2-5-2009

State v. Troutman Respondent's Brief Dckt. 35033

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

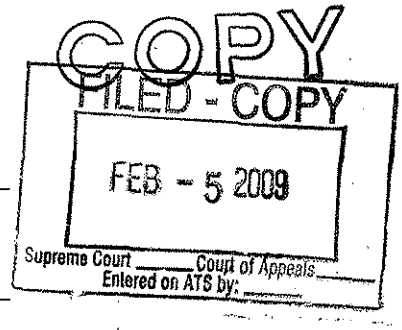
Plaintiff-Respondent,

vs.

MAURICE RONALD TROUTMAN,

Defendant-Appellant.

NO. 35033



BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature Of The Case

Maurice Ronald Troutman appeals from the judgment entered upon the jury verdict finding him guilty of rape, claiming his due process rights were violated as a result of unobjected to statements made by the prosecutor during her opening statement and closing argument.

Statement Of Facts And Course Of Proceedings

Heather S. and her friend "Jessi" came to Boise one weekend to watch an arena football game between the Bakersfield Blitz and the Boise Burn. (Trial Tr., p.60, L.2 – p.61, L.9, p.63, Ls.22-25.) Heather frequently traveled to Blitz games when they were in the area because she was friends with James Durant, one of the coaches for the Bakersfield team, and was dating Eric Coleman, who was also a coach for that team. (Trial Tr., p.61, Ls.5-9, p.64, Ls.8-17, p.156, Ls.3-6.) Heather and Jessi stayed at the Grove Hotel, where the team and coaches were also staying. (Trial Tr., p.62, Ls.13-19, p.65, Ls.8-9.) When Heather and Jessi checked in, they were given two room keys for Room 1020. (Trial Tr., p.65, L.24 - p.66, L.11.)

At the game on Saturday night, Heather and Jessi had a beer. (Trial Tr., p.75, Ls.3-5.) After the game was over, Heather and Jessi returned to their room to get ready to go out. (Trial Tr., p.67, Ls.2-5.) However, they were unable to gain access to their room because Jessi's key, the only key the girls had with them, was no longer working, and Heather had left her key in the room. (Trial

Tr., p.67, Ls.4-12.) The girls then went down to the front desk where the desk clerk provided them two new keys. (Trial Tr., p.67, L.6 – p.68, L.2.)

After they returned to their room and got ready, Heather, Jessi, and four of the coaches, James, Eric, Gary Compton, and Mike Cooper, went out to a local bar, where Heather had a few more drinks. (Trial Tr., p.69, Ls.9-13, p.71, Ls.14-23, p.74, Ls.16-18.) Steve Baker, a player for the Blitz, also joined them at the bar. (Trial Tr., p.70, Ls.12-21.) Heather, Jessi, and Steve left the bar sometime around 1:00 a.m. and returned to the hotel to Heather's and Jessi's room. (Trial Tr., p.72, L.15 – p.73, L.12, p.169, Ls.9-15.) Jessi and Steve eventually decided to go back to Steve's room. (Trial Tr., p.170, Ls.14-19.) After Jessi and Steve left, Heather took a sleeping pill, Ambien, and went to bed without changing her clothes. (Trial Tr., p.76, L.9 – p.78, L.24.)

When Jessi and Steve got to Steve's room, there were several people in there, including a couple having sex. (Trial Tr., p.172, Ls.1-14.) Jessi felt uncomfortable so she and Steve went back to Jessi's room where Jessi changed clothes. (Trial Tr., p.172, L.14 – p.173, L.2.) Jessi and Steve left shortly thereafter, and Jessi left her room key and license behind. (Trial Tr., p.174, Ls.8-22.) Jessi and Steve went back to Steve's room where Jessi helped the girl who had been having sex gather her belongings and go downstairs to catch a cab because, Jessi explained, the girl "didn't seem altogether." (Trial Tr., p.175, Ls.4-15., p.177, Ls.18-19.) Jessi then returned to Steve's room and spent the night with him. (Trial Tr., p.178, L.13 – p.179, L.13.)

The next morning, Jessi returned to her room where Heather had to let her in since Jessi had left her key behind the night before. (Trial Tr., p.80, L.24 – p.81, L.2., p.179, Ls.10-18.) At that time, Heather realized something "wasn't right." (Trial Tr., p.81, L.3 – p.82, L.23.) Heather's pants were off, including her underwear, and laying on the floor. (Trial Tr., p.81, Ls.9-25.) Her bra was also off, and her shirt, which tied in the back, was untied. (Trial Tr., p.82, Ls.1-5.) Heather then started having vague memories of pushing someone's head away and someone flipping her over and entering her vagina from behind. (Trial Tr., p.83, L.16 – p.85, L.3, p.93, Ls.8-18.) Heather called Eric and told him something happened and "something was definitely not right." (Trial Tr., p.85, Ls.12-15.) Heather told Eric she thought she had sex the night before but was not sure if it was "consensual," and could not clearly remember what happened after she took her Ambien. (Trial Tr., p.256, Ls.7-12, 16-23.) Heather did not call law enforcement at that time.

At some point, Heather also realized some of her things were missing, including her iPod, her iPod alarm, her camera, and $70.00 cash from her purse. (Trial Tr., p.86, L.18 – p.88, L.10.) One of the room keys was also missing. (Trial Tr., p.106, L.18 – p.107, L.1.)

Jessi called Eric and told him about the apparent theft, at which time Eric went down to the front desk to tell them "some things" had been stolen from Heather's room. (Trial Tr., p.257, Ls.3-12, p.257, Ls.13-21.) Eric did not report a possible sexual assault because Heather was "so unsure of what had happened." (Trial Tr., p.258, Ls.15-18.)

