

10-25-2010

# State v. Harper Clerk's Record v. 2 Dckt. 37683

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"State v. Harper Clerk's Record v. 2 Dckt. 37683" (2010). *Idaho Supreme Court Records & Briefs*. 2704.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2704](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2704)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

# LAW CLERK

Vol. 2 of 3

In the  
**SUPREME COURT**  
of the  
**STATE OF IDAHO**

**STATE OF IDAHO,**

Plaintiff-Respondent,

v.

**MATTHEW T. HARPER,**

Defendant-Appellant.

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

Honorable CARL B. KERRICK, District Judge

VOLUME II

LAWRENCE G. WARDEN  
Attorney for Plaintiff-Respondent

JONATHAN D. HALLY  
Attorney for Defendant-Appellant



37683

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

THE STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 37683
	)	
v.	)	TABLE OF CONTENTS
	)	
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant-Appellant.	)	

	<u>Page</u>
Motion to Amend Criminal Information filed February 10, 2010 .....	207-208
Order to Amend Criminal Information filed February 11, 2010 .....	209-210
Amended Information filed February 11, 2010 .....	211-212
Court Minutes dated February 18, 2010 .....	213-
Sixth Supplemental Response to Request for Discovery filed February 18, 2010 .....	214-217
Seventh Supplemental Response to Request for Discovery filed February 19, 2010 .....	218-221
Eighth Supplemental Response to Request for Discovery filed February 19, 2010 .....	222-225
Court Minutes dated February 22, 2010 .....	226-237
Jury Verdict Form filed February 24, 2010 .....	238-239
Presentence Report and Evaluations filed February 24, 2010 .....	240-241
Defendant's Motion for Judgment of Acquittal filed March 10, 2010 .....	242-243

Memorandum in Support of Defendant's Motion for Judgment of Acquittal filed March 10, 2010 .....	244-247
Court Minutes dated March 25, 2010 .....	248
Opinion and Order on Defendant's Motion for Judgment of Acquittal filed April 16, 2010 .....	249-253
Court Minutes dated May 6, 2010 .....	254-
Commitment filed May 6, 2010 .....	255-
Order on Bond Release filed May 10, 2010 .....	256-
Order filed May 10, 2010 .....	257-258
Judgment of Conviction filed May 10, 2010 .....	259-263
Notice of Appeal filed May 11, 2010 .....	264-267
Defendant's Second Motion for Bail or Release Pending Appeal filed May 11, 2010 .....	268-270
Order Denying Defendant's Second Motion for Bail or Release Pending Appeal filed May 12, 2010 .....	271-272
Order for Restitution and Judgment filed May 14, 2010 .....	273-274
Certificate of Exhibits .....	275-277
Clerk's Certificate .....	278-279
Certificate of Service .....	280-

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

THE STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 37683
	)	INDEX
	)	
v.	)	
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant-Appellant.	)	

Amended Information filed February 11, 2010 .....	211-212
Certificate of Exhibits .....	275-277
Certificate of Service .....	280-
Clerk's Certificate .....	278-279
Commitment filed May 6, 2010 .....	255-
Court Minutes dated February 18, 2010 .....	213-
Court Minutes dated February 22, 2010 .....	226-237
Court Minutes dated March 25, 2010 .....	248
Court Minutes dated May 6, 2010 .....	254-
Defendant's Motion for Judgment of Acquittal filed March 10, 2010 .....	242-243
Defendant's Second Motion for Bail or Release Pending Appeal filed May 11, 2010 .....	268-270
Eighth Supplemental Response to Request for Discovery filed February 19, 2010 .....	222-225
Judgment of Conviction filed May 10, 2010 .....	259-263
Jury Verdict Form filed February 24, 2010 .....	238-239

Memorandum in Support of Defendant's Motion for Judgment of Acquittal filed March 10, 2010 .....	244-247
Motion to Amend Criminal Information filed February 10, 2010 .....	207-208
Notice of Appeal filed May 11, 2010 .....	264-267
Opinion and Order on Defendant's Motion for Judgment of Acquittal filed April 16, 2010 .....	249-253
Order Denying Defendant's Second Motion for Bail or Release Pending Appeal filed May 12, 2010 .....	271-272
Order filed May 10, 2010 .....	257-258
Order for Restitution and Judgment filed May 14, 2010 .....	273-274
Order on Bond Release filed May 10, 2010 .....	256-
Order to Amend Criminal Information filed February 11, 2010 .....	209-210
Presentence Report and Evaluations filed February 24, 2010 .....	240-241
Seventh Supplemental Response to Request for Discovery filed February 19, 2010 .....	218-221
Sixth Supplemental Response to Request for Discovery filed February 18, 2010 .....	214-217

ORIGINAL

DANIEL L. SPICKLER  
Prosecuting Attorney

SANDRA K. DICKERSON  
Chief Deputy Prosecutor  
Nez Perce County, Idaho  
Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
ISBN 4968

FILED

2010 FEB 10 PM 4 38

PATTY O'NEALS  
CLERK OF THE DIST. COURT

DEPUTY

*Amels*

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

THE STATE OF IDAHO,	)	CASE NO. CR2009-0002662
	)	
	)	
Plaintiff,	)	MOTION TO AMEND
	)	CRIMINAL INFORMATION
vs.	)	
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant.	)	

COMES NOW, SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney for Nez Perce County, and pursuant to Idaho Criminal Rule 7(e), moves to amend the Criminal Information on file in the above captioned case to correct a clerical error.

DATED this 10<sup>th</sup> day of February, 2009.

*Sandra K. Dickerson*  
SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney

MOTION TO AMEND  
CRIMINAL INFORMATION

**AFFIDAVIT OF SERVICE**

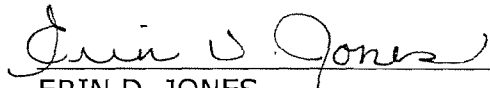
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing MOTION TO AMEND CRIMINAL INFORMATION was

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

ADDRESSED TO THE FOLLOWING:

John Hally  
Clark & Feeney  
PO Drawer 285  
Lewiston, ID 83501

DATED this   *10<sup>th</sup>*   day of February, 2010.

  
\_\_\_\_\_  
ERIN D. JONES  
Senior Legal Assistant



ORIGINAL

FILED

2010 FEB 11 AM 10 10

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
*Patty Weeks*  
DEPUTY

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

THE STATE OF IDAHO,	)	CASE NO. CR2009-0002662
	)	
Plaintiff,	)	ORDER TO AMEND
	)	CRIMINAL INFORMATION
v.	)	
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant.	)	

Good cause appearing therefore,

IT IS SO ORDERED that the Amended Criminal Information be accepted as filed.

Dated this 11<sup>th</sup> day of February, 2010.

*[Signature]*  
\_\_\_\_\_  
JUDGE

ORDER TO AMEND  
CRIMINAL INFORMATION

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing, ORDER TO AMEND CRIMINAL INFORMATION, was

- (1) \_\_\_\_\_ hand delivered, or
- (2)  hand delivered via court basket, or
- (3) \_\_\_\_\_ sent via facsimile, or
- (4) \_\_\_\_\_ mailed, postage prepaid, by depositing the same in the United States mail, addressed to the following:

John Hally  
Clark & Feeney  
PO Drawer 285  
Lewiston, ID 83501

Sandra K. Dickerson  
Chief Deputy Prosecuting Attorney  
P. O. Box 1267  
Lewiston, Id 83501

DATED this 11<sup>th</sup> day of February 2010.

CLERK OF THE COURT

  
Deputy



2010 FEB 11 AM 10 10

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

DANIEL L. SPICKLER  
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney  
Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
I.S.B.N. 4968

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

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW T. HARPER,

██████████ ██████████,  
S.S.N.: XXX-XX-1686,

Defendant.

CASE NO. CR2009-0002662

**AMENDED INFORMATION**

SANDRA K. DICKERSON Chief Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that MATTHEW T. HARPER is accused by this Amended Information of the following crime(s):

**COUNT I**  
**TRAFFICKING IN AMPHETAMINE AND/OR METHAMPHETAMINE BY**  
**MANUFACTURING, I.C. § 37-2732B(a)(3), a felony**

That the Defendant, MATTHEW T. HARPER, on or about and between August, 2008 and the 19th day of March, 2009 in the County of Nez Perce, State of Idaho, did knowingly manufacture methamphetamine and/or amphetamine by extracting ephedrine or pseudoephedrine and processing it into methamphetamine by use of red phosphorus, iodine, and other substances and/or processes.

**COUNT II**  
**MANUFACTURE OR DELIVERY OF A CONTROLLED SUBSTANCE WHERE**  
**CHILDREN ARE PRESENT, I.C. § 37-2737A, a felony**

That the Defendant, MATTHEW T. HARPER, on or about and between August, 2008, and the 19th day of March, 2009 in the County of Nez Perce, State of Idaho, did unlawfully manufacture a controlled substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance, upon the same premises where a minor child under the age of eighteen, to-wit: [REDACTED] (DOB: [REDACTED]), 2 years of age, was present.

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

  
\_\_\_\_\_  
SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney

COURT MINUTES

CR-2009-0002662

State of Idaho vs. Matthew Terrell Harper

Hearing type: Final Pretrial

Hearing date: 2/18/2010

Time: 3:49 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

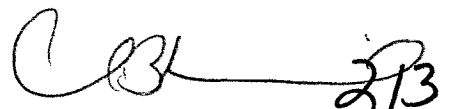
Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: William Carr

Prosecutor: Sandra Dickerson

34935 Defendant present with counsel.  
34948 Ms. Dickerson addresses the Court and trial is still set to go Monday.  
35005 Court recess.

 CBK 213

DANIEL L. SPICKLER  
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney  
Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
I.S.B.N. 4968

FILED

2010 FEB 18 PM 4 36

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
*Patty O. Weeks*  
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW T. HARPER,

Defendant.

CASE NO. CR2009-0002662

**SIXTH SUPPLEMENTAL RESPONSE  
TO REQUEST FOR DISCOVERY**

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

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

DATED this 18<sup>th</sup> day of February, 2010.

