

12-1-2010

State v. Thumm Clerk's Record v. 1 Dckt. 37512

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO,
PLAINTIFF-RESPONDENT.

vs.

VANCE EVERETT THUMM,
DEFENDANT-APPELLANT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon MIKE WETHERELL, District Judge

MOLLY HUSKEY
State Appellate Public Defender

Attorney for Appellant

LAWRENCE G. WASDEN
Attorney General

Attorney for Respondent

VOLUME I
COPY



37512

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

VANCE EVERETT THUMM,

Defendant-Appellant.

Supreme Court Case No. 37512

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MIKE WETHERELL

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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ROA Report

Case: CR-FE-2009-0006798 Current Judge: Mike Wetherell

Defendant: Thumm, Vance E

State of Idaho vs. Vance E Thumm

Date	Code	User		Judge	
4/15/2009	NCRF	PRHARRSK	New Case Filed - Felony	Magistrate Court Clerk	
	PROS	PRHARRSK	Prosecutor assigned Ada County Prosecutor	Magistrate Court Clerk	
	WARI	PRHARRSK	Warrant Issued - Arrest Bond amount: 1000000.00 Defendant: Thumm, Vance Everett	Magistrate Court Clerk	
	XSEA	PRHARRSK	Case Sealed	Magistrate Court Clerk	
	STAT	PRHARRSK	STATUS CHANGED: Inactive	Magistrate Court Clerk	
	4/16/2009	WART	TCMCCOSL	Warrant Returned Defendant: Thumm, Vance Everett	Magistrate Court Clerk
XUNS		TCMCCOSL	Case Un-sealed	Magistrate Court Clerk	
STAT		TCMCCOSL	STATUS CHANGED: Activate (previously inactive)	Magistrate Court Clerk	
BOOK		TCMCCOSL	Booked into Jail on:	Magistrate Court Clerk	
HRSC		TCMCCOSL	Hearing Scheduled (Video Arraignment 04/16/2009 01:30 PM)	Michael Oths	
ARRN		TCMCCUKM	Hearing result for Video Arraignment held on 04/16/2009 01:30 PM: Arraignment / First Appearance	Michael Oths	
CHGA		TCMCCUKM	Judge Change: Administrative	Michael Oths	
HRSC		TCMCCUKM	Hearing Scheduled (Preliminary 04/30/2009 08:30 AM)	Michael Oths	
BSET		TCMCCUKM	BOND SET: at 1000000.00 - (I18-907 Battery-aggravated)	Michael Oths	
		MADEFRJM	Notice Of Hearing	Michael Oths	
NCON		TCMCCUKM	No Contact Order:	Michael Oths	
4/20/2009		PROS	PRJOHNLM	Prosecutor assigned Casey J Hemmer	Michael Oths
4/27/2009	ORMR	CCEDWARM	Order For Delivery of Medical Records	Theresa Gardunia	
4/30/2009	CONT	CCEDWARM	Hearing result for Preliminary held on 04/30/2009 08:30 AM: Continued	Michael Oths	
	CHGA	CCEDWARM	Judge Change: Administrative	Michael Oths	
	HRSC	CCEDWARM	Hearing Scheduled (Review 05/04/2009 09:30 AM)	Michael Oths	
	AFPD	CCEDWARM	Application For Public Defender	Michael Oths	
	ORPD	CCEDWARM	Order Appointing Public Defender	Michael Oths	
	MFBR	TCBULCEM	Motion For Bond Reduction	Kevin Swain	
	NOHG	TCBULCEM	Notice Of Hearing	Kevin Swain	
	RQDD	TCBULCEM	Defendant's Request for Discovery	Kevin Swain	
	5/4/2009	CONT	CCEDWARM	Hearing result for Review held on 05/04/2009 09:30 AM: Continued	Kevin Swain
		HRSC	CCEDWARM	Hearing Scheduled (Preliminary 05/21/2009 08:30 AM)	Kevin Swain

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ROA Report

Case: CR-FE-2009-0006798 Current Judge: Mike Wetherell

Defendant: Thumm, Vance E

State of Idaho vs. Vance E Thumm

Date	Code	User	Judge
5/21/2009	BOUN	CCEDWARM	Hearing result for Preliminary held on 05/21/2009 08:30 AM: Bound Over (after Prelim) Lynn Brower
	HRSC	CCEDWARM	Hearing Scheduled (Arraignment 05/28/2009 09:00 AM) Lynn Brower
	DSBC	CCEDWARM	Dismissed by the Court (I18-2604 {F} Witness-intimidating A Witness) Lynn Brower
	COMT	CCEDWARM	Commitment Lynn Brower
	AMCO	CCEDWARM	Amended Complaint Filed Lynn Brower
5/22/2009	MFBR	TCBULCEM	Motion For Bond Reduction Mike Wetherell
5/26/2009	INFO	TCKELLHL	Information Mike Wetherell
5/27/2009	PROS	PRBRIGCA	Prosecutor assigned GABRIEL HAWS Mike Wetherell
5/28/2009	DCAR	DCOATMAD	Hearing result for Arraignment held on 05/28/2009 09:00 AM: District Court Arraignment- Court Reporter: Nicole Omsberg Number of Pages: less than 50 Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Entry of Plea 06/04/2009 09:00 AM) Mike Wetherell
	NOTC	DCOATMAD	Notification of Penalties for Violation of a No Contact Order Mike Wetherell
6/4/2009	DCHH	DCOATMAD	Hearing result for Entry of Plea held on 06/04/2009 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 50 Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Jury Trial 08/24/2009 09:00 AM) Mike Wetherell
	PLEA	DCOATMAD	A Plea is entered for charge: - NG (I18-907 Battery-aggravated) Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Pretrial Conference 08/20/2009 01:30 PM) Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Motion 07/30/2009 09:00 AM) Mike Wetherell
		DCOATMAD	Notice of Trial Setting Jt 08 24 09 -- PTC 08 20 09 Mike Wetherell
6/10/2009	MOTN	TCKELLHL	Motion for Preliminary Hearing Transcript Mike Wetherell
6/11/2009	ORDR	DCOATMAD	Order for Preliminary Hrg Transcript Mike Wetherell
6/15/2009	MOTN	TCRAMISA	Motion for DQ Without Cause Mike Wetherell
6/17/2009	ORDR	DCDANSEL	Order for Disqualification Without Cause (Dennis Goff) Mike Wetherell
	NOTC	TCRAMISA	Notice of Preparation of Transcript Mike Wetherell
7/6/2009	RSDS	TCRAMISA	State/City Response to Discovery Mike Wetherell
	RQDS	TCRAMISA	State/City Request for Discovery Mike Wetherell
7/8/2009	MOTN	TCBULCEM	Motion for leave to file Info Part II Mike Wetherell
	NOHG	TCBULCEM	Notice Of Hearing Mike Wetherell

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ROA Report

Case: CR-FE-2009-0006798 Current Judge: Mike Wetherell

Defendant: Thumm, Vance E

State of Idaho vs. Vance E Thumm

Date	Code	User	Judge
7/15/2009	PHTF	TCBULCEM	Preliminary Hearing Transcript Filed Mike Wetherell
7/16/2009	RSDS	TCRAMISA	State/City Response to Discovery/Addendum Mike Wetherell
7/24/2009	NOTC	TCKELLHL	Notice of Intent to Use IRE 404(b) and ICR 16 Mike Wetherell
	MOTN	TCKELLHL	Motion for In Limine Ruling Regarding the Admissibility of Excited Utterance Statements Mike Wetherell
	RSDS	TCKELLHL	State/City Response to Discovery/2nd Addendum Mike Wetherell
7/28/2009	RSDS	TCBULCEM	State/City Response to Discovery/3rd addendum Mike Wetherell
	NOHG	TCBULCEM	Notice Of Hearing Mike Wetherell
7/30/2009	DCHH	DCOATMAD	Hearing result for Motion held on 07/30/2009 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 50 Mike Wetherell
	PLEA	DCOATMAD	A Plea is entered for charge: - NG (I19-2514 Enhancement-Persistent Violator) Mike Wetherell
	INFO	DCOATMAD	Information Part II Filed Mike Wetherell
	RSDS	TCBULCEM	State/City Response to Discovery/4th addendum Mike Wetherell
7/31/2009	MOTN	TCBULCEM	Motion for joinder of two or more defendants Mike Wetherell
	MISC	TCBULCEM	Brief in support of state's motion for joinder of defendants Mike Wetherell
	NOHG	TCBULCEM	Notice Of Hearing Mike Wetherell
8/3/2009	HRSC	TCBULCEM	Hearing Scheduled (Hearing Scheduled 08/06/2009 09:00 AM) Mike Wetherell
8/6/2009	DCHH	DCOATMAD	Hearing result for Hearing Scheduled held on 08/06/2009 09:00 AM: District Court Hearing Held Court Reporter: Vanessa Gosney Number of Transcript Pages for this hearing estimated: less than 50 Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Motion 08/13/2009 09:00 AM) Mike Wetherell
8/13/2009	DCHH	DCOATMAD	Hearing result for Motion held on 08/13/2009 09:00 AM: District Court Hearing Held Court Reporter: Madsen Kim Number of Transcript Pages for this hearing estimated: less than 50 Mike Wetherell
	CONT	DCOATMAD	Continued (Jury Trial 10/26/2009 09:00 AM) Mike Wetherell
	CONT	DCOATMAD	Continued (Pretrial Conference 10/15/2009 01:30 PM) Mike Wetherell
	RSDS	TCBULCEM	State/City Response to Discovery/5th addendum Mike Wetherell
	ORDR	DCOATMAD	Order for Joinder FE09-10688 and FE09-10691 Mike Wetherell
8/27/2009	RSDS	TCRAMISA	State/City Response to Discovery/Sixth Addendum Mike Wetherell
9/15/2009	RSDS	TCBULCEM	State/City Response to Discovery/7th addendum Mike Wetherell
	STIP	TCBULCEM	Stipulation for sub of counsel/Bond Mike Wetherell

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ROA Report

Case: CR-FE-2009-0006798 Current Judge: Mike Wetherell

Defendant: Thumm, Vance E

State of Idaho vs. Vance E Thumm

Date	Code	User	Judge
9/23/2009	STIP	TCWEATJB	Stipulation For Protective Order Pursuant to I.C.R. 16(k)
9/24/2009	RSDS	TCRAMISA	State/City Response to Discovery/Eight Addendum
	ORDR	DCDANSEL	Protective Order Pursuant to ICR 16(k)
9/29/2009	RSDS	TCBULCEM	State/City Response to Discovery/9th addendum
10/7/2009	RSDS	TCRAMISA	State/City Response to Discovery/Tenth Addendum
10/8/2009	RSDS	TCRAMISA	State/City Response to Discovery/Eleventh Addendum
10/9/2009	MOTN	TCRAMISA	Motion for Pre-Trial Ruling Regarding Admissability of Evidence
	NOHG	TCRAMISA	Notice Of Hearing
10/15/2009	DCHH	DCOATMAD	Hearing result for Pretrial Conference held on 10/15/2009 01:30 PM: District Court Hearing Held Court Reporter: Kasey Redlich Number of Transcript Pages for this hearing estimated: Pre-Trial Ruling Regarding Admissibility of Evidence and Motion to Enlarge Time less than 50
	NOTC	DCOATMAD	Second Notice of Intent to Use IRE 404b
	ORDR	TCRAMISA	Order to Transport
10/16/2009	MISC	TCRAMISA	Amended Second Notice of Intent to Use IRE 404(b) and ICR 16
	MOTN	TCRAMISA	Motion to Transport
10/20/2009	RSDD	TCRAMISA	Defendant's Response to Discovery
10/21/2009	RSDS	TCBULCEM	State/City Response to Discovery/12th Addendum
	AFFD	TCBULCEM	Affidavit of Virginia Bond
	NOTC	TCBULCEM	Notice of intent
10/22/2009	MOTN	DCOATMAD	Motion to Transport Witness
	WITN	DCOATMAD	State's Witness List
	NOTC	DCOATMAD	Third Notice of Intent to Use IRE 404(b) and ICR 16
	ORDR	DCOATMAD	Order to Transport Witness
10/23/2009	MOTN	DCOATMAD	Motion to Quash Subpoena
	MISC	DCOATMAD	Memorandum in Support of Motion to Quash
	RQDD	TCBULCEM	Defendant's Request for Discovery/Specific
	MOTN	TCBULCEM	Motion in limine
10/26/2009	NOTC	DCOATMAD	Notice of Intent to Impeach
	RSDS	DCOATMAD	Sixth Addendum to Discovery Response to Court
	RSDS	DCOATMAD	Thirteenth Addendum to Discovery Repsonse to Court

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ROA Report

Case: CR-FE-2009-0006798 Current Judge: Mike Wetherell

Defendant: Thumm, Vance E

State of Idaho vs. Vance E Thumm

Date	Code	User		Judge
10/26/2009	DCHH	DCOATMAD	Hearing result for Jury Trial held on 10/26/2009 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than \$250	Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Jury Trial 10/27/2009 09:00 AM)	Mike Wetherell
	MOTN	TCBULCEM	Motion to suppress	Mike Wetherell
10/27/2009	DCHH	DCOATMAD	Hearing result for Jury Trial held on 10/27/2009 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 250	Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Jury Trial 10/27/2009 09:00 AM)	Mike Wetherell
	CONT	DCOATMAD	Continued (Jury Trial 10/28/2009 09:00 AM)Day Three	Mike Wetherell
10/28/2009	DCHH	DCOATMAD	Hearing result for Jury Trial held on 10/28/2009 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 50	Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Jury Trial 10/30/2009 09:00 AM) Day Four	Mike Wetherell
10/29/2009	MOTN	TCBULCEM	Motion to quash subpoena	Mike Wetherell
	MOTN	TCBULCEM	Motion for order shortening time	Mike Wetherell
	NOHG	TCBULCEM	Notice Of Hearing	Mike Wetherell
	HRSC	TCBULCEM	Hearing Scheduled (Hearing Scheduled 10/30/2009 08:30 AM) Motion to Quash Subpoena	Mike Wetherell
	ORDR	DCDANSEL	Order for Delivery of Medical Records to the Ada County Pros Pursuant to I.C. § 19-3004; ICR 17	Mike Wetherell
	MOTN	TCBULCEM	Motion to Transport	Mike Wetherell
10/30/2009	HRHD	DCOATMAD	Hearing result for Hearing Scheduled held on 10/30/2009 08:30 AM: Hearing Held Motion to Quash Subpoena	Mike Wetherell
	DCHH	DCOATMAD	Hearing result for Jury Trial held on 10/30/2009 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 250	Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Sentencing 12/18/2009 11:00 AM)	Mike Wetherell
	FIGT	DCOATMAD	Finding of Guilty (I18-907 Battery-aggravated)	Mike Wetherell
	FIGT	DCOATMAD	Finding of Guilty (I19-2514 Enhancement-Persistent Violator)	Mike Wetherell
	STAT	DCOATMAD	STATUS CHANGED: closed pending clerk action	Mike Wetherell

000007

State of Idaho vs. Vance E Thumm

Date	Code	User		Judge
10/30/2009	JUIN	DCOATMAD	Jury Instructions Filed	Mike Wetherell
	VERD	DCOATMAD	Verdict Form	Mike Wetherell
	INFO	DCOATMAD	Information Part II Verdict	Mike Wetherell
	PSIO1	DCOATMAD	Pre-Sentence Investigation Evaluation Ordered	Mike Wetherell
11/17/2009	ORDR	DCOATMAD	Notice of Ex Parte Contact	Mike Wetherell
12/1/2009	RSDS	TCRAMISA	State/City Response to Discovery/Fourteenth Addendum	Mike Wetherell
	MOTN	TCRAMISA	Motion to Withdraw as Attorney of Record/Bond	Mike Wetherell
	AFFD	TCRAMISA	Affidavit of Counsel	Mike Wetherell
	HRSC	DCDANSEL	Hearing Scheduled (Motion to Withdraw 12/10/2009 10:30 AM)	Mike Wetherell
12/10/2009	DCHH	DCOATMAD	Hearing result for Motion to Withdraw held on 12/10/2009 10:30 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated:	Mike Wetherell
	CONT	DCOATMAD	Continued (Sentencing 01/15/2010 10:00 AM)	Mike Wetherell
12/11/2009		DCOATMAD	Notice and Order Appointing Public Defender	Mike Wetherell
	MFBR	TCBULCEM	Motion For Bond Reduction	Mike Wetherell
	NOHG	TCBULCEM	Notice Of Hearing	Mike Wetherell
	RQDD	TCBULCEM	Defendant's Request for Discovery	Mike Wetherell
12/14/2009	CONT	DCOATMAD	Continued (Sentencing 01/08/2010 10:00 AM)	Mike Wetherell
12/17/2009	STIP	TCRAMISA	Stipulation to Change the Date of Sentencing	Mike Wetherell
1/4/2010	MOTN	TCRAMISA	Motion to Conflict of Interest	Mike Wetherell
	AFFD	TCRAMISA	Affidavit of Defendant	Mike Wetherell
1/8/2010	DCHH	DCOATMAD	Hearing result for Sentencing held on 01/08/2010 10:00 AM: District Court Hearing Held Court Reporter: Jeanne Hirmer Number of Transcript Pages for this hearing estimated: less than 50	Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Review 01/28/2010 09:00 AM)	Mike Wetherell
1/28/2010	DCHH	DCOATMAD	Hearing result for Review held on 01/28/2010 09:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 50	Mike Wetherell
	HRSC	DCOATMAD	Hearing Scheduled (Sentencing 03/10/2010 10:00 AM)	Mike Wetherell
3/10/2010	DCHH	DCOATMAD	Hearing result for Sentencing held on 03/10/2010 10:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 50	Mike Wetherell

000008

ROA Report

Case: CR-FE-2009-0006798 Current Judge: Mike Wetherell

Defendant: Thumm, Vance E

State of Idaho vs. Vance E Thumm

Date	Code	User		Judge
3/10/2010	RESR	DCOATMAD	Restitution Recommended by the Prosecutor's office. 965.50 victim # 1	Mike Wetherell
	RESR	DCOATMAD	Restitution Recommended by the Prosecutor's office. 946.34 victim # 2	Mike Wetherell
	RESR	DCOATMAD	Restitution Recommended by the Prosecutor's office. 14434.61 victim # 3	Mike Wetherell
	RESR	DCOATMAD	Restitution Recommended by the Prosecutor's office. 1615.00 victim # 5	Mike Wetherell
	JAIL	DCOATMAD	Sentenced to Jail or Detention (I18-907 Battery-aggravated) Confinement terms: Credited time: 329 days. Penitentiary determinate: 15 years. Penitentiary indeterminate: 25 years.	Mike Wetherell
	SNPF	DCOATMAD	Sentenced To Pay Fine 0.00 charge: I18-907 Battery-aggravated	Mike Wetherell
3/11/2010	JCOG	DCDANSEL	Judgment Of Conviction & Order Of Commitment	Mike Wetherell
	ORDR	DCDANSEL	Order for DNA Sample	Mike Wetherell
	ORDR	DCDANSEL	Order for Restitution and Judgment	Mike Wetherell
3/15/2010	APSC	TCPETEJS	Appealed To The Supreme Court	Mike Wetherell
3/17/2010	ORDR	DCOATMAD	Order Appointing State Appellate PD on Appeal	Mike Wetherell
3/22/2010	RESR	PRSCHMAN	Restitution Recommended by the Prosecutor's office. 14434.61 victim # 6	Mike Wetherell
3/23/2010	MOTN	TCRAMISA	Motion for Reconsideration of Sentence	Mike Wetherell
	MISC	TCRAMISA	Brief in Support of Defendant's Motion for Reconsideration of Sentence	Mike Wetherell
3/26/2010	MISC	TCBULCEM	Objection to Defendant's Motion for Reconsideration of Sentence	Mike Wetherell
	ORDR	DCOATMAD	Order Denying Motion for Reconsideration of Sentence	Mike Wetherell
4/15/2010	NOTA	CCTHIEBJ	Amended Notice of Appeal	Mike Wetherell

000009

APR 15 2009

J. DAVID NAVARRO, Clerk
By S. McCormack
DEPUTY

DR # 09-909408

GREG H. BOWER
Ada County Prosecuting Attorney

Whitney A. Faulkner
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
_____)

Case No. CR-FE-2009-0006798

COMPLAINT

Thumm's DOB: [REDACTED]
Thumm's SSN: [REDACTED]

PERSONALLY APPEARED Before me this 15th day of April 2009, Whitney A. Faulkner, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that VANCE EVERETT THUMM, ~~on or about~~ ^{between} the 11th day of April, ~~2009,~~ ^{and the 13th day of April,} in the County of Ada, State of Idaho, did commit the crimes of:
I. AGGRAVATED BATTERY, FELONY, I.C. §18-903(a), 907(a) and II. INTIMIDATING, IMPEDING, INFLUENCING, OR PREVENTING THE ATTENDANCE OF A WITNESS, FELONY, I.C. §18-2604 as follows:

COUNT I

That the Defendant, VANCE EVERETT THUMM, on or about the 11th day of April, 2009, in the County of Ada, State of Idaho, did willfully and unlawfully use force and/or violence upon the person of Deven Ohls, causing great bodily harm, permanent disability, or permanent disfigurement, to-wit: by repeatedly kicking and/or punching Deven Ohls in the face breaking his orbital lobe and/or nose.

pe I & II
4.15.09
JH

COUNT II

That the Defendant, VANCE EVERETT THUMM, on or about the 13th day of April, 2009, in the County of Ada, State of Idaho, did willfully intimidate and/or influence, in any manner, ~~Deven Ohls~~ JEREMY STEINMETZ, a potential witness from testifying at the criminal proceeding by directing ~~Deven Ohls~~ JEREMY STEINMETZ not to make any further statements to law enforcement.