After law enforcement arrived at the Grove, Troutman approached Officer Cody Evans, who was in the hotel lobby, and told him "[a] little birdie in the tree" told him Heather had given someone her key to "come in to . . . hang out with her." (Trial Tr., p.329, L.25 – p.332, L.19; Exhibit 16A, p.1, Ls.8-9.) Troutman then asked Officer Evans if Heather was "missing something." (Exhibit 16A, p.2, Ls.14-15.) Officer Evans told Troutman Heather was missing an iPod and a camera. (Exhibit 16A, p.2, L.19.) Officer Evans also told Troutman Heather thought she had been raped, to which Troutman responded, "Fuck no." (Exhibit 16A, p.3, Ls.5-7.) Officer Evans then told Troutman Heather's belongings had been returned to the front desk. (Exhibit 16A, p.3, Ls.15-16.) Troutman explained that was "because the word got out that it, something happened." (Exhibit 16A, p.3, Ls.17-19; see also Exhibit 17A, p.1, Ls.20-25.) Troutman elaborated on this later, telling Detective Matt Brechwald he "put the word out" to other players that if any of them stole Heather's property, they could return it outside his door and he would turn it in for them. (Trial Tr., p.454, Ls.7-12.) According to Troutman's initial statements, he purposely left his room to allow this to happen and returned to find a white bag leaning against his door with the stolen property inside. (Trial Tr., p.454, Ls.13-17.) Troutman then returned the bag to the front desk.[1] (Trial Tr., p.454, Ls.17-19.)

[1] James Dennis, the front desk supervisor at the Grove Hotel testified that an African-American male brought a bag to the front desk and told him the "coach" would pick it up. (Trial Tr., p.319, L.12 – p.320, L.2.) Sometime later, Mr. Dennis received a call from an unidentified male who told him the items turned in were for Room 1020. (Trial Tr., p.320, L.24 – p.322, L.1.)

After explaining his involvement with the stolen property, Troutman told Detective Brechwald he heard Heather said she was raped, and he wanted to "clear himself." (Trial Tr., p.454, Ls.20-25.) Troutman admitted he had sex with Heather after "the friend" allegedly gave him Heather's room key and told him to go "holler at her." (Exhibit 22A, p.12, Ls.8-11; Trial Tr., p.455, Ls.1-23.) Troutman took the key, let himself into Heather's room, where she was sleeping, laid down next to her and "started cuddling with her." (Exhibit 22A, p.12, Ls.11-13; Trial Tr., p.455, L.24 – p.456, L.10.) Troutman said she mumbled something incoherent at one point but they never had any conversation. (Trial Tr., p.456, Ls.10-12.) Troutman specifically admitted penetrating Heather from behind. (Trial Tr., p.458, Ls.12-16.)

Troutman also admitted giving the key to Heather's room to another player, later identified as Rennard Reynolds, after he left and telling Reynolds he just had sex in there and Reynolds could probably get "laid" too. (Trial Tr. p.456, Ls.16-20.) According to Troutman, he thought Heather was one of those girls who likes to have sex with multiple football players. (Trial Tr., p.456, L.21 – p.457, L.2.) When the police confronted Troutman with information they heard from Reynolds that Troutman said he told Heather it was just a "dream," Troutman claimed he only told Reynolds that to find "how much of a big mouth [Reynolds] was." (Exhibit 22A, p.44, L.11 – p.5, L.23.)

With respect to the items stolen from Heather's room, Troutman admitted "grabb[ing] some stuff thinking it was [his] stuff," but said he "gave it back as soon as [he] found out it wasn't [his]." (Exhibit 22A, p.19, Ls.13-19.) Although

Troutman did not identify what in particular he "grabbed," Leo Sullivan, a fellow player and Troutman's roommate on the trip, testified that Troutman told him he got a camera from "some girl." (Trial Tr., p.216, Ls.8-22.)

Further investigation by law enforcement revealed there were a total of four unauthorized entries into Heather's room. (Exhibit 28; see generally Trial Tr. and Grand Jury Tr.)

Heather underwent a sexual assault exam at which time swabs were taken of her face, breasts, rectum, and genitals for purposes of DNA testing. (Trial Tr., p.96, Ls.21-25, p.386, L.3 – p.387, L.1, p.388, Ls.2-18, p.395, Ls.6-18.) Rylene Nowlin, an expert in DNA comparison analysis, conducted DNA testing on the swabs taken from Heather and compared those results with the results of DNA testing on swabs taken from Troutman and Reynolds.[2] (Trial Tr., p.503, Ls.18-22, p.510, L.22 – p.518, L.18.) As a result of this testing, Ms. Nowlin determined that Heather and Troutman were both "potential contributors" to the DNA found on Heather's vaginal swabs to the exclusion of "99.99 per cent of randomly-selected individuals." (Trial Tr., p.512, Ls.9-17.) Troutman was also the "source of semen" on the perineal swabs taken from Heather. (Trial Tr., p.514, Ls.20-21.) Ms. Nowlin also identified Reynolds as a potential contributor to the DNA evidence on the saliva swabs taken from Heather's face, and could

[2] Ms. Nowlin also compared Heather's swabs with swabs taken from Eric Coleman, Mike Cooper, and Steve Baker, all of whom were excluded as possible contributors to the DNA evidence found on Heather's swabs. (Trial Tr., p.513, Ls.12-15, p.518, Ls.12-18.)

not eliminate Troutman as an additional source. (Trial Tr., p.516, L.10 – p.518, L.16.)

Troutman was indicted for rape.[3] (R., pp.11-12.) The indictment specifically alleged Troutman committed the crime of rape by "penetrat[ing] the vaginal opening of Heather S., . . ., with his penis, and where Heather S. was unconscious of the nature of the act at the time," or "was unable to resist due to any intoxicating or narcotic substance." (R. p.12.) Troutman's case proceeded to trial, and a jury convicted him of rape. (R., p.64.) The court imposed a unified twenty-year sentence with five years fixed. (R., p.73.) Troutman timely appealed. (R., pp.75-77.)

[3] The state also sought an indictment against Troutman for burglary based on his entry into Heather's room with the intent to commit rape, or in the alternative, with the intent to commit theft. (R., p.12.) The grand jury did not find probable cause to support this charge. (R., p.12.)

ISSUE

Troutman states the issue on appeal as:

> Did the prosecutor engage in misconduct depriving Mr. Troutman of due process of law and a fair trial, such that he is now entitled to a new trial?

(Appellant's Brief, p.7.)

The state rephrases the issue on appeal as:

Has Troutman failed to show error, much less fundamental error, in relation to the prosecutor's opening statement or closing arguments?