*Sandra K. Dickerson*  
SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney

**AFFIDAVIT OF SERVICE**

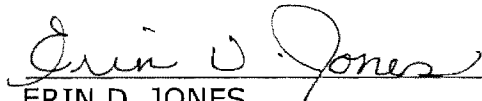
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing SIXTH SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

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

ADDRESSED TO THE FOLLOWING:

Jonathan D. Hally  
Clark & Feeney  
P.O. Drawer 285  
Lewiston Idaho 83501

DATED this   18<sup>th</sup>   day of February, 2010.

  
\_\_\_\_\_  
ERIN D. JONES  
Senior Legal Assistant

**AMENDED EXHIBIT "B"**  
**AMENDED LIST OF REPORTS**

STATE OF IDAHO vs. MATTHEW T. HARPER  
NEZ PERCE COUNTY CASE NO. CR2009-0002662

1. One (1) DVD and one (1) Photo CD.
2. Idaho State Police Incident Report dated December 2, 2008, prepared by Bryce Schrimsher, consisting of three (3) pages. (1-3)
3. Idaho State Police Incident Report dated December 16, 2008, prepared by Bryce Schrimsher, consisting of two (2) pages. (4-5)
4. Idaho State Police Incident Report dated March 16, 2009, prepared by Bryce Schrimsher, consisting of three (3) pages. (6-8)
5. Idaho State Police Incident Report dated March 23, 2009, prepared by Bryce Schrimsher, consisting of fifteen (15) pages. (9-23)
6. Idaho State Police Incident Report dated March 27, 2009, prepared by Bryce Schrimsher, consisting of two (2) pages. (24-25)
7. Affidavit of Detective Schrimsher Supporting Initial Determination of Probable Cause Pursuant to I.C.R. 5(c) consisting of three (3) pages. (26-28)
8. Initial Determination of Probable Cause After Arrest Without Warrant consisting of two (2) pages. (29-30)
9. Affidavit for Search Warrant consisting of ten (10) pages. (31-40)
10. Search Warrant consisting of six (6) pages. (41-46)
11. Acknowledgment of Oath and of Examination on Oath consisting of one (1) page. (47)
12. Order consisting of one (1) page. (48)
13. Idaho State Police Evidence/Property Receipt consisting of five (5) pages. (49-53)
14. Idaho State Police Forensic Services Criminalistic Analysis Report consisting of two (2) pages. (54-55)
15. Documents seized from Matthew Harper consisting of five hundred sixty-eight (568) pages. (56-623)
16. Pharmacy logs from Rite Aid consisting of fifteen (15) pages. (624-638)



17. Pharmacy logs from Kmart consisting of one (1) page. (639)
18. Pharmacy logs from Albertsons consisting of seven (7) pages. (640-646)
19. Pharmacy logs from Walgreens consisting of five (5) pages. (647-651)
20. Pharmacy logs from Wal-Mart consisting of three (3) pages. (652-654)
21. **Idaho State Police Forensic Services Criminalistic Analysis Report Supplement dated February 16, 2010, consisting of three (3) pages. (655-657)**

DANIEL L. SPICKLER  
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney  
Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
I.S.B.N. 4968

FILED

2010 FEB 19 PM 4 17

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
  
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW T. HARPER,

Defendant.

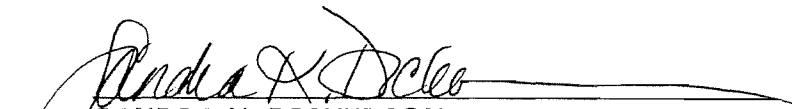
CASE NO. CR2009-0002662

**SEVENTH SUPPLEMENTAL RESPONSE  
TO REQUEST FOR DISCOVERY**

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

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

DATED this 19th day of February, 2010.

  
SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney

**AFFIDAVIT OF SERVICE**

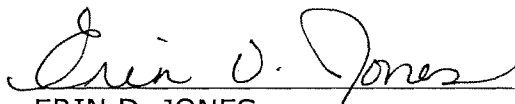
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing SEVENTH SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

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

ADDRESSED TO THE FOLLOWING:

Jonathan D. Hally  
Clark & Feeney  
P.O. Drawer 285  
Lewiston Idaho 83501

DATED this 19th day of February, 2010.

  
ERIN D. JONES  
Senior Legal Assistant

**AMENDED EXHIBIT "B"**  
**AMENDED LIST OF REPORTS**

STATE OF IDAHO vs. MATTHEW T. HARPER  
NEZ PERCE COUNTY CASE NO. CR2009-0002662

1. One (1) DVD and one (1) Photo CD.
2. Idaho State Police Incident Report dated December 2, 2008, prepared by Bryce Schrimsher, consisting of three (3) pages. (1-3)
3. Idaho State Police Incident Report dated December 16, 2008, prepared by Bryce Schrimsher, consisting of two (2) pages. (4-5)
4. Idaho State Police Incident Report dated March 16, 2009, prepared by Bryce Schrimsher, consisting of three (3) pages. (6-8)
5. Idaho State Police Incident Report dated March 23, 2009, prepared by Bryce Schrimsher, consisting of fifteen (15) pages. (9-23)
6. Idaho State Police Incident Report dated March 27, 2009, prepared by Bryce Schrimsher, consisting of two (2) pages. (24-25)
7. Affidavit of Detective Schrimsher Supporting Initial Determination of Probable Cause Pursuant to I.C.R. 5(c) consisting of three (3) pages. (26-28)
8. Initial Determination of Probable Cause After Arrest Without Warrant consisting of two (2) pages. (29-30)
9. Affidavit for Search Warrant consisting of ten (10) pages. (31-40)
10. Search Warrant consisting of six (6) pages. (41-46)
11. Acknowledgment of Oath and of Examination on Oath consisting of one (1) page. (47)
12. Order consisting of one (1) page. (48)
13. Idaho State Police Evidence/Property Receipt consisting of five (5) pages. (49-53)
14. Idaho State Police Forensic Services Criminalistic Analysis Report consisting of two (2) pages. (54-55)
15. Documents seized from Matthew Harper consisting of five hundred sixty-eight (568) pages. (56-623)
16. Pharmacy logs from Rite Aid consisting of fifteen (15) pages. (624-638)

220

17. Pharmacy logs from Kmart consisting of one (1) page. (639)
18. Pharmacy logs from Albertsons consisting of seven (7) pages. (640-646)
19. Pharmacy logs from Walgreens consisting of five (5) pages. (647-651)
20. Pharmacy logs from Wal-Mart consisting of three (3) pages. (652-654)
21. Idaho State Police Forensic Services Criminalistic Analysis Report Supplement dated February 16, 2010, consisting of three (3) pages. (655-657)
22. **Idaho State Police Incident Report for Case Number D09000021 prepared by Mike Mooney consisting of four (4) pages. (658-661)**

DANIEL L. SPICKLER  
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney  
Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
I.S.B.N. 4968

FILED

2010 FEB 19 PM 4 17

PATTY O. WEEKS  
CLERK OF DISTRICT COURT  
*Patty Weeks*  
DEPUTY

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

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
MATTHEW T. HARPER,  
  
Defendant.

CASE NO. CR2009-0002662

**EIGHTH SUPPLEMENTAL RESPONSE  
TO REQUEST FOR DISCOVERY**

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

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

DATED this 19th day of February, 2010.

*Sandra K. Dickerson*  
SANDRA K. DICKERSON  
Chief Deputy Prosecuting Attorney

**AFFIDAVIT OF SERVICE**

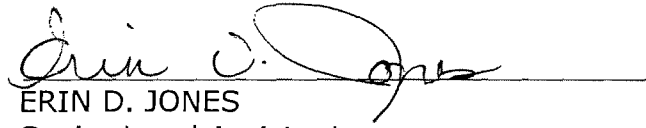
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing EIGHTH SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

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

ADDRESSED TO THE FOLLOWING:

Jonathan D. Hally  
Clark & Feeney  
P.O. Drawer 285  
Lewiston Idaho 83501

DATED this 19th day of February, 2010.

  
ERIN D. JONES  
Senior Legal Assistant

**AMENDED EXHIBIT "B"**  
**AMENDED LIST OF REPORTS**

STATE OF IDAHO vs. MATTHEW T. HARPER  
NEZ PERCE COUNTY CASE NO. CR2009-0002662

1. One (1) DVD and one (1) Photo CD.
2. Idaho State Police Incident Report dated December 2, 2008, prepared by Bryce Schrimsher, consisting of three (3) pages. (1-3)
3. Idaho State Police Incident Report dated December 16, 2008, prepared by Bryce Schrimsher, consisting of two (2) pages. (4-5)
4. Idaho State Police Incident Report dated March 16, 2009, prepared by Bryce Schrimsher, consisting of three (3) pages. (6-8)
5. Idaho State Police Incident Report dated March 23, 2009, prepared by Bryce Schrimsher, consisting of fifteen (15) pages. (9-23)
6. Idaho State Police Incident Report dated March 27, 2009, prepared by Bryce Schrimsher, consisting of two (2) pages. (24-25)
7. Affidavit of Detective Schrimsher Supporting Initial Determination of Probable Cause Pursuant to I.C.R. 5(c) consisting of three (3) pages. (26-28)
8. Initial Determination of Probable Cause After Arrest Without Warrant consisting of two (2) pages. (29-30)
9. Affidavit for Search Warrant consisting of ten (10) pages. (31-40)
10. Search Warrant consisting of six (6) pages. (41-46)
11. Acknowledgment of Oath and of Examination on Oath consisting of one (1) page. (47)
12. Order consisting of one (1) page. (48)
13. Idaho State Police Evidence/Property Receipt consisting of five (5) pages. (49-53)
14. Idaho State Police Forensic Services Criminalistic Analysis Report consisting of two (2) pages. (54-55)
15. Documents seized from Matthew Harper consisting of five hundred sixty-eight (568) pages. (56-623)
16. Pharmacy logs from Rite Aid consisting of fifteen (15) pages. (624-638)



17. Pharmacy logs from Kmart consisting of one (1) page. (639)
18. Pharmacy logs from Albertsons consisting of seven (7) pages. (640-646)
19. Pharmacy logs from Walgreens consisting of five (5) pages. (647-651)
20. Pharmacy logs from Wal-Mart consisting of three (3) pages. (652-654)
21. Idaho State Police Forensic Services Criminalistic Analysis Report Supplement dated February 16, 2010, consisting of three (3) pages. (655-657)
22. Idaho State Police Incident Report for Case Number D09000021 prepared by Mike Mooney consisting of four (4) pages. (658-661)
23. **Handwritten notes consisting of four (4) pages. (662-665)**

COURT MINUTES

CR-2009-0002662

State of Idaho vs. Matthew Terrell Harper

Hearing type: Jury Trial

Hearing date: 2/22/2010

Time: 9:02 am

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Jonathan Hally

Prosecutor: Sandra Dickerson

35 JURORS PREVIOUSLY DRAWN: Donna Phillips, Doris Ferguson, Katherine Nowlin, Andrew Forrest, Myron Mickelson, Cori Pearson, Todd Smith, Catherine Smith, Robert Vassar, Clayton Wood, Michael Nees, Rhoda Henry, Douglas Likkell, Travis Walker, Catherine Edmonson, Terra Butler, Mark Thorson, Robert Oliver, Nicole Hunder, Douglas Hubbard, Matthew Hubiak, Tasha Carper, Cathy Warnock, Brayton Rembold, Michelle Steele, George Voile, Debra Treib, Brian Overall, Jodi Holthaus, Darce Vassar, Ellen Steiner, Joe Rodriguez, Kimberly Martin, Marianne Nash, Lorri Huffman.

