

7-12-2010

State v. Hadden Clerk's Record v. 2 Dckt. 37523

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO

and

VS.

TRACI N HADDEN

and

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

for LINCOLN County

Hon. JOHN K. BUTLER District Judge

KEN JORGENSEN

Attorney for Appellant

MOLLY HUSKEY

Attorney for Respondent

Filed this _____ day of _____, 20____

Clerk

By _____ Deputy

CANTON PRINTERS - CALDWELL, IDAHO 83602

37523

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2009 NOV 17 PM 1:01



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

STATE OF IDAHO ,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR-2009-67
)	
TRACI HADDEN,)	
)	
Defendants.)	
)	

PRELIMINARY INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY: I will now give you the preliminary instructions in this case. When the evidence is closed, I will give you the final instructions in this case.

INSTRUCTION NO. 5

Now that you have been selected and sworn as the jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 6

This criminal case has been brought by the State of Idaho. I will sometimes refer to the state as the prosecution.

The defendant is charged by the State of Idaho with violations of the law. The charges against the defendant are contained in the Information. I shall now read the Information and shall state the defendant's plea.

The Information is simply a description of the charges; it is not evidence.

INSTRUCTION NO. 7

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

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

INSTRUCTION NO. 8

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the

courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your job is to think about the testimony of each witness you heard and decide how much you believe of what he or she had to say.

A witness who has special knowledge in a particular matter may give his or her opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for his or her opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 9

During your deliberations, you will be entitled to have with you my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence, and any notes taken by you in the course of the trial proceedings.

During the course of this trial, the judge, the law clerk, and perhaps the deputy court clerk will be using computers and taking notes. This is standard court room procedure and you are not to either be distracted by this or attempt to infer anything from any such activity.

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

ICJI 106

INSTRUCTION NO. 10

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 11

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 12

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. In fairness to the defendant and to the state of Idaho, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go to any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.

2009 NOV 18 11:09:23

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

STATE OF IDAHO ,)
)
 Plaintiff,)
)
 vs.) Case No. CR-2009-67
)
 TRACI HADDEN,)
)
 Defendants.)
)

FINAL INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY: I will now give you the final instructions in this case.

INSTRUCTION NO. 13

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

INSTRUCTION NO. 14

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

The evidence you are to consider consists of:

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

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

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

INSTRUCTION NO. 15

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 16

You are the sole judges of the credibility of the witnesses, of the weight of the evidence, and of the facts, all in this case. In weighing the testimony of such witnesses and determining their credibility, you should consider their opportunity for seeing, knowing or hearing the things about which they testified, their demeanor and conduct while on the witness stand, their interest or lack of interest in the case, their bias or prejudice, if any has been shown, and any other circumstances shown in the testimony which, in your judgment, affects their credibility.

INSTRUCTION NO. 17

You are instructed that a witness may be impeached by contradictory evidence or by evidence that the witness has made, at other times, statements inconsistent with the witness' testimony given on the witness stand.

You are further instructed that if a witness is successfully impeached, or if the jury believes from the evidence that a witness has willfully sworn falsely during the trial as to any matter or thing material to the issues in the case, then the jury is at liberty to disregard the witness' testimony, except insofar as the witness has been corroborated by other credible evidence or by facts and circumstances appearing during the trial.

INSTRUCTION NO. 18

In every crime or public offense there must exist a union or joint operation of act and intent. Intent or intention is manifested by the commission of the acts and surrounding circumstances connected with the offense.

INSTRUCTION NO. 19

It is alleged that the crime charged was committed "on or between" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 20

In order for the defendant to be guilty of Grand Theft, the state must prove each of the following:

1. On or about December 18, 2008
2. in the state of Idaho
3. the defendant Traci Hadden, with fraudulent intent, wrongfully took twenty (20) cattle
4. from the owner, Steve Bilbao and
5. the defendant took the cattle with the intent to deprive Steve Bilbao of his property, the cattle.

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

INSTRUCTION NO. 21

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

The theft of property which exceeds one thousand dollars (\$1000.00) in value is Grand Theft.

INSTRUCTION NO. 22

The law makes no distinction between a person who directly participates in the acts constituting a crime and a person who, either before or during its commission, intentionally aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps, or hires another to commit a crime with the intent to promote or assist in its commission. Both can be found guilty of the crime. Mere presence at or acquiescence in, or silent consent to, the planning or commission of a crime is not in the absence of a duty to act sufficient to make one an accomplice.

INSTRUCTION NO. 23

All persons who participate in a crime either before or during its commission, by intentionally aiding, abetting, advising, hiring, counseling, procuring another to commit the crime with the intent to promote or assist in its commission are guilty of the crime. All such participants are considered principals in the commission of the crime. The participation of each defendant in the crime must be proved beyond a reasonable doubt.

INSTRUCTION NO. 24

It is for you, the jury, to determine from all the evidence in this case, applying the law as given in these instructions, whether the defendant is guilty or not guilty of the offense charged. Although the explanations on the verdict form are self-explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

We, the Jury, duly impaneled and sworn to try the above entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

Question No. 1: Is the defendant, Traci Hadden, not guilty or guilty of Theft?

_____ Not Guilty

_____ Guilty

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

Question No. 2: Is the crime Grand Theft?

_____ Yes

_____ No

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

INSTRUCTION NO. 25

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 26

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason, please do not alter them or mark on them in any way.

INSTRUCTION NO. 27

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 28

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

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding officer will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

INSTRUCTION NO. 29

JURY
DISTRICT COURT
ST. LOUIS, MO.
2009 NOV 18 PM 12:50

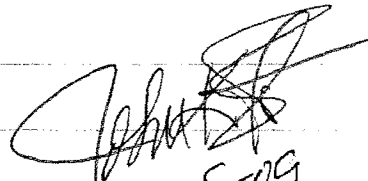
You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the Court instructs you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you wish to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to, you may tell them as much or as little as you like, but you should be careful to respect the privacy and feelings of your fellow jurors. Remember that they understood their deliberations to be confidential. Therefore, you should limit your comments to your own perceptions and feelings. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, please report it to me.

2009 NOV 18 PM 12:12

DOES GRAND THEFT HINGE ON THE VALUE
OF THE CATTLE TAKEN

OR ON THE AMOUNT OF CASH THAT MAY
HAVE BEEN RECEIVED?

Grand Theft is determined based
on the value of the property taken.
The value of the property must be
in excess of \$1,000.00. You
may consider the cash received
for the property as evidence of
value.


11-18-09

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

(Handwritten signature)

2009 NOV 18 PM 12:41

STATE OF IDAHO,)
)
Plaintiff,)
vs.)
) Case No. CR-2009-67
)
TRACI HADDEN,)
)
Defendants.)
_____)

SPECIAL VERDICT

We, the Jury, duly impaneled and sworn to try the above entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

Question No. 1: Is the defendant, Traci Hadden, not guilty or guilty of Theft?

_____ Not Guilty

 X Guilty

If you unanimously answered Question No. 1 "Guilty", then you must answer Question No.

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

Question No. 2: Is the crime Grand Theft?

 X Yes

_____ No

Dated the 18th day of November, 2009

A handwritten signature in cursive script, appearing to read "Paul Rendtorf", written above a horizontal line.

Presiding Juror

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

CR-2009-0000067
State of Idaho vs. Traci Hadden
Hearing type: Jury Trial
Hearing date: 11/17/2009
Time: 9:00 am
Judge: John Butler
Court reporter: Candace Childers
Minutes Clerk: Ruth Petruzzelli
Tape Number: 09-81
Defense Attorney: Mark Guerry
Prosecutor: E. Scott Paul

Day 1:

905 Court introduces case
Defendant present in Court with Counsel Mr. Guerry.
E. Scott Paul present for the State.
Witnesses are excluded from Courtroom and admonished not to talk about the case or testimony.

908 Jurors are brought in and Counsel stipulate to all jurors present and properly seated.
Court reads further jury instructions to the jury panel.

921 Mr. Paul begins with opening statements.

922 Mr. Guerry presents opening statement.

927 Mr. Paul calls Mr. Steven E Bilbao. (Owner of the stolen cows.)

Clerk administers oath to Mr. Bilbao.

Mr. Paul begins direct exam of Mr. Bilbao.

932 Mr. Paul marks Mr. Bilbao's brand card as Exhibit 101

No objection to Exhibit 101

Exhibit 101 Admitted.

932 Mr. Guerry begins cross exam of Mr. Bilbao.

939 Redirect by Mr. Paul

Mr. Bilbao is excused.

No objection to Mr. Bilbao is allowed to stay in the Courtroom.

939 Mr. Paul calls Mr. Blaine Ramey. (Owner of the Dunes Cattle Company)

941 Clerk administers oath to Mr. Ramey.
Mr. Paul begins direct exam of Mr. Ramey.
947 Mr. Paul offers check from the Dunes Cattle Company.
Marked as Exhibit 102
No objection
Check Exhibit 102 admitted.
948 Objection speculation/ Sustained.

951 Objection/ sustained. Court instruct jury to disregard last statement.

952 Mr. Guerry begins cross exam.

955 Objection relevance/ overruled
1002 Mr. Guerry offers defendants exhibit 201 Endorsement signed by Mr. Laramie Keppner.
1003 Exhibit 201 admitted by stipulation of the parties.

1004 Redirect of Mr. Ramey by Mr. Paul.
1006 Mr. Raney is excused

1006 Mr. Paul calls Rex Swim. (Brand inspector)
Clerk administers oath to Mr. Swim.
Mr. Paul begins direct exam.

1013 Cross exam of Mr. Swim by Mr. Guerry.
1023 Objection relevance/ sustained

1024 Redirect of Mr. Swim by Mr. Paul.

1024 Mr. Swim is excused.
1025 Recess 15 minutes. Court admonishes jurors not to discuss the case while in recess.

1040 Court convenes.
1041 Counsel stipulates that jurors are all present and properly seated

1041 Mr. Paul calls Laramie Keppner.
Clerk administers oath to Mr. Keppner.
Mr. Paul begins direct exam of Mr. Keppner.

1050 Objection Foundation/ sustained

1053 Mr. Guerry cross exam of Mr. Keppner.
1059 Objection / sustained
1106 Objection/ argumentative...overruled
1107 Objection/ argumentative...sustained
State moves to strike

1112 objection / sustained
1113 Objection asked and answered/ sustained
1116 Objection/ argumentative...overruled
1120 Objection/relevance...sustained
1122 Objection/relevance...sustained
1125 Objection assumes facts the defendant doesn't know/ sustained
1128 Objection/ relevance...overruled
1135 Objection/ relevance...overruled
1136 Objection / relevance...overruled / withdrawn
1138 objection/ asked and answered....sustained
1138 Objection/ asked and answered....sustained

1139 Redirect by Mr. Paul.
1140 Mr. Keppner is excused

1140 Mr. Paul calls Blue Hadden.
1142 Clerk administers oath to Blue Hadden
1142 Mr. Paul begins direct exam.
1201 Objection/ foundation...overruled

1202 Lunch recess Court admonishes jurors not to talk about the case

135 Court convenes
Mr. Hadden retakes the stand.
136 Court advises the Exhibit 102 is a US bank document and 201
Document is an endorsement blow up of the back of the check.

138 Counsel stipulate that jurors are all present and properly seated.

Court explains Exhibit 102 and 201

140 Court advises Mr. Hadden that he is still under oath.

Mr. Guerry begins cross exam of Blue Hadden.