ARGUMENT

Troutman Has Failed To Establish Error, Much Less Fundamental Error, In Relation To Any Of The Prosecutor's Comments During Her Opening Statement Or Closing Arguments

A. Introduction

Troutman argues that the prosecutor made several comments during her opening statement and closing arguments, which he did not object to, that prejudiced his right to a fair trial. (Appellant's Brief, pp.8-26.) Troutman has failed to establish any basis for reversal, however, because he has failed to establish error, much less fundamental error, in relation to any of the prosecutor's statements.

B. Standard Of Review And General Legal Standards Governing Claims Of Prosecutorial Misconduct

A defendant is not entitled to relief based upon a claim of prosecutorial misconduct unless he can establish two things: (1) the complained of conduct was improper; and (2) the improper conduct prejudiced him. State v. Romero-Garcia, 139 Idaho 199, 202, 75 P.3d 1209, 1212 (Ct. App. 2003). Thus, a mere assertion or finding that a particular question or statement was objectionable or improper is insufficient to establish prosecutorial misconduct. As explained by the United States Supreme Court: "[I]t is not enough that the prosecutors' remarks were undesirable or even universally condemned. The relevant question is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 181 (1986) (internal quotations and citations

omitted); see also Smith v. Phillips, 455 U.S. 209, 219 (1982) ("[T]he touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor.") In that regard, the Supreme Court has indicated prosecutorial misconduct may occur where the prosecutor "manipulate[s] or misstate[s] the evidence" or "implicate[s] other specific rights of the accused such as the right to counsel or the right to remain silent." Id. at 181-82. However, "a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context; only by so doing can it be determined whether the prosecutor's conduct affected the fairness of the trial." United States v. Young, 470 U.S. 1, 11 (1985). Thus, the Court must consider the probable effect that the prosecutor's argument "would have on the jury's ability to judge the evidence fairly." Id. at 11-12. Consistent with Darden and Young, the Idaho Supreme Court has held that a conviction will be set aside for prosecutorial misconduct only when the conduct is sufficiently egregious as to result in fundamental error. State v. Hairston, 133 Idaho 496, 507, 988 P.2d 1170, 1181 (1999).

With respect to prosecutorial misconduct in the context of closing argument the Supreme Court has stated:

> Isolated passages of a prosecutor's argument, billed in advance to the jury as a matter of opinion not of evidence, do not reach the same proportions. Such arguments, like all closing arguments of counsel, are seldom carefully constructed in toto before the event; improvisation frequently results in syntax left imperfect and meaning less than crystal clear. While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an

> ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.

Donnelly v. DeChristoforo, 416 U.S. 637, 646-47 (1974).

The Idaho Supreme Court has recently reiterated the importance of reviewing closing arguments in light of their improvisational nature, noting that "in reviewing allegations of prosecutorial misconduct [the appellate court] must keep in mind the realities of trial." State v. Field, 144 Idaho 559, 571, 165 P.3d 273, 285 (2007) (quoting State v. Estes, 111 Idaho 423, 427-28, 725 P.2d 128, 132-33 (1986)). The Idaho Supreme Court has further recognized "[t]he right to due process does not guarantee a defendant an error-free trial but a fair one," and the function of appellate review is "not to discipline the prosecutor for misconduct, but to ensure that any such misconduct did not interfere with the defendant's right to a fair trial." State v. Reynolds, 120 Idaho 445, 451, 816 P.2d 1002, 1008 (Ct. App. 1991).

C. Fundamental Error

Absent a timely objection at trial, an appellate court will generally not consider an issue on appeal unless the error alleged is "fundamental error." State v. McAway, 127 Idaho 54, 896 P.2d 962 (1995). An error is fundamental if it "goes to the foundation or basis of a defendant's rights or must go to the foundation of the case or take from the defendant a right which was essential to his defense and which no court could or ought to permit him to waive." State v. Christiansen, 144 Idaho 463, 470, 163 P.3d 1175, 1182 (2007). An error is not deemed fundamental and may not be reviewed for the first time on appeal if it

could have been cured by a timely objection. State v. Brown, 131 Idaho 61, 68-71, 951 P.2d 1288, 1295-98 (Ct. App. 1998). In the context of closing arguments, the Idaho Supreme Court has stated:

> Prosecutorial misconduct rises to the level of fundamental error if it is calculated to inflame the minds of jurors and arouse passion or prejudice against the defendant, or is so inflammatory that the jurors may be influenced to determine guilt on factors outside the evidence. More specifically, prosecutorial misconduct during closing arguments will constitute fundamental error only if the comments were so egregious or inflammatory that any consequent prejudice could not have been remedied by a ruling from the trial court informing the jury that the comments should be disregarded.

State v. Sheahan, 139 Idaho 267, 280, 77 P.3d 956, 969 (2003) (citations, quotations, and brackets omitted).

The same standard of fundamental error is applied to claims of prosecutorial misconduct during opening statements. State v. Dunn, 134 Idaho 165, 171, 997 P.2d 626, 632 (Ct. App. 2000); State v. Priest, 128 Idaho 6, 13, 909 P.2d 624, 631 (Ct. App. 1995).

Application of the foregoing standards to Troutman's claims of prosecutorial misconduct reveals he has failed to establish error, much less fundamental error.

D. None Of The Prosecutor's Statements Troutman Complains Of Were Improper, Much Less So Egregious Or Inflammatory That Any Consequent Prejudice Could Not Have Been Cured By A Curative Instruction

Troutman claims the prosecutor engaged in "numerous instances of misconduct during her opening statements and closing arguments" that "are so

egregious as to constituted [sic] fundamental, reversible error." (Appellant's Brief, p.8.) All of Troutman's misconduct claims lack merit.