90218 All parties present and ready to proceed.

90227 Court addresses jurors, will be waiting to start to allow more juror to arrive.

90346 Court admonishes the jury.

90430 Court recess until 9:30 a.m.

93349 All parties present and ready to proceed.

93355 Court addresses the jurors.

93549 Ms. Dickerson indicates State is prepared to proceed.

93555 Mr. Hally indicates Defense is prepared to proceed.

93616 Clerk calls roll of jurors.

93903 Ms. Dickerson has no challenges to the panel.

93906 Mr. Hally has no challenges to the panel.

93925 Clerk administers jury voir dire oath.

94325 Court addresses jurors.

94548 Court makes introductions.

94725 Ms. Dickerson makes introduction.

94820 Court begins voir dire questioning.

95140 Ms. Dickerson lists other attorneys in the prosecutor's office.

95157 Court continues with voir dire.

95456 Ms. Dickerson lists support staff in her office.

95523 Court continues with voir dire.

95755 Ms. Dickerson lists witnesses she intends to call.

95820 Court continues with voir dire.

100039 Mr. Hally makes introduction.

100057 Court continues with voir dire.

100202 Ms. Dickerson and Mr. Hally have no objection to excusing Susan Kirking for cause.

100208 Court excuses Susan Kirking for cause.

100221 Court calls juror Lila Robinson.

100252 Court addresses juror Lila Robinson.

100320 Court continues with voir dire.

100427 Ms. Dickerson and Mr. Hally have no objection to excusing Joe Rodriguez for cause.

100435 Court excuses Joe Rodriguez for cause.

100459 Court calls juror John Smolar.

100520 Court addresses juror John Smolar.

100535 Court continues with voir dire.

100550 Ms. Dickerson and Mr. Hally have no objection to excusing Lorri Huffman for cause.

100559 Court excuses Lorri Huffman for cause.

100612 Court calls Jason Clovis.

100630 Court addresses Jason Clovis.

100701 Mr. Hally lists other attorneys in his office.

100721 Court continues with voir dire.

101157 Mr. Hally lists support staff in his office.

101210 Court continues with voir dire.

101332 Court reads Amended Information to the jury.

101552 Court continues with voir dire.

101709 Ms. Dickerson and Mr. Hally have no objection to excusing Debra Treib for cause.

101720 Court excuses Debra Treib for cause.

101728 Court calls Misti Ruddell.

101747 Court addresses Misti Ruddell.

101817 Court continues with voir dire.

103215 Ms. Dickerson and Mr. Hally have no objection to excusing Nathan Niemeyer for cause.

103222 Court excuses Nathan Niemeyer for cause.

103239 Court calls John Porter.

103257 Court addresses John Porter.

103400 Court continues with voir dire.

104230 Ms. Dickerson and Mr. Hally have no objection to excusing Jason Clovis for cause.

104236 Court excuses Jason Clovis for cause.

104253 Court calls Marina Quigley.

104316 Court addresses Marina Quigley.

104409 Court continues with voir dire.

104431 Ms. Dickerson and Mr. Hally have no objection to excusing Rhoda Henry for cause.

104436 Court excuses Rhoda Henry for cause.

104510 Court calls Jamie Huminsky.

104515 Court addresses Jamie Huminsky.

104547 Court continues with voir dire.

105227 Court admonishes the jury.

105339 Court recess until 11:10 a.m.

111114 All parties present and ready to proceed.

111120 Court addresses the jury.

111154 Ms. Dickerson begins voir dire questioning.

112503 Mr. Hally begins voir dire questioning.

112846 Court and counsel meet at sidebar.

113438 Mr. Hally continues with voir dire.

114712 Court admonishes the jurors.

114753 Court recess until noon.

120222 All parties present and ready to proceed.

120229 Ms. Dickerson passes this panel for cause.

120231 Mr. Hally passes this panel for cause.

120254 Peremptory challenges off the record.

State

Defense

1. Andrew Forrest
2. Jamie Huminsky
3. Terra Butler
4. Pass

1. Myron Mickelson
2. Catherine Edmonson
3. Pass

120733 The jury is constituted as follows: Stan Eccles, Doris Ferguson, Katherine Nowlin, Travis Walker, Mark Thorson, Cori Pearson, Todd Smith, Catherine Smith, Robert Vassar, Clayton Wood, Ellen Bramlet, Robert Oliver and Douglas Likkel.

120920 Clerk administers oath to try the case.

120936 Ms. Dickerson accepts this jury.

120940 Mr. Hally accepts this jury.

120947 Court addresses remaining jurors and excuses them from the courtroom.

121108 Court addresses the jury.

121242 Court admonishes the jury.

121514 Court excuses the jury from the courtroom.

121551 Court recess until 1:30 p.m.

13159 All parties present and ready to proceed.

13208 Court addresses counsel.

13223 Ms. Dickerson moves for mistrial re: statements made by defense counsel during voir dire.

13406 Mr. Hally presents argument.

13553 Ms. Dickerson responds.

13638 Court addresses counsel.

14053 Court denies motion for mistrial.

14237 Court recess 5 minutes.

14923 All parties present and ready to proceed.

14932 Ms. Dickerson addresses the Court re: instruction.

15001 Mr. Hally addresses the Court.

15031 Bailiff brings in the jury, all members present.

15130 Court addresses the jury.

15234 Court reads opening instructions to the jury.

20325 Ms. Dickerson presents opening statement.

20808 Mr. Hally presents opening statement.

21029 Ms. Dickerson calls Detective Bryce Scrimsher, sworn, Ms. Dickerson begins direct examination.

23104 Ms. Dickerson has witness handed State's exhibit 6A thru 6S.

23251 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.

23301 Ms. Dickerson offers State's exhibit 6A thru 6S.

23307 Mr. Hally objects.

23315 Court and counsel meet at sidebar.

23445 Court sustains objection as to State's exhibit 6I.

23453 Court admits State's exhibits 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6J, 6K, 6L, 6M, 6N, 6O, 6P, 6Q, 6R and 6S.

23535 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.

24734 Ms. Dickerson has witness handed State's exhibit #2.

24752 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.

24827 Ms. Dickerson offers State's exhibit #2. Mr. Hally no objection.

24836 Court admits State's exhibit #2.

24839 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.

24856 Ms. Dickerson has witness handed State's exhibit #1.

24941 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.

25051 Ms. Dickerson offers State's exhibit #1.

25057 Mr. Hally questions Detective Bryce Scrimsher in aid of an objection.

25322 Mr. Hally presents objection.

25337 Ms. Dickerson responds.

25400 Court overrules objection and admits State's exhibit #2.

25412 Ms. Dickerson has witness handed State's exhibit #3.

25450 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.

25523 Ms. Dickerson offers State's exhibit #3.

25531 Court admits State's exhibit #3.  
25539 Ms. Dickerson has witness handed State's exhibit #4.  
25616 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.  
25724 Ms. Dickerson offers State's exhibit #4.  
25730 Mr. Hally objects.  
25804 Court and counsel meet at sidebar.  
25850 Court sustains objection.  
25857 Ms. Dickerson has witness handed State's exhibit #5.  
25937 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.  
30104 Ms. Dickerson has witness handed State's exhibit #9 and #10.  
30240 Ms. Dickerson continues direct examination Detective Bryce Scrimsher.  
30625 Mr. Hally begins cross examination Detective Bryce Scrimsher.  
31219 Ms. Dickerson begins redirect examination Detective Bryce Scrimsher.  
31355 Witness Detective Bryce Scrimsher steps down.  
31424 Court admonishes the jury.  
31710 Court excuses the jury from the courtroom.  
31749 Court recess until February 23, 2010 at 9:00 a.m.

FEBRUARY 23, 2010

90150 All parties present and ready to proceed.  
90210 Mr. Hally addresses the Court re: David Sincerbeaux's reports, State's exhibits #9 and #10 and Detective Mooney's report.  
90706 Ms. Dickerson responds.  
90935 Mr. Hally responds.  
91205 Court addresses counsel.  
91323 Court denies Defendant's motion re: late disclosure.  
91436 Mr. Hally addresses the Court re: David Sincerbeaux's affidavit.