211 Re direct by Mr. Paul.
212 Blue Hadden is excused.

212 Mr. Paul calls Kelly Goodman (brand inspector)
Clerk administers oath
214 Mr. Paul begins direct exam.

216 Cross exam by Mr. Guerry.

220 No redirect. Mr. Goodman is excused.
220 State rests....

Defense witnesses will not be available until tomorrow.
Jurors are excused for the day. Court admonishes the jurors not to discuss the case, not to make any decisions about the trial and also not to read or watch any news.
Jurors are asked to return back here tomorrow at 9:00 AM.

223 Recess for the day.

Attest
Curtis Petruzzelli

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

CR-2009-0000067
State of Idaho vs. Traci Hadden
Hearing type: Jury Trial
Hearing date: 11/18/2009
Time: 9:00 am
Judge: John Butler
Court reporter: Candace Childers
Minutes Clerk: Ruth Petruzzelli
Tape Number: 09-81
Defense Attorney: Mark Guerry
Prosecutor: E. Paul

DAY 2

904 Court introduces case.

Back on the record day 2 of jury trial
Defendant present in Court with Counsel Mr. Guerry.
E. Scott Paul present for the State.
Mr. Guerry only has one witness to testify.
Ms. Hadden will not testify on advice of Counsel. Court advises Ms. Hadden of her rights to testify.

906 The jurors are brought in the Courtroom and seated.
907 Counsel stipulate to jurors being all present and properly seated.
907 Mr. Guerry calls Shawn Keppner (Laramie Keppners brother)
Clerk administers oath to Mr. Keppner
908 Mr. Guerry begins direct exam.

914 Mr. Paul cross examination of Mr. Keppner.

915 Objection/ foundation.....overruled

916 Redirect by Mr. Guerry.
916 Mr. Keppner is excused.

916 Defense rests.....

917 Mr. Paul has no rebuttal.

Jurors are taken to the jury room.
Court admonishes jurors not to discuss case.

919 Outside the presence of the jury argument will be heard on jury instructions.

920 Mr. Guerry objects to some of the Courts jury instructions.

Mr. Guerry objection against jury instruction 311 and 312 .

921 Court comments on jury instructions.

921 Mr. Paul has no argument

921 Court overrules Mr. Guerry's objection to proposed instructions.

922 Recess

939 Court convenes

Jurors are brought back in. Counsel stipulate to all jurors being present and properly seated.

940 Court reads final jury instructions.

953 Mr. Paul proceeds with closing argument.

1006 Sidebar

1007 Mr. Guerry begins closing argument.

1022 Mr. Paul's final comments.

1025 Clerk pulls alternate juror from wheel. Lisa Cresswell

1026 Clerk administers oath to Bailiff Jay Henson

1026 Jurors retire to deliberate.

1055 Clerk administers oath Sheriff Kevin Ellis to relieve Bailiff Jay Henson.

1233 Back on the record.

Defendant and Counsel is present

E. Scott Paul present for the State.

Court advises to respect the jury's verdict.

Court advises that jurors did have a question for the Court during deliberation the Court will make that question part of the record.

1235 Jurors are brought back before the Court

Mr. Pendleton foreman hands verdict to the Bailiff

1236 Court reads verdict

Verdict guilty of grand theft

Jury is pulled as requested by Mr. Guerry.
1240 Mr. Guerry is satisfied at this time
1240 Court thanks the jurors and final instructions.

1242 Recess
Court asks that Counsel return upon the departure of the Jury.

1246 Back on the Records

Court orders Clerk to enter verdict
Sentencing January 5, 2010 at 9:00 AM
Court orders PSI and Mental Health evaluation.

Court advises Ms. Haddens of right to remain silent. Ms. Hadden does understand

Nothing further from Parties
Court remands defendant back to the Custody of the LCSO.

1248 Recess

Attest 

Exhibit Summary

Case: CR-2009-0000067

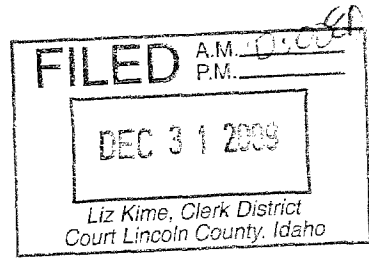
State of Idaho vs. Traci Hadden

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Mr. Bilbao's brand card	Admitted	File 101		
		Assigned to:	Paul, E. Scott		
2	Check from Dunes Cattle Cattle Company	Admitted	File 102		
		Assigned to:	Paul, E. Scott		
3	Endorsement signed by Laramie Keppner	Admitted	File 201		
		Assigned to:	Guerry, Mark J		

ORIGINAL

WEBB, WEBB & GUERRY
Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769



Attorneys for: Defendant

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

STATE OF IDAHO,)	
	)	Case No. CR 2009-67
Plaintiff,)	
	)	PRE-SENTENCING
vs.	)	MEMORANDUM
)	
TRACI HADDEN,)	
)	
Defendant.)	
)	

COMES NOW Traci Hadden, by and through her attorney of record, and hereby submits the following Pre-Sentencing Memorandum.

1. As this Court is aware, Traci Hadden was convicted by a jury in these proceedings. During the course of those proceedings, very troubling events occurred, including perjury in the form of testimony by one of the State's witnesses under a grant of immunity. This Court is obviously aware that Blue Hadden contradicted material testimony he gave at the preliminary hearing during the trial of this matter. In summary, Blue Hadden at the preliminary hearing, testified under oath that his mother didn't plan the theft of the cattle with Laramie Keppner, and that she received no money from the sale of the stolen cattle, and finally that Laramie and Traci Hadden did not even discuss the money from the sale of the stolen cattle. Then at trial, after a grant of absolute immunity and

undoubtedly leniency, Blue Hadden perjured himself by giving his dubious testimony that his mother in fact had planned the theft of the cattle with Laramie Keppner, he had heard the planning, that she had received money from the sale and that Traci Hadden and Laramie Keppner had discussed the money from the sale of the cattle on their return trip as well.

Additionally, Laramie Keppner, who was determined to be an unreliable witness by Judge Ingram at the preliminary hearing according to the transcript, again gave contradictory, unbelievable and unreliable testimony concerning where the cattle were allegedly taken from and other matters too numerous to count, including his ability to read and write, as well as what he did with the money he allegedly received from the theft and sale of the cattle.

2. Both Rex Swim, the brand inspector, and Blaine Ramey were again unable to provide reliable visual identifications of Traci Hadden as she sat in the courtroom, just as they were unable to do in the preliminary hearing. In fact, Blaine Ramey made it clear he based his courtroom identification on the fact that Traci Hadden had the plaque with "Defendant" on the table in front of her.

Nonetheless, the jury apparently disregarded these disturbing and serious flaws in the process and convicted Traci Hadden. Traci Hadden submits that the Court should consider this dubious proof when imposing a sentence in this matter.

3. Additionally, as this Court is aware, Traci Hadden on several occasions sought a change of venue in these proceedings and the Court even suggested to the Prosecuting Attorney, E. Scott Paul, that the proceedings be transferred to Jerome County. Mr. Paul objected and, of course, this matter was tried in Lincoln County. Of the last 34 jurors remaining that were polled for the panel, 20 were aware of the separate allegations against

Traci concerning aiding and abetting an attempted murder and solicitation. All but one claimed that they could set that knowledge aside and deliver a fair verdict. Based upon the above, it is highly questionable whether those jurors who were aware of the other cases, and who were impaneled, put that knowledge and their bias aside at all in their deliberations. Again, Traci Hadden requests that the Court consider this as well in imposing sentence.

4. Counsel for Traci Hadden can represent to the Court that he has obtained letters from various people which are attached to this Pre-Sentencing Memorandum which clearly show that responsible, respectable members of the community care for and support Traci Hadden and believe that she is worthwhile person. On that basis, in part, counsel submits that the Court, while considering the various goals of sentencing, should certainly consider the opportunity for rehabilitation in this case. As this Court is aware, there are numerous programs available to assist with rehabilitation of criminal defendants, one of them being the Retained Jurisdiction Program which Traci Hadden respectfully requests she be allowed to complete. Traci Hadden respectfully submits to this Court that an underlying sentence of one year determinate and an additional one year indeterminate sentence to be suspended, would be appropriate.

As this Court is aware, this case only involves the theft of cattle, a non-violent felony which should be sentenced as such. As this Court is well aware, Traci Hadden has not yet been tried or convicted of aiding and abetting attempted murder or solicitation of murder, and that matter is clearly separate and has no place in this sentencing despite the fact that members of the community, as well as the victim in the above-referenced case, may undoubtedly hope the Court will consider it. Counsel for Traci Hadden is well aware that this Court does not consider other separate, albeit serious pending charges in

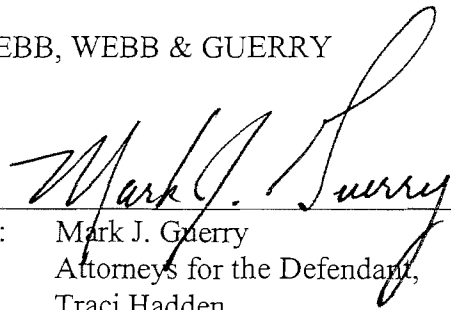
sentencings based upon his previous experience with this Court, however, he is compelled to reiterate that point where public outcry, particularly through the media, has been pervasive and most likely damaging in this matter.

5. As this Court is aware, no pre-sentencing investigation has been prepared with Traci Hadden's cooperation upon advice of counsel. While counsel would normally encourage cooperation with the pre-sentencing investigation, where other more serious charges are pending, there is really no alternative to Traci Hadden invoking her Fifth Amendment right at this point, although it may prevent the Court from obtaining information beneficial to her. Nonetheless, as the Courts in this jurisdiction are careful to point out, it is her right to not participate in the pre-sentencing investigation process based upon prior case law and that is what Traci Hadden has done on the advice of her counsel.

WHEREFORE, Traci Hadden respectfully requests that this Court consider the above as well as additional argument and some testimony and evidence which is anticipated to be presented at sentencing.

DATED this 30 day of December, 2009.

WEBB, WEBB & GUERRY



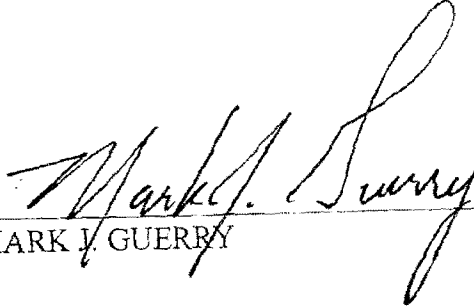
By: Mark J. Guerry
Attorneys for the Defendant,
Traci Hadden.

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83403-1768
PHONE 208/734-1616
FAX 208/734-5769

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury, that on the 30 day of December, 2009, I sent a true and correct copy of the foregoing PRE-SENTENCING MEMORANDUM, by U.S. mail, postage prepaid, to the following:

E. Scott Paul
Lincoln County Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352



MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 3RD AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/734-1616
FAX 208/734-5769

PRE-SENTENCING MEMORANDUM

To whom this may concern:

I just wanted to write a letter and tell you about my friend
Mikela = know. Traci Hadden is
A great mother to her two kids,
Blue and Sheryenne Hadden. She is
Always pushing them to do the best
they can in anything they do. She
pushes them to go to school
And to graduate from high school then
go to a good college and be
successful in their lives. She encourages
them in everything they want to do
And she is willing to do whatever
it takes to make sure they fulfill
their dreams. She is Always stand-
ing next to them encouraging them.
She goes to every game they
have to cheer them on. She is
just A great overall mom and I
hardly couldnt ask for a better
one!