Amended
4.15.09
JH

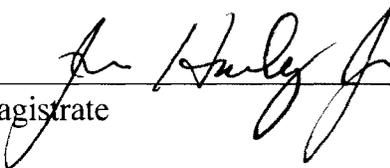
All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

Said Complainant therefore prays that a Warrant issue for the arrest of the Defendant and that VANCE EVERETT THUMM, may be dealt with according to law.

GREG H. BOWER
Ada County Prosecutor


Whitney A. Faulkner
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 15 day of April 2009.


Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

CASE NO. CR FE 09- 6798

vs.

CLERK MARILYN EDWARDS

Vance Everett Shum

DATE 04/15/2009 TIME 3:47

PROSECUTOR Whitney Faulkner

TOXIMETER _____

COMPLAINING WITNESS Brian Halland

CASE ID. Hawley 041509 BEG. 154703

END 155317

JUDGE

- | | |
|--|---|
| <input type="checkbox"/> BERECZ | <input type="checkbox"/> MacGREGOR-IRBY |
| <input type="checkbox"/> BIETER | <input type="checkbox"/> MANWEILER |
| <input type="checkbox"/> CAWTHON | <input type="checkbox"/> McDANIEL |
| <input type="checkbox"/> COMSTOCK | <input type="checkbox"/> MINDER |
| <input type="checkbox"/> DAY | <input type="checkbox"/> OTHS |
| <input type="checkbox"/> GARDUNIA | <input type="checkbox"/> REARDON |
| <input type="checkbox"/> HARRIGFELD | <input type="checkbox"/> STECKEL |
| <input checked="" type="checkbox"/> HAWLEY | <input type="checkbox"/> SWAIN |
| <input type="checkbox"/> HICKS | <input type="checkbox"/> WATKINS |
| <input type="checkbox"/> _____ | |
| <input type="checkbox"/> _____ | |

STATUS

- STATE SWORN**
- PC FOUND _____
- COMPLAINT SIGNED
- AMENDED COMPLAINT SIGNED
- NO PC FOUND _____
- EXONERATE BOND
- SUMMONS TO BE ISSUED
- WARRANT ISSUED
- BOND SET \$ _____
- NO CONTACT
- _____
- D.R. # _____
- DISMISS CASE
- IN CUSTODY

COMMENTS

AGENT'S WARRANT

RULE 5 (b)

FUGITIVE

000012

FILED 4-16-09 AT 3:09 .M.
 J. DAVID NAVARRO,
 CLERK OF THE DISTRICT COURT
 BY [Signature]
 Deputy

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
VANCE THUMM)
)
 Defendant.)

Case No. FE-09-6798
 Reference No. _____

NO CONTACT ORDER

DR # 909-408
 Ada Boise GC Meridian

The above-entitled matter having come before the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED that the above-named defendant shall not contact (including: In person or through another person, or in writing or e-mail, or by telephone, pager, or facsimile) or attempt to contact, harass, follow, communicate with, or knowingly remain within 100 feet of: DEVEN OHLS, JEREMY STEINMETZ

Exceptions are:

- no exceptions
- to contact by telephone between _____ .m. and _____ .m. on _____ for the following purposes: _____
- to participate in counselling/mediation
- to meet with or through attorneys and/or during legal proceedings
- to respond to emergencies involving the natural or adopted children of both parties
- other: _____

IT IS FURTHER ORDERED that the defendant named herein shall not go within 300 yards of the above-named person's residence or workplace as set forth below (provide this information only if requested by prosecution):

Residence Address _____

Work Address _____

VIOLATION OF THIS ORDER IS A SEPARATE CRIME under Idaho Code § 18-920, for which no bail will be set until an appearance before a judge; and a first and second conviction is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year or both. A third conviction within five (5) years is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state prison not to exceed five (5) years or both. Further, any such violation of this order may result in the increase, revocation, or modification of the bond set in the underlying charge for which this no contact order was imposed.

If there is more than one domestic violence protection order in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order.

This order may subject you to Federal prosecution under 18 U.S. Code § 922 if you possess, receive, or transport a firearm.

THIS ORDER CAN BE MODIFIED ONLY BY A JUDGE AND WILL EXPIRE:

at 11:59 p.m. on 4/16/09

OR upon dismissal of this case.

Defendant _____

Judge [Signature] Date 4/16/09

Served by: [Signature] #849
4-16-09

Dated served: _____ 000013

NO CONTACT ORDER

White-FILE Green-ACSO Pink-DEFENDANT Yellow-PROSECUTOR

[REV 4-2005]

ADA COUNTY MAGISTRATE MINUTES

Vance Everett Thumm CR-FE-2009-0006798

DOB: [REDACTED]

Scheduled Event: Video Arraignment Thursday, April 16, 2009 01:30 PM

Judge: Michael Oths Clerk: VM Interpreter: _____

Prosecuting Agency: Y AC BC GC MC Pros: J-Hawes

PD/ Attorney: [Signature]

- I18-907 Battery-aggravated F
- I18-2604 F Witness-intimidating A Witness F

WFO Case Called Defendant: Y Present Not Present Y In Custody

Advised of Rights Waived Right PD Appointed Waived Attorney

Guilty Plea / PV Admit N/G Plea Advise Subsequent Penalty

X Bond \$ 1,000,000.00 ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

PH 4 / 30 / 09 @ 830

W/ OHS

NCO w/ victims

Finish () Release Defendant

NO. 1140 FILED
AM. 11:40 PM.

APR 27 2009

J. DAVID SWARTZ, CLERK
BY *Marilyn Edwards*
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

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

THE STATE OF IDAHO,	)	Case Nos. CR-FE-2009-6798
	)	CR-FE-2009-7030
Plaintiff,)	
vs.	)	ORDER FOR DELIVERY OF
	)	MEDICAL RECORDS TO THE ADA
VANCE EVERETT THUMM and	)	COUNTY PROSECUTING
CHRISTOPHER LEE SMITH,	)	ATTORNEY'S OFFICE PURSUANT
Defendants.	)	TO THE HEALTH INSURANCE
	)	PORTABILITY AND
_____	)	ACCOUNTABILITY ACT AND
	)	IDAHO CODE §19-3004; ICR 17

This Court, upon information from the Ada County Prosecuting Attorney's Office that certain medical records described herein are necessary for preparation and presentation of the Prosecution's case in the above-captioned matter, and the Court concluding that the medical records do appear to be relevant and necessary to the proper adjudication of this matter, hereby orders that employees or representatives of Ada County Paramedics and St. Alphonsus Regional Medical Center produce all personal health information, including but not limited to medical

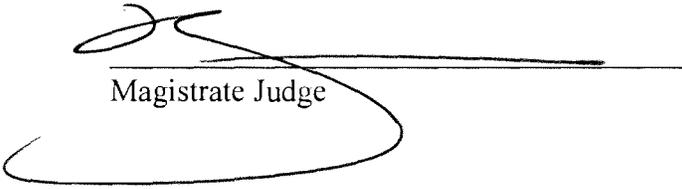
ME

records, photographs and billing statements in their custody pertaining to Deven Ohls, dob [REDACTED] doi: 4/11/09, to the Ada County Prosecuting Attorney's Office in response to a subpoena issued by the Prosecution in this case. The records may be generally provided in the manner set out in Idaho Code §9-420, except that the said records are to be made available for pickup by an agent of the Ada County Prosecuting Attorney's Office or law enforcement within three business days of the service of the subpoena, rather than be delivered to the Court.

This Order is also intended to require that personal health information, other than just the described written medical records, such as information known to employees or representatives of the Ada County Paramedics and St. Alphonsus Regional Medical Center also be provided to the prosecution or criminal defense by interview when asked for and that those employees or representatives of Ada County Paramedics and St. Alphonsus Regional Medical Center testify if required.

Any questions regarding said records should be directed to the Ada County Prosecuting Attorney's Office, (208) 287-7700.

IT IS SO ORDERED this 27th day of April 2009.


Magistrate Judge

374
PH
4/24
2009

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____ FILED _____
A.M. _____ P.M. *320*

APR 30 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

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

STATE OF IDAHO,
Plaintiff

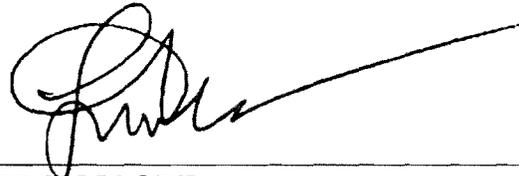
vs.
VANCE E THUMM,
Defendant.

Case No. CR-FE-2009-0006798

MOTION FOR BOND REDUCTION

COMES NOW, VANCE E THUMM, the above-named defendant, by and through counsel LARRY D MOORE, Ada County Public Defender's office, and moves this Court for its ORDER reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied their right to bail.

DATED, Thursday, April 30, 2009.



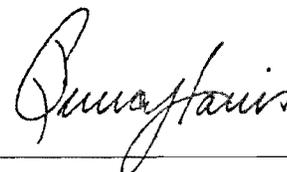
LARRY D MOORE
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, April 30, 2009, I mailed a true and correct copy of the within instrument to:

CASEY J HEMMER
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



W
MOTION FOR BOND REDUCTION

000017

ADA COUNTY MAGISTRATE MINUTES

Vance E Thumm CR-FE-2009-0006798

DOB: [REDACTED]

Scheduled Event: Preliminary Thursday, April 30, 2009 08:30 AM

Judge: Michael Oths Clerk: MARILYN EDWARDS Interpreter: _____

Prosecuting Agency: X AC ___ BC ___ GC ___ MC Pros: Casey Hammer
PD / Attorney: Pro Se

- 118-907 Battery-aggravated F
- 118-2604 F Witness-intimidating A Witness F

690631 Case Called Defendant: X Present ___ Not Present X In Custody
 ___ Advised of Rights ___ Waived Rights ___ PD Appointed ___ Waived Attorney
 ___ Guilty Plea / PV Admit ___ N/G Plea ___ Advise Subsequent Penalty
 ___ Bond \$ ___ ROR ___ Pay / Stay ___ Payment Agreement
 ___ In Chambers ^{1,000,000.00} ___ PT Memo ___ Written Guilty Plea ___ No Contact Order

090737 Pass to file out P-D app

Stappts PD

Reset 5/4/09 @ 930am
Review Swain

Co-Def on the 4th already Set.
(Not Consolidated yet)

092057

Finish () Release Defendant

ADA COUNTY MAGISTRATE MINUTES

Vance E Thumm CR-FE-2009-0006798

DOB: [REDACTED]

Scheduled Event: Review Monday, May 04, 2009 09:30 AM

Judge: Kevin Swain *Kardunia* Clerk: **MARILYN EDWARDS** Interpreter: _____

Prosecuting Agency: AC ___ BC ___ GC ___ MC Pros: *Casey Hemmer*

PD Attorney: *Larry Moore*

- 118-907 Battery-aggravated F
- 118-2604 F Witness-intimidating A Witness F

094952 Case Called Defendant: Present ___ Not Present ___ In Custody

___ Advised of Rights ___ Waived Rights ___ PD Appointed Waived Attorney

___ Guilty Plea / PV Admit ___ N/G Plea ___ Advise Subsequent Penalty

___ Bond \$ 1,000,000 ___ ROR ___ Pay / Stay ___ Payment Agreement

___ In Chambers ___ PT Memo ___ Written Guilty Plea ___ No Contact Order

*Set for Review Today -
Was set over to Consolidate
& get Conflict Counsel*

Reset 5/21/09 @ 830am

095636 2 - Bond argument

095812 1 - Responds:

095636 Bond Reduction denied

Finish () Release Defendant

095932

DR # 09-909408

MAY 21 2009

J. DAVID NAVARRO, Clerk
By MARILYN EDWARDS
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Casey Hemmer
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
_____)

Case No. CR-FE-2009-6798

AMENDED COMPLAINT

Thumm's DOB: [REDACTED]
Thumm's SSN: [REDACTED]

PERSONALLY APPEARED Before me this 21st day of May 2009, Casey Hemmer, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that VANCE EVERETT THUMM, on or ~~between~~ ^{ABOUT} the 11th and 13th days of April, 2009, in the County of Ada, State of Idaho, did commit the crimes of: I. AGGRAVATED BATTERY, FELONY, I.C. §18-903(a), 907(a), 204 and II. INTIMIDATING, IMPEDING, INFLUENCING, OR PREVENTING THE ATTENDANCE OF A WITNESS, FELONY, I.C. §18-2604 as follows:

000020

mg

COUNT I

That the Defendant, VANCE EVERETT THUMM, on or about the 11th day of April, 2009, in the County of Ada, State of Idaho, did willfully and unlawfully use force and/or violence upon the person of Deven Ohls and/or did aid and abet others who willfully and unlawfully used force and/or violence upon the person of Deven Ohls, causing great bodily harm, permanent disability, or permanent disfigurement, to-wit: by kicking and/or stomping and/or punching and/or stabbing Deven Ohls about the face and/or body causing a nasal bone fracture, concussion, and/or facial lacerations, and/or a puncture wound.

COUNT II

DISMISSED! That the Defendant, VANCE EVERETT THUMM, on or about the ~~13th~~ day of April, 2009, in the County of Ada, State of Idaho, did willfully intimidate and/or influence, in any manner, Jeremy Steinmetz, a potential witness and/or witness from testifying in a criminal proceeding by directing Jeremy Steinmetz not to make any statements about the facts alleged in Count I.

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

GREG H. BOWER
Ada County Prosecutor


Casey Hemmer
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 2nd day of May 2009.


Magistrate

MAY 4 1 2009

J. DAVID NAVARRO, Clerk
By MARILYN EDWARDS
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Casey Hemmer
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2009-6798
)	
vs.	)	COMMITMENT
)	
VANCE EVERETT THUMM,	)	Defendant's DOB: [REDACTED]
	)	Defendant's SSN: [REDACTED]
)	
Defendant.)	
_____)	

THE ABOVE NAMED DEFENDANT, VANCE EVERETT THUMM, having been brought before this Court for a Preliminary Examination on the 21st day of MAY 2009, on a charge that the Defendant on or ^{about} ~~between~~ the 11th and ~~13th~~ days day of April 2009, in the County of Ada, State of Idaho, did commit the crimes of: I. AGGRAVATED BATTERY, FELONY, I.C. §18-903(a), 907(a), 204 and ~~II. INTIMIDATING, IMPEDING, INFLUENCING, OR PREVENTING THE ATTENDANCE OF A WITNESS, FELONY, I.C. §18-2604~~, as follows:

MG,

COUNT I

That the Defendant, VANCE EVERETT THUMM, on or about the 11th day of April, 2009, in the County of Ada, State of Idaho, did willfully and unlawfully use force and/or violence upon the person of Deven Ohls and/or did aid and abet others who willfully and unlawfully used force and/or violence upon the person of Deven Ohls, causing great bodily harm, permanent disability, or permanent disfigurement, to-wit: by kicking and/or stomping and/or punching and/or stabbing Deven Ohls about the face and/or body causing a nasal bone fracture, concussion, and/or facial lacerations, and/or a puncture wound.

~~COUNT II~~

~~That the Defendant, VANCE EVERETT THUMM, on or about the 13th day of April, 2009, in the County of Ada, State of Idaho, did willfully intimidate and/or influence, in any manner, Jeremy Steinmetz, a potential witness and/or witness from testifying in a criminal proceeding by directing Jeremy Steinmetz not to make any statements about the facts alleged in Count I.~~

The Defendant having so appeared and having had/having waived preliminary examination, the Court sitting as a Committing Magistrate finds that the offense charged as set forth has been committed in Ada County, Idaho, and that there is sufficient cause to believe that the Defendant is guilty of committing the offense as charged.

WHEREFORE, IT IS ORDERED that the Defendant be held to answer to the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, to the charge herein set forth. Bail is set in the sum of \$ 4,000,000⁰⁰.

DATED this 21st day of MAY 2009.


MAGISTRATE

ADA COUNTY MAGISTRATE MINUTES

Vance E Thumm CR-FE-2009-0006798

DOB: [REDACTED]

Scheduled Event: Preliminary Thursday, May 21, 2009 08:30 AM

Judge: Kevin Swain *Brewer* Clerk: MARILYN EDWARDS Interpreter: _____

Prosecuting Agency: AC ___ BC ___ GC ___ MC Pros: *Casey Nemmer*

PD Attorney: *Larry More*

- 118-907 Battery-aggravated F
- 118-2604 F Witness-intimidating A Witness F

Case Called Defendant: Present ___ Not Present In Custody
 Advised of Rights ___ Waived Rights ___ PD Appointed ___ Waived Attorney
 Guilty Plea / PV Admit ___ N/G Plea ___ Advise Subsequent Penalty
 Bond \$ 1,000,000 ___ ROR ___ Pay / Stay ___ Payment Agreement
 In Chambers ___ PT Memo ___ Written Guilty Plea ___ No Contact Order

hrs held

B/o Wethull 5/28/09 @ 9:00am

*Comm. Signed
CTI Dismissed*

Finish () Release Defendant

Session: Swain052109
Session Date: 2009/05/21
Judge: Brower, Lynn
Reporter:

Division: magist
Session Time: 08:40

Courtroom: CR204

Clerk(s):
Edwards, Marilyn

State Attorneys:
Hemmer, Casey
White, Jeff

Public Defender(s):
Cosho, Anne
Moore, Larry

Prob. Officer(s):

Court interpreter(s):

Case ID: 0005

Case Number: CRFE096798
Plaintiff:
Plaintiff Attorney:
Defendant: Thumm, Vance E
Co-Defendant(s):
Pers. Attorney:
State Attorney: Hemmer, Casey
Public Defender: Moore, Larry

2009/05/21

13:42:55 - Operator
Recording:
13:42:55 - New case
Thumm, Vance E
13:43:00 - State Attorney: Hemmer, Casey
13:43:20 - Public Defender: Moore, Larry
def present in custody
13:43:47 - State Attorney: Hemmer, Casey
Amended Complaint
13:43:59 - Public Defender: Moore, Larry
no obj to filing & waives reading
13:44:42 - Public Defender: Moore, Larry
Exclude witness
13:44:54 - Judge: Brower, Lynn
Motion granted
13:45:40 - Other: Ransom, Officer
Boise Police Dept
13:45:51 - Public Defender: Moore, Larry
Stips to officers training
13:46:06 - Other: Ransom, Officer
on duty 4/11/09 & responded to the Budget Inn

000025

13:46:33 - Other: Ransom, Officer
a female came running you need to go to room 203

13:46:53 - Other: Ransom, Officer
in the room a male was bleeding profuely the room was torn u
p beer bottles

13:47:31 - Other: Ransom, Officer
all over

13:47:35 - Other: Ransom, Officer
found an ID card to Id the victim

13:48:09 - Other: Ransom, Officer
Victim was taken to St Al's & admitted

13:49:01 - State Attorney: Hemmer, Casey
SE# 1 offered

13:49:09 - Public Defender: Moore, Larry
no obj

13:49:12 - Judge: Brower, Lynn
SE# 1 admitted

13:49:21 - Other: Ransom, Officer
the room was in the name of Def

13:49:39 - Public Defender: Moore, Larry
Cross-examination of the witness.

13:49:42 - State Attorney: Hemmer, Casey
obj hs

13:49:58 - Judge: Brower, Lynn
overrule

13:50:07 - Other: Ransom, Officer
Victim said he did not know the name of who did this to him

13:50:33 - Other: Ransom, Officer
did not see def in the room

13:50:42 - Other: Ransom, Officer
Nothing further, witness steps down.

13:53:36 - Other: Steinntz, Jeremy
Sworn.

13:53:43 - State Attorney: Hemmer, Casey
4/11/09 went with some friends to the Office bar def being o
ne of them

13:54:15 - Other: Steinntz, Jeremy
I met def that night witness ID def

13:55:57 - General:
Time stamp

13:56:16 - Other: Steinntz, Jeremy
A fight broke out in the room

13:56:53 - Other: Steinntz, Jeremy
3 males was fighting with victim Olds

13:57:21 - Other: Steinntz, Jeremy
I saw def fighting him

13:57:32 - Other: Steinntz, Jeremy
I left & went to my car with three others

13:57:54 - Other: Steinntz, Jeremy
came back later

13:58:28 - Other: Steinntz, Jeremy
they had blood on there clothes

13:58:39 - Other: Steinntz, Jeremy
a few days later def came to my house & told me not to say a
nything about the

13:59:05 - Other: Steinntz, Jeremy
fight

13:59:08 - Public Defender: Moore, Larry

000026

Cross-examination of the witness.

13:59:54 - Other: Steinntz, Jeremy
I had tow or three drinks at the bar

14:00:29 - Other: Steinntz, Jeremy
about 9 people in the motel room

14:01:07 - Other: Steinntz, Jeremy
Frankie started the fight

14:01:57 - Other: Steinntz, Jeremy
I saw def throwing punches & a Mexican kid

14:02:27 - Other: Steinntz, Jeremy
3 males including def got in my car

14:02:47 - Other: Steinntz, Jeremy
I dropped them off at a house & I went back to the motel

14:03:17 - Other: Steinntz, Jeremy
The police were there when I got back

14:03:50 - Other: Steinntz, Jeremy
I didn't pick anyone from the photo lineup but was lying

14:05:02 - State Attorney: Hemmer, Casey
Redirect examination.

14:05:07 - Other: Steinntz, Jeremy
def didn't threaten me just told me not to say anything

14:06:13 - Public Defender: Moore, Larry
obj leading

14:06:19 - Judge: Brower, Lynn
sustain

14:07:10 - Public Defender: Moore, Larry
Recross-examination.

14:07:18 - Other: Steinntz, Jeremy
the police came twice, my story changed after def came to my house

14:08:32 - Other: Steinntz, Jeremy
Nothing further, witness steps down.

14:09:42 - Other: Holland, Byron
Sworn.

14:09:44 - State Attorney: Hemmer, Casey
Direct examination of witness.