1. The Prosecutor Did Not Ask The Jury To Draw Inferences She Knew To Be False Nor Did She Argue Inconsistent Theories

In discussing the state's burden of proof and the evidence presented at trial of the multiple unauthorized entries into Heather's room, the prosecutor advised the jury that her burden to establish the elements of rape did not require her to prove, beyond a reasonable doubt, what happened during each of those different entries, explaining:

> I only have to prove to you one time, and we know that that one time did take place. There is a period of time between the time he enters the room until that room is entered again.
>
> Defendant tells us that he passed the key to another man, because he figured it's just a matter of figuring that this woman in there that he doesn't know and has never met before and has never talked to is up to having sex with multiple members of the football team.
>
> He also tells us that he went to his own room -- Leo told us that. He came to the room and talked about getting a camera from a girl. Leo didn't talk about a time frame, but it would have to logically be after the time he has entered the room, has taken her camera and left again.
>
> And you know that it's her camera by the way that he is talking about it, because he ends up returning it when the jig is up, and the police are on the scene, and they are investigating.
>
> He panics and is trying to return everything and get all the evidence and the camera from himself. So the camera, he talks about he told the police about, has to be the same camera. I don't have to prove it beyond a reasonable doubt, but it's a pretty good probability.
>
> At 4:53 a.m. we know that room has been entered a second time. I don't have to prove if there was a rape or theft there, because the victim is unconscious. She is unaware these multiple

entries are happening. She doesn't know who is coming into the room, to tell us again at 5:09 a.m., 16 minutes later, the room is entered again.

The same key card the defendant had in his possession. That key card never went back to Jessi and was never placed back into the room, so he had it, and he says he handed it off to a third party unknown to the victim. Okay?

So either he or someone that he designated, by passing it along, is going into that room again. And that happens, a second entry happens. Again, don't know if there is rape or theft happening again.

029CD[4] again is used one hour later. There is a fourth entry. Again, do not know what other crimes were committed against this woman during that time frame. We do know at some point the iPOD was taken from the room. Her other luggage was searched. The wires that go with it are taken out of the room as well, and again, I don't know -- that's a side issue. I don't know if Mr. Troutman did that beyond a reasonable doubt or if his buddy that he passed the card to did that, but I do know that Mr. Troutman returned it all to the front desk when he knew the police was [sic] on them, and he would be getting caught.

All of that, mere inability to know who's in there, how many times he is coming in, she is not aroused. She is not awakened. She does not know, and she does not even realize a theft has happened, because she is that unaware and sedated and unconscious and helpless.[5]

And their repetitive entering into the room obviously speaks squarely to the point of her ability to be able to appreciate the nature of the act, which is the penetration in this case.

(Trial Tr., p.641, L.3 – p.643, L.10.)

Setting aside the clear import of the prosecutor's argument that evidence of multiple entries into Heather's room by Troutman and Reynolds of which she

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[4] 029CD refers the code assigned to the room key used to enter Heather's room. (Exhibit 28; Trial Tr., pp.425-430.)

[5] Troutman omits this paragraph of the prosecutor's closing argument from his excerpt, without indication of the omission. (Appellant's Brief, p.10.)

was unaware indicated her inability to consent, Troutman argues that the prosecutor engaged in misconduct by making this argument because, he complains, the argument "implied" that (1) Troutman "must have known that [Heather] was incapacitated because he may have snuck back into her hotel room one or more times after having sex with her," and (2) Troutman "is simply a bad man, a criminal, who may have raped and stolen from [Heather] multiple times." (Appellant's Brief, p.10.) According to Troutman, these implications were "extremely dishonest" because the prosecutor:

> knew very well that Mr. Reynolds had entered [Heather's] room three separate times; she knew that Mr. Troutman certainly could not have raped Ms. Schillereff multiple times; and she knew that Mr. Reynolds was the one who had taken the iPod and its charger, and had rooted around for additional items to steal.

(Appellant's Brief, pp.10-11.)

Troutman supports his argument by referencing testimony from the grand jury proceedings by Officer Mark Vucinich regarding Reynolds' admissions. (Appellant's Brief, p.9.) Specifically, Officer Vucinich testified that Reynolds admitted he went into Heather's room after Troutman gave him the key and told him he could go in there and have sex, and admitted he stole Heather's iPod "and some miscellaneous fixtures that go with it," and returned to her room two more times – once to look for "more items for the iPod," and once for no particular reason. (Grand Jury Tr., p.161, L.12 – p.172, L.15.)

Exactly why Troutman believes the grand jury testimony cited demonstrates *knowledge* on the part of the prosecutor that Troutman *never* re-entered Heather's room is unclear. That Reynolds admitted he made multiple

entries into Heather's room and stole Heather's iPod and charger is certainly not mutually exclusive of the possibility that Troutman also re-entered Heather's room with Reynolds at some point. The same grand jury testimony Troutman relies on indicates Reynolds saw the camera the first time he went in Heather's room but did not take it. (Grand Jury Tr., p.167, Ls.14-21.) Since Troutman admitted "grabbing" some stuff, and told Leo Sullivan he got a camera from a "girl," it is not beyond reason that Troutman could have returned with Reynolds on his third or fourth trip into Heather's room. This possibility is supported by Mr. Sullivan's additional testimony that he overheard Reynolds and Troutman in his room at some point after Troutman told him he had gotten the camera. (Trail Tr., p.226, L.6 – p.227, L.23.) The conversation between Troutman and Reynolds also included references to sexual contact with a girl. (Trial Tr., p.227, Ls.21-23.) It would be not be unreasonable to infer from this information that Troutman and Reynolds may have gotten back together after Troutman gave the key to Reynolds and before going back to Reynolds' and Sullivan's room, and Troutman has cited nothing in the record to establish that the prosecutor *knew* this was false.

Troutman's reliance on Nguyen v. Lindsey, 232 F.3d 1236 (9th Cir. 2000), Thompson v. Calderon, 120 F.3d 1045, 1058 (9th Cir. 1997), *reversed on other grounds*, and State v. Pearce, 146 Idaho 241, 248-49, 192 P.3d 1065, 1072-73 (2008), to support his claim of misconduct is misplaced. In Thompson, the Ninth Circuit held "that when no new significant evidence comes to light a prosecutor cannot, in order to convict two defendants **at separate trials**, offer inconsistent

theories and facts regarding the **same crime**." 120 F.3d at 1058 (emphasis added). Similarly, in Nguyen, the Ninth Circuit held "that a prosecutor's pursuit of fundamentally inconsistent theories in separate trials against separate defendants charged with the **same murder** can violate due process if the prosecutor knowingly uses false evidence or acts in bad faith." 232 F.3d at 1240 (emphasis added). However, the court in Nguyen also noted that a mere difference in the evidence presented at separate trials involving co-defendants is not sufficient to establish a due process violation, particularly where there is no evidence of falsification or bad faith, and the theories presented in each case are consistent. Id.