91529 Bailiff brings in the jury, all members present.

91600 Court addresses the jury.

91611 Ms. Dickerson calls Ashley Wolff, sworn, Ms. Dickerson begins direct examination.

92103 Ms. Dickerson has witness handed State's exhibit 6J.

92120 Ms. Dickerson continues direct examination Ashley Wolff.

92159 Mr. Hally begins cross examination Ashley Wolff.

92428 Ms. Dickerson begins redirect examination Ashley Wolff.

92533 Witness Ashley Wolff steps down.

92548 Ms. Dickerson calls Detective Rich Adamson, sworn, Ms. Dickerson begins direct examination.

93249 Ms. Dickerson has witness handed State's exhibit #7.

93301 Ms. Dickerson continues direct examination Detective Rich Adamson.

93329 Ms. Dickerson offers State's exhibit #7 for illustrative purposes.

93339 Mr. Hally has no objection.

93342 Court admits State's exhibit #7 for illustrative purposes.

93408 Ms. Dickerson continues direct examination Detective Rich Adamson.

94457 Ms. Dickerson has witness handed State's exhibits #6A thru #6S.

94513 Ms. Dickerson continues direct examination Detective Rich Adamson.

95325 Mr. Hally begins cross examination Detective Rich Adamson.

95440 Witness Detective Rich Adamson steps down.

95449 Ms. Dickerson calls Detective Mike Mooney, sworn, Ms. Dickerson begins direct examination.

100227 Ms. Dickerson has witness handed State's exhibits 8A thru 8Z.

100246 Ms. Dickerson continues with direct examination Detective Mike Mooney.

100356 Ms. Dickerson offers State's exhibits 8A thru 8Z.

100405 Mr. Hally has no objection.

100410 Court admits State's exhibits 8A thru 8Z.

100415 Ms. Dickerson continues direct examination Detective Mike Mooney.

101650 Mr. Hally begins cross examination Detective Mike Mooney.

102153 Ms. Dickerson begins redirect examination Detective Mike Mooney.

102249 Mr. Hally begins recross examination Detective Mike Mooney.

102334 Ms. Dickerson begins redirect examination of Detective Mike Mooney.

102338 Witness Detective Mike Mooney steps down.

102357 Court addresses the jury.

102411 Court admonishes the jury and excuses them from the courtroom.

102457 Court recess until 1:00 p.m.

125833 All parties present and ready to proceed.

125907 Bailiff brings in the jury, all members present.

125941 Ms. Dickerson calls David Sincerbeaux, sworn, Ms. Dickerson begins direct examination.

10426 Ms. Dickerson has witness handed State's exhibit #1.

10438 Ms. Dickerson continues direct examination David Sincerbeaux.

10556 Ms. Dickerson has witness handed State's exhibit #9.

10606 Ms. Dickerson continues direct examination David Sincerbeaux.

10646 Ms. Dickerson offers State's exhibit #9.

10654 Mr. Hally questions witness in aid of an objection.

10712 Mr. Hally has no objection.

10716 Court admits State's exhibit #9.

10719 Ms. Dickerson continues direct examination David Sincerbeaux.

10811 Ms. Dickerson has witness handed State's exhibit #10.

10822 Ms. Dickerson continues direct examination David Sincerbeaux.

10854 Ms. Dickerson has witness handed State's exhibits #4 and #5.

10912 Ms. Dickerson continues direct examination David Sincerbeaux.

11017 Ms. Dickerson offers State's exhibits #4, #5 and #10.

11025 Mr. Hally indicates same objection as previously stated.

11030 Court admits State's exhibit #4, #5 and #10.

11106 Witness David Sincerbeaux steps down.

11142 Ms. Dickerson addresses the Court and counsel stipulate to admission State's exhibit 6I.

11155 Court admits State's exhibit 6I.

11206 Ms. Dickerson indicates State rests.

11222 Court admonishes the jury and excuses them from the courtroom.

11300 Court recess.

11447 All parties present.

11504 Court addresses Defendant re: his right to testify.

11603 Mr. Hally moves for Judgment of Acquittal as to Count 2.

11751 Ms. Dickerson presents argument.

11909 Mr. Hally responds.

12013 Court addresses counsel and denies Defendant's motion.

12059 Court recess until 1:30 p.m.

13007 All parties present and ready to proceed.

13020 Court addresses counsel.

13050 Bailiff brings in the jury, all members present.

13129 Mr. Hally indicates Defense rests.

13134 Court addresses the jury.

13253 Court admonishes the jury and excuses them from the courtroom.

13345 Court recess until February 24, 2010 at 9:00 a.m.

90036 All parties present and ready to proceed.

90048 Court addresses counsel re: jury instructions.

90114 Ms. Dickerson no objection to the jury instructions.

90121 Mr. Hally no objection to the jury instructions.

90204 Bailiff brings in the jury, all members present.

90252 Court provides the jury with copies of the jury instructions.

90322 Court begins reading final instructions to the jury.

92746 Ms. Dickerson presents closing argument.

94315 Court admonishes the jury and excuses them from the courtroom.

94359 Court recess 10 minutes.

95502 All parties present and ready to proceed.

95528 Bailiff brings in the jury, all members present.

95614 Mr. Hally presents closing argument.

101553 Ms. Dickerson presents rebuttal closing argument.

102010 Court addresses the jury.

102023 Clerk draws alternate juror, Mark Thorson.

102113 Clerk administers oath of bailiff.

102151 Court excuses the jury from the courtroom to begin deliberating.

102219 Court addresses counsel.

102254 Court recess.

122603 All parties present and ready to proceed.

122615 Court addresses counsel.

122634 Bailiff brings in the jury, all members present.

122715 Court addresses presiding juror, Todd Smith.

122739 Bailiff hands verdict to the Court.

122802 Clerk reads verdict.

122905 Court addresses presiding juror, Todd Smith.

122917 All jurors nod in the affirmative that this is their verdict.

122952 Court excuses the jury from the courtroom.

123012 Sentencing set for 5-6-10 at 2:30 p.m. PSI due 4-29-2010.

123135 Ms. Dickerson addresses the Court and requests Defendant be remanded to the custody of the NPC Sheriff pending sentencing.

123150 Mr. Hally addresses the Court.

123234 Court addresses Defendant.

123251 Court orders Defendant be placed in custody at this time.

123308 Court recess.

FILED

2010 FEB 24 PM 12 36

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
*P. O. Weeks*  
DEPUTY

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MATTHEW T. HARPER, )  
 )  
 Defendant. )

CASE NO. CR 2009-002662

JURY VERDICT FORM

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

COUNT I

QUESTION NO. 1: Is the Defendant, MATTHEW T. HARPER, guilty or not guilty of  
TRAFFICKING IN AMPHETAMINE AND/OR METHAMPHETAMINE BY  
MANUFACTURING?

\_\_\_\_\_ NOT GUILTY

\_\_\_\_\_  GUILTY

If you unanimously answered Question No. 1 "Guilty", then you must skip to Question  
No. 3 and answer that question. If you unanimously answered Question No. 1 "Not guilty", then  
proceed to answer Question No. 2.

**QUESTION NO. 2:** Is the Defendant, MATTHEW T. HARPER, guilty or not guilty of  
POSSESSION OF A CONTROLLED SUBSTANCE?

\_\_\_\_\_ NOT GUILTY                      \_\_\_\_\_ GUILTY

Sign the verdict form and advise the bailiff.

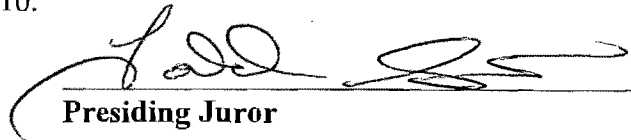
COUNT II

You should answer Question No. 3 only if you found the Defendant GUILTY of  
TRAFFICKING IN AMPHETAMINE AND/OR METHAMPHETAMINE BY  
MANUFACTURING in Question No. 1.

**QUESTION NO. 3:** Did the State prove beyond a reasonable doubt that MATTHEW T.  
HARPER manufactured methamphetamine where a child under the age of eighteen years was  
present?

  X   YES                                      \_\_\_\_\_ NO

DATED this   24   day of February, 2010.

  
\_\_\_\_\_  
Presiding Juror

Assigned to: \_\_\_\_\_  
Assigned: \_\_\_\_\_

Second Judicial District Court, State of Idaho  
In and For the County of Nez Perce  
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

FILED

Case No: CR-2009-0002662

STATE OF IDAHO  
Plaintiff,  
vs.  
Matthew Terrell Harper  
1536 Airway Ave  
Lewiston, ID 83501  
Defendant.

2010 FEB 24 PM 12:38

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
DEPUTY

- CHARGE(s):
- ) I37-2732(B)(3) Trafficking in Methamphetamine
- ) I37-2732(A)(1)(A)-MFG CY Controlled Substance-conspiracy To Manufacture
- ) I37-2737A Controlled Sub-Manufacture/ Deliver/ Possess When Children Present
- ) REQUIRED ROA CODES: (Enter the appropriate code)
- ) PSIO1- Order for Presentence Investigation Report (only)
- ) PSMH1- Order for Presentence Investigation Report and Mental Health Assessment
- ) PSSA1- Order for Presentence Investigation Report and Substance Abuse Assessment

On this Wednesday, February 24, 2010, a Pre-sentence Investigation Report was ordered by the Honorable Carl B. Kerrick to be completed by 4-29-10 for Court appearance on Thursday, May 06, 2010 at: 02:30 PM at the above stated courthouse.

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI

Under IC 19-2524 assessment(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to (IC 19-2524(4)):

- Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment. Treatment shall be provided as recommended in the assessment. (PSMH1 ROA code); and/or
- Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment. Treatment shall be provided as recommended in the assessment. (PSSA1 ROA code)

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

- Sex Offender  Domestic Violence  Other \_\_\_\_\_ Evaluator: \_\_\_\_\_
- No evaluations are ordered. (PSIO1 ROA code)

DEFENSE COUNSEL: Jonathan D Hally

PROSECUTOR: Sandra K. Dickerson

THE DEFENDANT IS IN CUSTODY:  YES  NO If yes where: \_\_\_\_\_

PLEA AGREEMENT: State recommendation

WHJ/JOC  Probation  PD Reimb  Fine  ACJ  Restitution  Retained Jurisdiction

Other: \_\_\_\_\_

Date: 2-24-10 Signature: *[Signature]*  
Judge \*\*\*\*\*

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER?  NO  YES

Name: \_\_\_\_\_  Male  Female RACE:  Caucasian  Hispanic  Other

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ Message Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Employer: \_\_\_\_\_ Work Address: \_\_\_\_\_

It is your responsibility to contact your assigned Pre-sentence Investigator. Please contact your assigned Investigator to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.




Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
Name & Phone Number of nearest relative: \_\_\_\_\_  
Date of Arrest: \_\_\_\_\_ Arresting Agency: \_\_\_\_\_

*It is your responsibility to contact your assigned Pre-sentence Investigator. Please contact your assigned Investigator to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.*



DATED this 10<sup>th</sup> day of March, 2010.

