEL L. WIDNER, appeals against the above named Respondent to the Idaho Supreme Court from that certain Judgment of Conviction and Commitment entered against him on March 21, 2012, by the Honorable Lynn G. Norton, District Judge, presiding.

2. Appellant has the right to appeal to the Idaho Supreme Court from the Judgment of Conviction and Commitment imposed as described in paragraph 1, above, and said Judgment of Conviction and Commitment has appealable issues under and pursuant to Rule

11(c), Idaho Appellate Rules, and Idaho Rule of Criminal Procedure 11(a)(2). In this case, Defendant entered a conditional plea of guilty subject to this Appeal.

3. A preliminary statement of the issues on appeal which Appellant intends to assert in the appeal is as follows:

a. Whether the court correctly ruled on Appellant's MOTION IN LIMINE that was filed with the court on June 7, 2011.

b. Provided, however, that any such list of issues on appeal shall not prevent Appellant from asserting other issues on appeal.

4. Appellant requests the following:

a. Reporter's standard transcript, pursuant to Rule 25, I.A.R.;

b. Preparation of the following limited portions of the reporter's transcript as defined in Rule 25(b), I.A.R.:

i. Sentencing Hearing of March 19, 2012. (Court Reporter, P. Tardiff, estimated 16 pages).

ii. Motion in Limine Hearing on September 13, 2011 (Court Reporter, P. Tardiff, estimated 86 pages).

iii. Motion in Limine Hearing on October 11, 2011 (Court Reporter, M. Martorelli, estimated 155 pages).

iv. Motion in Limine Hearing on October 27, 2011 (Court Reporter, D. Cromwell, estimated 245 pages).

c. Preparation of the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

i. All pre-trial motions filed herein;

ii. All memorandums or briefs filed herein;

iii. All exhibits admitted into evidence, or offered and not admitted into evidence;

iv. The Pre-Sentence Investigation Report which is routinely sealed by the Court but which is requested herein.

5. I hereby certify:

a. That a copy of this notice of appeal has been served on the courtreporter;

b. That the appellant is exempt from paying the estimated transcript fee because this is a criminal appeal. The Appellant is also indigent and

unable to pay the fee;

- c. That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules, and the Attorney General of Idaho, pursuant to Idaho Code § 67-1401(1).

DATED this 1st day of May, 2012.

MILLER LAW, P.C.



Joseph C. Miller
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2012, I caused a true and accurate copy of the foregoing document to be served upon the following pursuant to I.R.C.P. 5(f), as indicated below:

Kristina Schindele
Elmore County Prosecutor
P.O. Box 607
Mountain Home, ID 83647

_____ **Hand Delivery**
 _____ **Federal Express**
 _____ **Certified Mail**
 _____ **U.S. Mail**
 Facsimile Transmission

Lawrence Wasden
Attorney General
Attention: Criminal Division
P.O. Box 83720
Boise, ID 83720-0010

_____ **Hand Delivery**
 _____ **Federal Express**
 _____ **Certified Mail**
 U.S. Mail
 _____ **Facsimile Transmission**

Sara B. Thomas
State Appellate Public Defender
3050 Lake Harbor Ln., Ste. 100
Boise, ID 83703

_____ **Hand Delivery**
 _____ **Federal Express**
 Certified Mail
 _____ **U.S. Mail**
 _____ **Facsimile Transmission**

Penny Tardiff
Court Reporter
Elmore County Courthouse
Mountain Home, ID 83647

_____ **Hand Delivery**
 _____ **Federal Express**
 _____ **Certified Mail**
 _____ **U.S. Mail**
 Facsimile Transmission

Steve Kenyon
Idaho Supreme Court
451 State St
PO Box 83720
Boise, ID 83720-0101

_____ **Hand Delivery**
 _____ **Federal Express**
 Certified Mail
 _____ **U.S. Mail**
 _____ **Facsimile Transmission**



Joseph C. Miller

70

FILED

2012 MAY -3 PM 1:2

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Kg

Joseph C. Miller
MILLER LAW, P.C.
Pioneer Square
5223 W. Overland Rd.
Boise, ID 83705
Tel: (208) 287-8787
Fax: (208) 287-8788
email: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL L. WIDNER,)
)
 Defendant.)

Case No. CR-2011-00494

**MOTION TO MODIFY
OR REDUCE SENTENCE**

I.C.R. 35

TO: DISTRICT JUDGE LYNN NORTON

The Defendant, DANIEL L. WIDNER, by and through counsel, hereby moves the court pursuant to Idaho Criminal Rule 35 to modify the sentence entered by this court on March 21, 2012. Defendant requests that the fourteen (14) indeterminate years he was ordered to serve in the Idaho State Penitentiary be reduced.

Oral argument is requested, if deemed necessary by the court.

DATED this 3rd day of May, 2012.

MILLER LAW, P.C.

Joseph C. Miller
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2012, I caused a true and accurate copy of the foregoing document to be served upon the following pursuant to I.R.C.P. 5(f), as indicated below:

Lee Fisher
Elmore County Prosecutor
P.O. Box 607
Mountain Home, ID 83647
Fax: 587-2147

Hand Delivery
 Federal Express
 Certified Mail
 U.S. Mail
 Facsimile Transmission



Joseph C. Miller

FILED

2012 MAY -3 PM 1:24

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Kg

Joseph C. Miller
MILLER LAW, P.C.
Pioneer Square
5223 W. Overland Rd.
Boise, ID 83705
Tel: (208) 287-8787
Fax: (208) 287-8788
email: joe@idahojustice.com
ISBN: 7485

Counsel for the Defendant

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

STATE OF IDAHO,)
)
) Plaintiff,)
)
 vs.)
)
 DANIEL L. WIDNER,)
)
) Defendant.)

Case No. CR-2011-00494

**MOTION FOR LEAVE TO
WITHDRAW AS COUNSEL
OF RECORD**

TO: MAGISTRATE JUDGE LYNN G. NORTON

COMES NOW Joseph C. Miller, counsel for Defendant DANIEL L. WIDNER, and requests that the court permit attorney Joseph C. Miller and his firm of Miller Law, P.C. to withdraw as attorney of record for Defendant. This request is being made pursuant to I.R.C.P. 11(b)(2).