In Pearce, the Idaho Supreme Court, after discussing Thompson and Nguyen, stated:

> While a prosecutor, as the agent of the people and the state, has the unique duty to ensure a fundamentally fair trial by seeking not only to convict, but also to vindicate the truth and to administer justice, courts have largely recognized the limits of punishing prosecutors for apparent inconsistencies in their approach to criminal trials absent a "core" inconsistency.

146 Idaho at ___, 192 P.3d at 1073 (citations omitted).

There is absolutely no evidence that the prosecutor in this case pursued inconsistent theories against Troutman and Reynolds at separate trials involving the same crime. Indeed, the state did not charge Troutman and Reynolds with the same offense (R., pp.10-12), and Reynolds never went to trial (Appendix A – Register of Actions from State v. Reynolds). Therefore, the principles articulated in Thompson, Nguyen, and Pearce do not apply.

Even if this Court were to apply the principles articulated in Thompson, Nguyen, and Pearce to differences in the evidence presented at the grand jury and the evidence presented at trial, ignoring the Ninth Circuit's acknowledgement in Nguyen that "trial preparation is not a static process," 232 F.3d at 1240, and ignoring that Troutman and Reynolds were not even charged with the same crime, Troutman has failed to establish an inconsistency in the "theory" presented to the grand jury and the "theory" presented at Troutman's trial simply because the prosecutor, in her closing argument, did not advise the jury that there was evidence that Reynolds admitted stealing the iPod. Indeed, the prosecutor could not have done so because Reynolds' admissions were not introduced at Troutman's trial, and the prosecutor did not act in bad faith by failing to introduce such evidence, particularly since, as the prosecutor pointed out, who stole what and when was ultimately irrelevant to whether Troutman raped Heather.

Setting aside Troutman's reliance on the grand jury testimony regarding Reynolds' involvement in the thefts and his erroneous assertion that the state's position before the grand jury was inconsistent with its theory at trial, Troutman's belief that the prosecutor's comments "implied" Troutman is "simply a bad man," does not make them improper. Presumably most closing arguments following a rape trial could be read to imply the defendant is a bad man – that does not mean such arguments are misconduct. To the extent Troutman is arguing that the prosecutor's comments were improper because they urged the jury to convict him, not on the evidence, but because he was a bad man generally, such an

argument is clearly belied by the record. As previously noted, the prosecutor's comments regarding the multiple entries into Heather's room were made in the context of discussing the state's burden of proof and what the burden applied to, and not for the purpose of implying Troutman was a "bad man."

Troutman's argument that the prosecutor's comments may have also implied that Troutman "must have known that [Heather] was incapacitated because he may have snuck back into her hotel room one or more times after having sex with her," misstates the prosecutor's argument. The evidence presented at trial established that there were multiple entries into Heather's room without her knowledge. It was perfectly acceptable for the prosecutor to highlight this information in closing argument, as she did, and argue that evidence of multiple entries unknown to Heather demonstrated that Heather was unconscious of what was going on or was incapable of consenting to or resisting sexual intercourse.

Troutman's argument that the prosecutor committed misconduct by discussing the multiple entries into Heather's room, her references to the items taken, including the iPod, and her statement that she was unsure what, if any, other crimes may have occurred during those multiple unauthorized entries was a violation of I.R.E. 404(b), is equally unmeritorious. Evidence of the four entries, the items that were stolen, and the DNA evidence were all introduced at trial without objection. To suggest, as Troutman does, that the prosecutor could not discuss this evidence in closing argument and the reasonable inferences to be drawn therefrom or discuss this evidence in relation to the state's burden of proof

is contrary to law. See State v. Sheahan, 139 Idaho 267, 280, 77 P.3d 956, 969 (2003) (the parties "are entitled to discuss fully, from their respective standpoints, the evidence and the inferences to be drawn therefrom") (citation omitted).

2. The Prosecutor Did Not Distort Troutman's Defense

Troutman's closing argument centered around the theory that Troutman had sex with Heather with her consent, and the jury could conclude she consented because she told Eric she was not sure if it was consensual and because prior to taking her Ambien and going to sleep she was "behaving in a way that is appearing normal to other people, and yet she doesn't remember it," and sending text messages, which, the defense argued requires "coordination" and "fine motor control." (See generally Trial Tr., pp.657-663.) The defense further argued that because Heather does not know whether the sex was consensual, nobody knows. (Trial Tr., p.663, L.18 – p.664, L.19.) In addition, the defense characterized the "camera" as a "red herring," arguing, "There is no excuse for stealing a camera. I'm not going to pretend there is. But this isn't a theft case. This is a rape case. And stealing a camera does not get you to rape." (Trial Tr., p.663, Ls.9-13.)

In rebuttal, the state argued, *inter alia*:

> [H]e would have a done deal if, based on this argument, we are all going to have to put heavy locks on our doors, on the windows in our house and wear chastity belts when we go to bed, because in case you are lawfully ingesting any substance that makes you unable to fend for yourself and the next day you can't remember much about what's happened, but the law enforcement has done their absolute best and has figured out the criminal involved and the crime that's committed, you are at fault, and there is no crime.

> Under this suggestion, if your house door is unlocked and a person walking by decides that they are going to check all the doors in the neighborhood in the middle of the night and see who's got something they can take, comes into your house, and you happen to have taken a sleeping pill, or whatever, or are just a really heavy sleeper and someone comes through your house, takes everything you have and goes, "Hey, buddy, I'm taking your car," and you don't wake up, and he leaves.
>
> When he is caught later, he is going to go, "I was in his house. It was unlocked. He didn't tell me I couldn't come in."
>
> And then I said to him "Dude, I'm taking your car, and he doesn't remember, and he did not follow the warnings on the Ambien he was taking that said don't mix it with alcohol, that's his fault."
>
> When you start shifting the blame in a case like this onto the victim for her inability to remember every detail of what she was doing behind her locked door, in her own bedroom, in her own bed, then you are turning the world upside down. Justice not in its real sense, but what conceptual sense is.

(Trial Tr., p.665, L.3 – p.666, L.15.)

On appeal, Troutman complains the foregoing argument made by the prosecutor during rebuttal "grossly misstated and distorted what Mr. Troutman's defense actually was," "exhorted the jurors to convict Mr. Troutman based on a desire to cure a greater societal problem and/or protect themselves from others," and sought to reduce the state's burden of proof. (Appellant's Brief, p.16.) All of Troutman's claims fail.