Traci Hadden is a people
person. She is so enjoyable to be
around. If any ever needs help she
is willing to do anything in her own
power she can to help. She is willing

to help out on anything she can.
She really shows people why you
should be enjoying life and living
it to the fullest. She is a person
you can tell anything to and
trust that she won't go to the
whole world. She is always giving
people positive advice and making
them. She is not the kind of person
to just give up on you. She will
believe in you and help you get up
on your own.

TRAC has to be just a great
mother and a great person. I really
believe that she should be out to
be with her children but that's my
opinion. Thank you very much for
taking the time to read this over and to
consider it.

Sincerely,

Shyenne
Hadden

To whom this may concern

I Just wanted to write A Letter
And tell you about Traci N. Hadden.
Traci N. Hadden is the most wonderfull
mother to her kids, she would never
hurt her kids, what so ever in any way. She
has been there to every game I can think
of. She has helped alot of people out
with diffrent things they needed. Help with.
She was there for every one not just
her own kids. She has helped alot of people
out with there personal problems they have
come to her for. Traci N. Hadden is the best
person you could ever met. The first time
a person was to met Traci you would ~~think~~
feel welcome and Liked by her. She is open
and kind to people she mets. personally for her
kids they need her! They need there mother.
Traci is the most wonderfull person you can
met!

Thank you for taken the Time to
read this letter.

Sincerely
Katelynn Ferguson

12/11/09

To whom it may concern:

I'm writing in regards to Traci Hadden. I have know Traci for about 2 years. I first met her when she drove the trash truck at Sweets Septic.

I knew her two kids Shyanna & Blue from school. In about February I started going to to Traci house and hanging out. When I was over there there was always a house full of kids. Traci took care of several kids and never turned anyone away.

In the short time I knew Traci I was able to go to her with any problem no matter and she could help me through it. She then became my Mama Traci. Honestly I think that Traci was in the wrong place at the wrong time. Traci was an awesome mom and did everything she could for them.

If I can help any any other way please let me know.

Thanks,
Charli L. Ward
208-293-7740

Charlene Anderson
HC BOX 1836
Challis, Idaho 83226

To Whom It May Concern:

December 6, 2009

RE:Traci Hadden:

Traci Hadden is the best neighbor that I have ever had, my husband and I love her like a daughter. Whenever we were in need of help, Traci was always there for us.

Traci was in my home many times, with my permission, when I was away to use my computer or whatever. There was never any thing missing or moved, or touched.

I would and have trusted her with everything in my home and probably my life.

When my husband was very ill, Traci and her husband Brooker were there to irrigate, feed our cows, or whatever needed to be done.

Traci is a great mother, whatever her children wanted to do in 4-H, hogs, Steers, or horses she was right there helping them.

When we first met the family I thought they had many children, because so *many* kids stayed with them. That says a lot for her mothering abilities.

We love Traci and her children.

Thank you,

Charlene Anderson



DECEMBER 05, 2009

TO WHOM IT MAY CONCERN:

I MET TRACI HADDEN IN 2001 AND WAS VERY IMPRESSED BY THE DEMEANOR AND PLEASANTNESS OF THIS LOVELY YOUNG LADY.

TRACI HAS RAISED VERY NICE, WELL SPOKEN CHILDREN AND EVERYONE THAT COMES IN CONTACT WITH HER IS ENRICHED BY THE MEETING.

TRACI IS ALWAYS READY TO GIVE A HELPING HAND WHEN EVER NEEDED. SHE HAS GONE OUT OF HER WAY TO HELP ME ON NUMEROUS OCCASIONS.

PLEASE TAKE IN TO CONSIDERATION ALL THE PLUSES IN TRACI'S LIFE.

JEAN DIR

Jean Dir

CHALLIS RESIDENT

*P.O. Box 934
Challis, Id 83226*

Dear Bud,

- December 4, 2009 -

I wanted to write you and tell you thank you so much for all you have done for me. I love you like you are a Dad to me and I am so sorry if I have disappointed you in any way at all, I never meant to. Thank you so much for everything, like letting me help with the Hay, Branding, and just always being there for me to talk to. You have been more of a father to me than anyone else ever has been and I thank you so much for that. Thank you for believing in me and treating me like I was someone, that was so new to me and it makes me feel good. Thank you for trusting in me to put your name on the line for a pickup and for standing up for me. I love you and hope that you feel better I really need you.

Love your Adopted Daughter

Traci

ORIGINAL

LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

2009 DEC 24 AM 10:29

WEBB, WEBB & GUERRY
Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769
Attorneys for: Defendant

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

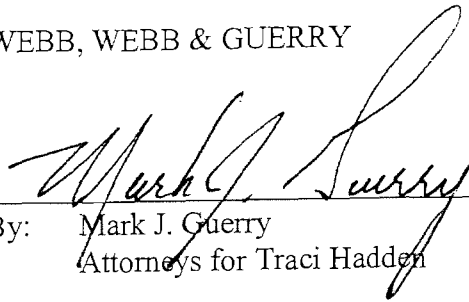
STATE OF IDAHO,)	
	)	Case No. CR 2009-67
Plaintiff,)	
)	
vs.	)	MOTION TO CONTINUE
	)	SENTENCING
TRACI HADDEN,)	
)	
Defendant.)	

COMES NOW, Traci Hadden, by and through her counsel of record, Mark J. Guerry, and hereby moves this Court for an Order rescheduling her sentencing currently set for January 5, 2010 to a later date. The basis for this motion is that Mike Cannon's jury trial is currently set for January 4, 2010 and Ms. Hadden submits to the Court that there will be extensive and prejudicial media coverage concerning Mike Cannon's trial which may inflame the public against her, including the victims in the case which she is scheduled to be sentenced in on February 5, 2010.

Counsel for Traci Hadden can represent to the Court that he has spoken with the prosecuting attorney for Lincoln County, E. Scott Paul, who has advised counsel he takes no position regarding this motion.

DATED this 23 day of December, 2009.

WEBB, WEBB & GUERRY

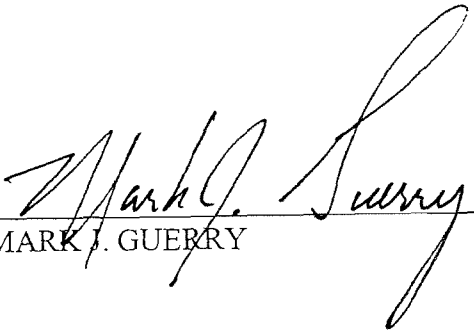

By: Mark J. Guerry
Attorneys for Traci Hadden

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury, that on the 23 day of ^{December}~~November~~, 2009,

I sent a true and correct copy of the foregoing MOTION TO CONTINUE SENTENCING,
by U.S. mail, postage prepaid, to the following:

E. Scott Paul
Lincoln County Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352


MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/734-1616
FAX 208/734-5769

LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

2009 DEC 31 PM 2: 25

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

STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR-2009-67
)	
TRACI HADDEN,)	
)	
Defendants.)	
)	

ORDER CONTINUING SENTENCING

On December 24, 2009 the defendant through her counsel of record filed a motion to continue the sentencing. The grounds set forth in the motion were not adequate for the court to continue the sentencing in the above entitled matter, however, the court has been advised by the deputy clerk of the court that a PSI has not yet been received.

The court did receive a copy of a letter from defendant's counsel to Probation & Parole advising that his client would be exercising her 5th & 6th Amendment Rights and would not participate in the pre-sentence investigation. The court had the deputy clerk contact Probation & Parole concerning the completion of the PSI. Apparently, the pre-sentence investigator

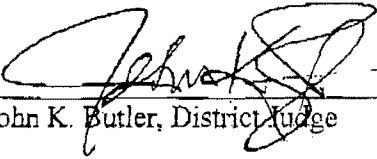
interpreted defense counsel's letter to mean that a PSI was not being requested and therefore a PSI has not been prepared as of this date.

It is therefore, Ordered, that Probation & Parole prepare a PSI in accordance with I.C.R. 32 without the participation of the defendant for purposes of sentencing.

It is Further Ordered that the sentencing in the above entitled matter is hereby continued to February 2, ²⁰¹⁰~~2009~~ at 9:00 a.m. at the Lincoln County Courthouse.

IT IS SO ORDERED.

DATED this 31 day of December, 2009.



John K. Butler, District Judge


CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 31 day of December, 2009, a true and correct copy of the foregoing ORDER CONTINUING SENTENCING was mailed, postage paid, and/or hand-delivered to the following persons:

E. Scott Paul
Lincoln County Prosecutor

Mark Guerry
Lincoln County Conflict Public Defender

IDOC: Probation & Parole


Deputy Clerk J

ORIGINAL

FILED A.M. 11:21
P.M.
JAN 19 2010
LIZ KIME CLERK DISTRICT
COURT, LINCOLN COUNTY, IDAHO

WEBB, WEBB & GUERRY
Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769

Attorneys for:
Defendant

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

* * * * *

STATE OF IDAHO,)	
	)	Case No. CR 2009- ⁶⁷ 953
Plaintiff,)	
	)	DEFENDANT'S SECOND MOTION
vs.	)	TO CONTINUE SENTENCING
)	
TRACI HADDEN,)	
)	
Defendant.)	

COMES NOW, Mark J. Guerry, attorney for the Defendant, Traci Hadden, in the above-entitled matter, and hereby moves this Court for a continuance of the sentencing currently scheduled in this matter for the 2nd day of February, 2010 at 9:00 a.m. Counsel for Ms. Hadden was appointed as conflict counsel in a long standing DUI case before Judge Borresen which has been continued once and is currently set for a jury trial on February 2, 2010. Various witnesses will be called in that case on behalf of both the State and the Defendant, and one of those witnesses is an expert pharmacologist with the State of Idaho who must travel in from out of the area. The aforementioned proceeding is *State of Idaho vs. Sally A. Smelser*, case No. CR 2009-1704. While counsel has made attempts to settle that case, it is clear that the State intends to proceed to trial as of this week and,

therefore, this continuance is requested in part on that basis.

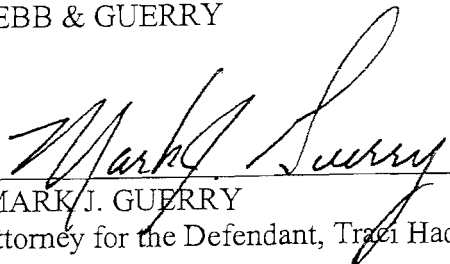
Additionally, if the Court were to continue this sentencing until after Traci Hadden stands trial in mid-February on other felony charges, then counsel for Ms. Hadden can represent to the Court that she would be able to participate in the PSI process, including the mental health evaluation, which would provide additional information to the Court and at the same time guard against any incriminating statements from Ms. Hadden which could somehow prejudice her in the other proceedings. This would also make good use of judicial resources since one PSI could be used in both proceedings if there is a conviction in Traci Hadden's other proceedings.

Counsel for Ms. Hadden can represent to the Court that the prosecution attorney, E. Scott Paul, takes no position on this motion.

DATED this 15 day of January, 2010.