14:09:51 - Other: Holland, Byron
Detective Boise Police officer

14:10:03 - Public Defender: Moore, Larry
stips to dectives qualifications

14:10:20 - Other: Holland, Byron
I work with gangs & no of def

14:10:57 - Public Defender: Moore, Larry
obj rel

14:11:05 - Judge: Brower, Lynn
overrule

14:11:12 - Other: Holland, Byron
The ring on def's neck is belonging to a gang

14:12:02 - Public Defender: Moore, Larry
obj rel

14:12:09 - State Attorney: Hemmer, Casey
I will rephrase

14:12:24 - Other: Holland, Byron
I know Jeremy Stiminetz also

14:12:54 - Public Defender: Moore, Larry
Cross-examination of the witness.

14:13:33 - Other: Holland, Byron
Nothing further, witness steps down.

000027

14:13:38 - State Attorney: Hemmer, Casey
 SE# 2 offered

14:14:27 - Judge: Brower, Lynn
 SE # 2 admitted

14:15:39 - State Attorney: Hemmer, Casey
 Argument

14:17:40 - State Attorney: Hemmer, Casey
 Recall Jeremy Stimnetz to establish jurisdiction where event
 took place

14:20:39 - State Attorney: Hemmer, Casey
 responds to the medical records to part defense obj too

14:21:19 - Other: Stimnetz, Jeremy
 already sworn

14:21:33 - State Attorney: Hemmer, Casey
 Direct examination of witness.

14:22:17 - Public Defender: Moore, Larry
 Cross-examination of the witness.

14:23:17 - Other: Stimnetz, Jeremy

14:23:25 - Judge: Brower, Lynn
 Inquires

14:24:02 - Other: Stimnetz, Jeremy
 Nothing further, witness steps down.

14:24:49 - State Attorney: Hemmer, Casey
 cont argument

14:25:20 - State Attorney: Hemmer, Casey
 moves to Dismiss Count II

14:25:42 - Judge: Brower, Lynn
 Count two is dismissed

14:25:52 - Public Defender: Moore, Larry
 Rebuttal

14:31:06 - Judge: Brower, Lynn
 B/O Wetherell 05/28/09 @ 9am comm signed state signs for exh
 ibits

14:32:31 - Judge: Brower, Lynn
 Bond remains

14:33:22 - General:
 Time stamp

14:33:26 - Operator
 Stop recording:

137
AM
5/28
9:00
ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____ FILED _____
A.M. _____ 3

MAY 22 2009

J. DAVID NAVARRO, Clerk
By HEIDI KELLY
DEPUTY

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

STATE OF IDAHO,

Plaintiff

vs.

VANCE E THUMM,

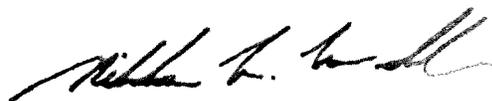
Defendant.

Case No. CR-FE-2009-0006798

MOTION FOR BOND REDUCTION

COMES NOW, VANCE E THUMM, the above-named defendant, by and through counsel NICHOLAS L WOLLEN, Ada County Public Defender's office, and moves this Court for its ORDER reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied their right to bail.

DATED, Friday, May 22, 2009.



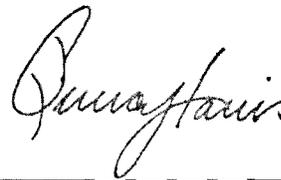
NICHOLAS L WOLLEN
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Friday, May 22, 2009, I mailed a true and correct copy of the within instrument to:

CASEY J HEMMER
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



MOTION FOR BOND REDUCTION

000029

1030 FILED P.M.

MAY 26 2009

J. DAVID NAVARRO, Clerk
By HEDI KELLY
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

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

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
_____)

Case No. CR-FE-2009-6798

I N F O R M A T I O N

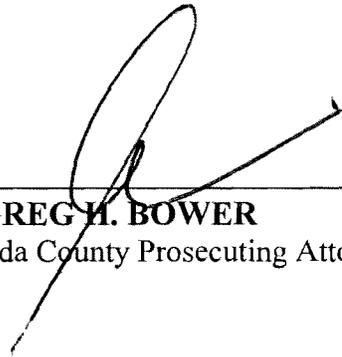
Defendant's DOB: [REDACTED]
Defendant's SSN: [REDACTED]

GREG H. BOWER, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that VANCE EVERETT THUMM is accused by this Information of the crime of: AGGRAVATED BATTERY, FELONY, I.C. §18-903(a), 907(a), 204, which crime was committed as follows:

That the Defendant, VANCE EVERETT THUMM, on or about the 11th day of April, 2009, in the County of Ada, State of Idaho, did willfully and unlawfully use force

and/or violence upon the person of Deven Ohls and/or did aid and abet others who willfully and unlawfully used force and/or violence upon the person of Deven Ohls, causing great bodily harm, permanent disability, or permanent disfigurement, to-wit: by kicking and/or stomping and/or punching and/or stabbing Deven Ohls about the face and/or body causing a nasal bone fracture, concussion, and/or facial lacerations, and/or a puncture wound.

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



GREG H. BOWER
Ada County Prosecuting Attorney

Session: Wetherell052809
Session Date: 2009/05/28
Judge: Wetherell, Mike
Reporter: Omsberg, Nicole

Division: DC
Session Time: 08:33

Courtroom: CR507

Clerk(s):
Oatman, Diane

State Attorneys:
Buttram, Tessie
Duggan, Barbara
Meehan, Julianne
Wittwer, Kai

Public Defender(s):
Geddes, Anthony
Glindeman, Megan
Wollen, Nick

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

Case Number: FE096798
Plaintiff:
Plaintiff Attorney:
Defendant: Thumm, Vance
Co-Defendant(s):
Pers. Attorney:
State Attorney: Duggan, Barbara
Public Defender: Wollen, Nick

2009/05/28

09:06:53 - Operator

Recording:

09:06:53 - New case

Thumm, Vance

09:08:10 - Judge: Wetherell, Mike

Ct calls case; def present in custody w/counsel

09:08:37 - Judge: Wetherell, Mike

Notification of penalties -- violation of no contact orders

000032

09:10:36 - Judge: Wetherell, Mike
Ct arrgs on Information
09:12:34 - Public Defender: Wollen, Nick
Req one week
09:12:52 - Judge: Wetherell, Mike
June 4, 2009 at 9:00 entry plea -- bond argument
09:13:06 - Operator
Stop recording:

000033

Session: Wetherell060409
Session Date: 2009/06/04
Judge: Wetherell, Mike
Reporter: Omsberg, Nicole

Division: DC
Session Time: 08:02

Courtroom: CR507

Clerk(s):

Oatman, Diane

State Attorney(s):

Buttram, Tessie
Duggan, Barbara
Reilly, Heather
Wittwer, Kai

Public Defender(s):

Geddes, Anthony
Glindeman, Megan
Wollen, Nick

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: Fe096798

Plaintiff:

Plaintiff Attorney:

Defendant: Thumm, Vance

Co-Defendant(s):

Pers. Attorney:

State Attorney: Wittwer, Kai

Public Defender: Wollen, Nick

2009/06/04

09:05:32 - Operator

Recording:

09:05:32 - New case

Thumm, Vance

09:05:42 - Judge: Wetherell, Mike

Ct calls case; def present in custody w/counsel

09:06:07 - Judge: Wetherell, Mike

Ct rews file

09:06:13 - Public Defender: Wollen, Nick

Not guilty

09:06:37 - Judge: Wetherell, Mike

Aug 24, 2009 at 9:00 trial; Aug 20, 2009 at 1:30

09:07:11 - State Attorney: Wittwer, Kai

State intents to file Info Part II

09:08:05 - Judge: Wetherell, Mike

July 30, 2009 at 9:00 for information Part II

09:08:18 - Public Defender: Wollen, Nick

Motion for bond reduction

09:12:46 - State Attorney: Wittwer, Kai

Response

09:12:48 - Public Defender: Wollen, Nick

Rebuttal

09:12:53 - Judge: Wetherell, Mike

Denies motion for bond reduction

09:13:22 - Operator

Stop recording:

000035

137
1114
9/150
900

NO. _____
FILED
A.M. _____ P.M. 3

JUN 10 2009

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

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

STATE OF IDAHO,

Plaintiff,

vs.

VANCE E. THUMM,

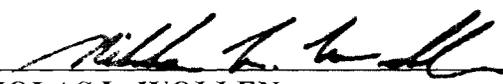
Defendant.

Case No. CR-FE-2009-0006798

MOTION FOR PRELIMINARY
HEARING TRANSCRIPT

COMES NOW, VANCE E. THUMM, the defendant above-named, by and through counsel NICHOLAS L. WOLLEN, Ada County Public Defender's office, and moves this Court pursuant to ICR 5.1(d) for an ORDER providing typewritten transcripts of the preliminary hearing proceedings, which were held May 21, 2009, as they are essential and necessary for filing pretrial motions. The defendant, being indigent, also requests that the transcripts be prepared at the cost of Ada County, and as soon as possible.

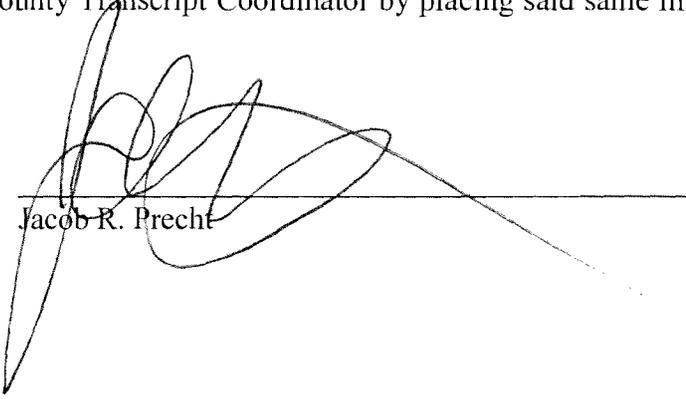
DATED, this 10 day of June 2009.



NICHOLAS L. WOLLEN
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 10 day of June 2009, I mailed a true and correct copy of the within instrument to the Ada County Transcript Coordinator by placing said same in the Interdepartmental Mail.



Jacob R. Precht

RECEIVED
JUN 10 2009
ADA COUNTY CLERK

JUN 11 2009

J. DAVID NAVARRO, Clerk
By DIANE M. OATMAN
DEPUTY

NICHOLAS L. WOLLEN
Deputy Public Defender

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

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

STATE OF IDAHO,

Plaintiff,

vs.

VANCE E. THUMM,

Defendant.

Case No. CR-FE-2009-0006798

ORDER FOR PRELIMINARY
HEARING TRANSCRIPT

For good cause appearing, this Court hereby grants the defendant's MOTION FOR PRELIMINARY HEARING TRANSCRIPT. Pursuant to ICR 5.1(d), a typewritten transcript of the preliminary hearing in this action shall be prepared at the expense of Ada County, and as soon as possible.

SO ORDERED AND DATED, this 11 day of June 2009.


MIKE WETHERELL
District Judge

NO. _____ FILED _____
A.M. _____ P.M. **309**

JUN 15 2009

J. DAVID NAVARRO, Clerk
By HEIDI KELLY
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
_____)

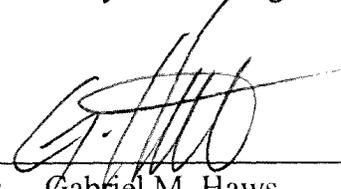
Case No. CRFE2009-6798
MOTION FOR
DISQUALIFICATION
WITHOUT CAUSE

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for Ada County, State of Idaho, and moves this Court to disqualify the Honorable Judge Dennis Goff from presiding over the above-entitled case.

WHEREFORE, the State prays for an order of disqualification and reassignment.

DATED this 15th day of June, 2009.

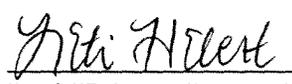
GREG H. BOWER
Ada County Prosecuting Attorney


By: Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2009, a true and correct copy of the foregoing documents were served to **Ada County Public Defender, 200 West Front Street, Room 1107, Boise, Idaho 83702**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: _____*


Leti Hebert, Legal Assistant

JUN 17 2009

David Navarro
DAVID NAVARRO, Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

RECEIVED

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

JUN 15 2009
ADA COUNTY CLERK

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
_____)

Case No. CRFE2009-6798

**ORDER FOR
DISQUALIFICATION
WITHOUT CAUSE**

The above entitled matter having come before this Court and good cause appearing;

IT IS HEREBY ORDERED that the Honorable Judge Dennis Goff be disqualified from the above entitled case pursuant to Idaho Criminal Rule 25(a), without cause.

DATED this 16th day of June, 2009.

Mark Stahler

District Judge

44

BZ
HAW
7/30
9:00

NO. _____
A.M. 1:30 P.M. _____

JUL 08 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise Idaho 83702
Telephone: (208) 287-7700

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

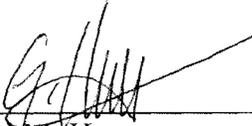
THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
_____)

Case No. CRFE2009-6798
MOTION FOR LEAVE TO
FILE INFORMATION
PART II

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho and moves this Court for an order permitting the filing of an Information, Part II, charging the defendant as a persistent violator of the law, I.C. §19-2514, for the reason that the State believes that the defendant has two or more prior felony convictions.

RESPECTFULLY SUBMITTED this 7th day of July, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney

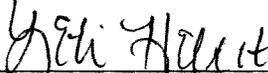


Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2009, a true and correct copy of the foregoing documents was served to **Ada County Public Defender, 200 West Front Street, Room 1107, Boise, Idaho 83702**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: _____*



Leti Hebert, Legal Assistant

NO. _____
 A.M. _____ P.M. 4
 JUL 24 2009
 J. DAVID NAW...
 By SWAR...
 CLERK

GREG H. BOWER
 Ada County Prosecuting Attorney

Gabriel M. Haws
 Deputy Prosecuting Attorney
 200 W Front Street, Room 3191
 Boise, Idaho 83702
 Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2009-6798
vs.)	
	)	MOTION FOR <i>IN LIMINE</i>
VANCE EVERETT THUMM,	)	RULING REGARDING THE
	)	ADMISSIBILITY OF
Defendant.	)	EXCITED UTTERANCE
	)	STATEMENTS
_____)	

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and moves this Court in Limine to make a pre-trial ruling regarding the admissibility of the following evidence pursuant to I.R.E. 803(1) or 803(2):

- 1) Statements made to the Front Desk Clerk of the Budget Host Inn, Aaron Childers, by Brooke Eberhardt who frantically yelled for Aaron to call 911 because a male was being "killed" or "beat up" by multiple individuals in room 203.

- 2) Statements made by Brooke Eberhardt to law enforcement within 5 minutes of the 911 call. That Brooke Eberhardt told law enforcement in a distraught and tearful manner that several males were “beating” the victim Devon Ohls and there was “blood throughout” hotel room 203.
- 3) Admissibility of a recording of the 911 call by Aaron Childers, which contains statements by Brooke Eberhardt in the background.

The State intends to lay adequate foundation for the admissibility of these statements at trial. Assuming the State can lay adequate foundation for these statements, the State seeks a pre-trial ruling regarding the admissibility of these statements under I.R.E 803(1) and/or (2). For the convenience of Court and Counsel the State has attached a copy of the 911 call as State Exhibit 1.

DATED this 24th day of July, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney

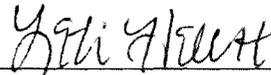


Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2009, a true and correct copy of the Motion for In Limine Ruling Regarding the Admissibility of Excited Utterance Statement were served to **Ada County Public Defender, 200 W. Front Street, Room 1107, Boise, Idaho 83702**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: _____*



Gabriel M. Haws
Deputy Prosecuting Attorney

137
MH
7/30
7:00

NO. _____
A.M. _____ P.M. 4
J. D. ...
CLERK

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room #3191
Boise, Idaho 83702
Phone: (208) 287-7700
Fax: (208) 287-7707

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
)
)
_____)

Case No. CRFE2009-6798
NOTICE OF INTENT TO
USE I.R.E. 404(b) and
I.C.R. 16

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and notifies the Court and Counsel of intent to use evidence of the Defendant's prior other crimes, wrongs or acts to establish or prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident pursuant to I.R.E. 404(b) and I.C.R. 16 in the State's case in chief. The general nature of the evidence will include:

NOTICE OF INTENT TO USE I.R.E. 404(b)
(THUMM) and I.C.R. 16, Page 1

000047

HK

- 1) Testimony from Boise City Gang Detectives Holland and/or Leavitt regarding Defendant's gang affiliation motives of the Severely Violent Criminal gang, modus operandi of the Severely Violent Criminal gang in attacking others. The State would not attempt to elicit this information in its case in chief, but feels it is highly relevant to rebut any evidence presented of the Defendant's peaceable character or to rebut a claim of self defense.
- 2) Testimony by Josiah Hanson, Isaiah Hanson, Loretta Hanson, Brandon Terry, and/or Josh Jones of a prior attack and brutal beating (punching, stabbing, kicking, stomping) by Vance Thumm in concert with other documented Severely Violent Criminal gang members. This incident is disclosed in Meridian Police Report 2008-805 and 2008-898.

DATED this 24th day of July, 2009

GREG H. BOWER
Ada County Prosecuting Attorney

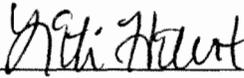


By: Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2009, a true and correct copy of the foregoing documents were served to **Ada County Public Defender, 200 W. Front Street, Room 1107, Boise, Idaho 83702**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: _____*



Leti Hebert, Legal Assistant

NO. _____ FILED _____
A.M. 9:10 P.M. _____

JUL 30 2009

J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise Idaho 83702
Telephone: (208) 287-7700

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 VANCE EVERETT THUMM,)
)
 Defendant.)

Case No. CRFE2009-6798

I N F O R M A T I O N

P A R T I I

Defendant's DOB: [REDACTED]
Defendant's SSN: [REDACTED]

GREG H. BOWER, Prosecuting Attorney in and for the County of Ada, State of Idaho, who, in the name of and by the authority of said State, prosecutes in its behalf, in proper person, comes now before the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, and given the Court to understand and to be further informed that, as PART II of the Information on file herein, the Defendant, VANCE EVERETT THUMM, is a persistent violator of the law, in that the Defendant, has

heretofore been convicted of the following felonies, to-wit: I. UNLAWFUL POSSESSION OF A FIREARM and II. AGGRAVATED ASSAULT.

I

That the said Defendant, VANCE EVERETT THUMM, on or about the 25th day of October, 2004, was convicted of the crime of UNLAWFUL POSSESSION OF A FIREARM, a FELONY, in the County of Ada, State of Idaho, by virtue of that certain Judgment of Conviction made and entered by Judge Bail in Case Number H0400381.

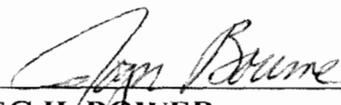
AND/OR

II

That the said Defendant, VANCE EVERETT THUMM, on or about the 30th day of November, 1998, was convicted of the crime of AGGRAVATED ASSAULT, a FELONY, in the County of Ada, State of Idaho, by virtue of that certain Judgment of Conviction made and entered by Judge McLaughlin in Case Number H9800730.

WHEREFORE, the said Defendant, having been convicted previously of two (2) or more felonies, should be considered a persistent violator of the law, and should be sentenced accordingly pursuant to Idaho Code §19-2514, upon conviction of the charge(s) contained in PART I of the Information.

DATED this 8th day of July, 2009.

For 

GREG H. BOWER
Ada County Prosecuting Attorney



Session: Wetherell073009
Session Date: 2009/07/30
Judge: Wetherell, Mike
Reporter: Omsberg, Nicole

Division: DC
Session Time: 08:48

Courtroom: CR507

Clerk(s):

Oatman, Diane

State Attorney(s):

Buttram, Tessie
Duggan, Barbara
Haws, Gabe
Reilly, Heather
Wittwer, Kai

Public Defender(s):

Geddes, Anthony
Glindeman, Megan
Wollen, Nick

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: FE096798

Plaintiff:

Plaintiff Attorney:

Defendant: Thumm, Vance

Co-Defendant(s):

Pers. Attorney:

State Attorney: Haws, Gabe

Public Defender: Wollen, Nick

2009/07/30

08:56:54 - Operator

Recording:

08:56:54 - New case

Thumm, Vance

08:57:13 - Operator

Stop recording:

09:02:45 - Operator

Recording:

09:02:45 - Record

Thumm, Vance

000052

09:02:48 - Judge: Wetherell, Mike
Ct calls cse; def present in custody w/counsel

09:03:09 - State Attorney: Haws, Gabe
Ct arrgs on Info Part II

09:06:17 - Public Defender: Wollen, Nick
Not guilty

09:06:36 - Starting Side Bar.
Ct notes matter previously set for trial and pretrial

09:06:46 - Ending Side Bar.
Ending Side Bar.

09:06:51 - State Attorney: Haws, Gabe
Motion -- 911 call

09:08:09 - Public Defender: Wollen, Nick
Response

09:08:37 - State Attorney: Haws, Gabe
Understands foundation needs to be properly laid before introduction of 911

09:09:09 - State Attorney: Haws, Gabe
call -- excited utterance

09:09:16 - Public Defender: Wollen, Nick
Hearsay w/out witnesses presence

09:09:26 - Judge: Wetherell, Mike
Ct notes meets criteria of excited utterance -- would be admissible

09:12:16 - State Attorney: Haws, Gabe
404b evidence

09:13:00 - Public Defender: Wollen, Nick
Would be obj'g to 404b evid

09:13:10 - Judge: Wetherell, Mike
Ct notes evide more prej than probative if issue w/ref to accident or

09:13:30 - Judge: Wetherell, Mike
self-def not raised -- but if raised, then 404b relevant for rebuttal

09:15:27 - Operator
Stop recording:

000053

137
FR
8/1/09

NO. _____
A.M. _____ FILED P.M. 5

JUL 31 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
VANCE EVERETT THUMM,)
FRANKE LEE HUGHES, and)
PARIS MARIES DAVIS,)
)
Defendants.)
_____)

Case No. CR-FE- 2009-06798
CR-FE-2009-10688
CR-FE-2009- 10691

MOTION FOR JOINDER OF
TWO OR MORE
DEFENDANTS

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney in and for the State of Idaho, County of Ada, and hereby moves this Honorable Court in the above-entitled matter for an Order, pursuant to Idaho Criminal Rule 8(b) and 13, to join together for trial two or more defendants. The State moves this Honorable Court to join CR-FE-2009-10691 and CR-FE-2009-10688, with criminal case CR-FE-2009-06798 for purposes of trial.