Attorney specifically states that:

1. Good cause for withdrawal exists inasmuch as Defendant has requested that Mr. Miller withdraw from representation.
2. Withdrawal is not being sought to create a tactical advantage or for any improper purpose.

Pursuant to I.R.C.P. 11(a)(1) attorney understands that signing this pleading constitutes

his certificate that attorney has read this pleading; that to the best of the attorney's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase in the cost of litigation.

If deemed necessary by the court, oral argument is requested pursuant to I.R.C.P. 7(b)(3).

DATED this 3rd day of May, 2012

MILLER LAW, P.C.



Joseph C. Miller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 2012, I served true and correct copies of the foregoing document by delivering the same to the following persons, by the method indicated below, pursuant to I.R.C.P.5(f):

Lee Fisher
Elmore County Deputy Prosecutor
P.O. Box: 607
Mountain Home, ID 83647
(208) 587-2147

U.S. Mail, postage prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Daniel L. Widner
1117 N.W. Foster Dr.
Mountain Home, ID 83647

U.S. Mail, postage prepaid
 Hand Delivered
 Overnight Mail
 Facsimile



Joseph C. Miller

FILED

2012 MAY 15 PM 2: 53

BARBARA STEELE
CLERK OF THE COURT
DEPUTY



Joseph C. Miller
MILLER LAW, P.C.
Pioneer Square
5223 W. Overland Rd.
Boise, ID 83705
Tel: (208) 287-8787
Fax: (208) 287-8788
e-mail: joe@idahojustice.com
ISBN: 7485

Attorney for the Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE
MAGISTRATE DIVISION**

THE STATE OF IDAHO,

Plaintiff,

vs.

DANIEL L. WIDNER,

Defendant.

Case No. CR-2011-00494

**ORDER GRANTING LEAVE TO
WITHDRAW AS COUNSEL
OF RECORD**

JOSEPH C. MILLER, of the firm Miller Law, P.C., attorney of record for Defendant DANIEL L. WIDNER, having filed a motion to withdraw as counsel of record with the court, and good cause appearing, therefore,

IT IS HEREBY ORDERED THAT:

1. Attorney Joseph C. Miller and the firm of Miller Law, P.C., are granted leave to withdraw as counsel of record for Defendant DANIEL L. WIDNER in the above-entitled case. Defendant is directed to appoint another attorney to appear, or to appear in person by filing a written notice with the Court stating how he will represent herself within twenty (20) days from the date of personal service or mailing of this Order to Defendant

DANIEL L. WIDNER at his last known address: 1117 N. W. Foster Dr. Mountain Home, ID 83647.

2. Attorney Joseph C. Miller and the firm of Miller Law, P.C., shall, with due diligence, serve copies of this order upon Defendant DANIEL L. WIDNER and all other parties to the action. Such service shall be hand delivered to Defendant DANIEL L. WIDNER personally or by certified mail to the last known address of the Defendant. Service shall be complete upon mailing.
3. No further proceedings will be had in the present action which will affect the rights of Defendant DANIEL L. WIDNER for a period of twenty (20) days after service or mailing of this order to Defendant.
4. If Defendant DANIEL L. WIDNER fails to file and serve an additional written appearance in this action whether in person or through a newly-appointed attorney within said twenty (20) day period, such failure shall be sufficient grounds for the dismissal of Defendant's pleadings, without further notice.

DATED THIS 15th day of May, 2012.


Lynn G. Norton
Magistrate Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 2012., I served true and correct copies of the foregoing document by delivering the same to the following persons, by the method indicated below, pursuant to I.R.C.P.5(f):

Elmore County Deputy Prosecutor
190 South 4th. East
Mountain Home, ID 83647
Fax: 208-587-2147

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile

Daniel L. Widner
Defendant
1117 N. W. Frost Dr.
Mountain Home, ID 83647

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile

Joseph C. Miller
Miller Law, P.C.
5223 W. Overland Rd.
Boise, ID 83709
Fax: 287-8788

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile

BARBARA STEELE

Clerk of Court

M. Frost

Deputy Clerk

In the Supreme Court of the State of Idaho

FILED
2012 MAY 17 PM 4:36
BARBARA STEELE
CLERK OF THE COURT
DEPUTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DANIEL L. WINDER,

Defendant-Appellant.

**ORDER CONDITIONALLY
DISMISSING APPEAL**

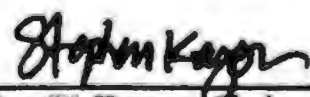
Supreme Court Docket No. 39908-2012
Elmore County Docket No. 2011-494

The Appellant having failed to pay the necessary fees for preparation of the Clerk's Record on appeal as required by Idaho Appellate Rule 24(e) and the Reporter's Transcript on appeal as required by Idaho Appellate Rule 27(e); therefore, good cause appearing;

IT HEREBY IS ORDERED that this appeal be, and hereby is, **CONDITIONALLY DISMISSED** unless the required fee for preparation of the Clerk's Record is paid to the District Court Clerk and the fee for preparation of the Reporter's Transcript is paid to the District Court Reporter or an Order is obtained from the District Court providing for payment at county expense within twenty-one (21) days from the date of this Order.

IT FURTHER IS ORDERED that this appeal is **SUSPENDED** until further notice.
DATED this 17th day of May, 2012.

For the Supreme Court



Stephen W. Kenyon, Clerk


cc: Counsel of Record
District Court Clerk
District Court Reporter
District Court Judge

ORDER CONDITIONALLY DISMISSING APPEAL – Docket No. 39908-2012

24

FILED

2012 MAY 24 PM 4:35

BARBARA STEELE
CLERK OF THE COURT
DEPUTY 

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF ELMORE

STATE OF IDAHO,

Case No. CR 2011 494

Plaintiff,

vs.

**MEMORANDUM DECISION DENYING
DEFENDANT'S MOTION TO
MODIFY OR REDUCE SENTENCE
PURSUANT TO I.C.R. 35**

DANIEL L WIDNER,

Defendant.