WEBB, WEBB & GUERRY

By


MARK J. GUERRY

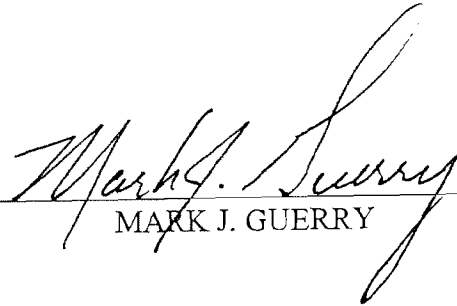
Attorney for the Defendant, Traci Hadden

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/734-1616
FAX 208/734-5769

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on the 15 day of January, 2010, I caused to be sent by U.S. Mail, postage prepaid, a true and correct copy of the foregoing DEFENDANT'S SECOND MOTION TO CONTINUE SENTENCING, addressed as

E. Scott Paul
Public Defender
Lincoln County
P. O. Box 860
Shoshone, ID 83352


MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83403-1768
PHONE 208 734-1616
FAX 208 734-5769

LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

2010 JAN 28 PM 4:44

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

STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR-2009-67
)	
TRACI HADDEN,)	
)	
Defendants.)	
)	

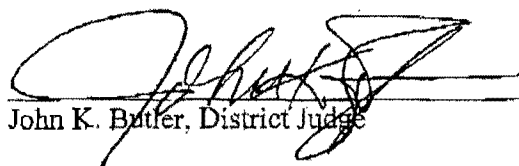
ORDER CONTINUING SENTENCING

On January 19, 2010 the defendant filed her second motion to continue the sentencing presently scheduled for February 2, 2010 on the basis that her counsel will be unavailable because he has a pending jury trial in Jerome County, State v. Smelser, CR-2009-1704.

Therefore, based on a showing of good cause the sentencing in the above entitled matter is hereby continued to Tuesday, March 2, 2010 at 9:00 a.m. at the Lincoln County Courthouse.

IT IS SO ORDERED.

DATED this 28 day of January, 2010.



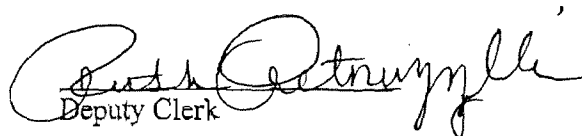
John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

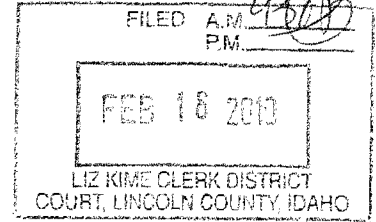
I, undersigned, hereby certify that on the 28 day of Jan, 2010, a true and correct copy of the foregoing ORDER CONTINUING SENTENCING was mailed, postage paid, and/or hand-delivered to the following persons:

E. Scott Paul
Lincoln County Prosecutor

Mark Guerry
Attorney at Law
Fax 934-5769


Deputy Clerk

ORIGINAL



WEBB, WEBB & GUERRY
Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769
Attorneys for: Defendant

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

* * * * *

STATE OF IDAHO,)	
	)	Case No. CR 2009-67
Plaintiff,)	
)	
vs.	)	MOTION FOR PSYCHOLOGICAL
	)	EVALUATION
TRACI HADDEN,)	
)	
Defendant.)	

COMES NOW, Traci Hadden, by and through her attorney of record, Mark J. Guerry, and hereby renews her motion for a psychological evaluation in the above-entitled proceedings.

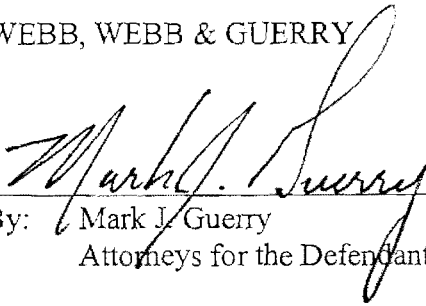
Ms. Hadden's separate criminal proceeding has been resolved by a plea agreement and counsel has advised his client to now cooperate in the PSI process.

Counsel requests that Dr. Richard Worst, or another appropriate doctor, including James Tyson, be appointed to perform the evaluation.

Oral argument is requested if this Honorable Court deems it necessary.

DATED this 17 day of February, 2010.

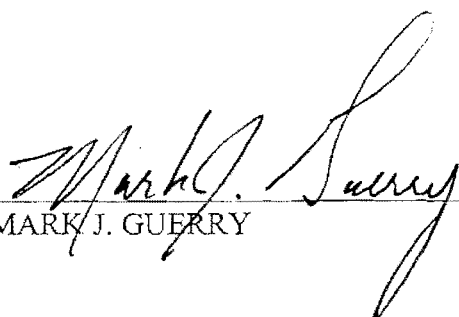
WEBB, WEBB & GUERRY


By: Mark J. Guerry
Attorneys for the Defendant Traci Hadden

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury, that on the 17 day of February, 2010, I sent a true and correct copy of the foregoing MOTION FOR PSYCHOLOGICAL EVALUATION, by U.S. mail, postage prepaid, to the following:

E. Scott Paul
Lincoln County Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352


MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83304-1768
PHONE 208/734-1616
FAX 208/734-5769

ORIGINAL

LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

WEBB, WEBB & GUERRY

Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83302-1768
208/734-1616
Fax: 208/734-5769

2010 FEB 23 AM 10:10

Attorneys for: Defendant

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

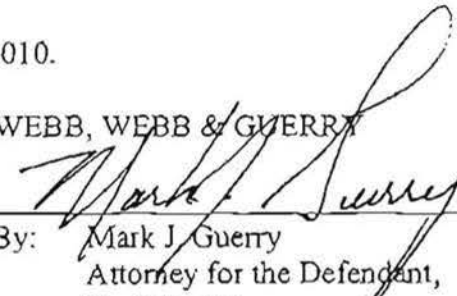
STATE OF IDAHO,)	
	)	Case No. CR 2009-67
Plaintiff,)	
)	
vs.	)	MOTION TO CONSOLIDATE
	)	SENTENCING
TRACI HADDEN,)	
)	
Defendant.)	

COMES NOW, the Defendant Traci Hadden, by and through her attorney of record, Mark J. Guerry, and hereby moves the Court to consolidate the sentencing in Traci Hadden's cases No. CR 2009-67 and No. CR 2009-0953. The consolidation would allow attorneys in Traci Hadden's sentencing to use one psychological evaluation, one pre-sentence investigation and would be a good and efficient use of judicial resources.

Oral argument is requested.

DATED this 22 day of February, 2010.

WEBB, WEBB & GUERRY


By: 
Mark J. Guerry
Attorney for the Defendant,
Traci Hadden

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury, that on the 22 day of February, 2009, I sent a true and correct copy of the foregoing MOTION TO CONSOLIDATE SENTENCING, by U.S. mail, postage prepaid, to the following:

Christopher Topmiller
Special Deputy Prosecuting Attorney
County of Lincoln
P.O. Box 860
Shoshone, ID 83352
Facsimile: 208-854-8083

R. Keith Roark
409 N. Main St.
Hailey, ID 83333



MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/734-1616
FAX 208/734-5769

ORIGINAL

LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

2010 FEB 25 AM 10: 23

WEBB, WEBB & GUERRY

Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769

Attorneys for: Defendant

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

STATE OF IDAHO,)	
	)	Case No. CR 2009-67
Plaintiff,)	
	)	FIRST ADDENDUM TO
vs.	)	PRE-SENTENCE MEMORANDUM
)	
TRACI HADDEN,)	
)	
Defendant.)	

COMES NOW Traci Hadden, by and through her attorney of record, and hereby submits the attached additional letters in support of her First Addendum to her Pre-Sentencing Memorandum filed in this matter.

DATED this 23 day of February, 2010


WEBB, WEBB & GUERRY


Mark J. Guerry
By: Mark J. Guerry
Attorneys for the Defendant,
Traci Hadden.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury, that on the 24 day of February, 2010, I sent a true and correct copy of the foregoing FIRST ADDENDUM TO PRE-SENTENCING MEMORANDUM, by U.S. mail, postage prepaid, to the following:

E. Scott Paul
Lincoln County Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352



MARK J. GUERRY


WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/734-1616
FAX 208/734-5769

To whom it may concern,

I've only known Traci Hadden a short time and it has been a pleasure getting to know her. I met her at a time in my life that was and I was totally lost. Traci was always there for me, even though her life wasn't all that great at the time either. She helped me learn how to have faith again and gave me someone to talk to. I thank her more than she knows and only wish the best for her. She has a lot to offer and I believe this is just a misunderstanding.

Thank you for your time:

sincerely

Christ

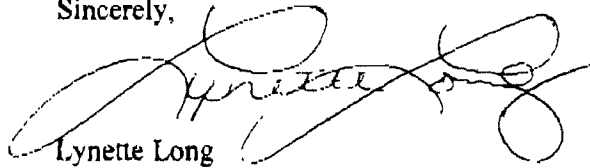
Birmingham

December 30, 2009

To whom it may concern,

I am writing this letter in behalf of Traci Hadden whom I have known for 10+ years. I have always found Traci to be a strong willed person, one to come to in a time of need or just be a listening ear. I admire her ability to take time for her kids during the rodeo season and the time she is able to spend with them. She has always been the type of friend I can count on to talk to and have always enjoyed being around her. I am from the Burley/Rupert area and most of the time we are able to hook up when she is over that way. I see Traci doing any job that she can just to help bring in the money for the household and make sure that things are taken care of. I feel that she is the back bone of the family and holds it together with her ability to do the things that her children need. I have a lot of respect for her and the things she has done in her life. I am proud to say that Traci Hadden is a very dear friend of mine.

Sincerely,



Lynette Long

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

2010 MAR 2 AM 10:54
2010 Mar. 2

CR-2009-0000067

State of Idaho vs. Traci Hadden

Hearing type: Sentencing

Hearing date: 3/2/2010

Time: 9:05 am

Judge: John Butler

Courtroom:

Court reporter: *Candace Childers*

Minutes Clerk: Emily Daubner

Tape Number: 10-12

Defense Attorney: Mark Guerry

Prosecutor: E. Paul

9:04 – Court calls case

9:04 – Defendant is present in Court with counsel

9:06 – Defense speaks on motion for Psychological evaluation & motion to consolidate – Mr. Guerry would like the court to wait until the Evaluation is in front of the court before placing sentence on Ms. Hadden.

9:08 – State would object to the motion to consolidate because there are two different cases. State would also object to the motion for the Psychological Evaluation.

9:10 – Court does not find the defendants mental status an issue during this case – Court denies the motion for a Psychological Evaluation. Court denies the motion to consolidate sentencing.

9:13 – Court has received and reviewed the PSI, and the memorandum, and the Addendums. Court clarifies that the Defendant and her counsel have reviewed the PSI.

9:14 – Defense has 2 witness that they will call.

9:15 – Defense calls first witness – Lynette Long – Clerk swears in witness. Defense questions witness.

9:17 – State has no questions

9:18 – Defense calls Sheyenne Hadden as witness. Clerk swears in witness. Defense questions witness.

9:21 – State has no questions for this witness. – Defense has no other witnesses.

9:22 - Stefanie Bilbao – addresses court on her cattle being taken.