First, Troutman's argument that the prosecutor characterized his "defense as being one of 'I didn't hear her say 'no,' so I took that as a 'yes'" (Appellant's Brief., p.6), is false. Nowhere in the argument cited by Troutman, and excerpted above, did the prosecutor characterize the defense in this manner. Nor did the prosecutor's use of the word "blame" improperly characterize Troutman's

defense. Rather, the prosecutor simply urged the jury to reject Troutman's argument that the jury could not find him guilty because Heather could not remember whether the sex was consensual. This was not improper.

Second, contrary to Troutman's argument, the prosecutor did not "ask[ ] the jury to convict Mr. Troutman to alleviate societal problems that are much larger than Mr. Troutman's own case, and out of fear for themselves, their families, and, in fact, anyone else who might become a victim of a home invasion." (Appellant's Brief, pp.18-19.) The prosecutor was not, as Troutman suggests, urging the jury to convict Troutman to "alleviate" a "societal problem[]"[6] – she was using an analogy in response to describe the practical effect of the defense's theory of the case. This is not improper.

Third, Troutman's argument that the state "subtly sought to relax the State's burden of proof" is absurd. (Appellant's Brief, p.19.) According to Troutman, the state accomplished this "subtle" relaxation of its burden "by arguing that, just because the State's key witness could not testify as to whether a crime had committed [sic] and, if so, by whom, the jury should nevertheless convict Mr. Troutman because 'the law enforcement has done their absolute best and has figured out the criminal involved and the crime that's committed.'" (Appellant's Brief, pp.19-20 (quoting Trial Tr., p.665, Ls.3-14).) This comment was not, as Troutman argues, a request for the jury to presume guilt "based on the mere fact that Mr. Troutman was believed to be guilty by the police"

[6] Indeed, the state is unaware of what "societal problem" Troutman thinks the prosecutor was trying to alleviate. As far as the state knows, people taking Ambien, with or without alcohol, are not regularly the victims of home invasions.

(Appellant's Brief, p.20), it was an assertion that the jury was not required to acquit Troutman simply because Heather could not "remember much about what[] happened" (Trial Tr., p.665, L.10). Troutman's efforts to spin it as anything other than that do not withstand scrutiny.

3. The Prosecutor Did Not Improperly "Attempt[] To Engender Sympathy" For Heather "And/Or Derision" For Troutman

Troutman complains "the prosecutor's arguments in this case were replete with attempts to engender sympathy for [Heather]." (Appellant's Brief, p.20.) Specifically, Troutman argues it was improper for the prosecutor, in her opening statement, to "highlight" Heather's "suffering during the rape exam," and in closing arguments to refer to Heather as a "poor woman" and a "real person" who came to Boise to have a "very nice time" and instead had a "very traumatic situation happen to her." (Appellant's Brief, pp.20-21.) These characterizations of Heather and her experience hardly constitute misconduct, particularly where, as here, they were not the focus of the state's opening statement or closing argument, and were not the basis upon which the prosecutor urged the jury to convict Troutman. Even if it was improper to refer to Heather as a "real person" or "poor woman," or to refer to her "suffering" through the sexual assault exam, given that Heather testified about her experience of being sexually assaulted and having to undergo what was certainly an unpleasant examination, which included pictures, take "medication pills for STDs and pregnancy," and AIDS testing (Trial Tr., p.97, Ls.16-23), it is unlikely the prosecutor's characterizations of Heather and her experience further influenced the jury to convict Troutman. See State v.

Peite, 122 Idaho 809, 819, 839 P.2d 1223, 1233 (Ct. App. 1992) (concluding that although it was improper for the prosecutor to ask the victim of rape what had "been the hardest part of the whole thing" for her, because the victim "had just testified she had been abducted, choked, beaten, raped, and threatened with the loss of her life and the lives of her children," the court did "not see how a subsequent question implying that these events had been 'hard' for her could further influence the jury").

Troutman's claim that the prosecutor engaged in misconduct by trying "to generate resentment" toward him by noting he did not wear a condom also lacks merit. (Appellant's Brief, pp.21-22.) Troutman, by his own admission, and as evidenced by the DNA analysis, did not wear a condom. (Trial Tr., p.459, Ls.19-24, p.512, Ls.9-17.) As a result, Heather testified she had to take "medication pills for STDs and pregnancy," and AIDS testing. (Trial Tr., p.97, Ls.16-23.) It was not improper for the prosecutor to refer to this evidence during closing argument. See Sheahan, 139 Idaho at 280, 77 P.3d at 969 (the parties "are entitled to discuss fully, from their respective standpoints, the evidence and the inferences to be drawn therefrom") (citation omitted). It was evidence of Troutman's conduct that made him look like a "bad man," not the prosecutor's argument.

4. The Prosecutor Did Not Testify

Troutman claims the prosecutor engaged in misconduct by stating, in response to Troutman's statement to Detective Brechwald that he thought Heather was just one of those girls who likes to have sex with multiple football

players, "Even women who -- and I am yet to hear from a single woman who has done that – this is anecdotal from him -- that there are women who have sex with multiple members at one time, willingly have sex with multiple members at one time . . .." (Appellant's Brief, p.23 (quoting Trial Tr., p.652, Ls.2-7.) According to Troutman, such argument was improper because it amounted to testimony by the prosecutor regarding "new evidence . . . that she has never personally heard of a woman wanting to have sex with multiple partners." (Appellant's Brief, p.23.) This is an overbroad characterization of the prosecutor's statement. She did not say she had never, in her own personal experience, heard of a woman engaging in such behavior. She said that she had "yet to hear from a single woman who has done that" – a comment that could very well be referring to the evidence introduced at trial, or the lack thereof.

Even if the prosecutor's statement could be characterized as improper "testimony" regarding facts not in evidence, Troutman has failed to explain why the statement was so egregious or inflammatory that it could not have been cured by an objection such that the statement must be deemed fundamental error.