PROCEEDINGS

This matter involves Defendant's Motion for to Modify or Reduce Sentence Pursuant to I.C.R. 35.

PROCEDURAL HISTORY

Pursuant to a plea agreement, the Court sentenced Defendant, Daniel L. Widner, on March 21, 2012, for the crimes of Trafficking in Marijuana, a felony, Count I, and Concealing a Dangerous Weapon, a misdemeanor, Count II. For Count I, the Defendant was sentenced to one (1) year fixed and fourteen (14) years indeterminate, with the Idaho Department of Correction; a five thousand (\$5,000.00) dollar fine; six hundred (\$600.00) dollars restitution for law enforcement costs, joint and several with co-defendant Alex Stewart; and court costs. The maximum punishment available on

1 Count I is fifteen (15) years imprisonment, a fifty-thousand (\$50,000.00) fine, or both.
2 The minimum penalty available for Count I is a one (1) year fixed term of imprisonment.
3 For Count II, the Defendant was sentenced to one hundred eighty (180) days in Elmore
4 County Jail to run concurrently with Count I. The maximum punishment available on
5 Count II is six (6) months in jail and a one thousand (\$1,000.00) dollar fine, or both.
6 Court costs were waived on this count due to indigency. Defendant received credit for
7 time served of twenty (20) days.

8 Defendant filed a Motion to Modify or Reduce Sentence pursuant to I.C.R. 35 on
9 May 3, 2012. There was no additional attachment to the Rule 35 motion filed with the
10 Court.
11

12 ANALYSIS

13 Rule 35 provides:

14 (M)otions to correct or modify sentences under this rule must be filed
15 within 120 days of the entry of the judgment imposing sentence or order
16 releasing retained jurisdiction and shall be considered and determined by
the court without the admission of additional testimony and without oral
argument, unless otherwise ordered by the Court in its discretion...

17 Defendant requests that his indeterminate sentence be reduced. The
18 determination to grant or deny the relief requested by Defendant is a matter committed
19 to the Court's discretion. See *State v. Gardner*, 127 Idaho 156, 164, 989 P.2d 615 (Ct.
20 App. 1995) Appellate courts employ the same standard of review on a court's
21 determination of whether to grant a motion for reduction of sentence as the court's
22 original imposition of sentence. See *State v. Ricks*, 120 Idaho 875 (Ct. App. 1991) The
23 Court has engaged in the analysis set forth in *State v. Toohil*, 103 Idaho 565, 650 P.2d
24 707 (Ct. App. 1982).
25
26

1 The court has considered the *Toohil* factors of protection of society, deterrence of
2 crime, rehabilitation of the offender and punishment. The court has also considered the
3 defendant's plea agreement where he agreed to plead guilty in exchange for the State's
4 recommendation of three years fixed and twelve years indeterminate. The court had
5 previously balanced the *Toohil* factors, considering the age of the defendant and the
6 seriousness of offense in fashioning the original sentence in this case and still finds the
7 indeterminate portion of the sentence appropriate.

8 For these reasons, the Court DENIES Defendant's Motion for Reduction of
9 Sentence pursuant to I.C.R. 35.

10 DATED this 15th day of May, 2012.

11
12
13 
14 _____
15 Lynn Nerton, District Judge
16
17
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21
22
23
24
25
26

CERTIFICATE OF MAILING

1
2 I hereby certify that on this 24th day of May, 2012, I mailed (served) a true and
3 correct copy of the within instrument to:

4 **ELMORE COUNTY PROSECUTORS OFFICE**
5 **INTERDEPARTMENTAL MAIL**

6 **Joseph C. Miller**
7 **MILLER LAW, P.C.**
8 **Pioneer Square**
9 **5223 W. Overland Road**
10 **Boise, ID 83705**

11
12
13 **BARBARA STEELE**
14 **Clerk of the District Court**

15 By: *[Signature]*
16 **Deputy Court Clerk**
17
18
19
20
21
22
23
24
25
26

In the Supreme Court of the State of Idaho

2012 JUL -2 AM 10 15

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *AS*

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DANIEL L. WINDER,

Defendant-Appellant.

ORDER DISMISSING APPEAL ✓

Supreme Court Docket No. 39908-2012

Elmore County Docket No. 2011-494

An ORDER CONDITIONALLY DISMISSING APPEAL was entered May 17, 2012, because the fees for preparation of the Clerk's Record and Reporter's Transcript were not paid. Appellant having failed to comply with this Court's order of May 7, 2012; therefore,

IT HEREBY IS ORDERED the ORDER CONDITIONALLY DISMISSING APPEAL is AFFIRMED and that this appeal be, and hereby is, DISMISSED.

DATED this 29th day of June, 2012.

For the Supreme Court

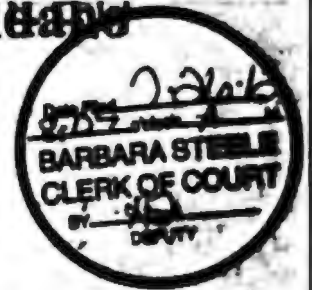
Stephen W. Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter
District Court Judge

76

In the Supreme Court of the State of Idaho



STATE OF IDAHO,
Plaintiff-Respondent,
v.
DANIEL L. WIDNER,
Defendant-Appellant.

)
)
) **REMITTITUR.**
)
) Supreme Court Docket No. 39908-2012.
) Elmore County Docket No. 2011-494
)
)
)

TO: FOURTH JUDICIAL DISTRICT, COUNTY OF ELMORE.

The Court having entered an Order dismissing this appeal June 29, 2012; therefore,
IT IS HEREBY ORDERED that the appeal herein from the judgment of the District
Court be, and hereby is, **DISMISSED.**

DATED this 25th day of July, 2012.

Clerk of the Supreme Court
STATE OF IDAHO

cc: Counsel of Record
District Court Clerk
District Court Reporter(s)
District Court Judge.