9:24 – State's comments and recommendations – reflects back on her record to show that it starts with Juvenile offenses and just progresses from there. State recommends 10 years determinate – 4 years indeterminate

9:33 – Defense argues that Blue Hadden did change his testimony from the Preliminary Hearing – and that he feels that they did receive an unfair trial – State asks the letters to consider the letters that were received about Traci and the comments from her daughter. Defense asks the court to consider a fixed sentence with CR-2009-953 or if the court chooses to give consecutive sentence defense asks for no more than 1-2 years fixed.

9:44 – Court asks Ms. Hadden if she would like to speak – Traci chooses to remain silent.
9:45 – Courts primary concern is the safety of society – Court considers nature of
offendent – notes that Ms. Hadden chose to execute her right and did not participate in
the PSI – Court found Blue Hadden’s testimony very credible at trial. Court recognizes
that even though Mr. Ramey and Mr. Swim could not identify Ms. Hadden – with the
evidence presented at trial the Court is satisfied that Ms. Hadden is guilty of selling the
cattle. Court also takes into consideration Ms. Hadden’s background. Charge of Grand
Theft – Court imposes fine \$1000 – Court will impose jail time of 14 years - 7 fixed 7
indeterminate – credit for time served- 261 days – Court orders restitution for Mr. Ramey
in amount of \$5,067.30 – Court does not believe Probation is appropriate – Defendant has
42 days to appeal – Court directs Clerk to enter Judgment. Court orders defendant
committed back to the custody of the Sheriff to be transported back to State Board of
Corrections.

2

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

State of Idaho,)

Plaintiff,)

vs.)

Case No. CR-2009-67

Traci N. Hadden)

SS# [REDACTED])

D.O.B. [REDACTED])

Defendant.)

**JUDGMENT OF CONVICTION UPON A JURY VERDICT OF GUILTY
TO ONE FELONY COUNT**

I. INTRODUCTION

1. The date of sentencing was March 2, 2010, (hereinafter called sentencing date).
2. The State of Idaho was represented by counsel, E. Scott Paul, of the Lincoln County Prosecutor's office.
3. The defendant Traci N. Hadden, appeared personally. I.C. § 19-2503.
4. The defendant was represented by counsel, Mark Guerry.
5. John K. Butler, District Judge, presiding.

II. ARRAIGNMENT FOR SENTENCING. I.C. § 19-2510

1. The defendant Traci N. Hadden was informed by the Court at the time of the sentencing that the jury returned a verdict of guilty, which in this case was:

Crime of: Grand Theft, a felony

Idaho Code: I.C. § 18-2403, 18-2407(1)(b)

Maximum Penalty: Imprisonment in the state penitentiary for at least 1 year and up to 14 years or a fine of \$5,000, or both.

Idaho Code: I.C. § 18-2408

Guilty by Jury Verdict -- date of: November 18, 2009

2. The defendant was then asked by the Court whether the defendant had any legal cause to show why judgment should not be pronounced against the defendant, to which the defendant responded "no."

III. SENTENCING DATE PROCEEDINGS

On March 2, 2010, the sentencing date, and after the arraignment for sentencing as set forth in section II "Arraignment for Sentencing" above, the Court proceeded as follows:

1. Determined that more than two (2) days had elapsed from the jury verdict to the date of sentencing. I.C. § 19-2501 and I.C.R. 33(a)(1).
2. Discussed the presentence report and relevant matters with the parties pursuant to I.C. § 20-220 and I.C.R. 32.
3. Determined victim's rights and restitution issues pursuant to I.C. § 19-5301 and Article 1, § 22 of the Idaho Constitution.
4. Offered an aggravation and/or mitigation hearing to both parties, including the right to present evidence pursuant to I.C.R. 33(a)(1).
5. Heard comments and sentencing recommendations of both counsel and asked the defendant personally if the defendant wished to make a statement and/or to present any information in mitigation of punishment. I.C.R. 33(a)(1).
6. The Court made its comments pursuant to I.C. § 19-2512, and discussed one or more of the criteria set forth in I.C. § 19-2521.

IV. THE SENTENCE

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

Crime of Grand Theft, a felony.

1. **Court costs:** The defendant shall pay total court costs in this case.
2. **Fine:** The defendant is fined the sum of \$1,000.00, and the defendant shall pay all costs, fees and fines ordered by this Court. This judgment that the defendant pay a fine and costs shall constitute a lien in like manner as a judgment for money in a civil action. I.C. §§ 19-2518, 19-2702.
3. **Penitentiary:** The defendant, Traci N. Hadden, shall be committed to the custody of the Idaho State Board of Correction, Boise, Idaho for a unified sentence (I.C. § 19-2513) of 14 years; which unified sentence is comprised of a minimum (fixed) period of confinement of 7 years, followed by an indeterminate period of custody of 7 years, with the precise time of the indeterminate portion to be set by said Board according to law, with the total sentence not to exceed 14 years.
4. **Credit for time served:** The defendant is given credit for time previously served on this crime in the amount of 261 days. I.C. § 18-309.

The credit for time served is calculated as follows: 1/20/2009 & 6/16/2009-3/2/2010

V. ORDER REGARDING RESTITUTION

1. **Restitution to Victim:** The Court hereby ORDERS a Judgment of Restitution to be entered in this case in the sum of \$5,067.37, (I.C. § 19-5304 (victim)). A separate written order of restitution shall be entered. I.C. § 19-5304(2). This amount is payable through the Clerk of the District Court to be disbursed to the victim(s) in this matter as follows:

Name: Blaine Ramey \$5,067.37

VI. RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS

The Right: The Court advised the defendant, Traci N. Hadden, of the Defendant's right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.A.R. 14 (a).

In forma Pauperis: The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3). I.C. § 19-852(a)(1) and (b)(2).

JUDGMENT OF CONVICTION

VII. ENTRY OF JUDGMENT - RECORD BY CLERK

The Court orders the Judgment and record be entered upon the minutes and that the record be assembled, prepared and filed by the Clerk of the Court in accordance with I.C. § 19-2519.

VIII. BOND/BAIL

The conditions of bail having never been met in this case, there is no bail to be exonerated. I.C.R. 46(g).

IX. ORDER ON PRESENTENCE INVESTIGATION REPORTS

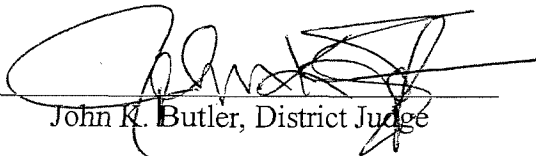
The parties are hereby ordered to return their respective copies of the presentence investigative reports to the deputy clerk of the court. Use of said report shall thereafter be governed by I.C.R. 32(h)(1),(2), and(3).

X. ORDER OF COMMITMENT

It is ADJUDGED and ORDERED that the defendant be committed to the custody of the Sheriff of Lincoln County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary, or other facility within the State designated by the State Board of Correction. I.C. § 20-237.

IT IS SO ORDERED.

DATED: 3/2/2010

SIGNED: 
John K. Butler, District Judge

I.C.R. 49 (b)
NOTICE OF ORDER

I, **Ruth Petruzelli**, Deputy Clerk for the County of **Lincoln** do hereby certify that on the 2 day of March, 2010, I have filed the original and caused to be served a true and correct copy of the above and foregoing document: **JUDGMENT OF CONVICTION UPON A JURY VERDICT OF GUILTY TO ONE FELONY COUNT** to each of the persons as listed below:

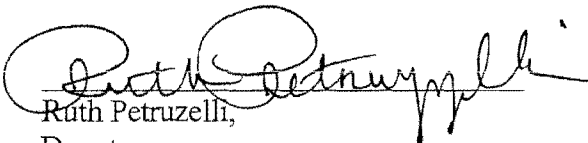
Prosecuting Attorney: E. Scott Paul

Defense Counsel: Mark Guerry

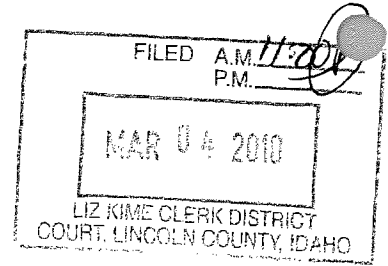
Defendant: Traci N. Hadden

IDOC

LCSD


Ruth Petruzelli,
Deputy

Clerk



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

State of Idaho,)
)
Plaintiff,)
vs.)
)
Traci N. Hadden)
SS# [redacted])
D.O.B. [redacted])
Defendant.)

Case No. CR-2009-67

JUDGMENT/ORDER OF RESTITUTION - I.C. § 19-5304

Pursuant to the Judgment of Conviction in the above entitled case entered on March 2, 2010, this document serves as a "separate written order" or judgment of restitution.

Restitution:

The Court hereby ORDERS a Judgment of Restitution to be entered in this case in the sum of \$5,067.37. This amount is payable to the Clerk of the District Court to be disbursed in this matter as follows:

Name: Blaine Ramey

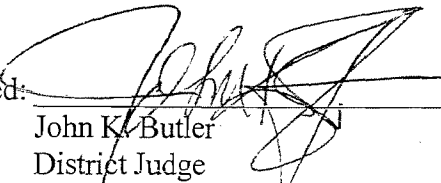
Right to Appeal/Leave to Order/Judgment of Restitution, in Forma Pauperis:

The Right: The Court hereby advises the defendant, Traci N. Hadden, of his right to appeal this Order/Judgment or Restitution within forty-two (42) days of the date it is file stamped by the Clerk of the Court. I.A.R. Rule 14 (a).

In Forma Pauperis: The Court further advises the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3); I.C. § 19-852(a)(1); I.C. § 31-3220.

IT IS SO ORDERED:

Dated: 3-3-2010

Signed: 
John K. Butler
District Judge

I.C.R. RULE 49 (b) AND I.R.C.P. RULE 77(d)
NOTICE OF ORDER OR JUDGMENT

I, undersigned, Deputy Clerk for the County of Jerome, do hereby certify that on the 4 day of March, 2010, I have filed the original and caused to be served a true and correct copy of the above and foregoing document: **JUDGMENT/ORDER OF RESTITUTION I.C. § 19-5304**, to each of the persons as listed below:

Prosecuting Attorney: E. Scott Paul

Defense Counsel: Mark Guerry

Defendant: Traci N. Hadden

IDOC -

Blaine Ramey
PO box 487
Blackfoot, ID
83221


Deputy Clerk

ORIGINAL

LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

2010 MAR -8 PM 1: 25

WEBB, WEBB & GUERRY

Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769

Attorneys for: Defendant/Appellant

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

STATE OF IDAHO,)	
	)	CASE NO. CR-2009-0067
Plaintiff,)	
	)	NOTICE OF APPEAL
vs.)	
)	
TRACI N. HADDEN,)	
SS# [REDACTED])	
D.O.B. [REDACTED])	
)	
Defendant/Appellant.)	

TO THE ABOVE NAMED PLAINTIFF, STATE OF IDAHO AND THE LINCOLN
COUNTY PROSECUTING ATTORNEY, E. SCOTT PAUL, P.O. BOX 860,
SHOSHONE, IDAHO 83352-00860, AND THE CLERK OF THE ABOVE-ENTITLED
COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Defendant/Appellant, TRACI N. HADDEN, appeals
against the above named Plaintiff to the Idaho Supreme Court from the Judgment of
Conviction Upon A Jury Verdict Of Guilty To One Felony Count, entered March 2, 1010,
by District Judge John K. Butler.

2. That the appellant party has a right to appeal to the Idaho Supreme Court, and

that the judgements and/or orders described in paragraph 1 above are appealable orders under and pursuant to I.A.R. 11(c)(1) and (6).