DATED this 31ST day of July 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



Gabe Haws
Deputy Prosecuting Attorney

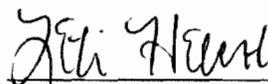
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2009, a true and correct copy of the foregoing **STATE'S MOTION FOR JOINDER OF DEFENDANTS THUMM, HUGHES, DAVIS** was served to Ada County Public Defender by Interdepartmental Mail; Layne Davis and John DeFranco by facsimile:

Vance Thumm
c/o Nicholas Wollen, Ada County Public Defenders Office
200 W. Front St., Room 1107,
Boise, Idaho, 83702

Franke Lee Hughes
c/o John DeFranco
1031 E. Park Blvd.
Boise, Idaho 83712
Fax: (208) 345-8945

Paris Davis
c/o Layne Davis
200 N. 4th St., Ste. 302
Boise, Idaho 83702
Fax: (208) 429-1100



Leti Hebert, Legal Assistant

NO. _____
A.M. _____ FILED P.M. _____

JUL 31 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
VANCE EVERETT THUMM,)
PARIS MARIE DAVIS, AND)
FRANKE LEE HUGHES,)
)
Defendant.)
_____)

Case No. CR-FE-2009-6798
CR-FE-2009-10688
CR-FE-2009-10691

**BRIEF IN SUPPORT OF
STATE'S MOTION FOR
JOINDER OF DEFENDANTS**

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney in and for
the State of Idaho, County of Ada, and moves this Court for an order joining the
above named Defendant pursuant to Idaho Criminal Rule 8(b) and 13.

FACTUAL BACKGROUND

In the early morning hours of April, 11, 2009, the victim, Deven Ohls, arrived at
the Budge Host Inn, room number 203. He arrived with Kaylan Spears and Brooke

Eberhardt for an “after party.” Vance Thumm, Chris Smith, Franke Hughes, Paris Davis, Helen Fisher, and Jeremy Steinmetz were all present in room 203, or arrived shortly thereafter. According to Jeremy Steinmetz, after a few minutes of conversation Thumm, Smith, and Hughes attacked Deven Ohls. Steinmetz was caught in the attack—pinned against a wall by the attackers and the victim. Kaylan Spears, Helen Fisher, and Jeremy Steinmetz all identified Thumm and Hughes as being present at the time of attack. Jeremy identified both Thumm and Hughes partaking in the attack with the assistance of a Hispanic male.¹ Witnesses also stated that during the attack Paris Davis was getting people out of the room and told them not to call the police.

After the attack, Paris Davis, Thumm, Hughes, and Smith all got into Steinmetz’s vehicle. Steinmetz noticed Thumm, Hughes, and Smith all had blood on their clothing. Steinmetz was told to drive. He drove all four individuals to Paris’ house. On the way to her house he heard Paris telling the males they needed to get rid of their clothing because it had blood on it and it was evidence of the crime. All four (4) individuals exited Steinmetz’s car upon arrival and entered Davis’ car.

Days later Boise Police Detective Holland questioned Davis regarding her knowledge of the attack and her involvement. Davis denied knowing the attack ever occurred.

On April 15, 2009, a warrant for Thumm’s arrest was issued. He was arrested on April 16, 2009. On April 17, 2009, Christopher Smith turned himself to probation and parole. He spoke with Detective Holland. Smith admitted his involvement in the attack.

¹ Chris Smith, a Hispanic male, self surrendered and pleaded guilty to an aggravated battery on Deven Ohls in CR- FE-2009-7030 in front of Judge Bail.

A preliminary hearing was held on Thumm's case on May 21, 2009, where Steinmetz, Detective Holland, and first responding Officer Ransom testified. Medical records depicting Ohls injuries were admitted during the preliminary hearing. The State filed the Information on Thumm's case May 26, 2009. Thumm pleaded not guilty on June 4, 2009.

On June 11, 2009, warrants were issued for Paris Davis and Franke Hughes. A preliminary hearing was held on Davis' case on July 15, 2009 and Information filed on July 17, 2009. Davis' case was assigned to Judge Neville. On July 27, 2009, a preliminary hearing was held on Hughes. Steinmetz, Helen Fisher and first responder Officer Montoya also testified. On July 28, 2009, an Information charging Hughes was filed. His case is pending in front of this Court.²

For the Court's information, Thumm is a documented gang member and shot caller for the prison and street gang "SVC" or Severely Violent Criminals. This gang has engaged in attacks on numerous individuals in the community and in prison. Thumm has been involved in some of those attacks. Thumm currently has a pending Aggravated Battery charge from 2008, where he, along with other documented SVC members, brutally attacked and beat a male adult at a house party. Chris Smith, though not an SVC gang member, is a documented gang member from California and associated with Thumm months before the incidents in this case occurred. The State has reliable information that there are a number of other SVC gang members still in the community and that in the past Thumm has ordered "hits" on people while incarcerated.

² Due to suspect identification issues and witness issues warrants on Hughes and Davis could not be obtained any earlier.

ARGUMENT

Idaho Criminal Rule 8 (b) states that two (2) or more defendants may be charged on the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Idaho Criminal Rule 13 states a court may order two (2) or more informations be tried together if the offenses, and the defendants if there is more than one (1), could have been joined in a single information.

Idaho case law has further outlined that joinder of two or more defendants is proper where there is sufficient factual nexus or if they constitute a common scheme or plan. State v. Gamble, 146 Idaho 331, 337, 193 P.3d 878,884 (Ct.App.2008). State v. Cirelli, 115 Idaho 732, 769 P.2d 609 (Ct.App.1989). Judicial economy is a significant factor courts consider. State v. Anderson, 138 Idaho 359, 362, 63 P.3d 485, 488 (Ct.App.2003). An additional factor is whether there is overlapping evidence against each defendant. Id. The burden is on the defendant's to show prejudice from joinder. State v. Caudill, 109 Idaho 22, 226, 706 P.2d 456, 460 (1985); State v. Cochran, 97 Idaho 71, 74, 539 P.2d 995, 1002 (1975). The propriety of joining defendants for trial is determined by what is alleged, not what the proof eventually shows. Gamble, at 337, 193 P.3d at 884. It is left to the trial court's discretion to join defendants for the purposes of trial.

In the present case, joining the Defendant's for trial is the most proper and judicially efficient manner to handle these three cases. Because all three individuals (Thumm, Davis, and Hughes) were all involved in the same incident that led to the current charges, the requirements of I.C.R. 8(b) and 13 are satisfied. Additionally, the State anticipates many overlapping exhibits: pictures, x-rays, diagrams, audio recordings.

The State will call many of the same witnesses in each trial. The same Doctors will testify in all three cases regarding injuries to Ohls. The same Detectives will testify as case agents, evidence custodians, and fact witnesses. The same lay witnesses will testify to their observations. The State anticipates a minimum of eight witnesses in common. Thus, for the sake of judicial economy it makes sense to try these cases at the same time.

Another important consideration is the posture and nature of the case. The lay witnesses in these cases have testified against a dangerous and highly violent street gang. Due to no fault of the State or the Defendant's, some have testified multiple times already at the preliminary hearing level. If they testify at trial, that is open to the public and where other gang members can observe their testimony, they are potentially placing themselves in a dangerous situation again. Having lay witnesses testify only once minimizes their risk.

Therefore, because there are common facts, evidence, and witnesses in all three cases, and the charges arise out of the same incident or conduct, joining of the two cases is appropriate under Idaho Criminal 8(b) and 13.

CONCLUSION

The State respectfully requests this Court to order the joinder of criminal cases CR-FE-09-06788, 09-10688, and 09- 10691 for trial.

DATED this 31st day of July 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



Gabe Haws
Deputy Prosecuting Attorney

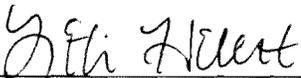
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2009, a true and correct copy of the foregoing **BRIEF IN SUPPORT OF STATE'S MOTION FOR JOINDER OF DEFENDANTS** was served to Ada County Public Defender by Interdepartmental Mail; Layne Davis and John DeFranco by facsimile:

Vance Thumm
c/o Nicholas Wollen, Ada County Public Defenders Office
200 W. Front St., Room 1107,
Boise, Idaho, 83702

Franke Lee Hughes
c/o John DeFranco
1031 E. Park Blvd.
Boise, Idaho 83712
Fax: (208) 345-8945

Paris Davis
c/o Layne Davis
200 N. 4th St., Ste. 302
Boise, Idaho 83702
Fax: (208) 429-1100



Leti Hebert, Legal Assistant

Session: Wetherell080609
Session Date: 2009/08/06
Judge: Wetherell, Mike
Reporter: ~~Redlich, Kasey~~

Division: DC
Session Time: 08:52

Courtroom: CR507

V. Gosney

Clerk(s):
Oatman, Diane

State Attorneys:
Buttram, Tessie
Haws, Gabe
Reilly, Heather
Wittwer, Kai

Public Defender(s):
Geddes, Anthony
Glindeman, Megan
Wollen, Nick

Prob. Officer(s):

Court interpreter(s):
Barrios, Sandra

Case ID: 0006

Case Number: 096798-10691-688
Plaintiff:
Plaintiff Attorney:
Defendant: Davis, Hughes Thumm
Additional audio and annotations can be found in case: 0008.
Co-Defendant(s):
Pers. Attorney: DeFranco, John
State Attorney:
Public Defender: Glindeman, Megan

2009/08/06

09:29:51 - Operator
Recording:
09:29:51 - New case
Davis, Hughes Thumm
09:31:27 - Judge: Wetherell, Mike
Ct calls all three defendants -- all three in custody w/coun

sel

09:31:45 - Judge: Wetherell, Mike
Def Franke Hughes present in custody w/Mr. DeFranco
09:32:05 - Judge: Wetherell, Mike
Ct adv def of rights
09:32:13 - Operator
Stop recording:

Case ID: 0008

Case Number: 096798-10691-688
Plaintiff:
Plaintiff Attorney:
Defendant: Davis, Hughes Thumm
Previous audio and annotations can be found in case: 0006.
Co-Defendant(s):
Pers. Attorney: DeFranco, John
State Attorney: Haws, Gabe
Public Defender: Glindeman, Megan

09:32:45 - Operator
Recording:
09:32:45 - Recall
Davis, Hughes Thumm
09:32:55 - Judge: Wetherell, Mike
Def Thumm present in custody w/Megan Glindeman
09:33:10 - Judge: Wetherell, Mike
Def Paris Davis present in custody w/Layne Davis
09:36:22 - Judge: Wetherell, Mike
Ct arrgs def Hughes--notification of Penalties for Escape
09:38:35 - Defendant: Davis, Hughes Thumm
Ture spelling of first name Frankie
09:38:55 - State Attorney: Haws, Gabe
No obj to amendment by interlineation
09:39:18 - State Attorney: Haws, Gabe
Amended information in this case
09:39:41 - Pers. Attorney: DeFranco, John
No objection -- there were dism'd counts at preliminary hearing
09:39:58 - Judge: Wetherell, Mike
Ct notes amended info filed
09:42:19 - Pers. Attorney: DeFranco, John
prep'd to entry not guilty plea
09:43:13 - Judge: Wetherell, Mike
Ct notes def Thumm trial Aug 24 JT -- PTC Aug 20 at 1:30

000064

09:44:01 - State Attorney: Haws, Gabe
Motion for Joinder

09:44:18 - State Attorney: Haws, Gabe
Mr. Hughes was just bound over last week -- reason for late
filing --- same

09:44:53 - State Attorney: Haws, Gabe
act or transaction--same witnesses

09:45:52 - Public Defender: Glindeman, Megan
Not prep'd to address motion -- Mr. Wollen's case -- Mr. Wol
len will be back

09:46:14 - Public Defender: Glindeman, Megan
this afternoon -- not comfortable addressing motion

09:46:39 - Other: Davis, Layne
Objection to motion for joinder

09:50:08 - Judge: Wetherell, Mike
Ct notes all facts will be presented to the jury -- response
s interspersed

09:51:21 - Pers. Attorney: DeFranco, John
Facts same, witnesses same -- does not see objection to join
der

09:53:08 - Judge: Wetherell, Mike
Wishes to hear all argument as to joinder -- Aug 13 at 9:00
cont'd motion for

09:53:25 - Judge: Wetherell, Mike
joinder -- decision will then be made as to whether or not t
o reset trial

09:54:58 - Pers. Attorney: DeFranco, John
Motion for bond reduction

09:58:31 - State Attorney: Haws, Gabe
Failures to appear Bannock County -- objection to reduction

10:00:42 - Judge: Wetherell, Mike
Motion for bond reduction denied

10:01:31 - Operator
Stop recording:

000065

NO. _____ FILED _____
A.M. _____ P.M. _____

AUG 13 2009

By David Navarro Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

RECEIVED
JUL 31 2009
ADA COUNTY CLERK

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

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
VANCE EVERETT THUMM,)
FRANKE LEE HUGHES, and)
PARIS MARIE DAVIS)
)
Defendants.)
_____)

Case No. CR-FE-2009-6798,
CR-FE-2009-10688,
CR-FE-2009-10691

ORDER FOR JOINDER

THIS MOTION for Joinder having come before me and good cause being shown,
IT IS HEREBY ORDERED AND THIS DOES ORDER that the Motion for
Joinder be granted.

DATED this 13th day of August 2009.

[Signature]
Judge

Session: Wetherell081309
Session Date: 2009/08/13
Judge: Wetherell, Mike
Reporter: Madsen, Kim

Division: DC
Session Time: 08:35

Courtroom: CR507

Clerk(s):
Oatman, Diane

State Attorneys:
Buttram, Tessie
Fisher, Jean
Reilly, Heather
Wittwer, Kai

Public Defender(s):
Glindeman, Megan
Wollen, Nick

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: FE09-67989/10691
Plaintiff:
Plaintiff Attorney:
Defendant: Thum, Davis, Hughes
Co-Defendant(s):
Pers. Attorney: DeFranco, John
State Attorney:
Public Defender: Wollen, Nick

2009/08/13

09:05:36 - Operator

Recording:

09:05:36 - New case

Thum, Davis, Hughes

09:06:12 - Judge: Wetherell, Mike

Ct calls all three cases; defendants all present in custody
w/counsel

09:06:37 - Public Defender: Wollen, Nick

Mr. Thumm wishes to hire private counsel -- Gabriel McCarthy

000067

09:07:02 - Public Defender: Wollen, Nick
Def wishes to waive speedy trial in order for private counsel to prep for

09:07:20 - Public Defender: Wollen, Nick
trial

09:08:25 - Judge: Wetherell, Mike
Ct inquires as to waiver

09:08:37 - Other: Davis, Layne
No ruling on joinder as yet -- obj to consolidation

09:09:00 - Pers. Attorney: DeFranco, John
No obj to joinder

09:10:37 - Judge: Wetherell, Mike
Ct notes Mr. Davis' obj -- grants joinder -- cases consolidated

09:12:58 - Judge: Wetherell, Mike
Ct vacates and resets trial Oct 26 at 9:00 -- Oct 15, 2009 at 1:30 pretrial

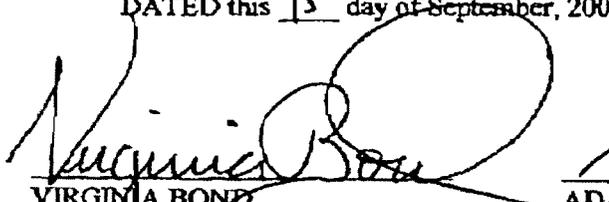
09:13:28 - Operator
Stop recording:

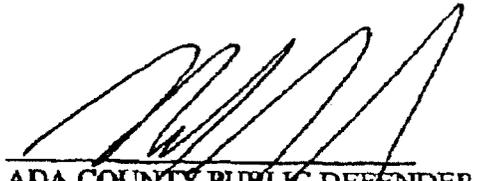
000068

BOND shall appear as counsel for Defendant, VANCE E. THUMM, and is hereby substituted for the ADA COUNTY PUBLIC DEFENDER, which said attorney hereby withdraws as counsel for the Defendant, VANCE E. THUMM, in the above entitled action for the following reason:

1. That VANCE E. THUMM, seeks the assistance of a private attorney.

DATED this 15 day of September, 2009,


VIRGINIA BOND
Bond Law, Chartered


ADA COUNTY PUBLIC DEFENDER

TIME RECEIVED

September 23, 2009 11:03:43 AM MDT

REMOTE CSID

208 642 0166

EXTENSION

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PAGES

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STATUS

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Sep 23 09 11:01a Bond Law, Chtd.
09/23/2009 10:17 FAX 208 287 7748

(208) 642-0166 p.1
RECEIVED 9/23/09 10:04

SEP 23 2009

ADA COUNTY
PROSECUTING ATTORNEYS OFFICE

NO. _____ FILED _____
A.M. _____ P.M. 1:50

SEP 23 2009

GREG H. BOWER
Ada County Prosecuting Attorney

J. DAVID NAVARRO, Clerk
By J. WEATHERBY
DEPUTY

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
Defendant.)
)
_____)
)

Case No. CR-FE-09-6798
**STIPULATION FOR
PROTECTIVE ORDER
PURSUANT TO I.C.R. 16(k)**

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for Ada County, State of Idaho, Virginia Bond, Attorney of Record for Defendant, Vance Everett Thumm, and do hereby stipulate that a protective order be issued by this Court, pursuant to I.C.R. 16(k), that prevents any further disclosure of witness addresses beyond that already provided by the parties as of the date this stipulation is

STIPULATION FOR PROTECTIVE ORDER PURSUANT TO I.C.R. 16(k)
(THUMM), Page 1

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TIME RECEIVED
September 23, 2009 10:36:37 AM MDT

REMOTE CSID

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PAGES
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STATUS
Received

09/23/2009 09:45 FAX
09/23/2009 10:17 FAX 208 287 7749

001
002/004

final to the Defendant, Vance Thumm, prevents the physical transfer of reports to Defendant, Vance Thumm, and prevents the physical transfer of compact discs containing audio recordings, video recordings, or pictures related to the above mentioned case to the Defendant, Vance Thumm.

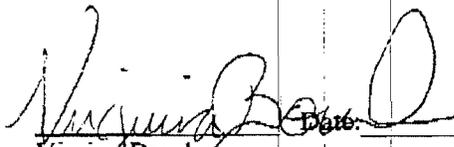
The parties further stipulate to an order requiring the State to produce listed State witnesses for an interview by Defense Counsel, if such witnesses are so inclined, upon the request of Defense Counsel. The State will provide a secure and safe facility where such interviews may occur.

The parties, on behalf of their staff and investigators, upon a finding of violation of this stipulation by this Court, shall be punished, as this Court deems reasonable and necessary to protect the safety of witnesses, attorneys, staff, and/or investigators or detectives, for violations of this stipulation or this Court's orders pursuant to this stipulation.

RESPECTFULLY SUBMITTED this 23rd day of September, 2009.


Gabriel M. Haws
Deputy Prosecuting Attorney

Date: 9/23/09


Virginia Bond
Counsel for Defendant

Date: 9-23-09

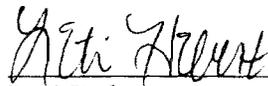
STIPULATION FOR PROTECTIVE ORDER PURSUANT TO I.C.R. 16(k)
(THUMM), Page 2

000072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2009, I caused to be served, a true and correct copy of the foregoing **Stipulation for Protective Order** were served to **Virginia Bond, P. O. Box 1725, Nampa, Idaho 83653**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number:*



Leti Hebert
Legal Assistant

TIME RECEIVED September 23, 2009 11:03:43 AM MDT	REMOTE CSID 208 642 0166	DURATION 100	PAGES 3	STATUS Received
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Sep 23 09 11:01a Bond Law, Chtd.
09/23/2009 10:17 FAX 208 287 7749

(208) 642-0166

p.3
003/004

NO. _____ FILED _____
A.M. _____ P.M. *2:34*

SEP 24 2009
J. DAVID MANNE
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Suite 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 VANCE EVERETT THUMM,)
)
 Defendant.)

Case No. CR-FE-09-6798
PROTECTIVE ORDER
PURSUANT TO I.C.R. 16(k)

The above entitled matter having come before this Court and sufficient showing made, makes the following order pursuant to I.C.R.16(k).

IT IS HEREBY ORDERED that:

1. No attorney, attorney staff member, investigator or detective, shall disclose the address of witnesses to the Defendant, Vance Everett Thumm, which were not previously disclosed prior to the date the stipulation for this order was signed by the parties;

PROTECTIVE ORDER PURSUANT TO I.C.R. 16(k),
(THUMM), Page 1

000074

cc: PA/Virginia Bond

TIME RECEIVED
September 23, 2009 11:03:43 AM MDT

REMOTE CSID
208 642 0166

DURATION
100

PAGES
3

STATUS
Received

Sep 23 09 11:01a Bond Law, Chtd.
09/23/2009 10:17 FAX 208 287 7749

(208) 642-0166

p.2
004/004

2. No attorney, attorney staff member, investigator or detective shall physically transfer police reports to the Defendant, Vance Everett Thumm, which were not previously disclosed prior to the date the stipulation for this order was signed by the parties;
3. No attorney, attorney staff member, investigator or detective, shall physically transfer compact discs containing audio recordings, video recordings, or pictures related to the above entitled case, to the Defendant, Vance Everett Thumm, which were not previously disclosed prior to the date the stipulation for this order was signed by the parties;
4. The State, upon request of Defense Counsel for Vance Everett Thumm, shall produce listed state witnesses for an interview with Defense Counsel if said witnesses agree to participate in requested interviews.
5. The State shall provide a safe and secure facility where the abovementioned interviews may occur.
6. Any attorney, attorney staff member, investigator or detective who is found in violation of the provisions of this order, shall be punished as this Court deems reasonable and necessary to protect the safety of witnesses, attorneys, attorney staff members, investigators, and/or detectives.