77

FILED

STATE APPellate
APPLICATION FOR PUBLIC DEFENDER/FINANCIAL STATEMENT

2012 JUL 26 PM 1:52

STATE vs. Daniel Widner Case # CR-2011-00494 Date 07/23/12
CLERK OF THE COURT
DEPUTY J

Name Daniel Widner Social Security Number [REDACTED]

Mailing Address [REDACTED]

State Idaho Zip Code 83647 Date of Birth [REDACTED]

Residential Address 1117 NW Foster Dr City Mountain Home

State Idaho Zip Code 83647

Home Phone (208) 591-1580 Work Phone (208) 599-0293

Employer Pizza Hut Supervisor Erin

Work Address 605 Airbase Rd. City Mountain Home

County United States State Idaho

Nearest Relative (Name and Relationship) Ken & Terry Widner father & mother

Address 1873 S. Joe King Rd Hammett Id Phone (208) 599-0293

Spouse/Partner N/A Phone Number () N/A

Address N/A City N/A State N/A

Employer N/A Supervisor N/A

Work Address N/A Work Phone () N/A

Children (Names & Ages)

Logan Lee Brun-Widner 5yrs

MONTHLY INCOME

GROSS MONTHLY INCOME \$ 400

Deductions: FED TAX unknown
 STATE TAX unknown
 MEDICARE unknown
 SOC. SEC. unknown
 OTHER 156

NET MONTHLY INCOME 250
 CHILD SUPPORT INCOME N/A
 WELFARE INCOME N/A
 RETIREMENT INCOME N/A
 UNEMPLOYMENT INCOME N/A
 OTHER INCOME N/A
 SPOUSE/PARTNER INCOME N/A
 TOTAL INCOME \$ 250

MONTHLY EXPENSES

HOUSE PAYMENT/RENT \$ 600
 Food Expense 150
 Phone-Electric-Gas-Water 300
 Clothing 0
 Medical Expenses 50
 Auto Fuel & Expenses 50
 Car Payment 0
 Child Support Payment 156
 Auto Insurance 45
 Health Insurance 0
 Child Day Care 0
 School Expense 0
 Long Term Debt 0
 Other Expenses 0
 Total Expenses \$ 13,051

00-over 70,000 24 D/month

ASSETS AND DEBTS

PERSONAL PROPERTY:

Location: N/A Fair Market Value \$ N/A Debts \$ N/A
 Location: N/A Fair Market Value \$ N/A Debts \$ N/A

AUTOMOBILES/TRUCKS/RECREATIONAL VEHICLES/MOTORCYCLES/EQUIPMENT

CAR	MAKE	MODEL	LICENSE PLATE #	VALUE	DEBT
1987	Pontiac	Grand Prix	N/A	0	0
1980	Chrysler	10V	N/A	0	0

Savings Accounts/Checking Accounts/ Stocks & Bonds/ Credit Cards

None

**Jewelry/Tools/Guns/Television-Stereo-Electronic Equipment/Miscellaneous Assets
(over \$50.00 in Value)**

DESCRIPTION	SERIAL #	FAIR MARKET VALUE	DEBT
<u>N/A</u>			

OTHER ASSETS/TAX REFUNDS/DEBTS OWED TO YOU/UNDEPOSITED MONEY
N/A

LONG TERM DEBT

Bank/Credit Union	Acct #	Balance	Monthly Payment	Collateral
<u>Student loans</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

If you are unemployed, who was your last employer Pizza Hut
Address 605 Airbase Rd.
Phone Number 208-587-4404 Date of last Employment 03-21-2011

Are you under the care of a physician NO Name N/A
Address N/A
Phone Number N/A

Has a physician advised you that you should not work? NO
Do you have any temporary or permanent disability that prevents you from working? NO
Please state the temporary or permanent disability. None
Do you presently take prescribed medication? Yes

List your prescribed medication.
Albuterol inhaler for Asthma

Please list any and all bankruptcy filings by you in the past 10 years.
(Date, Bankruptcy Court, Type of Bankruptcy)
N/A

This form is to be signed by all Defendants that receive public defender services, or enter into any fine payment agreement as a result of pleading guilty or being found guilty of a criminal offense(s).

PROMISORY NOTE

I, Daniel Widner, the undersigned hereby AGREE to pay to Elmore County the sum of \$ unknown as and for fines, fees, restitution, civil penalties, drug fund contributions, and public defender costs. This entire balance shall be due and payable on demand to the Elmore County Clerks Office subject to the terms of any payment agreement that I have signed. In addition, I agree to pay any attorney fees and costs associated with the collection of this note.

Dated 07 ~~23~~ 1 23 / 2012 Signed [Signature]
Defendant

WAGE ASSIGNMENT

I, Daniel Widner, hereby agree to assign to Elmore County that portion of my wages earned from unknown, who is my current employer, that portion of my wages that may be garnished by law. I, further, agree to assign my wages as set forth above from any future employer.

Dated 07 1 23 / 2012 Signed [Signature]
Defendant

CURRENT EMPLOYER Incarcerated
SUPERVISOR N/A
ADDRESS N/A
CITY, STATE, ZIP CODE N/A
PHONE NUMBER N/A

List your employment over the past 3 years.

EMPLOYER	ADDRESS (street, city, zip)	PHONE #
<u>Pizza hut</u>	<u>605 Airbase Rd Mountain Home 83647</u>	<u>208-587-4404</u>
<u>Harbor Inn</u>	<u>Mountain Home Idaho 83647</u>	<u>N/A</u>
<u>Wingers Bar & Grill</u>	<u>mountain Home Idaho 83647</u>	<u>N/A</u>

OATH

I Daniel Widner, THE DEFENDANT, HEREBY
SWEAR OR AFFIRM THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND
CORRECT AND IS A COMPLETE LISTING OF ALL MY ASSETS, INCOME, AND
EXPENSES.

DATED 07 123 12012

SIGNED

[Signature]

I HEREBY AURTHORIZE AND CONSENT TO THE RELIEASE OF ALL FINANCIAL
INFORMATION OF ANY KIND FROM ANY BANKS, SAVINGS AND LOANS, CREDIT
UNIONS, STOCK BROKERS, AND EMPLOYERS TO ELMORE COUNTY AND THEIR
AUTHORIZED AGENTS.