3. The appellant intends to assert the following issues on appeal:

(a) That the District Court erred by denying the Defendant's Motion to change venue;

(b) That the District Court erred by overruling the Defendant's objection to empaneling the jury; and

(c) That the verdict was not supported by the evidence where the State's witness, Blue Hadden, perjured himself in the jury trial proceeding and inconclusive visual identifications of the Defendant were made in the jury trial proceedings.

The appellant reserves the right to assert other issues on appeal.

4. A reporters supplemented transcript is requested at the expense of the County.

(a) The appellant requests the preparation of the supplemental transcript including the closing arguments of counsel at trial and the arguments at sentencing, March 2, 2010, in addition to the standard transcript.

No request is made that the transcript be prepared in compressed format.

5. The appellant requests all documents be included in the clerk's records which are automatically included under Rule 28, I.A.R.

6. No order has been entered sealing all or any part of the record or transcript.

7. Counsel for the appellant hereby certifies to the best of his knowledge:

(a) That service of the notice of appeal has been made upon the reporter of the proceeding;

(b) That the appellant is exempt from paying the estimated transcript fee

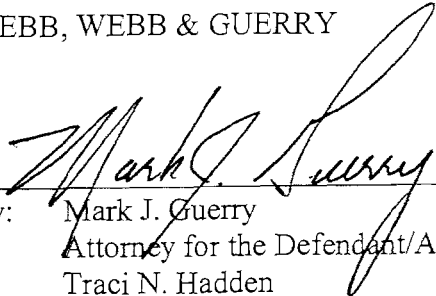
because this is an appeal of a felony conviction and the Appellant is an indigent person who is incarcerated;

(c) The appellant is exempt from paying Appellate filing fees because the Appellant's appeal is an appeal from a conviction in a criminal case. (I.A.R. 23 (a) (8)).

(d) That service has been made upon all parties required to be served pursuant to Rule 20 and the Attorney General of Idaho pursuant to Section 67-1401 (1) of the Idaho Code.

DATED this 5 day of March 2010.

WEBB, WEBB & GUERRY


By: Mark J. Guerry
Attorney for the Defendant/Appellant
Traci N. Hadden

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/731-1616
FAX 208/731-5769

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on the 5 day of March, 2010. I caused to be sent by U.S. Mail, postage prepaid, a true and correct copy of the foregoing, NOTICE OF APPEAL, addressed as follows:

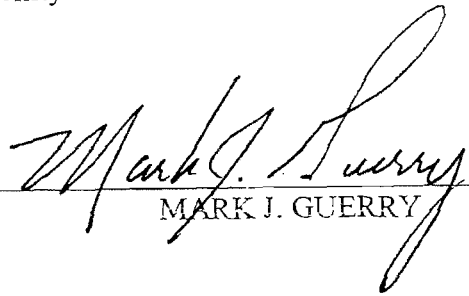
E. Scott Paul
Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352-0860

Court Reporter
Candace Childers
233 West Main
Jerome, ID 83338

Office of Attorney General
P. O. Box 83720, Room 210
Boise, ID 83720

Clerk of Idaho Supreme Court
P. O. Box 83720
Boise, ID 83720

Traci N. Hadden
Mini-Cassia Criminal Justice Facility
1514 Albion St.
Burley, ID 83318


MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208/734-1616
FAX 208/734-3769

ORIGINAL

FILED A.M. 11 2010
P.M.
MAR 15 2010
LIZ KIME, CLERK DISTRICT
COURT LINCOLN COUNTY, IDAHO

WEBB, WEBB & GUERRY
Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769
Attorneys for: Defendant/Appellant

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

STATE OF IDAHO,)	
	)	CASE NO. CR-2009-0067
Plaintiff,)	
	)	MOTION FOR APPOINTMENT
vs.	)	OF APPELLATE PUBLIC
	)	DEFENDER
TRACI N. HADDEN,)	
SS# [REDACTED])	
D.O.B. [REDACTED])	
)	
Defendant/Appellant.)	

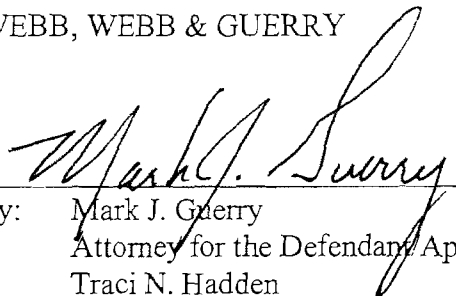
COMES NOW, Traci N. Hadden, by and through her attorney of record, Mark J. Guerry, and hereby moves this Court for appointment of the State appellate public defender in this matter on the following grounds:

1. Traci N. Hadden filed a Notice of Appeal in this matter dated March 5, 2010;
2. Traci N. Hadden is a "needy person" as that is defined in Idaho Code § 19-851, where she is unable to provide for the payment of an attorney and all other necessary expenses of representation to pursue the appeal of a "serious crime" to wit, grand theft, a felony;
3. Pursuant to Idaho Code § 19-852(b)(2), Traci N. Hadden is entitled to be represented by the appellate public defender in a appellate proceeding.

4. Traci N. Hadden owns no property of any significant value and has no employment and has been incarcerated for nearly one year and, therefore, pursuant to Idaho Code § 19-854, Ms. Hadden is a needy person unable to pay any portion of the cost of her appellate proceedings and, therefore, she respectfully submits the appellate public defender be appointed in this matter.

DATED this 12 day of March, 2010.

WEBB, WEBB & GUERRY


By: Mark J. Guerry
Attorney for the Defendant Appellant
Traci N. Hadden

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83404-1768
PHONE 208-734-1616
FAX 208-734-5789

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on the 12 day of March, 2010. I caused to be sent by U.S. Mail, postage prepaid, a true and correct copy of the foregoing, MOTION FOR APPOINTMENT OF APPELLATE PUBLIC DEFENDER, addressed as follows:

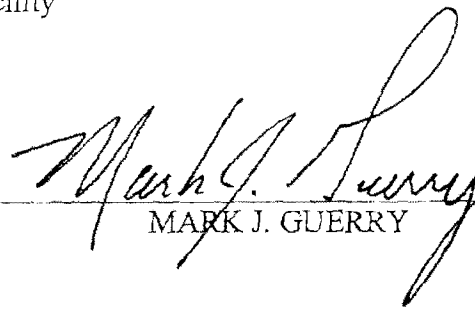
E. Scott Paul
Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352-0860

Court Reporter
Candace Childers
233 West Main
Jerome, ID 83338

Office of Attorney General
P. O. Box 83720, Room 210
Boise, ID 83720

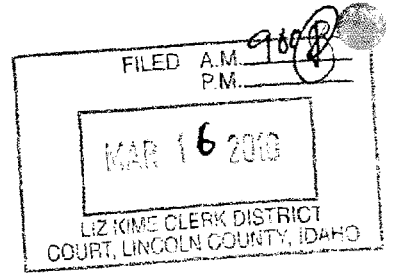
Clerk of Idaho Supreme Court
P. O. Box 83720
Boise, ID 83720

Traci N. Hadden
Mini-Cassia Criminal Justice Facility
1514 Albion Street
Burley, ID 83318


MARK J. GUERRY

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 3RD AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE: 208/739-1616
FAX: 208/734-5769

ORIGINAL



WEBB, WEBB & GUERRY

Attorneys at Law
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-1768
208/734-1616
Fax: 208/734-5769

Attorneys for: Defendant/Appellant

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

STATE OF IDAHO,

Plaintiff,

vs.

TRACI N. HADDEN,
SS# [REDACTED]
D.O.B. [REDACTED]

Defendant/Appellant.

)
) CASE NO. CR-2009-0067

)
) NOTICE AND ORDER
) APPOINTING STATE
) APPELLATE PUBLIC
) DEFENDER IN DIRECT APPEAL

TO: OFFICE OF THE IDAHO STATE APPELLATE PUBLIC DEFENDER

The above-named defendant appeared before this Court on charges of Count I, Grand Theft, I.C. 18-2403,2407 (1)(b), at which time the defendant was duly convicted on Count I Grand Theft I.C. 19-2403, 18-2407, by a jury on November 18, 2009, defendant was sentenced March 2, 2010 and was sentenced to a unified sentence of 14 years, 7 years determinate, 7 years indeterminate, credit for time served of 261 days. Notice of Appeal was filed on March 8, 2010. A Copy of the Judgment of Conviction is attached hereto and incorporated herein by reference.

The defendant is pursuing a direct appeal from the Judgment of Conviction Upon a Jury Verdict of Guilty to One Felony Count, and Order of Commitment filed March 2, 2010.

The Court is satisfied that said defendant is a needy person entitled to the services of the State Appellate Public Defender pursuant to Idaho Code Section 19-852 and 19-854 and the services of the State Appellate Public Defender are available pursuant to Idaho Code Section 19-852 and Section 19-867 *et. seq.*

Pursuant to Idaho Appellate Rule 45.1(b) and Idaho Code Section 19-867 *et. seq.*, the defendant's trial counsel is allowed to withdraw for the purposes of appeal only; and the State Appellate Public Defender is hereby appointed to represent the defendant in any appellate process.

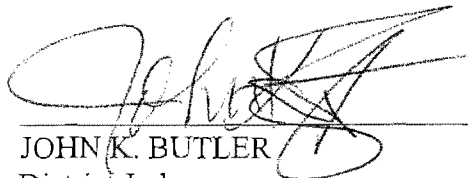
IT IS HEREBY ORDERED, in accordance with Idaho Code Section 19-870(a), that the State Appellate Public Defender is appointed to represent the defendant in all matters as indicated herein, or until relived by further order of the Court.

IT IS FURTHER ORDERED, pursuant to Idaho Appellate Rule 1, the parties, the Clerk of the Court and the Court Reporter, shall follow the established Idaho Appellate Rule if a a Notice of Appeal is filed.

The State Appellate Public Defender's Office is provided the following information by the Court:

1. The defendant's sentence: Judgment of Conviction. The State Appellate Public Defender's Office has been provided all copies.
2. The defendant's current address is Mini-Cassia Criminal Justice Facility, 1514 Albion St., Burley, ID 83318.
3. The Defendant's trial counsel was Mark J. Guerry, 155 2nd Avenue North, P.O. Box 1768, Twin Falls, ID 83303-1768.

DATED this 11th day of March, 2010.