DATED this 24th day of September, 2009.



Judge

137,
PT
10/15
130

NO. _____ FILED _____
A.M. P.M. 2

OCT 09 2009

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room #3191
Boise, Idaho 83702
Phone: (208) 287-7700
Fax: (208) 287-7707

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
)
)
_____)

Case No. CRFE2009-6798

**MOTION FOR PRE-TRIAL
RULING REGARDING
ADMISSIBILITY OF
EVIDENCE**

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and moves this court for a pre-trial ruling regarding the admissibility of evidence that Paris Davis, Vance Thumm, and Heather Barr are either members or close associates of the Severely Violent Criminal prison/street gang and the tenets of that gang are self-protection, insubordination to authority, violence, and dishonesty.

**MOTION FOR PRE-TRIAL RULING REGARDING ADMISSIBILITY
OF EVIDENCE (THUMM), page 1**

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8

FACTS

Vance Thumm is a documented gang member of the Severely Violent Criminal (SVC) gang.¹ The basic tenets of the SVC gang are:

The SVC gang is both a street and prison gang. Members of this gang have been arrested, charged, or convicted for violent attacks, intimidating witnesses, unlawfully possessing weapons, and dealing drugs.

Paris Davis is an associate of the SVC gang. Thumm has written letters to her that are romantic in nature. The state has witnesses that would testify that at the time of the alleged offense, April 2009, Davis and Thumm were dating.

Heather Barr is an associate of the SVC gang. Barr has spoken with and visited Thumm numerous times in the recent weeks. She has also spoken with and discussed Defendant's case with Thumm as recently as last week.

Recently, Barr and Davis were seen by gang detectives associating with other members of the SVC gang when they attended trials for Thumm and Zachary Johnstone (also a documented SVC member).

On September 23, 2009, the State received Defendant's Notice of Defense of Alibi. In that notice, the Defendant lists Heather Barr and Vance Thumm as witnesses for her defense of alibi.

Gang Detective and Expert Brian Holland, with the Boise City Police Department, has spent many hours investigating the SVC gang. Part of that investigation includes debriefing sessions with founding SVC members and other admitted SVC gang members. Through this information and the documentation process required under federal guidelines, he would testify that the SVC gang is a criminal gang and Vance Thumm is a member of that gang. He would testify that this gang operates on the street and in prison. Through debriefings with founding members of the SVC gang, he would testify that he knowledge of the basic tenets

¹ Documentation procedures follows those of federal guidelines for documenting gang members.

of the SVC gang are: self-protection, preservation of the gang and gang members, insubordination to authority, violence, intimidation, and extortion.

Lieutenant Tim Higgins Sr., Investigation and Intelligence Coordinator for the Idaho Department of Corrections, would testify that to classify and house prison inmates information regarding their gang associations and enemies is obtained from the inmate. That during this process inmate Thumm claimed gang membership with the SVC gang. He would testify the SVC gang operates on the street and in prison. He would testify that the basic tenets of the SVC gang are self-protection, insubordination, and violence.

Sergeant Stoltenberg is the classification sergeant at the Ada County Jail, would testify that Thumm associates with SVC members. He would testify that based on information regarding Thumm's gang membership he makes classification and housing decisions at the jail to ensure maximum safety of all inmates.

Danny Arnold was a founding member of the SVC gang. The State anticipates he would testify that the SVC gang tenets are self-protection, insubordination to authority, violence, extortion, intimidation, and preservation of the gang and gang members. He would also testify that Thumm is a ranking member of the SVC gang and he was dating Paris Davis. He would testify that Davis is closely associated with SVC members. He would testify that the SVC gang operates on the streets and in prison.

DISCUSSION

Following common law practices, impeachment and rebuttal evidence that shows a witness' bias or interest is "always relevant" under Idaho Rules of Evidence 401, which is identical to the Federal Rules of Evidence 401. U.S. v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 469 (1984). This is because the jury is

entitled to “assess all evidence which might bear on the accuracy and truth of a witness’ testimony.” Id.

Evidence of a witness gang association with an accused is relevant and not unduly prejudicial under Idaho Rules of Evidence 403, which is identical to the Federal Rules of Evidence 403. Id. In U.S v. Abel, the United State Supreme Court overturned a Ninth Circuit decision relating to the admissibility of a witness’ testimony that rebuts and impeaches a defendant’s witness. In that case, Abel was indicted and tried for bank robbery. Co-defendant Ehls testified against Abel at trial. After Ehls testified, Abel proffered witness Mills. Mills testified that Ehls told him that Ehls was going to testify falsely. The State moved to bring in evidence that Ehls, Mills, and Abel were members of the Aryan Brotherhood, all previously knew each other while in prison, and the tenets of the gang were to lie, cheat, steal, and kill. The District court allowed testimony by Ehls, in rebuttal, that Mills and Able were member of a “prison gang” but did not allow Ehls to give the name of that gang. Additionally, the District Court held that Ehls was able to describe the tenets of the gang. The District Court reasoned that Ehls’ testimony was relevant to bias or interest of Mills toward Able. The Ninth Circuit overruled the District Court’s decision, holding that such evidence was impeachment by association and there was no evidence that Able was a member of that gang. U.S. v. Abel, 707 F.2d 1013, 1016 (9th Cir.1983).

The United State Supreme Court rejected the reasoning of the Court of Appeals. The Supreme Court stated “a successful show of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony. U.S. v. Able, 469 U.S at 51, 105 S.Ct. at 568. It held that showing bias is permissible impeachment under the Federal Rules of Evidence. Id. The Court ruled that Mills’ and Abel’s “membership in the Aryan Brotherhood supported the inference that Mills’ testimony was slanted or perhaps fabricated in [Abel’s] favor.” Id. at 52, 105 S.Ct. at 469.

Additionally the Court rejected the argument by the Court of Appeals that the state must produce a factual showing that the witness/members “must be shown to have subscribed to all the tenets of the organization either casually or sufficient to permit him to be convicted under laws.” Id. The Court also rejected Able’s argument that admitting Ehls’ precise description of the gang as a lying and murderous group was error. The Court held that

the *type* of organization in which a witness and a party share membership may be relevant to show bias . . . The attributes of the Aryan Brotherhood- a secret prison sect sworn to perjury and self –protection- bore directly not only the *fact* of bias but also on the *source* and strength of Mill’s bias. The tenets of this group showed that Mills has a powerful motive to slant his testimony towards respondent, or even commit perjury outright.” Id. at 54, 105 S. Ct. at 470.

The Court also held that since a limiting instruction was given such evidence was highly probative and not unduly prejudicial. Id.

Evidence of Davis’, Thumm’s, and Barr’s close association and membership with the prison and street gang Severely Violent Criminals is highly probative evidence. Davis has disclosed Thumm and Barr as witnesses for her defense of Alibi. If these witnesses testify their motive, bias, and interests maybe slanted toward Davis because of this gang relationship. The evidence shows the strength and source of their motives and bias, which is crucial for the jury is to hear and understand in assessing credibility of their testimonies.

Evidence of the SVC gang tenets are also highly probative. The fact that this gang has espoused the tenets of self-protection, insubordination to authority, violence, and dishonesty shows the “type” and “source” and “strength” of Thumm’s and Barr’s bias. The tenets also show that Thumm and Barr have a powerful motive to slant their testimony towards Davis because of their gang association.

The fact that their association is criminal street and prison gang is also highly relevant. As the Court noted in Able, mere association with a group, such

as Book of the Month Club, has little or no relevance. Id. at 54, 1054 S.Ct. at 470. Rather, what makes such associations relevant is the nature of their associations.

The State also believes the admission of the name of the gang is also relevant. Unlike, Able, where the name of the group clearly could inflame jurors to prejudice—Aryan Brotherhood—because of a negative connotation towards racism or cultist activity that such group may espouse, the Severely Violent Criminal gang has no such negative connotation associated with the name of their group. Therefore, there is little or minimal need to define Thumm, Barr, and Davis’ association in generic terms of a “criminal prison or street gang.”

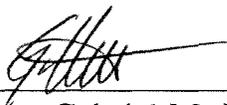
Lastly, under I.R.E. 403, undue prejudice of this evidence does not substantially outweigh the high probative of the evidence. The Supreme Court’s decision in Abel, is directly on point with the present facts. Thus, with this court’s careful considerations of the issues presented herein, together with any limiting instruction this Court deems appropriate, “the admission of this highly probative evidence [does] not unduly prejudice [the Defendant].” Id.

CONCLUSION

The State respectfully requests a pre-trial hearing and ruling regarding the admissibility of gang affiliation evidence to rebut or impeach witnesses that may testify regarding Defendant’s defense of alibi.

DATED this 9th day of October, 2009

GREG H. BOWER
Ada County Prosecuting Attorney



By: Gabriel M. Haws
Deputy Prosecuting Attorney

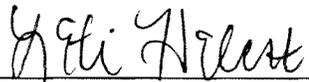
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October, 2009, a true and correct copy of the foregoing documents was served to **Virginia Bond, Attorney at Law, P.O. Box 1725, Nampa, ID 83653**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*

By faxing copies of the same to said attorney(s) at the facsimile number:

(208) 442-0017



Leti Hebert, Legal Assistant

OCT 15 2009

J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room #3191
Boise, Idaho 83702
Phone:(208) 287-7700
Fax: (208) 287-7707

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
)
_____)

Case No. CR-FE-2009-6798
**SECOND NOTICE OF
INTENT TO USE I.R.E.
404(b) and
I.C.R. 16**

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and notifies the Court and Counsel of intent to use evidence of the Defendant's prior other crimes, wrongs or acts to establish or prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident pursuant to I.R.E. 404(b) and I.C.R. 16 in the State's case in chief, or as rebuttal or impeachment evidence. The general nature of the evidence

will include: testimony from Frankie Hughes regarding of at least three prior unprovoked attacks by Vance Thumm between January, 2009, and April 11, 2009, on unsuspecting individuals.

DATED this 15th day of October, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney

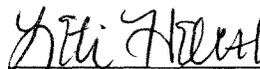
Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2009, a true and correct copy of the foregoing **Notice of Intent to Introduce 404(b)** was served to **VIRGINIA BOND, Attorney at Law**, P.O. Box 1725, Nampa, Idaho 83653, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: _____*

✓ *Hard-delivery*



Leti Hebert, Legal Assistant

Session: Wetherell101509
Session Date: 2009/10/15
Judge: Wetherell, Mike
Reporter: Redlich, Kasey

Division: DC
Session Time: 08:57

Courtroom: CR507

Clerk(s):

Oatman, Diane

State Attorney(s):

Buttram, Tessie
Haws, Gabe
Morrison, Monica
Reilly, Heather
Wittwer, Kai

Public Defender(s):

Geddes, Anthony
Herrett, Megan
Wollen, Nick

Prob. Officer(s):

Court interpreter(s):

Case ID: 0033

Case number: FE096798
Plaintiff:
Plaintiff Attorney:
Defendant: Thumm, Vance
Co-Defendant(s):
Pers. Attorney: Bond, Virginia
State Attorney: Haws, Gabe
Public Defender:

2009/10/15

13:58:16 - Operator
Recording:
13:58:16 - New case
Thumm, Vance
13:59:38 - Judge: Wetherell, Mike
Ct calls case; def present in custody w/counsel
14:01:47 - Judge: Wetherell, Mike
Discussion re: gang affiliation
14:08:07 - Pers. Attorney: Bond, Virginia
Disclosure of witnesses

000085

14:08:17 - State Attorney: Haws, Gabe
Objection

14:08:19 - Judge: Wetherell, Mike
Ct notes pretrial order -- good cause must be shown for late disclosure

14:11:25 - Judge: Wetherell, Mike
Cont'd discussion re: late disclosure

14:13:47 - State Attorney: Haws, Gabe
404b evidence -- testimony from Franke Hughes

14:14:34 - Pers. Attorney: Bond, Virginia
objects to late disclosure

14:15:02 - Judge: Wetherell, Mike
will allow counsel to discuss issue among themselves

14:22:34 - Operator
Stop recording:

NO. _____
 A.M. _____ P.M. _____ 3
OCT 16, 2009
 J. DAVID NAVARRO, Clerk
 By ERIN BULCHER
 DEPUTY

GREG H. BOWER
 Ada County Prosecuting Attorney

Gabriel M. Haws
 Deputy Prosecuting Attorney
 200 West Front Street, Room #3191
 Boise, Idaho 83702
 Phone: (208) 287-7700
 Fax: (208) 287-7707

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

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2009-6798
vs.)	
	)	AMENDED SECOND
VANCE EVERETT THUMM,	)	NOTICE OF INTENT TO
	)	USE I.R.E. 404(b) and
Defendant,	)	I.C.R. 16
)	
)	

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and notifies the Court and Counsel of intent to use evidence of the Defendant's prior other crimes, wrongs or acts to establish or prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident pursuant to I.R.E. 404(b) and I.C.R. 16 in the State's case in chief, or as rebuttal or impeachment evidence. The general nature of the evidence

will include: testimony from Frankie Hughes regarding of at least three prior unprovoked attacks by Vance Thumm between January, 2009, and April 11, 2009, on unsuspecting individuals.

One incident occurred in a hotel room. Chester Archuleta was present during the fight. Frankie Hughes would testify that Thumm attacked at least one individual and he saw Thumm punching that individual in the face. The attack occurred in the hotel bathroom. The individual attacked had claimed he belonged to the LST or "Lost Soul Trece" before the attack.

Frankie would testify that another incident occurred when Thumm and a female were in a bedroom with the door closed. The female's brother interrupted and Vance punched the brother in the face a number of times. Thumm made the brother apologize repeatedly before he stopped punching him in the face.

The third attack witnessed by Frankie Hughes occurred when Thumm punched a male in the face who was sitting too close to Thumm's sister, Gussy.

Hughes would testify these three of these incidents occurred between January 2009 and April 11, 2009.

DATED this 16th day of October, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2009, a true and correct copy of the foregoing **Amended Second Notice of Intent to Introduce 404(b)** was served to **VIRGINIA BOND, Attorney at Law**; P.O. Box 1725, Nampa, Idaho 83653, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: (208) 442-0017*

Leti Hebert

Leti Hebert, Legal Assistant

OCT 21 2009

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

VIRGINIA BOND
BOND LAW, CHARTERED
Attorney at Law, ISB 3842
16 South Main Street
Payette, ID 83661
Telephone: (208) 642-4748
Facsimile: (208) 642-0166

Attorney for Defendant

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

STATE OF IDAHO,	)	CASE NO. CRFE 2009-6798
)	
)	
Plaintiff,	)	NOTICE OF INTENT
)	
VANCE EVERETT THUMM,)	
)	
Defendant.)	

COMES NOW VIRGINIA BOND of BOND LAW, CHARTERED, attorney for VANCE THUMM, Defendant herein, and hereby gives notice of Defendant's intent to use portions of audios previously provided by the State, including portions of the 04/13/09 arrest of VANCE THUMM, and portions of the 05/01/09 interview with Frankie Hughes. Audio to be

NOTICE OF APPEARANCE - PAGE

000090

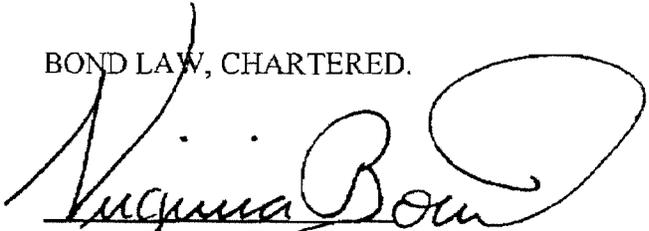
provided as soon as complete.

Further, that the defense would call Dr. Jessica Wasielewski regarding injuries she observed to Defendant's hands on April 9th, 2009. Reports supplied herewith as a supplement to discovery.

Defense would call Mike Nugent to potentially impeach Frankie Hughes regarding statements made to Nugent, while both were in custody, regarding inconsistencies in Hughes' testimony.

DATED this 20 day of October, 2009.

BOND LAW, CHARTERED.


VIRGINIA BOND
Attorney for Defendant

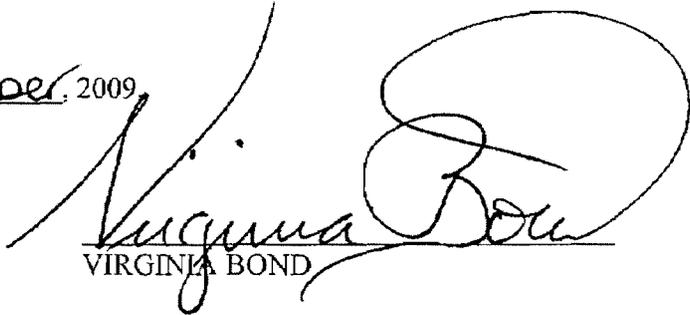
CERTIFICATE OF SERVICE:

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Ada County Prosecuting Attorney
Ada County Courthouse
200 W Front Street Room 3191
Boise, ID 83702

- U. S. Mail, postage prepaid
- Personally delivered
- Telecopy/fax
- By placing document in the Canyon County Prosecuting Attorney's basket located in the clerk's office of the Canyon County Courthouse

DATED this 20 day of October, 2009.


 VIRGINIA BOND

OCT 21 2009

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

13-7
JT
10/24
9-20
1

VIRGINIA BOND
BOND LAW, CHARTERED
Attorney at Law, ISB 3842
16 South Main Street
Payette, ID 83661
Telephone: (208) 642-4748
Facsimile: (208) 642-0166

Attorney for Defendant

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

_____)	
)	
STATE OF IDAHO,	)	CASE NO. CRFE 2009-6798
)	
Plaintiff,	)	AFFIDAVIT OF VIRGINIA BOND
)	
vs.)	
)	
VANCE EVERETT THUMM,)	
Defendant.)	
_____)	

State of Idaho)
 : ss.
County of Payette)

VIRGINIA BOND, being first duly sworn on oath, deposes and states the following:
1. That Affiant received all discovery from the Public Defender's office with 7 to 10 days of appearing 09/15/09. However no defense pleadings were included.

2. There were no objections to State's motions, no response to discovery.
3. Upon leaving court October 15th, 2009, Affiant spoke with the previously assigned Public Defender, Nick. Nick advised that he had talked to Vance Thumm several times but did not really recall any particulars, and that he would check his notes regarding the Defendant's disclosure of witnesses.
4. On Friday, October 16th, 2009, Affiant received a phone call from Public Defender Nick indicating there were no file notes to review. He really had no independent recall of Thumm's mention of witnesses.
5. Affiant then asked if the Public Defender had done a response to request for discovery. He stated they had and Affiant should have received it. At this time, Affiant has no indication that a response was ever filed.
6. That failure of an attorney to timely file discovery should not prejudice Defendant's right to a fair trial.
7. Late disclosure in this case would not severely prejudice the state as the defense would call witnesses previously listed by the State, or contained in police reports.

Only two exceptions exist:

Dr. Jessica Wasielewski

Mike Nugent

8. These witnesses would only be called to rebut evidence the defense anticipates the state to elicit. Affiant previously advised Mr. Gabe Haws of medical evidence, exculpatory in nature, relevant to marks on Defendant's knuckles. Medical records indicate Dr. Wasielewski saw injuries to Thumm's knuckles on 04/09/09. This charged occurrence is 04/11/09.
That Mike Nugent was allegedly housed with Frankie Hughes and allegedly has information relevant to Frankie Hughes' testimony to be offered to take advantage of a deal.
Defense will supplement as to Mike Nugent as information becomes available.

000094

Further your Affiant sayeth not.

Virginia Bond
VIRGINIA BOND

SUBSCRIBED AND SWORN to before me this 20 day of October, 2009.