I AGREE TO REIMBURSE ELMORE COUNTY PURSUANT TO (I.C.A. 19-858) FOR
ANY AND ALL EXPENSES INCURRED BY ELMORE COUNTY FOR MY LEGAL
EXPENSES AND I FURTHER AGREE TO SIGN A WAGE ASSIGNMENT AND
PROMISORY NOTE FOR ANY SUCH EXPENSES.

DATED

/ /

SIGNED

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____

JUDGE

STATE OF Idaho)
County of Elmore) ss.

SUBSCRIBED AND SWORN before me on this 23rd day of July 2012

Refer: Defendant's Signature

[Signature]
Notary Public for Idaho
Residing at Elmore County, Idaho
Commission expires April 18, 2017



FILED
2012 JUL 26 PM 1:52
BARBARA STEELE
CLERK OF THE COURT
DEPUTY

Daniel Lee Widner
Full Name of Party Filing Document
2255 E 8th North
Mailing Address (Street or Post Office Box)
Mtn. Home Idaho 83647
City, State and Zip Code
208-599-0293
Telephone

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

STATE OF IDAHO
Plaintiff,
vs.
DANIEL L. WIDNER
Defendant.

Case No. CR-2011-00494
MOTION AND AFFIDAVIT FOR FEE
WAIVER

Plaintiff Defendant asks to start or defend this case without paying fees, Idaho Code

Section 31-3220, and swears under oath:

1. This is an action for (type of case) Drug trafficking.
2. I am unable to pay the court costs. I verify that the statements made in this Affidavit are true and correct. I understand that a false statement in this Affidavit is perjury and I could be sent to prison for one to 14 years. The waiver of payment does not prevent the court from later ordering me to pay costs and fees.

(Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.)

IDENTIFICATION AND RESIDENCE:

Name: Daniel Lee Widner Other name(s) I have used: N/A

Address: 1117 NW Foster Dr. Mtn. Home Idaho 83647

How long at that address? 3 years Phone: 208-591-1580

Year and place of birth: 1986 Phoenix Arizona

Education completed (years): 13.5

FAMILY:

Marital Status: Single Married Divorced Widowed Separated

The following minor children live with me:

Name (use initials only)	Age	Relationship	Child Support Received (\$/month)
<u>N/A</u>			

EMPLOYMENT:

Occupation: Shift manager Employed by: Pizza Hut

Position: shift manager / cook Salary: \$ N/A or \$ 8.00 per hour

Monthly gross income \$ 400 If your current position is temporary what are the start and end dates? N/A

Phone number to use to verify: 208-587-4404 If you have held this job less than one year, previous employer: Erin

Phone number to use to verify: 208-587-4404

Spouse's Occupation: N/A Employed by: N/A

Position: N/A Salary: \$ N/A or \$ N/A per hour

Monthly gross income \$ N/A If your spouse's current position is temporary what are the start and end dates? N/A

I receive assistance or support from the following sources and in the following monthly amounts:

Spouse: \$ N/A Welfare: \$ N/A Food Stamps: \$ N/A Relatives: \$ _____

Unemployment Compensation: \$ N/A Social Security: \$ N/A Retirement: \$ N/A

Former Spouse: \$ N/A Other (Identify) N/A \$ N/A

If unemployed, how long since your last regular employment? 03-21-2011

List all places where you have applied for work in the last six months:

Company	Last Applied	Reason for Rejection
<u>Hampton Inn? suites</u>	<u>02/11</u>	<u>Background check</u>

Are you willing to work now? Yes What work can you do? cooking/restaurant, manual labor, construction, sales

What is the minimum wage for which you are willing to work? \$ 7.50

List all employers you worked for during the last three years.

Company	Date Terminated	Ending Salary	Reason for Termination
<u>Pizza hut</u>	<u>03-21-2011</u>	<u>8.00/hr</u>	<u>Incarceration</u>
<u>Hampton Inn</u>	<u>03-2011</u>	<u>9.00/hr</u>	<u>unemployable / Background check</u>

Are you capable of working now? Yes No If no, why not? Incarcerated

If a health problem keeps you from working, provide the name of your treating doctor: N/A

Is your health problem permanent? Yes No

When will you be released to work? unsure maybe 2013, march

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Address	City	State	Legal Description	Value	Your Equity
N/A					

List all other property owned by you and state its value.

Description (provide description for each item)	Value
Cash <u>none</u>	0
Notes and Receivable <u>none</u>	0
Vehicles <u>87 Pontiac</u>	0
Bank/Credit Union/Savings/Checking Accounts <u>none</u>	0
Stocks/Bonds/Investments/Certificates of Deposit <u>none</u>	0
Trust Funds <u>none</u>	0
Retirement Accounts/IRAs/401(k)s <u>none</u>	0
Cash Value Insurance <u>none</u>	0
Motorcycles/Boats/RVs/Snowmobiles <u>none</u>	0
Furniture/Appliances <u>none</u>	0
Jewelry/Antiques/Collectibles <u>none</u>	0
TVs/Stereos/Computers/Electronics <u>none</u>	0
Tools/Equipment <u>none</u>	0
Sporting Goods/Guns <u>none</u>	0
Horses/Livestock/Tack <u>none</u>	0
Other (describe) <u>none</u>	0

EXPENSES: (List all of your monthly expenses.)