JOHN K. BUTLER
District Judge

NOTICE OF FILING AND SERVING ORDER

NOTICE IS HEREBY GIVEN by the Clerk of the above-entitled Court, pursuant to Rule 77(d) of the *Idaho Rules of Civil Procedure*, that the foregoing Order was filed on the 16 day of March, 2010, and was served to the following parties on the 18 day of March, 2010, by U.S. Mail or as otherwise indicated:

E. Scott Paul
Lincoln County Prosecuting Attorney
P.O. Box 860
Shoshone, ID 83352-0860

State Appellate Public Defender
3647 Lake Harbor Lane
Boise, ID 83703

Idaho Attorney General
P. O. Box 83720, Room 210
Boise, ID 83720

Clerk of the Court
Administrative Director
P.O. Box 83720
Boise, ID 83720-0101

Mark J. Guerry
155 2nd Avenue North
P.O. Box 1768
Twin Falls, ID 83303-01768

Traci N. Hadden
Mini-Cassia Criminal Justice Facility
1514 Albion Street
Burley, ID 83316

CLERK OF THE DISTRICT COURT

By Ruth Detmeyer
Deputy Clerk

WEBB, WEBB & GUERRY
ATTORNEYS AT LAW
155 2ND AVENUE NORTH
P.O. BOX 1768
TWIN FALLS, ID 83303-1768
PHONE 208-734-1616
FAX 208-734-5769

2010 MAR 23 PM 1:59

E. SCOTT PAUL- State Bar #4235
PROSECUTING ATTORNEY
LINCOLN COUNTY
P.O. BOX 860
SHOSHONE, IDAHO 83352
Telephone (208)886-2454
Fax (208)886-9824


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

STATE OF IDAHO,)		
	)	Case No. CR-2009-67	
Plaintiff,)		
	)	ADDENDUM TO RESPONSE TO	
v.	)	REQUEST FOR DISCOVERY	
TRACI HADDEN,)		
)		
Defendant,)		

E. Scott Paul, Prosecuting Attorney in and for Lincoln County, State of Idaho, pursuant to Rule 16 of the Idaho Criminal Rules hereby responds to the Defendants request for discovery as follows:

1. Idaho State Police Forensic Services Criminalistic Analysis Report - FINGERPRINTS number C20090821 signed by Natasha D. Wheatley, Forensic Scientist II, dated December 17, 2009, including signed affidavit.

DATED this 23rd day of March, 2010.



E. Scott Paul
Prosecuting Attorney

**ADDENDUM TO RESPONSE
TO REQUEST FOR DISCOVERY**

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I caused true and correct copies of the foregoing documents to be sent on this 23rd day of March, 2010, via United States Mail, postage prepaid, or by method indicated, to the following:

R. Keith Roark
The Roark Law Firm
409 North Main Street
Hailey, ID 83333

Tina Legarreta

CL Case No.:	C20090821	Agency Case No.:	0904113
Agency:	SLN1 - LINCOLN COUNTY SHERIFF'S OFFICE		
ORI:	ID0320000	Crime Date:	Apr 1, 2009

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received Information

Handwritten signature

Evidence Received: 04/06/2009
 Add. Crime Date:
 How Received: IN PERSON
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: JOSH EGGLESTON
 Delivered By: KEVIN ELLIS
 Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 04/15/2009
 Add. Crime Date:
 How Received: IN PERSON
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: JOSH EGGLESTON ph. (208)886-2250
 Delivered By: E MARQUEZ
 Received By: JANE DAVENPORT ph. (208)884-7170

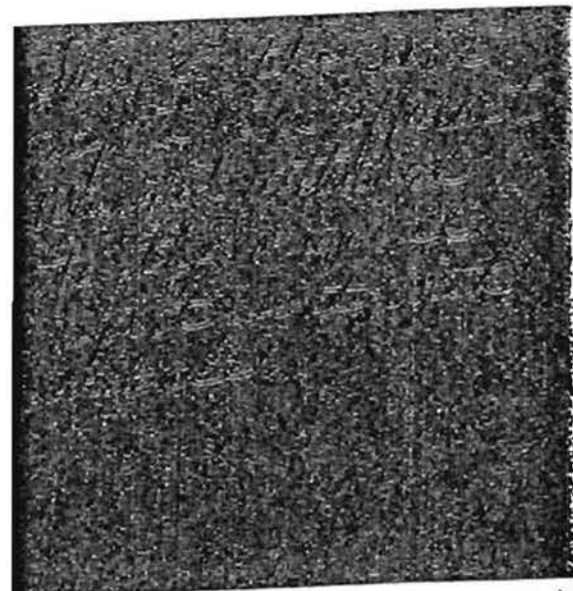
RECEIVED
 2009 APR 22 11 26
 LINCOLN COUNTY SHERIFF
 111 WEST B STREET SUITE 8
 SHOSHONE, IDAHO 83352

Evidence Received: 05/20/2009
 Add. Crime Date:
 How Received: UPS
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: JOSH EGGLESTON
 Delivered By: MERIDIAN FORENSIC LAB
 Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 06/01/2009
 Add. Crime Date:
 How Received: IN PERSON
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: JOSH EGGLESTON
 Delivered By: S. JACOBSON
 Received By: L. HIGDEM ph. (208)769-1410

Evidence Received: 11/23/2009
 Add. Crime Date:
 How Received: IN PERSON
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: NATHAN CORDER
 Delivered By: NATE CORDER
 Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/27/2009
 Add. Crime Date:
 How Received: FEDERAL EXPRESS
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: NATHAN CORDER
 Delivered By:
 Received By: J. HUTCHISON ph. (208)209-8700



Handwritten initials

CL Case No.: C20090821 Agency Case No.: 0904113
 Agency: SLN1 - LINCOLN COUNTY SHERIFF'S OFFICE
 ORI: ID0320000 Crime Date: Apr 1, 2009

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 12/09/2009
 Add. Crime Date:
 How Received: UPS
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: NATHAN CORDER
 Delivered By: MERIDIAN FORENSIC LAB
 Received By: J. HUTCHISON ph. (208)209-8700

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Suspect	CANNON, MICHAEL JOHN			
Suspect	HADDEN, BLUE GARRITT			
Suspect	HADDEN, TRACI NICOLE			
Victim	HADDEN, CRAIG			

< 12/17/2009 Supplemental Information >

EVIDENCE DESCRIPTION:

Item #M9 (Agency Exh. 48A) - evidence envelope containing a broken long gun stock.

Item #M10 (Agency Exh. 48B) - gun box containing a rifle with the stock broke off bearing serial number C6470772.

Item #M11 (Agency Exh. 49) - evidence envelope containing two Walmart grocery bags (labeled M11.1 and M11.2).

Evidence was signed and sealed when received.

EXAMINATION:

Items #M9, M10, M11.1, and M11.2 were processed for latent prints using physical and/or chemical methods.

Items #M11.1 and M11.2 - latent prints were marked and preserved. Photographic evidence is being retained by ISP Forensic Services.

Six latent prints were examined for comparable ridge detail. Latent prints of value were analyzed and compared to certified copies of fingerprint cards bearing the names Traci Nicole Hadden, SID #ID00190315, Blue Garritt Hadden, SID #ID10087062, and Michael John Cannon, SID #ID10087063.

CONCLUSION:

Latent print #M11.2-a has been positively identified to the exemplar bearing the name Michael John Cannon. The identification was effected

MJC

CL Case No.:	C20090821	Agency Case No.:	0904113
Agency:	SLN1 - LINCOLN COUNTY SHERIFF'S OFFICE		
ORI:	ID0320000	Crime Date:	Apr 1, 2009

Criminalistic Analysis Report - FINGERPRINTS

using a certified copy of a fingerprint card recorded by Jody Jeske on behalf of the Twin Falls Sheriff's Office on June 12, 2009.

Latent prints #M11.1-a, M11.1-b, M11.1-c are excluded to the available exemplars bearing the names Traci Nicole Hadden, Blue Garritt Hadden, and Michael John Cannon.

Latent prints #M11.1-d and M11.1-e do not contain a sufficient amount of clear ridge detail necessary for identification.

Items #M9 and M10 - no latent prints were observed or developed.

If an additional suspect is developed by your agency at a later date, a fingerprint card or the appropriate suspect information should be submitted for comparison.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.



Natasha D. Wheatley
Forensic Scientist II, Latent Prints

Date: 12.17.09

CL Case No.:	C20090821	Agency Case No.:	0904113
Agency:	SLN1 - LINCOLN COUNTY SHERIFF'S OFFICE	Crime Date:	Apr 1, 2009
ORI:	ID0320000		

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

STATE OF IDAHO }
) ss.
 COUNTY OF ADA }

Natasha D. Wheatley, being first duly sworn, deposes and says the following:

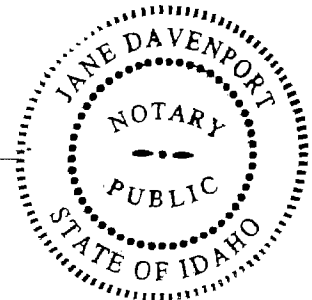
1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Natasha D. Wheatley
 Natasha D. Wheatley
 Forensic Scientist II, Latent Prints

Date: 12.17.09

SUBSCRIBED AND SWORN TO BEFORE ME 17 Dec 09

Jane Davenport
 Notary Public, State of Idaho
 Commission Expires: 5 Jan 13



LINCOLN COUNTY
DISTRICT COURT
STATE OF IDAHO

2010 APR 20 PM 12: 1

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

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

STATE OF IDAHO,
Plaintiff-Respondent,
v.
TRACI N. HADDEN,
Defendant-Appellant.

CASE NO. CR 2009-67
S.C. DOCKET NO. 37523
AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, E. SCOTT PAUL, LINCOLN COUNTY PROSECUTOR, P.O. BOX DRAWER B, 111 W. B STREET, SHOSHONE, ID, 83352, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment of Conviction Upon a Jury Verdict of Guilty to One Felony Count entered in the above-entitled action on the 2nd day of March, 2010, the Honorable John K. Butler, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

- (a) Did the district court err by denying the Defendant's Motion to Change Venue?
- (b) Did the district court err by overruling the Defendant's objection to empanelling the jury?
- (c) Was there sufficient evidence to support the verdict when the State's witness, Blue Hadden, perjured himself in the jury trial proceeding and inconclusive visual identifications of the Defendant were made in the jury trial proceedings?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) Motion Hearing held on June 16, 2009 (Court Reporter: Candace Childers, no estimation of pages was listed on the Register of Actions);
- (b) Motion Hearing held on July 21, 2009 (Court Reporter: Candace Childers, no estimation of pages was listed on the Register of Actions);

- (c) Pretrial Conference held on August 4, 2009 (Court Reporter: Candace Childers, no estimation of pages was listed on the Register of Actions);
- (d) Pretrial Conference held on November 3, 2009 (Court Reporter: Candace Childers, no estimation of pages was listed on the Register of Actions);
- (d) Jury Trial held November 12-18., 2009, to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: Candace Childers, no estimation of pages was listed on the Register of Actions); and
- (e) Sentencing Hearing held on March 2, 2010 (Court Reporter: Candace Childers, no estimation of pages was listed on the Register of Actions).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Affidavit of Probable Cause filed January 14, 2009;
- (b) Transcript of Digitally Recorded Proceedings filed April 30, 2009;
- (c) Letter from E. Scott Paul filed July 23, 2009;

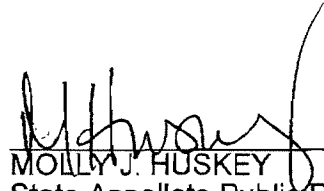
- (d) Plaintiff's Proposed Exhibit List filed November 2, 2009;
- (e) All proposed and given jury instructions including, but not limited to, the Plaintiff's Proposed Jury Instructions filed November 2, 2009, Initial Instructions to the Prospective Jury filed November 12, 2009, and Preliminary Instructions to the Jury filed November 17, 2009, Final Instruction to the Jury filed November 18, 2009, and Instruction No. 29 filed November 18, 2009;
- (f) Plaintiff's Proposed Witness List filed November 2, 2009;
- (g) Defendant's Witness List filed November 5, 2009;
- (h) Defendant's Proposed List of Exhibits filed November 5, 2009;
- (i) Supplement Exhibit List filed November 10, 2009;
- (j) Letter from Mark Guerry filed December 10, 2009; and
- (k) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing and Addendum to PSI filed January 27, 2007, and First Addendum to Presentence Memorandum lodged February 25, 2010.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Candace Childers;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));

- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Lincoln County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 20th day of April, 2010.


MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 20th day of April, 2010, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

MARK J GUERRY
ATTORNEY AT LAW
155 2ND AVENUE NORTH
PO BOX 1768
TWIN FALLS ID 83303 1768

CANDACE CHILDERS
COURT REPORTER
233 WEST MAIN STREET
JEROME ID 83338

E SCOTT PAUL
PO BOX DRAWER B
111 W B STREET
SHOSHONE ID 83352

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court



HEATHER R. LEWIS
Administrative Assistant

MJH/TMF/SBT/hrl

ORIGINAL

FILED A.M. 4:00 P.M.
APR 27 2010
Liz Kime, Clerk District
Court Lincoln County, Idaho

MARK J. GUERRY
Attorney at Law
646 East 3800 North
Buhl, Idaho 83316
(208) 308-1725
Fax: (208) 764-9540
Attorney for the

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

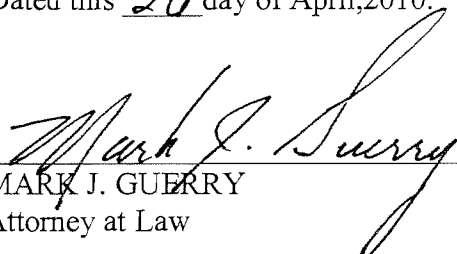
STATE OF IDAHO,)	
	)	Case No.: CR-2009-0067
Plaintiff,)	
	)	MOTION FOR REDUCTION OF SENTENCE
vs.)	
)	
TRACI N. HADDEN,)	
SS: [REDACTED])	
D.O.B. [REDACTED])	
)	
Defendant.)	

COMES NOW, TRACI HADDEN, pursuant to Rule 35 of the Idaho Criminal Rules for the State of Idaho and hereby respectfully moves this Court for a reduction of the determinate portion of her sentence of seven (7) years in these proceedings.

This motion is essentially a plea for mercy, or in the alternative based upon an irregularity or defect in the proceedings; that is perjured testimony was presented to the Jury by Blue Hadden, where Blue Hadden's testimony at the time of trial contradicted material elements of his sworn testimony at the preliminary hearing in this proceeding.

The Defendant respectfully requests, therefore that her sentence in this proceeding be reduced to a four (4) year determinate, seven (7) years indeterminate, eleven (11) year unified sentence as was offered, in part, in brief plea negotiations the week jury selection began.

Dated this 26 day of April, 2010.




MARK J. GUERRY
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on the 26th day of April, 2010, I caused to be sent by U.S. Mail, postage prepaid, a true and correct copy of the foregoing MOTION TO FOR REDUCTION IN SENTENCE, addressed as follows:

E. Scott Paul
Prosecuting Attorney
P.O. Box 860
Shoshone, Idaho 83352-0860



MARK J. GUERRY

9:00 AM

FILED A.M.
P.M.

MAY 06 2010

Liz Kime, Clerk District
Court Lincoln County, Idaho

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

STATE OF IDAHO ,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR-2009-67
)	
TRACI HADDEN,)	
)	
Defendants.)	
)	

ORDER DENYING RULE 35 MOTION WITHOUT HEARING

I. BRIEF PROCEDURAL HISTORY

1. On March 2, 2010, a Judgment of Conviction was entered against the defendant on the charge of Grand Theft, a felony following a finding of guilt after a jury trial.
2. The sentence imposed by the Court was a unified sentence of 14 years, which was comprised of a fixed period of confinement of 7 years, followed by an indeterminate period of custody of 7 years. The defendant was granted credit for time served. This was within the maximum penalty prescribed by I.C. Section 18-2408.
3. On April 27, 2010 the defendant filed a Rule 35 motion asking that the Court reconsider the sentence imposed on March 2, 2010. In her motion, the defendant asks the Court “for mercy” or in the alternative a modification of her sentence “based on irregularity or defect in the proceedings”.

4. After reviewing the files and records in the above entitled matter, and concluding that the April 27, 2010 Rule 35 motion was timely filed as to this case, this Court issues an Order Denying Reduction of the Sentence. This is in compliance with I.C.R. 35.

II. THE STANDARD

1. A Rule 35 Motion is essentially a plea for leniency within the discretion of the Court. *State v. Peterson*, 126 Idaho 522, 887 P.2d 67 (Ct. App. 1994); *State v. Williams*, 135 Idaho 618, 21 P.3d 940 (Ct. App. 2001). This Court also recognizes that the decision of whether to even conduct a hearing under this rule is one of discretion and in so exercising that discretion, the Court may not unduly limit the information considered in deciding the motion. After reviewing the legal guidelines and the basis for the defendant's requested relief this Court has determined that a hearing is not needed.
2. Pursuant to I.C.R. 35, having reviewed the files and records in the above entitled matter, this Court considers and determines the said Rule 35 motion, as it relates to this case, timely filed by the defendant on April 27, 2010 without a hearing and without the admission of additional testimony, evidence, and/or oral argument.

III. THE RULING

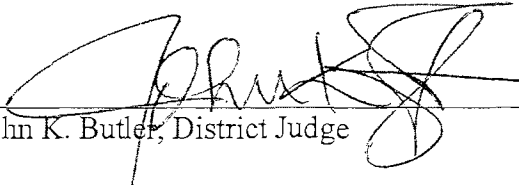
Based on the foregoing review by the Court, IT IS HEREBY ORDERED that the defendant's Idaho Criminal Rule 35 motion is DENIED:

1. The defendant does not allege that the sentence is illegal and therefore this motion is a plea for leniency. The purpose of a Rule 35 motion is not to collaterally attack the defendant's finding of guilt and solely focuses on the sentence imposed by the court.
2. The Court is aware of the defendant's character, prior criminal record, and the nature of the underlying offenses.
3. The defendant did not accompany her Rule 35 Motion with any new or additional information to show that her sentence was excessive. There is no new evidence to support any claim of mercy or leniency. In fact the defendant and her attorney made the same arguments at sentencing as she now makes to support her Rule 35 motion.
4. "When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007) (emphasis added). The Court, having reviewed the entire record, notes that the defendant presents no new evidence or information that would allow the court to look past the primary goal of the good order and protection of society and the related goal of retribution or punishment to reduce the defendant's sentence.. *State v. Young*, 119 Idaho 430 (Ct. App. 1991); *State v. Wickel*, 126 Idaho 578 (Ct. App. 1994). The Court at sentencing did consider the four goals of sentencing and the factors of I.C. § 19-2521. The sentence as set forth by the Court was and is still appropriate.

For all of the above reasons, the defendant's motion for correction or reduction of sentence is DENIED.

IT IS SO ORDERED.

DATED this 5 day of May, 2010.



John K. Butler, District Judge


CERTIFICATE OF MAILING/DELIVERY

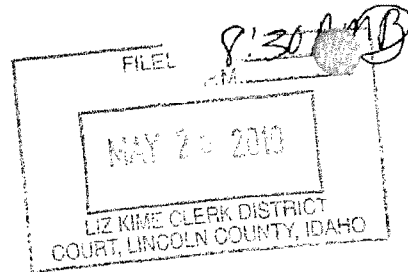
I, undersigned, hereby certify that on the 11th day of May, 2010, a true and correct copy of the foregoing ORDER DENYING RULE 35 MOTION WITHOUT HEARING was mailed, postage paid, and/or hand-delivered to the following persons:

E. Scott Paul
Lincoln County Prosecutor

Mark Guerry
Lincoln County Conflict Public Defender

Defendant: Traci Hadden


Deputy Clerk



TO: Idaho Supreme Court/Court of Appeals
Post Office Box 83720
Boise, Idaho 83720-0101

DOCKET NO. 37523-2010

(TRACI N. HADDEN
(Petitioner/Appellant,
(vs.
(STATE OF IDAHO,
(Respondent.
(_____

NOTICE OF TRANSCRIPTS LODGED

Notice is hereby given that on May 25, 2010, I lodged seven transcripts of 510 pages in length for the above-referenced appeal with the District Court Clerk of the County of Lincoln in the Fifth Judicial District.

Hearing Dates: 6-16-09 Status/Motions, 7-21-09 Arraignment/Motions, 8-4-09 Motions, 11-3-09 Pretrial, 11-12-09 Voir Dire, 11-17&18-09 Jury trial, 3-2-10 Sentencing.



(Signature of Reporter or Transcriber)

CANDACE J. CHILDERS, CSR No. 258
(Typed Name of Reporter or Transcriber)

May 22, 2010
(Date)

Exhibit List
(State VS Traci N. Hadden
Lincoln County Case # CR-2009-67
Docket #37523-210

11/17/2009	Admitted	Mr. Bilbao's brand card
11/17/2009	Admitted	Check from Dunes Cattle Company
11/17/2009	Admitted	Endorsement signed by Laramie Keppner
02/02/2010	Confidential	PSI

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

State of Idaho,)	
)	
)	
Plaintiff/Respondent,)	
	)	Lincoln County Case # CR 2009-67
	)	Docket # 37523-2010
)	
vs	)	CLERK'S CERTIFICATE
)	
Traci N. Hadden)	
Defendant/Appellant.)	

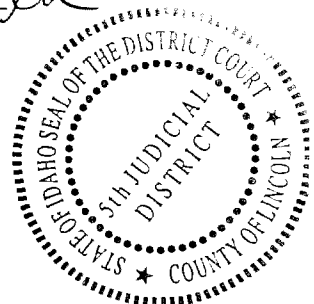
I, Ruth Petruzzelli, Deputy Clerk of the District Court of the Fifth Judicial District, of the State of Idaho, in and for the County of Lincoln, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I, do further certify that all documents, X-rays, charts and pictures offered or admitted in the above-entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's transcript and Clerk's Record (except for Exhibits, which are to be retained in the possession of the undersigned), as required by Rule 31 of the Appellate Rules. (See Clerk's Certificate of Exhibits if there are exhibits and no Reporter's transcript or not listed in the Reporter's Transcript.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 9 day of June 2010.

Liz Kime, Clerk

By: Ruth Petruzzelli
Ruth Petruzzelli
Deputy Clerk



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

State of Idaho ;)	
)	
Plaintiff/Respondent	)	Lincoln County
	)	Case # CR 2009-67
	)	Docket # 37523-2010
vs)	
	)	CERTIFICATE OF SERVICE
Traci N. Hadden)	
)	
Defendant/Appellant)	
)	

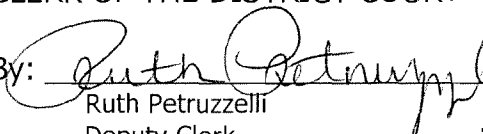
I, Ruth Petruzzelli, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and the Court Reporter's Transcript, along with a copy of (the Presentence Investigation or other evidentiary documents) and any Exhibits offered or admitted to each of the Attorneys of Record in this case as follows:

Kenneth K Jorgensen
Deputy Attorney General
PO Box 83720
Boise, Idaho 83720-0010

Molly J Huskey
State Appellate Public Defender
PO Box 83720
Boise, Idaho 83720-0005

IN WITNESS WHEREOF, I have hereunto **set my hand and affixed the seal** of said Court this 9 day of June, 2010.

CLERK OF THE DISTRICT COURT

By: 
Ruth Petruzzelli
Deputy Clerk