Philip L. Wilson

Notary Public for Idaho

Residing at Hayette

My Commission expires October 15, 2015

OCT 22 2009

By J. David Navarro Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 W. Front Street, Suite 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
PARIS MARIE DAVIS,)
)
Defendants,)
)
_____)

Case No. CR-FE 2009-6798
CR-FE-2009-10691

**STATE'S LIST OF
POTENTIAL TRIAL
WITNESSES**

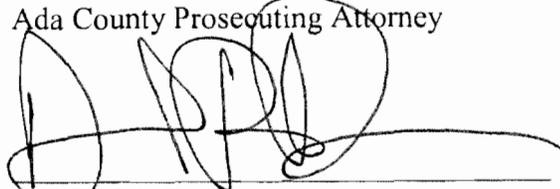
COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney, in and for the
County of Ada, State of Idaho, and does hereby provide the following list of trial
witnesses:

- 1) Officer Ransom, Boise City Police Department
- 2) Detective Leavitt, Boise City Police Department
- 3) Detective Holland, Boise City Police Department
- 4) Officer Kelly Montoya, Boise City Police Department

- 5) **Officer Josh Arend, Boise City Police Department**
- 6) **Officer Josh Kinkaid, Boise City Police Department**
- 7) **Officer Eric Urian, Boise City Police Department**
- 8) **CSS Jim Kling, Boise City Police Department**
- 9) **Amanda Clough, Boise City Police Department**
- 10) **Bridget Kinney, Boise City Police Department**
- 11) **Aaron Childers**
- 12) **Kaylan Speers**
- 13) **Helen Fisher**
- 14) **Deven Ohls**
- 15) **Jeremy Steinmetz**
- 16) **Frankie Hughes**
- 17) **Chris Smith**
- 18) **Loretta Anderson**
- 19) **Mark Tompkins, Ada County EMT**
- 20) **Dr. Frederick Foss**
- 21) **Danny Arnold**
- 22) **Lee Reiber**
- 23) **Anne Greenwalt, State of Idaho**
- 24) **Christine McIntire, State of Idaho**
- 25) **Mike Coolige, State of Idaho**
- 26) **Tim Higgins, State of Idaho**
- 27) **Sgt. Paul Stoltenberg, Ada County Sheriff's Office**
- 28) **Juliatt McKay, Ada County Sheriff's Office**

DATED, this 22nd day of October, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



for Gabriel M. Haws
Deputy Prosecuting Attorney

NO. _____ FILED 3:25
A.M. _____ P.M. _____

OCT 22 2009

By David Navarro Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room #3191
Boise, Idaho 83702
Phone:(208) 287-7700
Fax: (208) 287-7707

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
PARIS MARIE DAVIS)
)
Defendants.)
)
)
_____)

Case No. CR-FE-2009-6798
CR-FE-2009-10691

**THIRD NOTICE OF
INTENT TO USE I.R.E.
404(b) and I.C.R. 16**

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and notifies the Court and Counsel of intent to use evidence of the Defendant's prior other crimes, wrongs or acts to establish or prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident pursuant to I.R.E. 404(b) and I.C.R. 16 in the State's case in **THIRD NOTICE OF INTENT TO USE I.R.E. 404(b) (THUMM/DAVIS) and I.C.R. 16, Page 1**

000099

chief, or as rebuttal or impeachment evidence. The general nature of the evidence will include: Testimony from Jeremy Steinmetz that Vance Thumm stopped by his house, along with Paris Davis, on April 13, 2009, and told him "not to say anything" to police.

Jeremy Steinmetz would testify that he provided a statement to officers on the April 11, 2009, wherein he described one assailant as having a large tattoo on his neck and tan skin. On the morning of April 14, 2009, Detective Holland and Holtry interviewed Steinmetz again. During that interview he told officers, he could not identify Vance Thumm in a photo line-up. Later that same day, Steinmetz provided another statement to Detective Holland and Leavitt positive identifying Thumm from the same photo line-up used earlier that day. Steinmetz would testify that the reason he did not identify Thumm on the morning of April 14, 2009, was because Thumm had stopped by his house, along with Co-Defendant Davis, on April 13, 2009. During the April 13th visit, the Thumm told him "not to say anything" to the police. He would testify this April 13th visit was the reason his statement changed from the night of the incident.

Vance Thumm was originally charged in the complaint with Intimidating a Witness. At Thumm's preliminary hearing, Judge Brower dismissed the intimidation charge.

Steinmetz consistently identified Thumm in Thumm's, Davis', and Hughes' preliminary hearings that Thumm was an attacker.

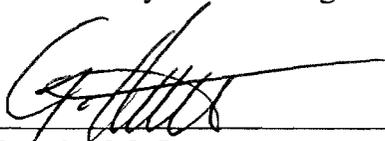
In abundance of caution, the State provides this notice pursuant to I.R.E. 404(b). The State does not believe the statements by Thumm are prior bad acts because a judge determined that there was not probable to believe the acts arose to criminal level. Indeed, the nature of the statements were quite matter of fact as opposed to threatening. If this court determines that the actions by Thumm were "bad acts," the State believes the statements are highly probative of both Thumm and

Davis' knowledge of the attack, involvement in the attack, and intent to cover their tracks. Any prejudice caused to the Defendants by the admission of Thumm's acts is not unfairly prejudicial and does not substantially outweigh the probative value because they are his own statements, made at or near the time of the incident, and his attorney can cross examine Steinmetz regarding those statements. Furthermore, it does not suggest to the jury that they should decide the case based on inflamed passion or prejudice. Additionally, a limiting instruction would further reduce any prejudice caused by the actions.

Regarding the notice requirement, the State believes that since the Thumm was charged with the crime and the reports were disclosed, along with audio recordings detailing Steinmetz's hesitancy to identify Thumm the morning of April 14, 2009, the Defendant was provided adequate notice. Additionally, there is minimal prejudice caused to the Defendant by the late disclosure because all the items were previously disclosed in discovery and he previously had an opportunity to cross examine Steinmetz at the preliminary hearing stage.

DATED this 22nd day of October, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 2009, a true and correct copy of the foregoing **Amended Third Notice of Intent to Introduce 404(b)** was served to **VIRGINIA BOND, Attorney at Law, P.O. Box 1725, Nampa, Idaho 83653 for Defendant THUMM; and LAYNE DAVIS, 200 N. 4th St., Ste. 302, Boise, Idaho 83702, for Defendant DAVIS** in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number:*

Virginia Bond fax: (208) 442-0017; Layne Davis fax: (208) 429-1100



Leti Hebert, Legal Assistant

137
JT
10/22
9.00

NO. 46 FILED
A.M. _____ P.M. _____

OCT 23 2009

J. DAVID NAVARRO, Clerk
By ERIN EULCHER
DEPUTY

VIRGINIA BOND
BOND LAW, CHARTERED
Attorney at Law, ISB 3842
16 South Main Street
Payette, ID 83661
Telephone: (208) 642-4748
Facsimile: (208) 642-0166

Attorney for Defendant

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

_____)	
STATE OF IDAHO,)	CASE NO. CRFE 2009-6798
)	
Plaintiff,)	MOTION IN LIMINE
)	
VANCE EVERETT THUMM,)	
)	
Defendant.)	
_____)	

COMES NOW, VIRGINIA BOND of BOND LAW, CHARTERED, attorney for the Defendant, VANCE EVERETT THUMM, and hereby moves this Court for an order in limine to prevent disclosure of any evidence of Defendant's hobby of cage fighting.

That this information is contained in the medical report supplemented, but will not be introduced into evidence. Such information is irrelevant, prejudicial, and should not be disclosed to the jury without a hearing, offer of proof, showing relevancy, and permission of the Court.

MOTION IN LIMINE

000103

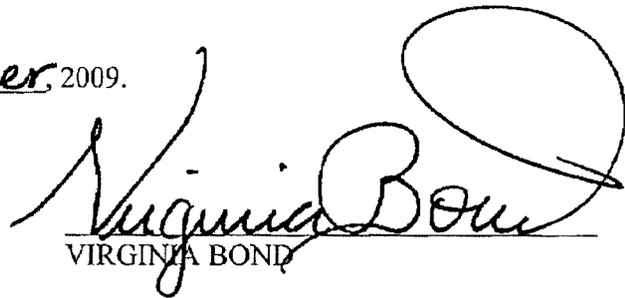
CERTIFICATE OF SERVICE:

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

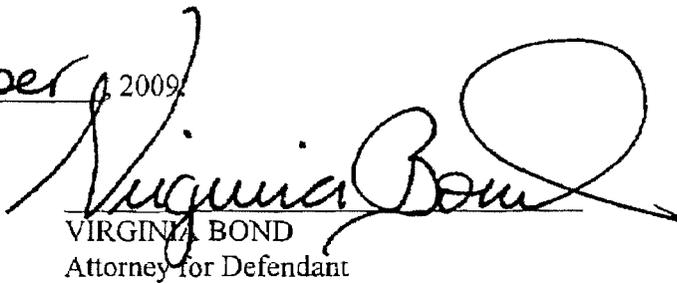
Ada County Prosecuting Attorney
Ada County Courthouse
200 W Front Street Room 3191
Boise, ID 83702

_____ U. S. Mail, postage prepaid
_____ Personally delivered
 X Telecopy/fax

DATED this 22 day of October, 2009.


VIRGINIA BOND

DATED this 22 day of October, 2009.


VIRGINIA BOND
Attorney for Defendant

MOTION IN LIMINE

000105

NO. _____ FILED
A.M. 11:46 P.M. _____

OCT 23 2009

By David Navarro Clerk
DEPUTY

GREG H. BOWER
ADA COUNTY PROSECUTING ATTORNEY

GABE HAWS
Deputy Prosecuting Attorney
Criminal Division
200 West Front Street, Room 3191
Boise, ID 83702
(208) 287-7700

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

STATE OF IDAHO,)	
	)	Case No. CR-FE-2009-6798
Plaintiff,)	
	)	MOTION TO QUASH SUBPOENA
vs.	)	PURSUANT TO IDAHO
	)	CRIMINAL RULE 17, IDAHO
VANCE EVERETT THUMM,	)	CODE SECTIONS 19-3007 AND 19-
	)	3007A OR ISSUE A PROTECTIVE
Defendant.	)	ORDER
_____)	

COMES NOW, Gabe Haws, Deputy Prosecuting Attorney, who moves this Court to quash the subpoena the Defendant sent via fax to Victim Witness Coordinator Shelly Parker, or in the alternative to limit the matters as to which Ms. Parker may testify and allow her to carry out the in-court component of her job.

This motion is based upon the record in this matter as well as the memorandum filed herewith.

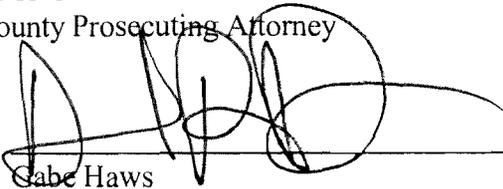
MOTION TO QUASH SUBPOENA PURSUANT TO IDAHO CRIMINAL RULE 17, IDAHO CODE SECTIONS 19-3007 AND 19-3007a, OR ISSUE A PROTECTIVE ORDER (THUMM)
- PAGE 1

000106

DATED this 23rd day of October, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney

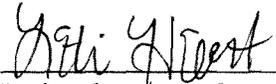
By: _____


Gabe Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 2009, a true and correct copy of the foregoing **MOTION TO QUASH SUBPOENA PURSUANT TO IDAHO CRIMINAL RULE 17, IDAHO CODE SECTIONS 19-3007 AND 19-3007A, OR ISSUE A PROTECTIVE ORDER** was served to **VIRGINIA BOND, Attorney at Law, P.O. Box 1725, Nampa, Idaho 83653** in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: (208) 442-0017*



Leti Hebert, Legal Assistant

NO. _____ FILED _____
A.M. _____ P.M. _____

OCT 26 2009

By J. David Navarro Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: (208) 287-7700
Fax: (208) 287-7707

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

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
VANCE EVERETT THUMM,)
)
Defendant.)
)
)
_____)

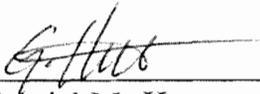
Case No. CRFE2009-6798
**NOTICE OF INTENT TO
IMPEACH**

COMES NOW, Gabriel M. Haws, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and moves the court for a hearing pursuant to I.R.E. 609 for the purpose of giving notice that the State intends to use fact and nature of Michael T. Nugent's prior conviction for Aid and Abet Robbery, in the State of Idaho, County of Bannock in case number CR-1998-033-FE, before Judge Woodland.

Further, the State hereby specifically notifies the defendant pursuant to I.C.R. 609(b) that the State intends to use the conviction AID AND ABET ROBBERY, for impeachment should Michael K. Nugent choose to testify.

DATED this 26th day of October, 2009.

GREG H. BOWER
Ada County Prosecuting Attorney



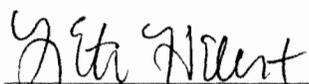
By: Gabriel M. Haws
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of October, 2009, a true and correct copy of the foregoing State's Notice of Intent to Impeach was served to **Virginia Bond, Attorney at Law, P.O. Box 1725, Nampa, ID 83653**, in the manner noted below:

- By depositing copies of the same in the United States mail, postage prepaid, first class.*
- By depositing copies of the same in the Interdepartmental Mail.*
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- By faxing copies of the same to said attorney(s) at the facsimile number: _____*

Hand-delivery



Leti Hebert, Legal Assistant

NO. _____ FILED _____
A.M. _____ P.M. _____

OCT 26 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

VIRGINIA BOND
BOND LAW, CHARTERED
Attorney at Law, ISB 3842
16 South Main Street
Payette, ID 83661
Telephone: (208) 642-4748
Facsimile: (208) 642-0166

Attorney for Defendant

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

STATE OF IDAHO,	)	CASE NO. CRFE 2009-6798
)	
Plaintiff,	)	MOTION TO SUPPRESS
vs.)	
)	
VANCE EVERETT THUMM)	
)	
Defendant.)	
)	

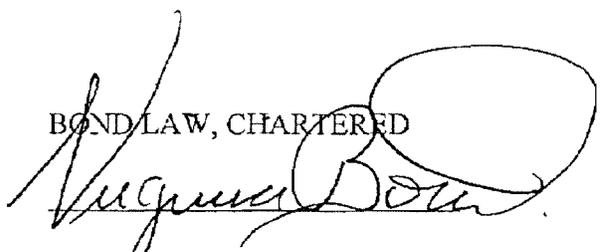
COMES NOW, VIRGINIA BOND of BOND LAW, CHARTERED, Attorney for the Defendant, VANCE EVERETT THUMM, and hereby moves this Honorable Court to suppress the following evidence:

Photos of Defendant's knuckles taken in violation of the fourth amendment.

All photo line ups and the results thereof as the method of showing and comments made urging identification were overly suggestive, invalidating the accuracy of witness identification and statements.

Dated this 25 day of October, 2009.

BOND LAW, CHARTERED



VIRGINIA BOND

Attorney for Defendant

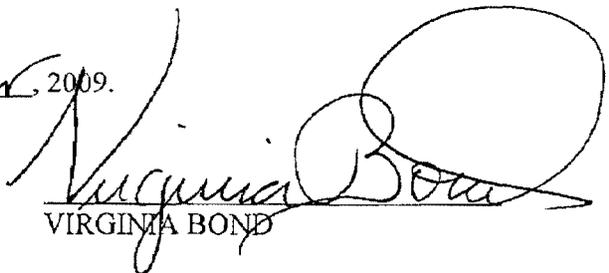
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the following method indicated below to each of the following:

Ada County Prosecuting Attorney
Ada County Courthouse
200 W Front Street Room 3191
Boise, ID 83702

<u> </u>	U. S. Mail, postage prepaid
<u> </u>	Personally delivered
<u> x </u>	Telecopy/fax

Dated the 25 day of October, 2009.


 VIRGINIA BOND

Session: Wetherell102609
Session Date: 2009/10/26
Judge: Wetherell, Mike
Reporter: Omsberg, Nicole

Division: DC
Session Time: 08:17

Courtroom: CR504

Clerk(s):
Oatman, Diane

State Attorneys:
Haws, Gabriel

Public Defender(s):
Davis, J Layne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: FE096798/10691
Plaintiff:
Plaintiff Attorney:
Defendant: Paris Davis, Vance Thumm
Co-Defendant(s):
Pers. Attorney: Bond, Virginia
State Attorney: Haws, Gabriel
Public Defender: Davis, J Layne

2009/10/26

09:02:43 - Operator
Recording:
09:02:43 - New case
Paris Davis, Vance Thumm
09:03:01 - Judge: Wetherell, Mike
Ct calls case; both defendants present in custody w/counsel
-- Ct revw files
09:16:35 - State Attorney: Haws, Gabriel
Motion to quash subpoena
09:16:45 - Judge: Wetherell, Mike
Ct will allow victim witness
09:17:14 - Pers. Attorney: Bond, Virginia
Motion to allow doctor to testify

000113

09:17:30 - State Attorney: Haws, Gabriel
Response -- late disclosure

09:20:53 - Judge: Wetherell, Mike
If State feels prej, Ct will reset trial

09:25:20 - Judge: Wetherell, Mike
Discussion -- re: resetting trial -- trial to proceed

09:25:39 - State Attorney: Haws, Gabriel
Rec'd specific req for discovery -- notes for the record late discovery req

09:26:32 - State Attorney: Haws, Gabriel
--disclosure

09:27:09 - Pers. Attorney: Bond, Virginia
Response

09:27:50 - Pers. Attorney: Bond, Virginia
Filed motion to suppress

09:28:07 - Judge: Wetherell, Mike
Ct does not have motion in the file

09:28:26 - State Attorney: Haws, Gabriel
Request motion be taken up outside presence of the jury

09:28:42 - Judge: Wetherell, Mike
Ct notes Ms. Bond will bring up motion outside presence

09:28:59 - State Attorney: Haws, Gabriel
Reference of co-def to Mr. Thumm "going to prison"

09:29:40 - Pers. Attorney: Bond, Virginia
Response -- prejudicial

09:30:25 - Public Defender: Davis, J Layne
Response -- statements made by Paris

09:32:00 - State Attorney: Haws, Gabriel
Rebuttal

09:34:59 - Judge: Wetherell, Mike
Ct will have to hear testimony before ruling

09:35:13 - State Attorney: Haws, Gabriel
Cont'd argument -- statement made by defendants

09:35:40 - Public Defender: Davis, J Layne
Response

09:36:27 - Pers. Attorney: Bond, Virginia
Response

09:39:21 - Judge: Wetherell, Mike

09:39:30 - Operator
Stop recording:

09:55:17 - Operator
Recording:

09:55:17 - Record
Paris Davis, Vance Thumm

09:55:18 - Judge: Wetherell, Mike
Ct calls case; prospective panel present -- Clerk calls roll

09:58:18 - Judge: Wetherell, Mike
Ct inquires of counsel re: obj to instructions

000114

09:58:26 - Judge: Wetherell, Mike
Counsel have no objection to pre-instructions

10:02:33 - Judge: Wetherell, Mike
Preliminary instructions

10:09:14 - Other: clerk
Panel sworn for voir dire examination

10:09:29 - Judge: Wetherell, Mike
Voir dire examination

10:10:12 - Judge: Wetherell, Mike
Ct excuses Juror No. 40

10:10:52 - Judge: Wetherell, Mike
Ct excuses Juror No. 32

10:18:27 - Judge: Wetherell, Mike
Ct excuses Juror No. 43

10:37:05 - Judge: Wetherell, Mike
Ct excuses Juror 37

10:39:25 - Judge: Wetherell, Mike
Ct excuses all jurors except juror No. 49

10:40:47 - Judge: Wetherell, Mike
Ct discussion issue re: jury service

10:41:59 - Judge: Wetherell, Mike
Ct excuses juror No 49

10:42:30 - Operator
Stop recording:

10:56:07 - Operator
Recording:

10:56:07 - Record
Paris Davis, Vance Thumm

10:56:16 - Judge: Wetherell, Mike
Outside presence of prospective panel

10:56:24 - State Attorney: Haws, Gabriel
inquires re: peremptories

10:56:38 - Judge: Wetherell, Mike
11 peremptory challenges 6 to Def Mr. Thumm 5 to Def Paris

10:57:30 - Judge: Wetherell, Mike
Ct inquires of counsel -- no objection

11:00:16 - Judge: Wetherell, Mike
Ct inquires of Juror No. 26 w/responses interspersed

11:03:07 - Judge: Wetherell, Mike
Prospective panel now present

11:04:22 - State Attorney: Haws, Gabriel
Voir dire examination

12:08:04 - Judge: Wetherell, Mike
Ct admonishes panel re: lunch recess

12:10:14 - Judge: Wetherell, Mike
Jurors rel'd for lunch recess except juror 38 -- inquiry --
rel'd

12:11:46 - Judge: Wetherell, Mike

000115

Ct adv counsel re: eye witness testimony instruction
12:12:37 - Operator
Stop recording:
13:31:14 - Operator
Recording:
13:31:14 - Record
Paris Davis, Vance Thumm
13:31:19 - Pers. Attorney: Bond, Virginia
Voir dire examination
13:58:43 - Pers. Attorney: Bond, Virginia
Passes panel for cause
13:58:52 - Public Defender: Davis, J Layne
Voir dire examination
14:40:53 - Judge: Wetherell, Mike
Counsel exercise peremptory challenges
14:50:49 - Judge: Wetherell, Mike
Clerk calls chosen members into jury box
14:52:59 - Judge: Wetherell, Mike
Counsel accept jury as impanled
14:53:10 - Judge: Wetherell, Mike
Ct excuses balance of panel
14:54:59 - Other: clerk
panel sworn to try the case
14:56:09 - Judge: Wetherell, Mike
Jury admonished and excused
15:20:17 - Judge: Wetherell, Mike
Discussion re: aiding and abetting aggravated battery
15:27:05 - Judge: Wetherell, Mike
Jury present & seated as sworn
15:27:18 - Judge: Wetherell, Mike
Ct instructs the jury
15:48:27 - Public Defender: Davis, J Layne
Wishes to take matter up outside jury's presence before open
ing
15:48:42 - Judge: Wetherell, Mike
Ct admonishes and excuses panel
15:49:16 - Judge: Wetherell, Mike
Outside presence of the jury
15:50:17 - Public Defender: Davis, J Layne
Disclosure re: basketball w/juror No. 8
15:51:16 - State Attorney: Haws, Gabriel
Response
15:51:19 - Judge: Wetherell, Mike
Ct adv counsel to not play basketball tonight
15:51:35 - Pers. Attorney: Bond, Virginia
Nothing to add
15:51:40 - Public Defender: Davis, J Layne
Will solve matter that way

000116

15:53:55 - Judge: Wetherell, Mike
Jury present & seated as sworn
15:54:03 - State Attorney: Haws, Gabriel
Opening statement
16:08:35 - Pers. Attorney: Bond, Virginia
Opening statement
16:10:27 - Pers. Attorney: Bond, Virginia
16:10:54 - Public Defender: Davis, J Layne
Opening statement
16:16:44 - Operator
Stop recording:

000117

Session: Wetherell102709
Session Date: 2009/10/27
Judge: Wetherell, Mike
Reporter: Omsberg, Nicole

Division: DC
Session Time: 08:22

Courtroom: CR504

Clerk(s):
Oatman, Diane

State Attorneys:
Haws, Gabriel

Public Defender(s):
Davis, J Layne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: FE096798/10691
Plaintiff:
Plaintiff Attorney:
Defendant: Paris Davis, Vance Thumm
Co-Defendant(s):
Pers. Attorney: Bond, Virginia
State Attorney: Haws, Gabriel
Public Defender: Davis, J Layne