Expense	Average Monthly Payment
Rent/House Payment	\$ 600 / mth
Vehicle Payment(s)	0
Credit Cards (List last 4 digits of each account number.)	
none	0
Loans (name of lender and reason for loan)	
lender unknown student loans from IIT-tech	0
Electricity/Natural Gas Idaho Power / Intermountain gas	\$ 300
Water/Sewer/Trash Allied waste	\$ 50
Phone N/A	0
Cellular Phone Straight talk	\$ 45
Cable/Satellite TV/Internet Cable one Internet	\$ 45
Groceries Pubs market / walmart	\$ 150
Dining Out wings / mcdonalds / subway / wendys	\$ 50
Clothing none	0
Auto Fuel/Transportation Jacksons / market	\$ 50
Auto Maintenance none	0
Cosmetics/Haircuts/Salons walmart	\$ 15
Entertainment/Books/Magazines none	0
Home Insurance none	0
Auto Insurance Robert Ebbs	\$ 45
Life Insurance none	0

Expense (continued)	Average Monthly Payment
Medical Insurance <u>none</u>	<u>0</u>
Medical Expense <u>Doctr visits + medications</u>	<u>\$ 50</u>
Child Care <u>child support</u>	<u>\$ 156.00</u>
Other (describe) <u>none</u>	<u>0</u>

MISCELLANEOUS:

How much can you borrow? \$ N/A From whom? N/A

When did you file your last income tax return? 2011 Amount of refund: \$ 0

PERSONAL REFERENCES: (These persons must be able to verify information provided.)

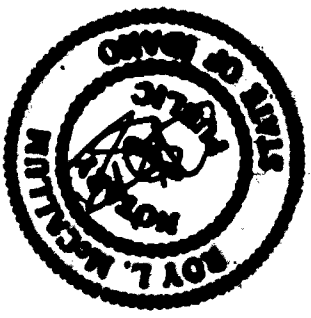
Name	Address	Phone	Years Known
<u>Ken Widner</u>	<u>1873 S. Joe King Rd. Hammett ID</u>	<u>208-599-0293</u>	<u>26</u>
<u>Terry Widner</u>	<u>1873 S. Joe King Rd. Hammett ID</u>	<u>208-599-0293</u>	<u>26</u>

Daniel Widner
 Typed/printed

[Signature]
 Signature

STATE OF IDAHO)
 County of Elmore) ss.

SUBSCRIBED AND SWORN before me on this 23rd day of July 2012



[Signature]
 Notary Public for Idaho
 Residing at Elmore County, Idaho
 Commission expires April 18, 2017

79

DANIEL L. WIDNER (APPELLANT)
2255 E. 8th North St.
Elmore County Correctional Facility
Mountain Home ID 83647

FILED
2012 JUL 26 PM 2: 12

BARBARA STEELE
CLERK OF THE COURT
DEPUTY
[Signature]

IN THE SUPREME COUT OF THE STATE OF IDAHO

STATE OF IDAHO)	
)	
Plaintiff/Respondent,	)	MOTION FOR RECONSIDERATION
	)	OF SUPREME COURTS ORDER
v.	)	CONDITIONALLY DISMISSING
	)	APPEAL
DANIEL L. WIDNER	)	Supreme Court Docket No.39908-2012
(APPELLANT)	)	Elmore County Docket No. 2011-00294 <i>494</i>

NOTICE IS HEREBY GIVEN THAT:

1. THE UBOVE NAMED DEFENDANT, DANIEL L. WIDNER, FILES
THIS MOTION FOR RECONSIDERATION

2. APPELLANT'S APPEAL WAS DISMISSED FOR FAILURE TO PAY
FEES.

3. APPELLANT IS INCARCERATED AND INDIGENT.

4. APPELLANT WAS WITHOUT COUNCEL ON APPEAL

PROCEEDINGS

5. APPELLANT WAS REPRESENTED BY A PRIVATE ATTORNEY,
(JOE MILLER), ON THE PROCEEDINGS LEADING TO THIS APPEAL.

i MR. MILLER WAS ASKED NUMEROUS TIMES, PRIOR TO
HIS REQUEST TO WITHDRAW AS COUNSEL,

BY TELEPHONE, E-MAIL, AND CERTIFIED MAIL TO FILE:

iii AN APPEAL

iv A RULE 35

vi A MOTION TO WAVE FEES

vii A MOTION TO APPOINT THE STATE APPELLANT PUBLIC

6. DEFENDER

7. MR. MILLER DID FILE FOR AN APPEAL AND A RULE 35,

**HOWEVER HE DID NOT FILE A MOTION TO WAVE FEES OR A MOTION TO
APPOINT THE STATE APPELLANT PUBLIC DEFENDER.**

**8. APPELLANT HAS PROVE REQUESTING MR. MILLER TO FILE THESE
MOTIONS, IN WRITING BY CERTIFIED MAIL, IN APRIL, 2012 AND THEREFORE
BELIEVED HE WOULD HAVE COUNSEL FOR APPEAL HEARINGS AND RULE
35 HEARINGS.**

**8. APPELLANT BELIEVES HIS APPEAL SHOUD BE RECONSIDERED
BECAUSE HE IS INDIGENT AND WAS WITHOUT COUNSEL.**

Daniel L. Widner
1117 N.W. Foster Dr.
Mountain Home ID 83647
(208) 591-1580

Defendant

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

STATE OF IDAHO)
Plaintiff/Respondent,)

vs.)

DANIEL L. WIDNER)
Defendant/Appellant.)

Case No. CR-2011-00494
MOTION FOR
RECONSIDERATION OF
SUPREME COURTS ORDER
OF DISMISSAL

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND ITS ATTORNEYS,
KRISTINA SCHINDELE, ELMORE COUNTY PROSECUTOR, LAWRENCE G. WARDEN,
IDAHO ATTORNEY GENERAL, STATEHOUSE, BOISE, IDAHO 83720, ALL COURT
REPORTERS, AND THE CLERK OF THE ABOVE-ENTITLED COURT;

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, DANIEL L. WIDNER, appeals against the above
named Respondent to the Idaho Supreme Court from that certain Judgment of Conviction
and Commitment entered against him on March 21, 2012, by the Honorable Lynn G. Norton,
District Judge, presiding.

2. Appellant has a right to appeal to the Idaho Supreme Court, from the judgment of
Conviction and Commitment imposed as described in paragraph 1, above, and said
Judgment of Conviction and Commitment has appealable issues under and pursuant to
Rule 11(a)(2). In this case, Defendant entered a conditional plea of guilty subject to this
Appeal.

3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal is as follows:

a. Whether the court correctly ruled on Appellant's MOTION IN LIMINE that was filed with the court on June 7, 2011

b. Provided, however, that any such list of issues on appeal shall not prevent Appellant from asserting other issues on appeal.