CLARK and FEENEY

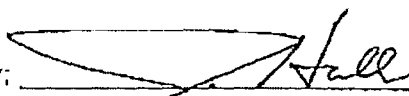
By:   
Jonathan D. Hally, a Member of the firm  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of March, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Ms. Sandra K. Dickerson  
Nez Perce County Prosecuting Attorney  
P.O. Box 1267  
1109 F Street  
Lewiston, Idaho 83501

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- Facsimile at: (208) 799-3080

By:   
Jonathan D. Hally

243

FILED

2010 MAR 10 PM 4 06

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
*P. O. Weeks*  
DEPUTY

JONATHAN D. HALLY  
CLARK and FEENEY  
1229 Main Street  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208)743-9516  
Facsimile: (208) 746-9160  
Idaho State Bar # 4979  
Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 2009-2662
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION FOR
vs.	)	JUDGMENT OF ACQUITTAL
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the named Defendant in the above-entitled matter, by and through his counsel of record, Jonathan Hally of the law firm of Clark and Feeney, and submits this Memorandum in Support of Defendant's Motion for Judgment of Acquittal and argues as follows:

With regard to Count II, Manufacture or Delivery of a Controlled Substance Where Children are Present, I.C. §37-2737A, the only evidence of a minor child being present at the residence in question was on the date the search warrant was executed. However, on that date, there was no evidence that the Defendant did manufacture a controlled substance. Instead, the


MEMORANDUM IN SUPPORT OF DEFENDANT'S  
MOTION FOR JUDGMENT OF ACQUITTAL - 1

1 State only presented evidence that the Defendant was in possession of methamphetamine. See,  
2 *Stare v. Gamble*, 146 Idaho 331, 343-344, 193 P.3d 878, 890-891 (Ct. App. 2008.) Since there  
3 was no evidence of the Defendant actually manufacturing controlled substance on the date the  
4 minor child was present, there was insufficient evidence for a conviction on Count II.

5 Accordingly, this Court should set aside the verdict and enter a judgment of acquittal.

6 DATED this 10<sup>th</sup> day of March, 2010.

7  
8 CLARK and FEENEY

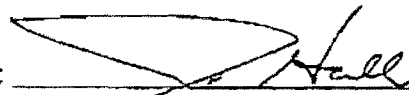
9  
10 By:   
11 Jonathan D. Hally, a Member of the firm  
12 Attorneys for Defendant

13  
14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on this 10<sup>th</sup> day of March, 2010, I caused to be served a true  
16 and correct copy of the foregoing document by the method indicated below, and addressed to the  
17 following:

18 Ms. Sandra K. Dickerson  
19 Nez Perce County Prosecuting Attorney  
20 P.O. Box 1267  
1109 F Street  
Lewiston, Idaho 83501

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- Facsimile at: (208) 799-3080

21  
22 By:   
23 Jonathan D. Hally

24  
25 MEMORANDUM IN SUPPORT OF DEFENDANT'S  
26 MOTION FOR JUDGMENT OF ACQUITTAL - 2

245

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

JONATHAN D. HALLY  
CLARK and FEENEY  
1229 Main Street  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208)743-9516  
Facsimile: (208) 746-9160  
Idaho State Bar # 4979  
Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 2009-2662
	)	
Plaintiff,	)	
	)	<b>DEFENDANT'S MOTION FOR</b>
vs.	)	<b>BAIL OR RELEASE PENDING</b>
	)	<b>APPEAL</b>
MATTHEW T. HARPER,	)	
	)	
Defendant.	)	
_____	)	

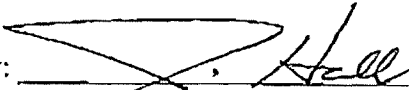
COMES NOW, the named Defendant in the above-entitled matter, by and through his counsel of record, Jonathan Hally of the law firm of Clark and Feeney, and pursuant to Idaho Criminal Rule 46 moves this Court to release the Defendant upon his own recognizance or upon bail and under terms and prohibitions as the Court may deem necessary pending appeal.

Oral Argument is requested.

DATED this 10<sup>th</sup> day of March, 2010.

246

CLARK and FEENEY


By:   
Jonathan D. Hally, a Member of the firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of March, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Ms. Sandra K. Dickerson  
Nez Perce County Prosecuting Attorney  
P.O. Box 1267  
1109 F Street  
Lewiston, Idaho 83501

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- Facsimile at: (208) 799-3080

By:   
Jonathan D. Hally

247

COURT MINUTES

CR-2009-0002662

State of Idaho vs. Matthew Terrell Harper

Hearing type: Oral Argument

Hearing date: 3/25/2010

Time: 2:07 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Jonathan Hally

Prosecutor: Sandra Dickerson

20741 Defendant present, in custody, with counsel.

20859 Mr. Hally presents argument on Defendant's motion.

21515 Ms. Dickerson presents argument on Defendant's motion.

21757 Mr. Hally presents rebuttal argument.

22046 Court takes Motion for Judgment of Acquittal under advisement and will issue written decision.

22106 Court denies request re: bail pending sentencing.

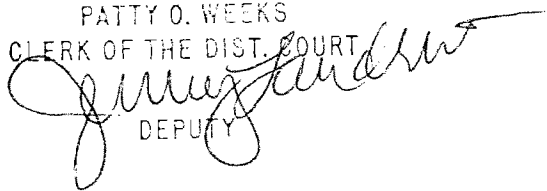
22151 Court recess.



FILED

2010 APR 16 PM 12 42

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
DEPUTY



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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MATTHEW T. HARPER, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

CASE NO. CR 2009-2662

**OPINION AND ORDER ON  
DEFENDANT'S MOTION TO  
FOR JUDGMENT OF  
ACQUITTAL**

This matter came before the Court on the Defendant's Motion for Judgment of Acquittal. The State of Idaho was represented by Sandra Dickerson, Senior Deputy Prosecuting Attorney for Nez Perce County. The Defendant was represented by Jonathan Hally, of the firm Clark and Feeney. The Court heard oral argument on this matter on March 25, 2010. The Court, being fully advised in the matter, hereby renders its decision.

**BACKGROUND AND PROCEDURAL HISTORY**

The Defendant, Matthew T. Harper, was found guilty by way of jury verdict of two offenses: Trafficking in Amphetamine and/or Methamphetamine by Manufacturing and Manufacture or Delivery of a Controlled Substance Where Children are Present. The

Defendant filed a motion for judgment of acquittal on the second count, Manufacture or Delivery of a Controlled Substance Where Children are Present.

### ANALYSIS

The Defendant argues acquittal on the second count—Manufacture or Delivery of a Controlled Substance Where Children are Present, I.C. § 37-2737A, is warranted in this case. The Defendant contends that there was insufficient evidence for the jury to conclude he was guilty of this crime because the only evidence of a minor child being present at the residence in question was on the date the search warrant was executed. However, according to the Defendant, there was no evidence that the Defendant manufactured a controlled substance on that particular date—there was only evidence that the Defendant was in possession of methamphetamine.

I.C.R. 29(c) addresses a motion for judgment of acquittal after discharge of the jury. “The proper description of the standard of review for a motion for judgment of acquittal under I.C.R. 29(c) is whether there was substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Hoyle*, 140 Idaho 679, 684, 99 P.3d 1069, 1074 (2004).

In the case at bar, the jury was instructed that “it is unlawful for any person to manufacture or deliver, or possess with the intent to manufacture or deliver, a controlled substance as defined in schedules I, II, III and IV in this chapter, upon the same premises where a child under the age of eighteen (18) years is present.” I.C. § 37-2737A, Jury Instruction No. 22. Further, the jury found the Defendant guilty of Trafficking in Amphetamine and/or Methamphetamine on or about or between the dates of August 2008 and March 19, 2009. *See* Jury Instruction No.12. The jury also had the opportunity to

consider the included charge of Possession of a Controlled Substance (Jury Instruction No. 16), but ultimately found the Defendant guilty as charged.

A review of the evidence presented at trial supports a finding that there was substantial evidence upon which the jury could have found the essential elements of the crime of Manufacture or Delivery of a Controlled Substance Where Children are Present beyond a reasonable doubt. The Defendant argues that on the date the search warrant was executed there was no evidence that the Defendant did manufacture a controlled substance, but only that the Defendant was in possession of a controlled substance. This argument is unpersuasive based upon the evidence produced at trial. There was ample evidence presented regarding items located within the Defendant's room of the residence to support the jury's finding that the Defendant manufactured methamphetamine, as defined by Jury Instruction No. 14. The evidence presented included testimony regarding the location of a two-stage liquid in a box, tubing that had methamphetamine located inside it, coffee filters with possible binder material located on them, and methamphetamine as a completed product that was recovered on the day the search warrant was issued. In addition, the mother of the child testified that she had lived in the residence for six months, and that the child was present at least half the time. Overall, there was sufficient evidence to support the findings made by the jury.

In addition, the Defendant relies on *State v. Gamble*, 146 Idaho 331, 343-44, 193 P.3d 878, 890-91 (Ct. App. 2008) in support of his argument that there must be proof of the completed process of manufacturing while the child is present in order for the Defendant to be guilty of Manufacture or Delivery of a Controlled Substance Where Children are Present. In *Gamble*, there was some discussion regarding the difference

between attempted manufacture and completed manufacture of methamphetamine; however, the Court was considering whether statements made by the prosecuting attorney during closing statements equated to prosecutorial misconduct. *Id.* Ultimately, the *Gamble* Court held “there was no denial of due process and there was overwhelming evidence that methamphetamine had been manufactured in the house, such that any prosecutorial misstatement of the law would be harmless.” *Id.* at 345, 193 P.3d at 892. The analysis presented in *Gamble* is not dispositive of the motion before this Court.

When reviewing the evidence presented as a whole, there is sufficient evidence to support the jury’s finding of guilt on both counts charged. Therefore, the Defendant’s motion for judgment of acquittal is denied.

#### CONCLUSION

The Defendant seeks a judgment of acquittal on Count II—Manufacture or Delivery of a Controlled Substance Where Children are Present, I.C. § 37-2737A. Based upon the foregoing reasons, the Defendant’s motion is denied.

#### ORDER

The Defendant’s Motion for Judgment of Acquittal is hereby DENIED.

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of April 2010.