5. The Prosecutor Did Not Ask The Jury To Presume Rape "In An Effort To Change Existing 'Lenient' Cultural Views Regarding Sex"

Troutman's final claim of prosecutorial misconduct is based on the following argument:

> He wants to finagle his way around the sexual issues. And I don't know what it is about our culture, generally not American, but all male-female relationships, where we give more importance to someone taking a tangible thing from us without our permission, but

> we are more lenient about the issue of someone having sexual penetration.
>
> Maybe he could have been misled or misunderstood. We don't say maybe he misunderstood that he could take a camera. He didn't ask her about taking that, either.
>
> We are very clear on that issue, that you took the camera, didn't ask permission, and that's not okay. But with the sex, we are willing to sort of go into the realm of unreasonable, unfortunately.

(Trial Tr., p.656, Ls.8-24.)

Troutman argues this was improper argument because, he claims, "it could have been taken one (or both) of two ways:" (1) it could have been viewed by the jury as permission to "presume rape from the fact that Mr. Troutman had sex with [Heather] without specific permission" just as they could "presume theft from the fact that Mr. Troutman took [Heather's] camera without explicit permission," and/or (2) the jury should "apply a more pro-prosecution standard to their deliberations because cultural views on non-consensual sex have traditionally been too lax." (Appellant's Brief, p.25.) Both of Troutman's interpretations strain reason.

Nowhere in her argument did the prosecutor ask the jury to presume Troutman raped Heather, much less ask them to presume he did so based on the presumption that he stole her camera. This is an absurd reading of the prosecutor's argument, as is Troutman's claim that the argument could be interpreted as urging the jury to be "more pro-prosecution" to compensate for "lax" "cultural views on non-consensual sex." The foregoing argument immediately followed a discussion of Troutman's theft of the camera and his initial denials that he took the camera:

> The detective asked him in seven different ways [whether he took the camera]. Defendant's response is "no" seven different times, because they asked him. Of course, [Officer] Vucinich even tried to make it sound less accusatory, "Did the camera follow you through, out the door," make it sound a little less problematic, so they may say, "Oh, yes it may have."
>
> He can't do it. Why do you think that is? Because that's a tangible object. It's one thing to do try [sic] to bamboozle people and say, "Oh, she was totally into it. She just can't remember. She liked it. She was into it. She was fine. She was awake," because that isn't something tangible.
>
> We cannot see that far into them. We can't open up Heather's brain to see what was going on in there. But a camera that left the room while a girl was sleeping, that is called taking people's things without their permission.
>
> And he can't admit to that, because it's a very concrete, obviously, bad act on his part that he did to this person, to a person that he is claiming is awake and is fully aware of what's going on.
>
> When he is pushed to the brink -- because they are saying, "Look, why should I believe you about the rape? Why you can't admit to the simple fact that you took this girl's camera without permission," he again says, "I was tipsy. I grabbed some stuff. I'm not going to see what -- I grabbed some stuff thinking it was mine, and as soon as I found it wasn't, I gave it back -- gave it to back to the victim."
>
> Of course, that is not at all the case. He did not think his camera was inside her purse. He just does not know how to deny the undeniable.

(Trial Tr., p.654, L.21 – p.656, L.7.)

If it was not apparent from the portion of the argument cited by Troutman, it is certainly apparent when the entire argument is read in context that the prosecutor was not urging the jury to presume anything or to be more sympathetic to the prosecution based on "cultural norms." Rather, she was highlighting that there is no distinction between taking a piece of property without

someone's permission and taking something more personal and intimate without their permission. This is not improper.

Troutman's additional claims that the prosecutor's argument was improper because it "misled the jury" by allegedly implying "that Mr. Troutman had been found guilty of theft when, in actuality he had never even been charged with . . . such an offense" and "implied that the accidental taking of someone else's property constitutes theft under Idaho law" are ridiculous. (Appellant's Brief, p.25.) The prosecutor in no way indicated Troutman had been found guilty of theft, and her comments that he took the camera were consistent with the evidence of Troutman's admission that he did so.

6. Troutman Has Failed To Establish Any Error, Much Less Fundamental Error

Troutman "concedes that none of the instances of misconduct complained of above were objected to by his attorney at trial," but argues he is nevertheless entitled to relief under the fundamental error doctrine. (Appellant's Brief, p.27.) Although Troutman cites the correct standard for fundamental error, he fails to apply that standard to his claims. (Appellant's Brief, pp.27-28.) Instead, he only asserts "that the instances of misconduct described . . . above, whether considered individually, or in the aggregate, constitute fundamental error because so much of it was calculated inflame [sic] the passions and prejudices of the jury and influence the verdict with matters outside the evidence." (Appellant's Brief, p.28.) However, the fundamental error standard requires Troutman to explain why the comments complained of were so egregious or inflammatory that

they could not have been cured by an instruction. Sheahan, 139 Idaho at 280, 77 P.3d at 969. Because Troutman has failed to present any argument on this point, this Court should decline to consider his arguments. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking.").

Even if this Court considers Troutman's claim of fundamental error, because he has failed to establish any error, he has necessarily failed to establish fundamental error. Even if some of the prosecutor's arguments were improper, Troutman has failed to articulate any basis for concluding the arguments were so egregious or inflammatory that "any consequent prejudice could not have been remedied by a ruling from the trial court informing the jury that the comments should be disregarded." Sheahan, 139 Idaho at 280, 77 P.3d at 969.

CONCLUSION

The state respectfully requests that this Court affirm Troutman's conviction.

DATED this 5th day of February, 2009.

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of February 2009, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIK R. LEHTINEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

JESSICA M. LORELLO
Deputy Attorney General

APPENDIX A

Case History

Ada

2 Cases Found.

State of Idaho vs. Maurice Ronald Troutman, etal.
No hearings scheduled

Case: **CR-FE-2007-0000971** **Old Case: H0700971 M0709773** **District** Judge: **Deborah Bail** Amount due: **$100.50** **Closed pending clerk action**

Charges:	Violation Date	Charge	Citation	Disposition
	07/08/2007	**I18-1401 Burglary** **Arresting Officer: Evans, Cody D, BO**		**Finding: Retained Jurisdiction** **Disposition date: 03/05/2008** **Fines/fees: $100.50** **Discretionary: 90 days** **Det Penitentiary: 5 years**
	Probation:	**Type:Felony Probation & Parole Term: 5 years** **To be completed by: 09/08/2013** **Probation completed on:**		
	07/08/2007	**I18-1401 Burglary** **Arresting Officer: Unknown Officer,, AD**		**Finding: Retained Jurisdiction** **Disposition date: 03/05/2008** **Fines/fees: $0.00** **Det Penitentiary: 5 years**