4. Appellant requests the following:

a. Reporter's standard transcript, pursuant to Rule 25, I.A.R.;

b. Preparation of the following limited portions of the reporter's transcript

As defined in Rule 25(b), I.A.R.:

i. Sentencing Hearing of March 19, 2012. (Court Reporter, P. Tardiff, estimated 16 pages).

ii. Motion in Limine Hearing on September 13, 2011 (Court Reporter, P. Tardiff, estimated 86 pages).

iii. Motion in Limine Hearing on October 11, 2011 (Court Reporter, M. Martorelli, estimated 155 pages).

iv. Motion in Limine Hearing on October 27, 2011 (Court Reporter, D. Cromwell, estimated 245 pages).

c. Preparation of the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

i. All pre-trial motions filed herein;

MOTION FOR RECONSIDERATION- 2of 2

- ii. All memorandums or briefs filed herein;
- iii. All exhibits admitted into evidence, or offered and not admitted into evidence;
- iv. The Pre-Sentence Investigation Report which is routinely sealed by the Court but which is requested herein

5. I hereby certify;

- a. That a copy of this MOTION TO RECONSIDER has been served on the Court reporter;
- b. That the appellant is exempt from paying the estimated transcript fee because this is a criminal appeal. The Appellant is also indigent and unable to pay the fee;
- c. That service has been made upon all parties required to be served Pursuant to Rule 20, Idaho Appellate Rules, and the Attorney General of Idaho, pursuant to Idaho Code 67-1401(1).

DATED this __ Day of July, 2012

State of Idaho
County of Elmore

[Signature]
Daniel L. Widner, Defendant

Subscribed and Sworn before me this 23rd day of July 2012



[Signature]
Notary Public for Idaho
Residing at Elmore County, Idaho
Commission expires April 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of July, 2012, I caused a true and accurate copy of the foregoing document to be served upon the following pursuant to I.R.C.P.5(f), as indicated below:

Kristina Schindele
Elmore County Prosecutor
P.O. Box 607
Mountain Home, ID 83647

___ Hand Delivery
___ Federal Express
 Certified Mail
___ U.S. Mail
___ Facsimile

Lawrence Wasden
Attorney General
Attention: Criminal Division
P.O-Box-83720
Boise, ID 83720-0010

___ Hand Delivery
___ Federal Express
 Certified Mail
___ U.S. Mail
___ Facsimile Transmission

Sara B. Thomas
State Appellate Public Defender
3050 Lake Harbor Ln., Ste. 100
Boise, ID 83703

___ Hand Delivery
___ Federal Express
 Certified Mail
___ U.S. Mail
___ Facsimile Transmission

Penny Tardiff
Court Reporter
Elmore County Courthouse
Mountain Home, ID 83647

___ Hand Delivery
___ Federal Express
 Certified Mail
___ U.S. Mail
___ Facsimile Transmission

Steve Kenyon
Idaho Supreme Court
451 State St.
PO Box 83720
Boise, ID 83720-0101

___ Hand Delivery
___ Federal Express
 Certified Mail
___ U.S. Mail
___ Facsimile Transmission

MOTION FOR RECONSIDERATION- 402

Kendall L. Widner
Kendall L. Widner 7-26-2012

In the Supreme Court of the State of Idaho

2817 AUG -1 AM 9: 20

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DANIEL L. WIDNER,

Defendant-Appellant.

ORDER

Supreme Court Docket No. 39908-2012
Elmore County District Court No.
2011-494

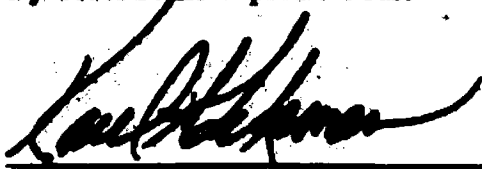
Ref. No. 12-346

On June 29, 2012, this Court issued an ORDER DISMISSING APPEAL as the fees for preparation of the Clerk's Record and Reporter's Transcript were not paid to the District Court Clerk nor, was an Order obtained from the District Court providing for payment at county expense. Thereafter, a REMITTITUR was issued by this Court on July 25, 2012. Subsequently, a document entitled, "MOTION FOR RECONSIDERATION OF SUPREME COURTS ORDER CONDITIONALLY DISMISSING APPEAL" was filed by Appellant Daniel L. Widner on July 27, 2012. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant Daniel L. Widner's "MOTION FOR RECONSIDERATION OF SUPREME COURTS ORDER CONDITIONALLY DISMISSING APPEAL" shall be HELD IN ABEYANCE PENDING A RULING BY THE DISTRICT COURT on Appellant Daniel L. Widner's Motion and Affidavit for Fee Waiver and Application for State Appellate Public Defender with Financial Statement attached, which were filed in the district court on July 26, 2012.

DATED this 1 day of ^{August} July, 2012.

By Order of the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge Lynn G. Norton

8

FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

2012 AUG 10 PM 2:48

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

**BARBARA STEELE
CLERK OF THE COURT
DEPUTY**
HS

STATE OF IDAHO,

Plaintiff,

Case No. CR-2011- 494

vs.

**ORDER APPOINTING COUNSEL FOR
APPEAL**

DANIEL L. WIDNER,

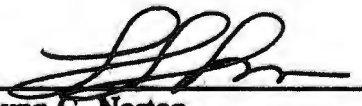
Defendant.

The Defendant, Daniel L. Widner, filed a Motion for Reconsideration of Supreme Court's Order Conditionally Dismissing Appeal on July 27, 2012. On July 26, 2012, the Defendant has filed with the District Court a Motion and Affidavit for Fee Waiver and Application for Public Defender Financial Statement. The court has considered those affidavits and finds the Defendant is a "needy person" pursuant to Idaho Code 19-851, *et seq.*

Since the Defendant's trial counsel, Joe Miller, has been granted leave to withdraw from this case, the Idaho State Appellate Public Defender is appointed to represent the Defendant in all proceedings involving this appeal.