  
\_\_\_\_\_  
CARL B. KERRICK – District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON MOTION FOR JUDGMENT OF ACQUITTAL was:

X hand delivered via court basket, or

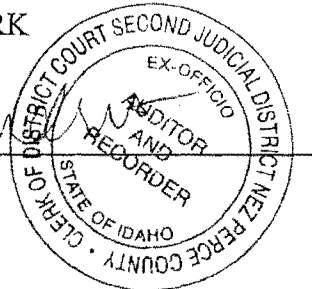
\_\_\_\_\_ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this \_\_\_\_\_ day of April, 2010, to:

Jonathan D. Hally  
CLARK AND FEENEY  
P O Drawer 285  
Lewiston ID 83501

Sandra K. Dickerson  
CHIEF DEPUTY PROSECUTING ATTORNEY  
P O Box 1267  
Lewiston ID 83501

PATTY O. WEEKS, CLERK

By *[Signature]*  
Deputy



COURT MINUTES

CR-2009-0002662

State of Idaho vs. Matthew Terrell Harper

Hearing type: Sentencing

Hearing date: 5/6/2010

Time: 2:31 pm

Judge: Carl B. Kerrick

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Jonathan Hally

Prosecutor: Sandra Dickerson

- 23123 Defendant present, in custody, with counsel.
- 23219 Court addresses Defendant.
- 23246 Defendant has reviewed the Report of Violation.
- 23256 Mr. Hally has no corrections to the PSI.
- 23304 Mr. Hally makes statement in mitigation.
- 23609 Ms. Dickerson makes statement in aggravation.
- 23734 Court addresses Defendant.
- 24024 Count 1—Department of Corrections 5-8 years, Count 2—  
Manufacture/Possess/Deliver Controlled Substance Where Children are Present—Department of  
Corrections 0-2 years to run consecutively with Count 1. Credit for time served toward the fixed  
portion of Defendant's sentence.
- Fine as to Count 1 \$25,000.00 and court costs \$110.50 and court costs as to Count 2  
\$110.50. Restitution in the amount of \$5439.97 joint and severally liable with Ashley Wolff and  
Bradley Stinson.
- 24339 Court addresses the parties re: bail and denies request.
- 24534 Mr. Hally addresses the Court.
- 24613 Court recess.

Handwritten signature and the number 254.

FILED

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

2010 MAY 6 PM 3 23

STATE OF IDAHO,

Plaintiff,

vs.

Matthew T. Harper

Defendant.

PATTY A. WILSON  
DEPUTY SHERIFF  
*(Signature)*

CASE NO. CR09-02662

COMMITMENT

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

The above-named Defendant, appearing before this Court this day, being informed by the Court of the nature of the charge against him/her, to wit:

Count 1 - Trafficking in Methamphetamine

Count 2 - Manufacture/Deliver/Possess Controlled Substance where children are present  
committed on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in said county,

and having been duly arraigned before the Court and having been duly found to be guilty and having stated that no legal cause existed why judgment should not be pronounced against him/her and no sufficient cause appearing to the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is guilty of said crime and that he/she be punished as follows: Imprisonment in the Idaho State Board of

Correction for a period of Count 1 - 5 to 8 years  
Count 2 - 0-2 years

NOW, THEREFORE, YOU, THE SAID SHERIFF OF NEZ PERCE COUNTY, STATE OF IDAHO, are hereby commanded to receive the said Defendant and detain him/her in the Idaho State Board of Correction, until this sentence is complied with.

DONE IN OPEN COURT this 6<sup>th</sup> day of May, 2010.

*Credit for time already served.  
Sentence in Count 1 & 2  
to run consecutively.*

*(Signature)*  
District Judge

COMMITMENT

255

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

STATE OF IDAHO,  
Plaintiff,

) ORDER OF BOND FORFEITURE  
) OR RELEASE

vs.  
Matthew Harper  
Defendant,

**FILED** Case CRO9-2662

200 May 10 AM 8:57 AMT. POSTED \$ \_\_\_\_\_

OFFENSE Trafficking in DEPT. OF CORRECTIONS CLERK OF THE DISTRICT COURT WESLEY DUMM \$ \_\_\_\_\_

POSTEE: AAAA Ace Bail Bonds DEPUTY Cost \$ \_\_\_\_\_  
Brandon W FAVOUR Vict. Fund \$ \_\_\_\_\_

Defendant  Surety C. J. Fund \$ \_\_\_\_\_

BOND AMOUNT \$ \_\_\_\_\_ C. I. Fund \$ \_\_\_\_\_

ADDRESS \_\_\_\_\_ Dst. Crt. Fund \$ \_\_\_\_\_

TOTAL REFUND \$ \_\_\_\_\_

IT IS HEREBY ORDERED that the bond is forfeited to the Court and Notice is hereby sent to the following on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

IT IS HEREBY ORDERED that the bond be returned.

IT IS HEREBY ORDERED that the Bond be applied to fines, costs, and to any other funds as ordered by the Court, and any sums remaining be disbursed to the Postee.

DATED this 10<sup>th</sup> day of May, 2010.

CEBI  
Judge

Check # \_\_\_\_\_

Drawn by \_\_\_\_\_

Received by \_\_\_\_\_

Mailed to \_\_\_\_\_  
~~ORDER OR BOND RELEASE~~



FILED

2010 MAY 10 AM 8 57

PATTY O-WEEKS  
CLERK OF THE DISTRICT COURT  
*Patty O Weeks*  
DEPUTY

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

	)	
	)	
	)	
	)	ORDER
	)	
MATTHEW T. HARPER,	)	CASE NO: CR09-02662
INMATE	)	
	)	

**CONFIDENTIAL:**

This P.S.I. packet shall be opened only by the Record's Clerk at any facility of  
the Idaho State Correctional Institution.

IT IS SO ORDERED this 10<sup>th</sup> day of May, 2010.

*Carl B. Kerrick*  
\_\_\_\_\_  
CARL B. KERRICK-District Judge

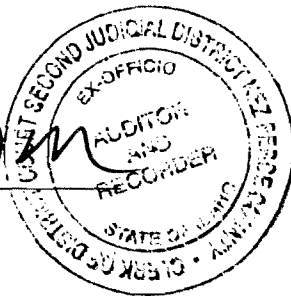
CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER was mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 10<sup>th</sup> day of May, 2010, on:

ISCI  
P O BOX 14  
BOISE ID 83707

PATTY O. WEEKS, CLERK

By: *Patty O. Weeks*  
Deputy



FILED

2010 MAY 10 AM 8 57

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
*[Handwritten Signature]*  
DEPUTY

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

THE STATE OF IDAHO,	)	CASE NO. CR09-02662
	)	
Plaintiff,	)	JUDGMENT OF CONVICTION
	)	
vs.	)	
	)	
MATTHEW T. HARPER,	)	
DOB: [REDACTED]	)	
SSN: [REDACTED]	)	
	)	
Defendant.	)	

This case having come on regularly for trial on February 22, 2010, before the Honorable Carl B. Kerrick, Sitting as Judge in the above-entitled case, with a jury duly and regularly empaneled, the defendant present in court and represented by Jonathan Hally and Sandra Dickerson present on behalf of the State of Idaho.

The defendant was charged by Information with the crime of Count 1 TRAFFICKING IN AMPHETAMINE AND/OR METHAMPHETAMINE BY MANUFACTURING, Idaho Code § 37-2732B(a)(3), a felony, committed on or about and between August 2008 and the March 19, 2009 and Count 2 MANUFACTURING OR DELIVERY OF A CONTROLLED SUBSTANCE WHERE CHILDREN ARE PRESENT, Idaho Code § 37-2737A, a felony, committed on or about and between August 2008 and March 19, 2009; and, a verdict of guilty to the crime of Count 1 TRAFFICKING IN AMPHETAMINE AND/OR METHAMPHETAMINE BY MANUFACTURING, Idaho Code § 37-2732B(a)(3), a felony, and Count 2 MANUFACTURING OR DELIVERY OF A CONTROLLED SUBSTANCE WHERE CHILDREN ARE PRESENT, Idaho Code § 37-2737A, a felony was rendered by the jury on February 24, 2010, and thereafter, a presentence investigation was submitted to the Court, and the Court having considered the same, and being fully advised in the premises;

On May 6, 2010, the Court asked the defendant if there existed any legal cause why judgment should not be pronounced, and Defendant replied that there was none, and no sufficient cause being shown or appearing to the Court, thereupon, the Court rendered its judgment as follows:

IT IS HEREBY, ORDERED, ADJUDGED AND DECREED that Defendant is guilty of the crime of Count 1 TRAFFICKING IN AMPHETAMINE AND/OR METHAMPHETAMINE BY MANUFACTURING, Idaho Code § 37-2732B(a)(3), a felony, and Count 2 MANUFACTURING OR DELIVERY OF A CONTROLLED SUBSTANCE WHERE CHILDREN ARE PRESENT, Idaho Code § 37-2737A, a felony and that defendant is SENTENCED at to Count 1 to the custody of the IDAHO STATE BOARD OF CORRECTION, Boise, Idaho for a period of not less than FIVE (5) years nor more than EIGHT (8) years, consisting of a minimum period of

260

confinement of FIVE (5) years during which the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct (except as provided by Section 20-101D, Idaho Code) and a subsequent indeterminate period of custody not exceeding THREE (3) years; Count 2 to the custody of the IDAHO STATE BOARD OF CORRECTION, Boise, Idaho for a period of not less than ZERO (0) years nor more than TWO (2) years, consisting of a minimum period of confinement of ZERO (0) years during which the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct (except as provided by Section 20-101D, Idaho Code) and a subsequent indeterminate period of custody not exceeding TWO (2) years.

That Defendant shall receive credit for time already served toward the FIXED portion of Defendant's sentence; and,

That the sentence in Count 1 and 2 shall run consecutively; and,

Defendant shall pay court costs as to Count 1 and 2 in the amount of \$110.50, for a total of \$221.00. That payments shall be mailed to Clerk of the Court, P O Box 896, Lewiston, Idaho 83501; and,

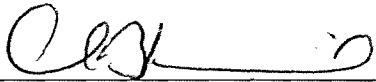
That Defendant shall pay a fine, as to Count 1, in the amount of \$25,000.00. That payments shall be mailed to Clerk of the Court, P O Box 896, Lewiston, Idaho 83501; and,

That Defendant shall make restitution to the victim(s), in the sum of \$5,439.97, joint and severally liable with Ashley Wolff CR09-02665 and Bradley Stinson CR09-02663. That all restitution payments for victims, as set forth hereinabove MUST be paid in the form of a CASHIERS CHECK or MONEY ORDER, made payable to: NEZ PERCE COUNTY VICTIM'S FUND and mailed to the NEZ PERCE COUNTY DISTRICT COURT, Post Office Box 896, Lewiston, Idaho 83501. There will be NO exceptions to the above requirements; and,

**NOTICE OF RIGHT TO APPEAL**

YOU, **MATTHEW T. HARPER**, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within the time provided by law.