Register of actions:

Date	
07/25/2007	Case Created - Indicted M0709773
07/25/2007	Charge number 2: Committment and Papers
07/25/2007	Charge number 2: Defendant Transferred In - M0709022 D.01
07/25/2007	Charge number 2: Count Indicted From - M0709022 D.01 C.001
07/25/2007	Charge number 2: Bond Transferred From - M0709022 D.01 C.001
07/25/2007	INDICTMENT FILED
07/25/2007	Ref M0709022 and G0700069
07/25/2007	Charge number 3: Charge Created
07/25/2007	Arraignment - 08/02/2007
07/31/2007	Order for Disq of Judge
07/31/2007	Notice - of Reassignment to Judge Bail
08/01/2007	Arraignment - 08/06/2007
08/06/2007	Arraignment
08/06/2007	Continued For Plea
08/08/2007	Motion - for GJ Transcript
08/08/2007	Sub of Counsel/ Barnum
08/08/2007	Defendant Request For Discovery
08/09/2007	Order - For GJ Transcript
08/13/2007	Arraignment - (Con't)
08/13/2007	Charge number 2: Not Guilty Plea
08/13/2007	Charge number 3: Not Guilty Plea
08/13/2007	Event Scheduled - Pre-Trial Conference - 10/15/2007
08/13/2007	Jury Trial Set - 11/13/2007
08/13/2007	Event Scheduled - Hearing - 08/27/2007

08/14/2007	Notice - Of Trial Setting
08/14/2007	Notice - Of Preparation Of GJ Transcript
08/20/2007	Notice - of Hearing
08/20/2007	Motion - for Bond Reduction
08/27/2007	Hearing
08/27/2007	Charge number 2: Dismissed Before Trial or Hearing
08/27/2007	Charge number 3: Change Plea to Guilty Before Trial
08/27/2007	Event Scheduled - Sentencing Hearing - 10/15/2007
10/15/2007	Notice - of Intent to W/draw from Plea Agreement
10/15/2007	Event Scheduled - Sentencing Hearing - 10/29/2007
10/29/2007	Event Scheduled - Sentencing Hearing - 11/05/2007
11/05/2007	Jury Trial Set - 12/04/2007
11/06/2007	Notice - Of Re-Setting Trial
11/30/2007	Event Scheduled - Hearing - 12/03/2007
12/03/2007	Hearing
12/03/2007	Charge number 2: Guilty Plea
12/03/2007	Charge number 3: Change Plea to Guilty Before Trial
12/03/2007	Event Scheduled - Sentencing Hearing - 12/12/2007
12/12/2007	Event Scheduled - Sentencing Hearing - 02/20/2008
02/14/2008	Motion - to Continue SH
02/14/2008	Affid of Support
02/20/2008	Event Scheduled - Sentencing Hearing - 03/05/2008
03/05/2008	Sentence Hearing
03/05/2008	Charge number 2: Retained Jurisdiction - 180 days
03/05/2008	Charge number 2: Sentenced to ISCI - 5y Concurrent
03/05/2008	Charge number 3: Retained Jurisdiction - 180 days
03/05/2008	Charge number 3: Sentenced to ISCI - 5y Concurrent
03/06/2008	Jdmt of Conviction & Order of Retained Jurisdiction
03/17/2008	Finger Print Card# Sent to BCI - 0100099983
04/08/2008	Notice of Change of Firm Name and Contact Info
05/28/2008	Motion to Reconsider Sentence Pursuant to ICR 35
05/30/2008	State's Objection to Defend's Motion 35
08/15/2008	Hearing Scheduled (Rider Review 09/08/2008 09:30 AM)
08/15/2008	STATUS CHANGED: Closed pending clerk action
08/15/2008	Order to Transport (9/8/08)
09/08/2008	Hearing result for Rider Review held on 09/08/2008 09:30 AM: District Court Hearing Held Court Reporter: Susan Gambee Number of Transcript Pages for this hearing estimated: 50
09/08/2008	Probation Ordered (I18-1401 Burglary) Probation term: 5 years. (Felony Probation & Parole)
09/08/2008	Amended JudgmentSentence modified on 9/8/2008. (I18-1401 Burglary)
09/08/2008	Sentenced To Pay Fine 100.50 charge: I18-1401 Burglary
09/08/2008	Standard Terms of Probation, CSC, Thinking Errors
09/09/2008	Order Suspending Sentence and Order of Probation

State of Idaho vs. Rennard A Reynolds
No hearings scheduled

Case: **CR-MD-2007-0009022** **Magistrate** Judge: **Richard Schmidt** Amount due: **$0.00** **Closed**
Old Case: M0709022

Charges:	Violation Date	Charge	Citation	Disposition
	07/08/2007	**I18-1401 Burglary** **Arresting Officer: zzBCPD,, BO**		**Finding: Defendant Bound Over**

Disposition
date: 07/25/2007
Fines/fees: $0.00

Register of actions:	Date	
	07/10/2007	Case Created
	07/10/2007	Case Opened
	07/10/2007	Video Arraignment - 07/10/2007
	07/10/2007	Charge number 1: Charge Booked by ACSO
	07/10/2007	Video Arraignment - Video Arraignment - 07/10/2007
	07/10/2007	Charge number 1: Charge Filed Cause Found
	07/10/2007	Video Arraignment
	07/10/2007	Order Appointing Public Defender
	07/10/2007	Charge number 1: Bond Reduced or Amended to - $150000.00
	07/10/2007	Event Scheduled - Preliminary Hearing - 07/31/2007
	07/12/2007	Notice - of Hearing
	07/12/2007	Motion - for Bond Reduction
	07/12/2007	Defendant Request For Discovery
	07/25/2007	Charge number 1: Defendant Bound Over - H0700971 D.02
	07/25/2007	Charge number 1: Count Indicted To - H0700971 D.02 C.002
	07/25/2007	Charge number 1: Bond Transferred To - H0700971 D.02 C.002
	07/25/2007	INDICTMENT FILED
	07/25/2007	Ref H0700971 and G0700069

Connection: Secure