2009/10/27

09:00:26 - Operator
Recording:
09:00:26 - New case
Paris Davis, Vance Thumm
09:00:37 - Judge: Wetherell, Mike
Ct calls case; defendants present in custody w/counsel
09:00:53 - Pers. Attorney: Bond, Virginia
Adv the Ct served subpoena on doctor last week -- adv she wi
ll not be
09:01:27 - Pers. Attorney: Bond, Virginia
attending trial -- sent an investigator to personally serve
doctor
09:01:29 - Judge: Wetherell, Mike

000118

Jury present and seated as sworn
09:03:33 - State Attorney: Haws, Gabriel
Calls Detective Leavitt, sworn - D-X -- training & experience
09:05:23 - Other: Leavitt, Detective
Dispatched to St. Alphonsus -- spoke w/Officer Ransom
09:06:24 - Other: Leavitt, Detective
Describes victim's condition -- eventually arrived at scene of incident
09:09:08 - Other: Leavitt, Detective
Describes scene -- identifies State's 1
09:12:03 - State Attorney: Haws, Gabriel
Moves State's 1 -- no objection -- admitted
09:14:04 - State Attorney: Haws, Gabriel
2 through 8 identified by witness
09:15:38 - State Attorney: Haws, Gabriel
Moves
09:15:45 - Pers. Attorney: Bond, Virginia
Question in aid of objection
09:17:12 - Pers. Attorney: Bond, Virginia
No obj State's 3 -- obj to balance -- irrelevant
09:17:27 - Public Defender: Davis, J Layne
Question in aid of objection
09:18:24 - Public Defender: Davis, J Layne
No objection
09:18:27 - Judge: Wetherell, Mike
Ct admits State's 2, 3, 4, 5, 6, 7, and 8
09:24:57 - Other: Leavitt, Detective
Interviews of individuals/investigation of incident
09:29:08 - Public Defender: Davis, J Layne
objection
09:29:19 - Pers. Attorney: Bond, Virginia
Joins in obj
09:29:23 - State Attorney: Haws, Gabriel
response
09:29:51 - Public Defender: Davis, J Layne
Cont'd argument
09:29:55 - Judge: Wetherell, Mike
Sustained as to hearsay
09:30:22 - State Attorney: Haws, Gabriel
Cont'd direct examination -- confirmation of identity of suspects
09:34:06 - Other: Leavitt, Detective
Securing photo lineup
09:39:46 - Other: Leavitt, Detective
Case officer on this particular case
09:40:16 - Public Defender: Davis, J Layne
Objection hearsay

000119

09:40:47 - State Attorney: Haws, Gabriel
Response

09:41:47 - Judge: Wetherell, Mike
Objection overruled

09:42:07 - State Attorney: Haws, Gabriel
Req Ct reptr readback -- Ct reptr complies

09:43:45 - State Attorney: Haws, Gabriel
State's 66 identified by witness

09:45:55 - State Attorney: Haws, Gabriel
Moves

09:45:57 - Pers. Attorney: Bond, Virginia
Objection -- questions in aid of objection

09:49:03 - Public Defender: Davis, J Layne
no obj

09:49:13 - State Attorney: Haws, Gabriel
response

09:50:30 - Judge: Wetherell, Mike
Ct allows admission of State's 66

09:52:25 - Other: Leavitt, Detective
Photo lineup identifies def as person who rented the room in
question

09:56:21 - Other: Leavitt, Detective
Identifies State's 65 -- moves

09:56:33 - Judge: Wetherell, Mike
Counsel have no obj - admitted

10:00:50 - Pers. Attorney: Bond, Virginia
Cross-examination'

10:03:21 - State Attorney: Haws, Gabriel
Objection

10:03:24 - Pers. Attorney: Bond, Virginia
W/draws question

10:07:55 - Pers. Attorney: Bond, Virginia
Moves A -- no obj -- admitted

10:10:34 - State Attorney: Haws, Gabriel
objection

10:10:38 - Judge: Wetherell, Mike
Ct inquires of counsel

10:10:45 - Pers. Attorney: Bond, Virginia
will recall officer later if necessary

10:11:43 - Public Defender: Davis, J Layne
Cross-examination

10:15:35 - State Attorney: Haws, Gabriel
redirect examination

10:23:59 - Public Defender: Davis, J Layne
obj

10:24:08 - State Attorney: Haws, Gabriel
question rephrased

10:24:52 - Pers. Attorney: Bond, Virginia

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cross-examination
10:25:16 - State Attorney: Haws, Gabriel
objection -- question in aid of obj
10:26:00 - Judge: Wetherell, Mike
sustained
10:26:09 - State Attorney: Haws, Gabriel
objection
10:26:12 - Judge: Wetherell, Mike
sustained
10:26:27 - Public Defender: Davis, J Layne
cross-examination
10:30:07 - Judge: Wetherell, Mike
Recess admonition
10:30:58 - Operator
Stop recording:
11:01:39 - Operator
Recording:
11:01:39 - Record
Paris Davis, Vance Thumm
11:02:56 - Judge: Wetherell, Mike
Jury present and seated as sworn
11:03:50 - State Attorney: Haws, Gabriel
Calls Aaron Childers, sworn -- D-X, employee at Budget Host
Inn on day of
11:04:34 - State Attorney: Haws, Gabriel
incident
11:08:24 - Other: Childers, Aaron
Checked def into hotel room
11:09:29 - Other: Childers, Aaron
Identifies State's CD 46
11:14:02 - Other: Childers, Aaron
identifies def for the record
11:14:40 - Other: Childers, Aaron
women came running into lobby screaming "somebody was being
murdered in the
11:15:04 - Other: Childers, Aaron
room" -- called 911 - woman bleeding from the head
11:16:27 - Other: Childers, Aaron
CD - 911 call -- identified -- moves
11:16:45 - Judge: Wetherell, Mike
no objection -- Ct admits 48
11:17:18 - Judge: Wetherell, Mike
Ct excuses Ct repr from realtime reporting-counsel so stipu
late
11:18:54 - State Attorney: Haws, Gabriel
48 surveillance of woman entering hotel - 49 - clerks 911 ca
ll
11:19:00 - Judge: Wetherell, Mike

no obj -- Ct admits both
11:28:07 - Pers. Attorney: Bond, Virginia
Cross-examination
11:30:42 - Public Defender: Davis, J Layne
Cross-examination
11:31:01 - State Attorney: Haws, Gabriel
redirect examination
11:31:29 - Other: Childers, Aaron
steps down and excused
11:31:37 - State Attorney: Haws, Gabriel
Calls Officer Ransom, sworn - D-X--training and experience
11:38:44 - Pers. Attorney: Bond, Virginia
obj
11:38:47 - Public Defender: Davis, J Layne
obj
11:38:49 - Judge: Wetherell, Mike
Overruled
11:41:11 - Other: Ransom, Officer
describes scene upon arrival -- interviews w/individuals
11:42:50 - Other: Ransom, Officer
Identifies 9 thorough 12
11:44:18 - State Attorney: Haws, Gabriel
Moves
11:44:22 - Pers. Attorney: Bond, Virginia
obj cumulative
11:44:59 - Public Defender: Davis, J Layne
No objection
11:45:02 - State Attorney: Haws, Gabriel
response
11:46:43 - Judge: Wetherell, Mike
overruled as to 9, 10 and 12 -- admitted (Ct will await furt
her relevancy as
11:47:35 - Judge: Wetherell, Mike
to 11)
11:51:07 - Pers. Attorney: Bond, Virginia
Requests recess
11:52:24 - Judge: Wetherell, Mike
Ct admonishes panel
11:52:34 - Operator
Stop recording:
12:03:27 - Operator
Recording:
12:03:27 - Record
Paris Davis, Vance Thumm
12:03:36 - State Attorney: Haws, Gabriel
Cont'd direct examination of Officer Ransom
12:05:05 - Other: Ransom, Officer
13 through 15 identified

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12:05:11 - State Attorney: Haws, Gabriel
Moves exhibits

12:05:22 - Pers. Attorney: Bond, Virginia
no obj

12:05:25 - Public Defender: Davis, J Layne
questions in aid of objection

12:07:49 - Public Defender: Davis, J Layne
no objection

12:07:51 - Judge: Wetherell, Mike
Ct admits State's 13, 14, and 15

12:11:39 - State Attorney: Haws, Gabriel
Moves 16, 17, and 18 -- no objection -- admitted

12:16:18 - State Attorney: Haws, Gabriel
State's 19, 20, 21, 22, 23, 24, and 25 identified by witness
-- moves

12:17:12 - Pers. Attorney: Bond, Virginia
inquires in aid of objection

12:17:54 - Pers. Attorney: Bond, Virginia
no obj

12:17:57 - Public Defender: Davis, J Layne
no obj

12:17:58 - Judge: Wetherell, Mike
Ct admits 19 through 25

12:27:28 - State Attorney: Haws, Gabriel
Identifies 26 through 30 and 32 -- moves -- no obj

12:29:07 - Judge: Wetherell, Mike
Ct admits 26, 27, 28, 29, 30 and 32

12:32:32 - Judge: Wetherell, Mike
Lunch recess

12:33:33 - State Attorney: Haws, Gabriel
Rec'd redacted audio tape from defense counsel Ms. Bond this
morning

12:34:26 - Pers. Attorney: Bond, Virginia
Can provide testimony from detective delivered to State some
time last week

12:34:59 - State Attorney: Haws, Gabriel
response

12:35:54 - Judge: Wetherell, Mike
Ct notes pretrial order

12:36:30 - Pers. Attorney: Bond, Virginia
Adv Ct investigator tried to delivered to Ct's chambers last
week

12:37:35 - Operator
Stop recording:

13:46:51 - Operator
Recording:

13:46:51 - Record
Paris Davis, Vance Thumm

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13:46:54 - Judge: Wetherell, Mike
Outside presence of the jury

13:47:03 - Pers. Attorney: Bond, Virginia
Tape delivered to prosecutor -- investigator present to adv
Ct

13:47:24 - Judge: Wetherell, Mike
Ct reads pretrial order to counsel

13:51:42 - Judge: Wetherell, Mike
Ct inquires re: deadlines being met

13:51:58 - Pers. Attorney: Bond, Virginia
Response

13:52:21 - Judge: Wetherell, Mike
Ct will allow counsel to make her record

13:53:22 - Pers. Attorney: Bond, Virginia
Addresses the Court

13:53:28 - Public Defender: Davis, J Layne
inquires of Ct re: tapes and redactions

13:55:36 - State Attorney: Haws, Gabriel
addresses the court

13:57:11 - Judge: Wetherell, Mike
Ct rules tapes will not be allowed to be used -- provided la
te

13:58:15 - Judge: Wetherell, Mike
Counsel will be allowed to cross-examine vigorously w/ref to
prior

13:59:25 - Judge: Wetherell, Mike
inconsistent statements

14:00:51 - Judge: Wetherell, Mike
Jury present and seated as sworn

14:01:05 - State Attorney: Haws, Gabriel
Direct examination of Officer Ransom cont'd

14:01:27 - Other: Ransom, Officer
State's 33 through 38 identified by witness

14:03:33 - State Attorney: Haws, Gabriel
Moves -- no obj -- Ct admits 33 through 38

14:08:31 - Other: Ransom, Officer
Identifies State's 39 through 42 -- State moves

14:08:54 - Judge: Wetherell, Mike
counsel have no obj -- admitted

14:11:13 - Pers. Attorney: Bond, Virginia
Cross-examination

14:14:46 - Public Defender: Davis, J Layne
No questions

14:14:56 - Other: Ransom, Officer
Steps down and excused

14:15:25 - State Attorney: Haws, Gabriel
Calls Helen Fisher, sworn - D-X, friend of defendant Paris D
avis

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14:21:21 - Other: Fisher, Helen
Testimony as to evening in question at the bar

14:23:59 - Other: Fisher, Helen
Party eventually cont'd in hotel room--Budget Host Inn

14:34:41 - Other: Fisher, Helen
Discussion w/Brook w/ref to incident in hotel room

14:34:57 - Pers. Attorney: Bond, Virginia
cross-examination

14:58:36 - Pers. Attorney: Bond, Virginia
cross-examination

15:03:16 - State Attorney: Haws, Gabriel
redirect examination

15:06:22 - Pers. Attorney: Bond, Virginia
Recross examination

15:06:47 - Public Defender: Davis, J Layne
no further questions

15:06:53 - Other: Fisher, Helen
Steps down and excused

15:07:42 - State Attorney: Haws, Gabriel
Calls Devon Ohls, sworn - D-X

15:08:21 - Other: Fisher, Helen
Deven Ohls victim in this case -- relationship w/witnesses/d
efendants

15:10:02 - Other: Fisher, Helen
Relates events on evening in question

15:17:03 - Public Defender: Davis, J Layne
objection

15:17:07 - Judge: Wetherell, Mike
overruled

15:32:38 - Public Defender: Davis, J Layne
objection

15:32:41 - Judge: Wetherell, Mike
Ct allows

15:33:05 - Public Defender: Davis, J Layne
objection

15:33:10 - Judge: Wetherell, Mike
overruled

15:38:57 - Judge: Wetherell, Mike
Ct admonish jury re: recess

15:40:05 - Starting Side Bar.
Ms. Bond adv witness not to refer to in custody status

15:40:06 - Ending Side Bar.
Ct so notes

15:40:19 - Operator
Stop recording:

15:54:47 - Operator
Recording:

15:54:47 - Record

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Paris Davis, Vance Thumm
15:54:48 - Judge: Wetherell, Mike
Outside presence of the jury
15:54:57 - State Attorney: Haws, Gabriel
Adv Ct reference to terms "rat"
15:56:00 - Public Defender: Davis, J Layne
no intention to go into area of gang activity
15:56:42 - Pers. Attorney: Bond, Virginia
Concurs
15:56:48 - Judge: Wetherell, Mike
Ct admonishes witness re: reference to "rat"
16:00:24 - Judge: Wetherell, Mike
Jury present and seated as sworn
16:00:32 - Pers. Attorney: Bond, Virginia
Cross-examination
16:08:12 - Public Defender: Davis, J Layne
No questions
16:08:16 - Judge: Wetherell, Mike
Ct adv witness def is subject to being recalled
16:08:31 - State Attorney: Haws, Gabriel
Calls Kaylan Speers, friend of defendant Paris Davis -- identifies defendants
16:12:33 - Other: Speers, Kaylan
Evening began at Paris' residence -- getting ready for the evening, drinking
16:13:34 - Other: Speers, Kaylan
arrived at the Office at 10:30 cont'd partying
16:16:39 - Other: Speers, Kaylan
party cont'd at hotel room Budget Host Inn
16:27:33 - Public Defender: Davis, J Layne
Clarify when identification is made
16:27:46 - Judge: Wetherell, Mike
Ct adv counsel to so identify
16:36:08 - Other: Speers, Kaylan
Discussions with police officers
16:37:43 - Public Defender: Davis, J Layne
Cross-examination
16:46:42 - State Attorney: Haws, Gabriel
objection
16:46:45 - Judge: Wetherell, Mike
sustained
16:48:14 - Public Defender: Davis, J Layne
Cross-examination
16:51:37 - State Attorney: Haws, Gabriel
Objection
16:51:40 - Judge: Wetherell, Mike
Sustained
16:55:24 - State Attorney: Haws, Gabriel

Redirect examination

16:56:16 - Public Defender: Davis, J Layne
objection -- suspect
16:56:21 - Judge: Wetherell, Mike
Ct will allow use of term
16:59:50 - Public Defender: Davis, J Layne
Objection
16:59:55 - Judge: Wetherell, Mike
sustained
16:59:59 - Public Defender: Davis, J Layne
Objection
17:00:01 - Judge: Wetherell, Mike
Ct allows
17:01:11 - Public Defender: Davis, J Layne
Objection
17:01:13 - Judge: Wetherell, Mike
Sustained
17:01:45 - Public Defender: Davis, J Layne
objection
17:01:47 - Judge: Wetherell, Mike
Ct allows
17:05:29 - Other: Speers, Kaylan
Identifies State's 62 and 64
17:07:28 - State Attorney: Haws, Gabriel
Moves State's 62 and 64
17:07:44 - Pers. Attorney: Bond, Virginia
questions in aid of objection
17:09:12 - Public Defender: Davis, J Layne
Objection
17:09:14 - Judge: Wetherell, Mike
Ct admits 62 and 64
17:11:06 - Public Defender: Davis, J Layne
recross-examination
17:14:59 - Pers. Attorney: Bond, Virginia
recross-examination
17:15:47 - Other: Speers, Kaylan
steps down and released
17:15:56 - Judge: Wetherell, Mike
Ct admonishes and releases jury
17:16:39 - Judge: Wetherell, Mike
Outside presence of the jury
17:16:52 - Judge: Wetherell, Mike
Discussion re: length of State's case
17:18:48 - Pers. Attorney: Bond, Virginia
Adv Ct will be calling witness out of order
17:19:00 - Judge: Wetherell, Mike
Ct notes
17:19:10 - Operator

Stop Recording

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Session: Wetherell1102809
Session Date: 2009/10/28
Judge: Wetherell, Mike
Reporter: Omsberg, Nicole

Division: DC
Session Time: 07:53

Courtroom: CR504

Clerk(s):
Oatman, Diane

State Attorney(s):
Haws, Gabriel

Public Defender(s):
Davis, J Layne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: 09-6798/-0910691
Plaintiff:
Plaintiff Attorney:
Defendant: Davis, Vance Thumm/Paris
Co-Defendant(s):
Pers. Attorney: Bond, Virginia
State Attorney: Haws, Gabriel
Public Defender: Davis, J Layne

2009/10/28

07:54:33 - Operator
Recording:
07:54:33 - New case
Davis, Vance Thumm/Paris
07:55:31 - Operator
Stop recording:
09:03:42 - Operator
Recording:
09:03:42 - Record
Davis, Vance Thumm/Paris
09:03:49 - Judge: Wetherell, Mike
Outside presence of the jury
09:03:59 - State Attorney: Haws, Gabriel
Nothing to take up
09:04:04 - Pers. Attorney: Bond, Virginia
adv ct doctor served and adv'd to appear on Fri -- reference to trainer
09:05:11 - State Attorney: Haws, Gabriel
req witness DOB and social security number
09:05:42 - Judge: Wetherell, Mike
Ct will grant reqt
09:06:05 - State Attorney: Haws, Gabriel
EMT may need to be called out of order
09:06:31 - Judge: Wetherell, Mike

Ct so notes
09:08:27 - Judge: Wetherell, Mike
Jury present seated as sworn
09:09:25 - State Attorney: Haws, Gabriel
Calls Dr. Foss, sworn - D-X
09:10:16 - Other: Foss, Frederick
trauma surgeon -- training and experience
09:15:34 - Other: Foss, Frederick
Physician on call at emergency room when victim arrived
09:19:41 - Other: Foss, Frederick
physical examination -- describes injuries
09:22:19 - Pers. Attorney: Bond, Virginia
Objection -- doctors report being read into the record
09:22:34 - Judge: Wetherell, Mike
Ct adv dr to use doc only to refresh his recollection
09:25:24 - Other: Foss, Frederick
Identifies State's 51 through 54
09:27:30 - State Attorney: Haws, Gabriel
Moves 51 through 54
09:27:37 - Pers. Attorney: Bond, Virginia
questions in aid of obj
09:27:57 - Judge: Wetherell, Mike
Counsel have no obj -- 51 through 54 admitted
09:41:55 - Public Defender: Davis, J Layne
objection
09:42:09 - Judge: Wetherell, Mike
sustained
09:47:10 - Pers. Attorney: Bond, Virginia
objection
09:47:14 - Judge: Wetherell, Mike
sustained
09:47:38 - Public Defender: Davis, J Layne
objection
09:47:43 - Judge: Wetherell, Mike
sustained
09:49:29 - Pers. Attorney: Bond, Virginia
cross-examination
10:00:23 - Public Defender: Davis, J Layne
cross-examination
10:08:47 - State Attorney: Haws, Gabriel
Redirect examination
10:13:46 - Public Defender: Davis, J Layne
recross examination
10:17:24 - Other: Foss, Frederick
steps down and excused
10:17:42 - Judge: Wetherell, Mike
Ct admonishes panel recess
10:18:24 - Judge: Wetherell, Mike
Outside presence -- counsel have nothing to take up
10:18:40 - Operator
Stop recording:
10:36:13 - Operator
Recording:
10:36:13 - Record
Davis, Vance Thumm/Paris
10:37:04 - Judge: Wetherell, Mike
Jury present seated as sworn
10:37:53 - State Attorney: Haws, Gabriel