DATED this 10<sup>th</sup> day of May, 2010, nunc pro tunc for May 6, 2010.

  
\_\_\_\_\_  
CARL B. KERRICK-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing JUDGMENT OF CONVICTION was:

hand delivered via court basket, or

\_\_\_\_\_ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 10<sup>th</sup> day of May, 2010, to:

IDOC Central Records *-mailed*  
1299 North Orchard Suite 110  
Boise ID 83701

Jonathan Hally  
P O Drawer 285  
Lewiston ID 83501

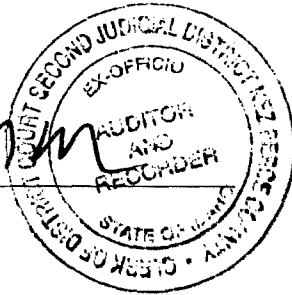
Prosecuting Attorney  
P.O. Box 1267  
Lewiston ID 83501

Idaho State Police

Probation and Parole

PATTY O. WEEKS, CLERK

By *P. O. Weeks*  
Deputy



FILED

2009 MAY 11 AM 9 10

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
DEPUTY  
*[Handwritten signature]*

JONATHAN D. HALLY  
CLARK and FEENEY, LLP  
Idaho State Bar # 4979  
1229 Main Street  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516  
Facsimile: (208) 746-9160  
Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CV 2009-2662
	)	
Plaintiff/Respondent,	)	<b>NOTICE OF APPEAL</b>
	)	
vs.	)	
	)	
MATTHEW T. HARPER	)	
	)	
Defendant/Appellant.	)	
_____	)	

**TO: THE ABOVE-NAMED RESPONDENT, THE STATE OF IDAHO AND THE PARTY'S ATTORNEY, DAN SPICKLER, PROSECUTING ATTORNEY, NEZ PERCE COUNTY PROSECUTOR'S OFFICE, PO BOX 1267, LEWISTON, IDAHO, AND THE CLERK OF THE ABOVE ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Matthew T. Harper, hereby appeals against the above-named Plaintiff/Respondent to the Idaho Supreme Court from the *Judgment of Conviction*, entered in the above-entitled action on the 10th day of May, 2010, Honorable Judge Carl Kerrick presiding.

**NOTICE OF APPEAL** -1

264



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

4           3.     A preliminary statement of the issues on appeal which the Appellant then intends to  
 5 assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from  
 6 asserting other issues on appeal include the following:

- 7           (a)    Did the District Court commit error in denying Defendant's Motion to Suppress?
- 8           (b)    Did the District Court commit error in denying the Defendant's Motion for Judgment
- 9           of Acquittal?

10          4.     No order has been entered sealing all or any portion of the record.

11          5.     (a) A reporter's transcript has been requested.

12                   (b) The Appellant requests preparation of the following portions of the reporter's  
 13 transcript in hard copy:

14           The reporter's standard transcript as defined in Rule 25(c), I.A.R. supplemented by  
 15 the transcript of the hearing of September 19, 2009 on Defendant's pretrial motions.

16          6.     The Appellant requests the following documents to be included in the clerk's record  
 17 in addition to those automatically included under Rule 28, I.A.R.:

- 18           (a)    State's Response to Request for Discovery filed 4/10/2009.
- 19           (b)    State's Supplemental Response to Request for Discovery filed 4/16/2009.
- 20           (c)    Second Supplemental Response to Request for Discovery filed 5/13/2009.
- 21           (d)    2<sup>nd</sup> Request for Discovery and Inspection filed 7/14/2009.
- 22           (e)    3<sup>rd</sup> Supplemental Response to Request for Discovery filed 7/21/2009.
- 23           (f)    4<sup>th</sup> Supplemental Response to Request for Discovery filed 7/30/2009.
- 24           (g)    Defendant's Motion to Dismiss and/or Severance of Counts filed 8/13/2009.
- 25           (h)    Defendant's Motion to Suppress filed 8/13/2009.
- 26           (i)    Affidavit of Jonathan D. Hally in Support of Motion to Suppress and Motion to  
              Dismiss filed 8/13/2009.
- (j)    Affidavit of Matthew T. Harper in Support of Motion to Suppress filed 8/13/2009.

- 1 (k) Brief in Support of Motion to Suppress 8/13/2009.
- 2 (l) Defendant's Reply to State's Brief in Objection to Defendant's Motion to Suppress Evidence filed on 9/08/2009.
- 3 (m) Motion to Reconsider filed 10/21/2009.
- 4 (n) Memorandum in Support of Motion to Reconsider filed 10/21/2009.
- 5 (o) 6<sup>th</sup> Supplemental Response to Request for Discovery filed 2/18/2010.
- 6 (p) 7<sup>th</sup> Supplemental Response to Request for Discovery filed 2/19/2010.
- 7 (q) 8<sup>th</sup> Supplemental Response to Request for Discovery filed 2/19/2010.
- 8 (r) Defendant's Motion for Judgment of Acquittal filed 3/10/2010.
- 9 (s) Memorandum in Support of Defendant's Motion for Judgment of Acquittal filed 3/10/2010.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and Address: Nancy Towler  
 Nez Perce County Courthouse  
 PO Box 896  
 Lewiston, Idaho 83501


(b)(1) That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

(c)(1) That the estimated fee for preparation of the clerk's record has been paid.

(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), Idaho Code.

DATED this 11 day of May, 2010.

CLARK and FEENEY, LLP

By:   
 Jonathan D. Hally, a Member of the firm  
 Attorneys for Defendant/Appellant

266

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of May, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mr. Dan Spickler  
Nez Perce County Prosecuting Attorney  
P.O. Box 1267  
1109 F Street  
Lewiston, Idaho 83501

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- Facsimile at: (208) 799-3080

Ms. Nancy Towler  
Nez Perce County Courthouse  
PO Box 896  
Lewiston, Idaho 83501

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- Facsimile at: (208) 799-3058

State of Idaho  
Office of Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010

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

By:   
Jonathan D. Hally

267

FILED

2010 MAY 17 PM 12 31

PATTY O. WEEKS

*P. O. Weeks*  
CLERK OF THE DISTRICT COURT

DEPUTY

JONATHAN D. HALLY  
CLARK and FEENEY, LLP  
Idaho State Bar # 4979  
1229 Main Street  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208)743-9516  
Facsimile: (208) 746-9160  
Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 2009-2662
	)	
Plaintiff,	)	
	)	<b>DEFENDANT'S SECOND MOTION</b>
vs.	)	<b>FOR BAIL OR RELEASE PENDING</b>
	)	<b>APPEAL</b>
MATTHEW T. HARPER,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the named Defendant in the above-entitled matter, by and through his counsel of record, Jonathan Hally of the law firm of Clark and Feeney, LLP, and pursuant to Idaho Criminal Rule 46 moves this Court to release the Defendant upon his own recognizance or upon bail and under terms and conditions as the Court may deem necessary pending appeal.

This motion is based upon the grounds that Mr. Harper is appealing his conviction, including this Court's denial of his motion to suppress evidence. Mr. Harper has attended all

**DEFENDANT'S SECOND MOTION FOR  
BAIL OR RELEASE PENDING APPEAL**

268

1 scheduled hearings during the pendency of this matter; has family living in Lewiston, Idaho for  
2 which he can stay during the appeal process, and he is capable of securing work during the appeal.  
3 Without question, Mr. Harper is not a danger to society nor a flight risk as is evidenced by the fact  
4 that he has been released on his own recognizance during the pendency of the criminal prosecution  
5 and attended all matters scheduled and did not commit any law violations. Further, as noted at  
6 sentencing, the State had attempted to enter into a plea bargain with the Defendant which would  
7 have resulted in Mr. Harper attending the retained jurisdiction program and, presumably, be  
8 released by this time.  
9

10 Clearly, given the above, Mr. Harper's release pending appeal will not harm anyone. This  
11 Court can set up requirements for his monitoring and random drug tests as it deems necessary. If  
12 Mr. Harper is unsuccessful on appeal then the sentence would be imposed and he would serve his  
13 sentence. However, if Mr. Harper is successful on appeal, he will have suffered an irreparable loss  
14 of his freedom. In State v. Edwin Contreras-Gonzales, Nez Perce County Case CR2004-4289,  
15 the Defendant was convicted of Trafficking in Methamphetamine and was sentenced in  
16 conformance with the mandatory minimum sentence required for the charge. Like Mr. Harper, Mr.  
17 Contreras-Gonzales moved to suppress evidence which the Honorable Judge Brudie denied. On  
18 appeal, the Idaho Court of Appeals vacated and remanded the matter back to the district court for  
19 further review. Upon remand, the District Judge entered an order reversing the judgment of  
20 conviction and ordering a new trial. The lesson learned in Mr. Contreras-Gonzales' case is that  
21 the judgement of conviction in that matter was entered on August 10, 2006 and the order vacating  
22  
23  
24

25 **DEFENDANT'S SECOND MOTION FOR**  
26 **BAIL OR RELEASE PENDING APPEAL**

- 2

1 that Judgment was on March 2, 2009. During the two and a half years the matter was on appeal,  
2 Mr. Edwin Contreras-Gonzales sat in prison. In that case, a plea bargain was ultimately reached.  
3 In the case at bar, if Mr. Harper is successful, the matter would be dismissed as there would be no  
4 evidence for the State to use at trial.

5 Since granting the Rule 46 request would not harm anyone, while a denial of the motion  
6 could cause an irreparably loss of freedom, Mr. Harper, respectfully requests this Court grant the  
7 motion to release Mr. Harper pending appeal.  
8

9 DATED this // day of May, 2010.

10 CLARK and FEENEY, LLP

11  
12  
13 By: 

14 Jonathan D. Hally, a Member of the firm  
15 Attorneys for Defendant

16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY that on this // day of May, 2010, I caused to be served a true and  
18 correct copy of the foregoing document by the method indicated below, and addressed to the  
19 following:

20 Ms. Sandra K. Dickerson  
21 Nez Perce County Prosecuting Attorney  
22 P.O. Box 1267  
23 1109 F Street  
24 Lewiston, Idaho 83501

U.S. Mail, postage prepaid  
 Hand Delivered  
 Overnight Delivery  
 Facsimile at: (208) 799-3080

25 By: 

26 Jonathan D. Hally

**DEFENDANT'S SECOND MOTION FOR  
BAIL OR RELEASE PENDING APPEAL**

- 3

FILED  
2010 MAY 12 PM 12 22

PATTY O. WEERS  
CLERK OF THE DISTRICT COURT  
*[Signature]*  
DEPUTY

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

STATE OF IDAHO, )

Plaintiff, )

vs. )

MATTHEW T. HARPER, )

Defendant. )

CASE NO. CR09-02662

ORDER DENYING DEFENDANT'S  
SECOND MOTION FOR BAIL OR  
RELEASE PENDING APPEAL

Defendant filed his Second Motion for Bail or Release Pending Appeal on May 11, 2010. The Court having reviewed and considered the motion hereby DENIES Defendant Second Motion for Bail or Release Pending Appeal based on comments presented by the Court at Defendant's sentencing hearing on May 6, 2010.