AND IT IS SO ORDERED.

Dated this 10th day of August, 2012.



**Lynn G. Norton
District Judge**

CLERK'S CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing document was sent to the following:

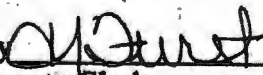
Sara Thomas
State Appellate Public Defender
3050 Lake Harbor Lane
Boise, ID 83703
U.S. MAIL

Lawrence Wasden
Attorney General
ATTN: Criminal Division
P.O. Box 83720
Boise, ID 83720-0010
U.S. MAIL

Clerks Office
IDAHO SUPREME COURT
COURT OF APPEALS
PO Box 83720
Boise, ID 83720-0101

Dated this 10th day of August, 2012.

BARBARA STEELE
Clerk of the District Court

By 
Deputy Clerk

Heather Furst

In the Supreme Court of the State of Idaho

From:
Sent:
To:

Thursday, August 23, 2012 11:49 AM

Attorney for Appellant Case reported Attorney

2012 AUG 23 PM 12:01

Subject: STATE OF IDAHO,

Attorney for

Plaintiff-Respondent,

ORDER

BARBARA STEELE
CLERK OF THE COURT
DEPUTY

ENTITLED TO SUPREME COURT REVIEW AND WITHDRAWING AS WELL AS THE
10-10 DANIEL L. WIDNER,

Supreme Court Docket No. 39908-2012
Elmore County District Court No. 2011-494

Defendant-Appellant.

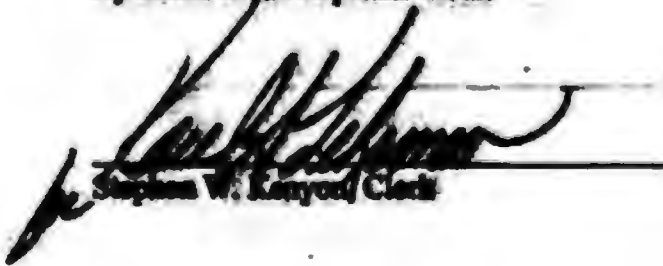
Ref. No. 12-392

On August 1, 2012, this Court issued an ORDER wherein Appellant Daniel L. Widner's "MOTION FOR RECONSIDERATION OF SUPREME COURT'S ORDER CONDITIONALLY DISMISSING APPEAL" was held in abeyance pending a ruling by the district court on Appellant Daniel L. Widner's Motion and Affidavit for Fee Waiver and Application for State Appellate Public Defender with Financial Statement attached, which were filed in the district court on July 26, 2012. Thereafter, this Court received a certified copy of the district court's ORDER APPOINTING COUNSEL FOR APPEAL file stamped August 10, 2012 (treated as a RESPONSE TO THIS COURT'S ORDER OF AUGUST 1, 2012). Therefore, good cause appearing:

IT HEREBY IS ORDERED that this Court's June 29, 2012 ORDER DISMISSING APPEAL and the July 25, 2012 REMITTITUR be, and hereby are, WITHDRAWN and proceedings in the above entitled appeal shall be REINSTATED; therefore, the due date for the filing of the Clerk's Record and Reporter's Transcripts with this Court shall be reset.

DATED this 23rd day of August, 2012.

By Order of the Supreme Court



Stephen W. Canyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Penny Tardiff
Court Reporter Dianne Cromwell
Court Reporter Mia Martorelli

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

STATE OF IDAHO,)
)
)
Plaintiff/Respondent,)
)
vs.) Supreme Court
) Case No. 39908-2012
)
DANIEL L. WIDNER,) CLERK'S CERTIFICATE
)
Defendant/Appellant.)
_____)

I, Barbara Steele, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete record of the pleadings and documents requested by Appellate Rule 28.

I further certify that all exhibits, offered or admitted in the above entitled cause, see Clerk's Certificate of Exhibits, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record.

I further certify that the following will be submitted as exhibits to the Record on Appeal:

1. Pre-Sentence Report (CONFIDENTIAL EXHIBIT)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 3rd day of October, 2012.

CLERK'S CERTIFICATE

BARBARA STEELE
Clerk of the District Court

By K Steele
Deputy Clerk

CLERK'S CERTIFICATE

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

THE STATE OF IDAHO,)
)
)
 Plaintiff/Respondent,)
)
 vs.) Supreme Court
) Case No. 39908-2012
 DANIEL L. WIDNER,)
) CLERK'S CERTIFICATE OF
) EXHIBITS
 Defendant/Appellant.)
 _____)

I, Barbara Steele, Clerk of the District Court of the Fourth
Judicial District of the State of Idaho, in and for the County of
Elmore, do hereby certify:

That the following is a list of exhibits which were offered
or admitted into evidence during the Preliminary Hearing in this
case:

No Exhibits

AND I FURTHER CERTIFY that the following will be submitted as
exhibits to this Record:

Presentence Report (Confidential Exhibit)

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the said Court this 3rd. day of ~~September~~ ^{October},
2012.

BARBARA STEELE
Clerk of the District Court

By 15/Sealed
Deputy Clerk

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

STATE OF IDAHO,)
)
)
Plaintiff/Respondent,)
)
vs.)
)
DANIEL WIDNER,)
)
Defendant/Appellant.)
_____)

Supreme Court
Case No. 39908-2012

CERTIFICATE OF SERVICE

I, BARBARA STEELE, Clerk of the District Court of the Fourth
Judicial District of the State of Idaho, in and for the County of
Elmore, do hereby certify that I have personally served or mailed,
by United States Mail, one copy of the REPORTER'S TRANSCRIPT and
CLERK'S RECORD to each of the attorneys of record in this cause as
follows:

Lawrence G. Wasden
ATTORNEY GENERAL
Statehouse Mail
P.O. Box 83720
Boise, ID 83720-0010

Sara Thomas
STATE APPELLATE PUBLIC DEFENDER
3050 N Harbor Lane, Suite 100
Boise, ID 83703

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the seal of the said Court this 3rd day of October, 2012.

BARBARA STEELE
Clerk of the District Court

By ps sealed
Deputy Clerk