Dated this 12<sup>th</sup> day of May, 2010.

*[Signature]*  
\_\_\_\_\_  
CARL B. KERRICK-District Judge

ORDER DENYING DEFENDANT'S  
SECOND MOTION FOR BAIL OR  
RELEASE PENDING APPEAL

CERTIFICATE OF MAILING


I hereby certify that a true copy of  
the foregoing ORDER DENYING MOTION  
was mailed, postage prepaid, by the undersigned at  
Lewiston, Idaho, this 12<sup>th</sup> day of May, 2010, to:

Jonathan Hally - *messenger*  
P O Drawer 285  
Lewiston ID 83501

Sandra Dickerson - *messenger*  
P O Box 1267  
Lewiston ID 83501

PATTY O. WEEKS, Clerk

By *Patty O. Weeks*  
Deputy

A circular seal for the Second Judicial District, State of Idaho. The outer ring contains the text "SECOND JUDICIAL DISTRICT STATE OF IDAHO" at the top and "CLERK AND RECORDER" at the bottom. The center of the seal features a stylized signature and the words "OFFICE" and "RECORDING" above and below the signature.

ORDER DENYING DEFENDANT'S  
SECOND MOTION FOR BAIL OR  
RELEASE PENDING APPEAL



FILED

2010 MAY 14 AM 8 51  
ORIGINAL

PATTY S. WEEKS  
CLERK OF DISTRICT COURT  
*Patty Weeks*

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

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW T. HARPER,

Defendant.

CASE NO. CR2009-0002662

ORDER FOR RESTITUTION AND  
JUDGMENT

WHEREAS, on May 6, 2010, an Order for Restitution was entered against the above-named defendant; and therefore pursuant to Idaho Code Section 19-5304 and based on evidence presented to this Court,

IT IS HEREBY ORDERED that the above-named defendant shall make restitution to ISP DRUG AND DRUNK DRIVING ACCOUNT in the amount of \$5,439.97. Said amount being held jointly and severally liable with Ashley Wolff CR2009-0002665 and Bradley Stinson CR2009-0002663.

This Order constitutes a civil judgment in favor of ISP DRUG AND DRUNK DRIVING ACCOUNT and against the above-named defendant and accrues interest at the statutory rate specified for civil judgments. After FORTY-TWO (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

ORDER FOR RESTITUTION AND JUDGMENT

IT IS SO ORDERED.

DATED this 14<sup>th</sup> day of May 2010.

*CEB*  
JUDGE

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing, Order for Restitution and Judgment,

- (1) \_\_\_\_\_ hand delivered, or
- (2)  hand delivered via court basket, or
- (3) \_\_\_\_\_ sent via facsimile, or
- (4) \_\_\_\_\_ mailed, postage prepaid, by depositing the same in the United States mail, addressed to the following:

Jonathan D. Hally  
Clark & Feeney  
P.O. Drawer 285  
Lewiston Idaho 83501

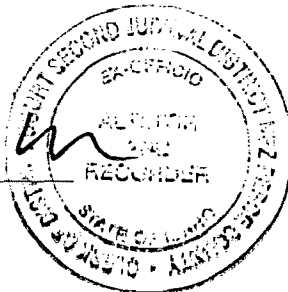
Prosecutor's Office  
P. O. Box 1267  
Lewiston, ID 83501

State of Idaho  
Department of Probation and Parole  
908 Idaho Street  
Lewiston, Idaho 83501

DATED this 17<sup>th</sup> day of May 2010.

CLERK OF THE COURT

*JCS Damm*  
Deputy



ORDER FOR RESTITUTION AND JUDGMENT

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

THE STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 37683
	)	CERTIFICATE OF EXHIBITS
v.	)	
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant-Appellant.	)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, do hereby certify that the following list is a list of the exhibits offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Court this 12 day of July 2010.

PATTY O. WEEKS, Clerk

By *DeAnna P. Grimm*  
Deputy

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	State's exhibit 1 - Picture shows vial of methamphetamine (on left) along with other supplies for making meth. Admitted 5/13/09	Admitted	On appeal to Deanna 6/		
2	State's exhibit 2 - Cabinet with supplies for making meth. Admitted 5/13/09	Admitted	On appeal to Deanna 6/		
3	State's exhibit 3 - Picture of large bottle marked as 10 containing a substance taken from the house, and small bottle marked 10A is a sample taken from the larger bottle to send to the lab for analysis. Admitted 5/13/09	Admitted	On appeal to Deanna 6/		
4	State's exhibit 4 - Picture of a jar containing a substance which was taken from the house and marked as 11. Sample 11A is a sample taken from the jar to be sent to the lab for analysis. Admitted 5/13/09	Admitted	On appeal to Deanna 6/		
5	State's exhibit 5 - Picture of child who lived in the home where the meth lab was found. Admitted 5/13/09	Admitted	On appeal to Deanna 6/		
6	State's exhibit 6 - ISP Forensic Services Criminalistic Analysis Report. Admitted 5/13/09	Admitted	On appeal to Deanna 6/		
7	Defendant's exhibit #1 Order Releasing Funds admitted at contempt hearing 8-17-09	Admitted	On appeal to Deanna 6/		
8	Defendant's exhibit #2 Seizure Warrant admitted at contempt hearing 8-17-09	Admitted	On appeal to Deanna 6/		
9	Defendant's exhibit #3 Notice of Seizure admitted at contempt hearing 8-17-09	Admitted	On appeal to Deanna 6/		
10	State's exhibit A Complaint CV09-00854 admitted at contempt hearing 8-17-09	Admitted	On appeal to Deanna 6/		
✓ 11	State's exhibit 1 vials of liquid exhibits B01A, B11A, B12A, B13A and Z01A ADMITTED AT JURY TRIAL 2-22-10	Admitted	Drug Vault A 090000570 28-32		
✓ 12	State's exhibit 2 pseudophedrine tablets ADMITTED AT JURY TRIAL 2-22-10	Admitted	Drug Vault A ISP 090000570 #20		

*photo in place of exhibit*

*photo in place of exhibit 27b*

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
✓ 13	State's exhibit 3 pipes and straw ADMITTED AT JURY TRIAL 2-22-10	Admitted	Drug Vault A ISP 090000570 #22		
		Assigned to:	Dickerson, Sandra K.		
✓ 14	State's exhibit 4 tubing from the wooden box ADMITTED AT JURY TRIAL 2-23-10	Admitted	Drug Vault A ISP 090000570 #27		
		Assigned to:	Dickerson, Sandra K.		
✓ 15	State's exhibit 5 vial of methamphetamine ADMITTED AT JURY TRIAL 2-23-10	Admitted	Drug Vault A ISP 090000570 #21		
		Assigned to:	Dickerson, Sandra K.		
16	State's exhibits 6A thru 6S photographs ADMITTED AT JURY TRIAL 2-22-10 -----6 I WAS ADMITTED 2-23-10	Admitted	On appeal to Deanna 6/		
		Assigned to:	Dickerson, Sandra K.		
17	State's exhibit 7 photograph ADMITTED AT JURY TRIAL 2-23-10 FOR ILLUSTRATIVE PURPOSES	Admitted	On appeal to Deanna 6/		
		Assigned to:	Dickerson, Sandra K.		
18	State's exhibit 8A thru 8Z photographs ADMITTED AT JURY TRIAL 2-23-10	Admitted	On appeal to Deanna 6/		
		Assigned to:	Dickerson, Sandra K.		
19	State's exhibit 9 lab report ADMITTED AT JURY TRIAL 2-23-10	Admitted	On appeal to Deanna 6/		
		Assigned to:	Dickerson, Sandra K.		
20	State's exhibit 10 lab report--supplemental dated 2-17-10 ADMITTED AT JURY TRIAL 2-23-10	Admitted	On appeal to Deanna 6/		
		Assigned to:	Dickerson, Sandra K.		

*photo in place of exhibit*

*photo in place of exhibit*

*photo in place of exhibit*

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

THE STATE OF IDAHO,	)	
	)	
	)	SUPREME COURT NO. 37683
Plaintiff-Respondent,	)	
	)	CLERK'S CERTIFICATE
v.	)	
	)	
	)	
MATTHEW T. HARPER,	)	
	)	
	)	
Defendant-Appellant.	)	

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

I further certify:

1. That all documents, x-rays, charts, and pictures offered or admitted as exhibits in the above-entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record (except for State's exhibit #1 Vials of liquid, State's exhibit #2 Pseudophedrine tables, State's exhibit #3 Pipes and straw,

CLERK'S CERTIFICATE

State's exhibit #4 Tubing from the wooden box and State's exhibit #5 Vial of methamphetamine) The above exhibits will be retained in the possession of the undersigned, as required by Rule 31 of the Idaho Appellate Rules.

2. That the following will be submitted as a confidential exhibit to the record:

Presentence Report dated April 27, 2010

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court this 12 day of July 2010.

PATTY O. WEEKS, Clerk

By   
Deputy Clerk

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

THE STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 37683
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
MATTHEW T. HARPER,	)	
	)	
Defendant-Appellant.	)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that copies of the Clerk's Record and the Reporter's Transcript were placed in the United States mail and addressed to Lawrence G. Wasden, Attorney General, P. O. Box 83720, Boise, Idaho 83720-0010 and hand delivered by Valley Messengers to Jonathan D. Hally, P O Drawer 285, Lewiston, ID 83501 this 15 day of ~~June~~ <sup>Sept</sup> 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 15 day of ~~June~~ <sup>Sept</sup> 2010.

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT

**DEANNA P. GRIMM**

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