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Calls Jim Kling, sworn - D-X law enforcement technician/training experience
10:41:59 - Other: Kling, Jim
dispatch to scene -- photos of scene/evidence collected
10:48:20 - Other: Kling, Jim
Identifies State's 43 and 44 -- moves
10:48:52 - Pers. Attorney: Bond, Virginia
counsel wish to examine exhibits
10:50:32 - Public Defender: Davis, J Layne
no obj
10:50:35 - Pers. Attorney: Bond, Virginia
question in aid of objection
10:53:00 - Judge: Wetherell, Mike
Based upon no obj State's 43 and 44 admitted
10:55:54 - Judge: Wetherell, Mike
Counsel have no questions of witness
10:56:05 - Other: Kling, Jim
Steps down and excused
10:56:48 - State Attorney: Haws, Gabriel
Calls Jeremy Steinmetz, sworn - D-X -- friend of def Paris Davis
11:00:45 - Other: Steinmetz, Jeremy
identifies def for the record
11:01:02 - Other: Steinmetz, Jeremy
explains events on evening in question
11:11:50 - Public Defender: Davis, J Layne
obj
11:11:53 - Judge: Wetherell, Mike
overruled
11:13:22 - Other: Steinmetz, Jeremy
arrived at Budget Host 2:50 a.m.
11:22:15 - Other: Steinmetz, Jeremy
describes scene upon arrival -- occupants/beverages
11:23:26 - Other: Steinmetz, Jeremy
describes incident of physical altercation -- where people are positioned in
11:26:41 - Other: Steinmetz, Jeremy
the room
11:32:08 - Public Defender: Davis, J Layne
objection
11:32:17 - Judge: Wetherell, Mike
overruled
11:32:37 - Public Defender: Davis, J Layne
obj
11:32:47 - Judge: Wetherell, Mike
Ct inquires of counsel
11:32:52 - Public Defender: Davis, J Layne
response
11:33:17 - Judge: Wetherell, Mike
overruled
11:44:42 - Pers. Attorney: Bond, Virginia
objection
11:44:45 - Public Defender: Davis, J Layne
joins in objection
11:44:48 - Judge: Wetherell, Mike
sustained
11:45:03 - Judge: Wetherell, Mike
Counsel approach -- discussion off the record
11:46:21 - Judge: Wetherell, Mike
lunch recess -- admonishes panel
11:47:12 - Judge: Wetherell, Mike

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Outside presence of the jury
11:47:35 - State Attorney: Haws, Gabriel
inclined to inquiry of witness re: Vance's roll or participation in the
11:47:57 - State Attorney: Haws, Gabriel
attack -- not sure what response of witness will be
11:48:51 - Pers. Attorney: Bond, Virginia
leading nature of question
11:49:22 - Judge: Wetherell, Mike
Ct inquires re: mistrial -- leading question
11:49:42 - Public Defender: Davis, J Layne
argument
11:49:47 - Judge: Wetherell, Mike
response
11:50:36 - Judge: Wetherell, Mike
Ct notes counsel are not willing to waive arguing for a mistrial if witness
11:51:10 - Judge: Wetherell, Mike
testifies that Ms. Davis says def will be going back to prison -- counsel
11:51:33 - Judge: Wetherell, Mike
cannot have it both ways -- Ct will allow State to ask leading question in
11:53:27 - Judge: Wetherell, Mike
order not cause a mistrial -- overrules obj
11:53:57 - Judge: Wetherell, Mike
State allow to adv witness -- statements referring to def being previously
11:54:22 - Judge: Wetherell, Mike
incarcerated at the pen
11:56:36 - Judge: Wetherell, Mike
Ct notes for the record
11:56:45 - State Attorney: Haws, Gabriel
actions on April 13
11:58:15 - Judge: Wetherell, Mike
Discussion re: April 13 incident
11:58:26 - Pers. Attorney: Bond, Virginia
obj to fingerprint evidence -- late disclosure
11:59:03 - State Attorney: Haws, Gabriel
will not be presented fingerprinting evidence
11:59:16 - Judge: Wetherell, Mike
Ct notes evid will not be introduced
11:59:29 - Judge: Wetherell, Mike
Ct adv def if comments made in closing no fingerprint evid, ct will stop
12:00:04 - Judge: Wetherell, Mike
proceedings and allow evidence
12:00:12 - State Attorney: Haws, Gabriel
adv ct re: disclosure of evid
12:01:03 - Judge: Wetherell, Mike
Cont'd discussion re: using evidence in case in chief vs rebuttal evid
12:01:39 - Public Defender: Davis, J Layne
Chris Smith's record being used
12:02:05 - Judge: Wetherell, Mike
if he tesifies maybe used to impeach
12:02:19 - Operator
Stop recording:
13:15:30 - Operator
Recording:
13:15:30 - Record
Davis, Vance Thumm/Paris
13:16:36 - Judge: Wetherell, Mike
Jury present and seated as sworn
13:17:01 - State Attorney: Haws, Gabriel

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direct examination cont'd of Jeremy Steinmetz
13:26:40 - Other: Steinmetz, Jeremy
interviews w/investigators
13:29:48 - Other: Steinmetz, Jeremy
identifies State's 63
13:30:59 - State Attorney: Haws, Gabriel
moves 63 -- no obj - Ct admits 63
13:34:32 - Public Defender: Davis, J Layne
Cross-examination
13:39:52 - State Attorney: Haws, Gabriel
obj
13:39:58 - Judge: Wetherell, Mike
Ct adv counsel to approach -- re: statement in prelim hrg transcript
13:48:55 - State Attorney: Haws, Gabriel
obj -- calls for speculation
13:49:03 - Judge: Wetherell, Mike
Ct allows
14:03:03 - Pers. Attorney: Bond, Virginia
req recess
14:03:07 - Judge: Wetherell, Mike
Ct admonishes panel
14:03:45 - Judge: Wetherell, Mike
Outside presence
14:03:53 - Pers. Attorney: Bond, Virginia
Inquires re: standing at defense table vs. potium
14:04:11 - Judge: Wetherell, Mike
Ct adv counsel anywhere is fine
14:04:23 - Public Defender: Davis, J Layne
Inquires re: length
14:04:34 - State Attorney: Haws, Gabriel
two additional witness
14:05:01 - Judge: Wetherell, Mike
Discussion re: length of trial
14:06:05 - Operator
Stop recording:
14:18:42 - Operator
Recording:
14:18:42 - Record
Davis, Vance Thumm/Paris
14:19:13 - Judge: Wetherell, Mike
Jury present and seated as sworn
14:20:21 - Pers. Attorney: Bond, Virginia
Cross-examination
14:23:08 - State Attorney: Haws, Gabriel
Requests counsel adv where in prelim transcript
14:23:25 - Pers. Attorney: Bond, Virginia
Complies
14:28:06 - State Attorney: Haws, Gabriel
objection
14:28:14 - Judge: Wetherell, Mike
Ct inquires of counsel
14:28:21 - Pers. Attorney: Bond, Virginia
advises Ct officer's report
14:31:36 - State Attorney: Haws, Gabriel
objection
14:31:39 - Judge: Wetherell, Mike
Ct allows
14:31:54 - State Attorney: Haws, Gabriel

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objection
14:31:56 - Judge: Wetherell, Mike
sustained
14:40:53 - State Attorney: Haws, Gabriel
objection
14:41:02 - Pers. Attorney: Bond, Virginia
will w/draw question
14:43:13 - State Attorney: Haws, Gabriel
redirect examination
14:43:36 - Pers. Attorney: Bond, Virginia
obj
14:43:39 - Public Defender: Davis, J Layne
obj
14:43:40 - Judge: Wetherell, Mike
overruled
14:43:45 - Public Defender: Davis, J Layne
objection -- question in aid of obj
15:01:28 - Public Defender: Davis, J Layne
obj
15:01:30 - Judge: Wetherell, Mike
Ct notes previously asked and answered
15:02:47 - Public Defender: Davis, J Layne
objection
15:02:56 - Judge: Wetherell, Mike
Counsel approach -- discussion off the record
15:05:17 - Pers. Attorney: Bond, Virginia
objection
15:05:24 - Judge: Wetherell, Mike
Ct notes beyond the scope of cross-examination
15:05:56 - Public Defender: Davis, J Layne
objection
15:05:59 - Judge: Wetherell, Mike
sustained
15:06:03 - State Attorney: Haws, Gabriel
rephrases question
15:07:11 - Public Defender: Davis, J Layne
recross examination
15:11:07 - Judge: Wetherell, Mike
Recess
15:11:13 - Operator
Stop recording:
15:22:08 - Operator
Recording:
15:22:08 - Record
Davis, Vance Thumm/Paris
15:22:09 - Judge: Wetherell, Mike
Outside presence of the jury
15:22:17 - State Attorney: Haws, Gabriel
Adv Ct action of Vance Thumm re: head movements
15:23:01 - Judge: Wetherell, Mike
Ct adv def will be watching
15:23:10 - State Attorney: Haws, Gabriel
req Ct admonish witness re: right to testify/not to testify
15:23:40 - Judge: Wetherell, Mike
Ct admonishes witness
15:24:55 - Judge: Wetherell, Mike
Counsel have nothing further
15:27:20 - Judge: Wetherell, Mike

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jury present seated as sworn
15:28:15 - State Attorney: Haws, Gabriel
Calls Franke Hughes, sworn - D-X
15:29:08 - Pers. Attorney: Bond, Virginia
obj
15:29:10 - Judge: Wetherell, Mike
Ct allows
15:33:29 - Other: Hughes, Franke
relationship w/defendants -- events on evening in question
15:51:20 - Public Defender: Davis, J Layne
Objection -- motion up outside presence of the jury
15:52:26 - Judge: Wetherell, Mike
Counsel approach -- sidebar conference
16:22:42 - Public Defender: Davis, J Layne
objection
16:22:45 - Judge: Wetherell, Mike
sustained
16:23:04 - Other: Hughes, Franke
relates what happened after altercation
16:28:17 - Public Defender: Davis, J Layne
objection -- w/draws objection
16:28:50 - Public Defender: Davis, J Layne
objection
16:28:53 - Judge: Wetherell, Mike
overruled
16:29:17 - Judge: Wetherell, Mike
obj -- ct adv counsel to clarify
16:40:20 - Pers. Attorney: Bond, Virginia
Cross-examination
16:43:32 - Public Defender: Davis, J Layne
cross-examination
16:51:04 - State Attorney: Haws, Gabriel
Redirect examination
16:52:03 - Pers. Attorney: Bond, Virginia
objection -- inquires in aid of objection
16:52:26 - Public Defender: Davis, J Layne
objection
16:53:08 - Judge: Wetherell, Mike
Ct adv counsel additional foundation
16:53:17 - Public Defender: Davis, J Layne
yes or no response
16:53:21 - Judge: Wetherell, Mike
Ct will allow the question as asked
16:53:44 - Other: Hughes, Franke
Observed clothes being placed in trash bag
17:02:08 - Pers. Attorney: Bond, Virginia
recross examination
17:02:20 - State Attorney: Haws, Gabriel
objection
17:02:23 - Judge: Wetherell, Mike
ct allows
17:02:56 - Public Defender: Davis, J Layne
cross-examination
17:03:39 - State Attorney: Haws, Gabriel
redirect examination
17:04:32 - Judge: Wetherell, Mike
Ct admonishes and releases jury
17:05:21 - Judge: Wetherell, Mike

000134

Outside presence of the jury
17:05:32 - Pers. Attorney: Bond, Virginia
Motion for mistrial
17:05:37 - Judge: Wetherell, Mike
denied
17:05:39 - Public Defender: Davis, J Layne
nothing further
17:05:43 - Judge: Wetherell, Mike
Ct will give limiting instruction
17:06:26 - State Attorney: Haws, Gabriel
notes for the record sidebar conf -- reference to homie
17:06:51 - Judge: Wetherell, Mike
Ct so notes
17:07:04 - Public Defender: Davis, J Layne
conkurs
17:07:06 - State Attorney: Haws, Gabriel
17:07:11 - Public Defender: Davis, J Layne
conkurs
17:07:21 - Judge: Wetherell, Mike
If counsel wish admonition provide to the court proposed admonition
17:07:41 - Judge: Wetherell, Mike
Witnesses will be allowed to be taken out of order if necessary
17:08:05 - Operator
Stop recording:

OCT 29 2009
J. DAVID NAVAREDO, Clerk
J. David Navaredo
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Gabriel M. Haws
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

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

THE STATE OF IDAHO,	)	Case No. CRFE2009-6798
)	
Plaintiff,	)	ORDER FOR DELIVERY OF
vs.	)	MEDICAL RECORDS TO THE
	)	ADA COUNTY PROSECUTING
VANCE EVERETT THUMM,	)	ATTORNEY'S OFFICE
	)	PURSUANT TO THE HEALTH
Defendant.	)	INSURANCE PORTABILITY
	)	AND ACCOUNTABILITY ACT
	)	AND IDAHO CODE §19-3004;
	)	ICR 17

This Court, upon information from the Ada County Prosecuting Attorney's Office that certain medical records described herein are necessary for preparation and presentation of the Prosecution's case in the above-captioned matter, and the Court concluding that the medical records do appear to be relevant and necessary to the proper adjudication of this matter, hereby orders that employees or representatives of Saint Alphonsus Regional Medical Center produce all personal health information, including but not limited to medical records, documents,

ORDER FOR DELIVERY OF MEDICAL RECORDS TO THE ADA COUNTY PROSECUTING ATTORNEY'S OFFICE PURSUANT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND IDAHO CODE §19-3004; ICR 17.

000136

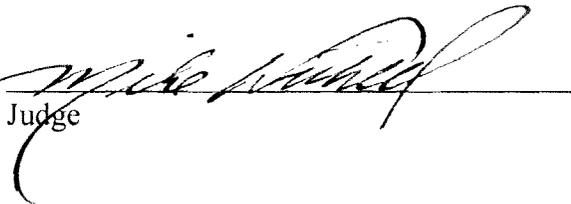
Handwritten notes and signature at the bottom of the page.

photographs and billing statements in their custody pertaining to VANCE EVERETT THUMM, [REDACTED] DOI: 4/6/09 and/or 4/7/09 to the Ada County Prosecuting Attorney's Office in response to a subpoena issued by the Prosecution in this case. The records may be generally provided in the manner set out in Idaho Code §9-420, except that the said records are to be made available for pickup by an agent of the Ada County Prosecuting Attorney's Office or law enforcement within three business days of the service of the subpoena, rather than be delivered to the Court.

This Order is also intended to require that personal health information, other than just the described written medical records, such as information known to employees or representatives of the Saint Alphonsus Regional Medical Center also be provided to the prosecution or criminal defense by interview when asked for and that those employees or representatives of Saint Alphonsus Regional Medical Center testify if required.

Any questions regarding said records should be directed to the Ada County Prosecuting Attorney's Office, (208) 287-7700.

IT IS SO ORDERED this 29th day of October 2009.


Judge

OCT 29 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

32
JT
10/30
9:00

Richard W. Stover, ISB # 6801
EBERLE, BERLIN, KADING, TURNBOW &
McKLVEEN, CHARTERED
1111 W. Jefferson, Suite 530
Post Office Box 1368
Boise, Idaho 83701-1368
Telephone: (208) 344-8535
Facsimile: (208) 344-8542

Attorneys for Dr. Jessica Wasielewski

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

STATE OF IDAHO,

Plaintiff,

vs.

VANCE E. THUMM,

Defendant.

Case No. CR-FE-2009-6798

MOTION TO QUASH SUBPOENA

COMES NOW, Jessica Wasielewski, M.D., by and through her attorneys, Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered, and hereby moves this Court for an Order quashing the subpoena served upon Dr. Wasielewski on the grounds and for the reason that it was untimely and improperly served.

On Tuesday, October 27, 2009, Dr. Wasielewski was served with the Subpoena (a true and correct copy of which is attached hereto as Exhibit "A") at approximately 6:00 p.m. at her home. The Subpoena expressly commands Dr. Wasielewski to appear before this Court on October 26, 2009, at 9:00 a.m. Clearly, Dr. Wasielewski cannot appear in court the day before she was served and first received notice of the Subpoena. Moreover, as it is appears that the

testimony sought from Dr. Wasielewski relates to her treatment of the above-named Defendant at the Emergency Department of Saint Alphonsus on April 9, 2009, there are several other means to obtain the same evidence without burdening an emergency room physician. Namely, the Defendant can introduce his medical records, other treating physicians, or other treating medical staff. Since the same evidence can be produced by other means, Dr. Wasielewski's motion to quash should be granted. *See*, 81 Am.Jur.2d Witnesses § 12 (2009).

The Court should also consider the Dr. Wasielewski's nonparty status when weighing the burdens imposed in connection with the subpoena at issue. *See S.E.C. v. Seahawk Deep Ocean Technology, Inc.*, 166 F.R.D. 268, 269, 35 Fed.R.Serv.3d 360 (D.Conn. 1996). In this case, Dr. Wasielewski is an emergency room physician scheduled to be on duty on Thursday, October 29, 2009, at West Valley Medical Center Emergency Room, and on Friday, October 30, 2009, at Saint Alphonsus Regional Medical Center Emergency Room. Compelling Dr. Wasielewski to testify in the above-entitled matter on such short notice would be an undue burden to the doctor in terms of finding another emergency room physician to cover her shift and, more importantly, it would endanger the community at large in that it would force an essential emergency room physician to vacate her post. While this is a concern at any time, it is especially problematic given the enhanced measures employed at hospital areas nationwide in response to the H1N1 flu pandemic.

-Finally, the Defendant's trial date was certainly not a surprise to him or his counsel, and the Court's subpoena power has been available to the Defendant since the commencement of this action. The Defendant's failure to serve a Subpoena on Dr. Wasielewski in time for her to accommodate such request should not result in an undue burden to the witness or the community

at large. Indeed, the Defendant's right to compulsory process is not absolute. *U.S. v. Gonzales*, 79 F.3d 413 (5th Cir.1996).

In sum, the Subpoena should be quashed as void on its face because it commands the witness to appear on a date in the past. Additionally, other means of obtaining the same evidence are available to the Defendant, the witness will be unduly burdened, the community will be put at risk, and the Defendant's right to compulsory process is not absolute. As such, Dr. Wasielewski respectfully requests this Court quash the Subpoena served upon her relating to this case.

DATED this 28th day of October, 2009.

EBERLE, BERLIN, KADING, TURNBOW &
McKLVEEN, CHARTERED

By: 

Richard W. Stover, of the Firm
Attorney for Dr. Wasielewski

CERTIFICATE OF SERVICE

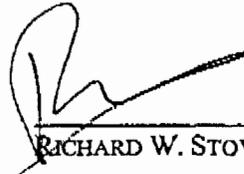
I HEREBY CERTIFY that on this 28th day of October, 2009, a true and correct copy of the foregoing document was served by the method, methods and addressed as follows:

ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT STREET, ROOM 3191
BOISE, IDAHO 83702

- U.S. Mail
- (208) 287-7709
- Overnight Delivery
- Messenger Delivery

VIRGINIA BOND
BOND LAW, CHARTERED
16 SOUTH MAIN STREET
PAYETTE, IDAHO 83661

- U.S. Mail
- (208) 642-0166
- Overnight Delivery
- Messenger Delivery



RICHARD W. STOVER

Oct 19 09 08:17p

Bond Law, Chtd

(208) 642-0166

p.1

Erday 9²⁰

VIRGINIA BOND
BOND LAW, CHARTERED
Attorney at Law ISB 3842
16 South Main Street
Payette, ID 83661
Telephone: (208) 642-4748
Facsimile: (208) 642-0166

COPY

cell: 899-6109 -

Please call Mrs Bond. thanks

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

STATE OF IDAHO ,	}
Plaintiff.	}
vs.	}
VANCE E. THUMM,	}
Defendant.	}

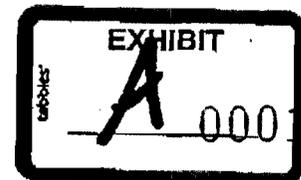
CASE NO. CRFE 2009-6798

SUBPOENA

THE STATE OF IDAHO SENDS GREETINGS TO:
Dr. Jessica Wasielewski

YOU ARE HEREBY COMMANDED TO appear and attend before our District Court of the Fourth Judicial District, State of Idaho, in and for the County of Ada, before the Honorable Michael Wetherell at a session of said Court to be held at the courtroom of said Court, at Boise City, Ada County, Idaho, on the 26th day of October, 2009, at 9:00 a.m., then and there to testify in the above stated cause now pending in said Court, on the part of the Defendant for a jury trial on the charge of Aggravated Battery.

SUBPOENA - PAGE





Oct 19 09 08:17p

Bond Law, Chtd

(2009) 642-0168

p.2

ATTEST my hand and seal of said Court this 20th SEPT 2009

J. DAVID NAVARRO, Clerk District Court

By Sellley
Deputy Clerk

NO _____ FILED _____
A.M. _____ P.M. _____

OCT 29 2009

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

Richard W. Stover, ISB # 6801
EBERLE, BERLIN, KADING, TURNBOW &
McKLVEEN, CHARTERED
1111 W. Jefferson, Suite 530
Post Office Box 1368
Boise, Idaho 83701-1368
Telephone: (208) 344-8535
Facsimile: (208) 344-8542

Attorneys for Dr. Jessica Wasielewski

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

STATE OF IDAHO,

Plaintiff,

vs.

VANCE E. THUMM,

Defendant.

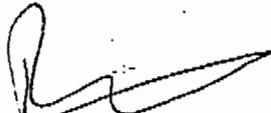
Case No. CR-FE-2009-6798

**MOTION FOR ORDER SHORTENING
TIME**

COMES NOW, Jessica Wasielewski, M.D., by and through her attorneys, Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered, and hereby moves this Court for an Order shortening the time limitations placed by Rule 45(c), Idaho Criminal Rules on the grounds and for the reasons that Dr. Wasielewski has filed a Motion to Quash Subpoena relating to a subpoena that compels her to testify in the above-entitled matter on Monday, October 26, 2009, despite the fact that it was not served on her until Tuesday, October 27, 2009, at 6:00 p.m. It is anticipated that the Defendant's trial will conclude by Friday, October 30, 2009, so the time limits set by Rule 45(c) do not allow for Dr. Wasielewski's motion to be heard in a timely manner unless the Court shortens time.

DATED this 28th day of October, 2009.

EBERLE, BERLIN, KADING, TURNBOW &
McKLVEEN, CHARTERED

By: 
Richard W. Stover, of the Firm
Attorney for Dr. Wasielewski

CERTIFICATE OF SERVICE

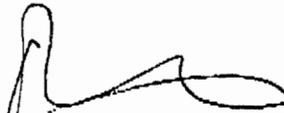
I HEREBY CERTIFY that on this 28th day of October, 2009, a true and correct copy of the foregoing document was served by the method, methods and addressed as follows:

ADA COUNTY PROSECUTOR'S OFFICE
200 W. FRONT STREET, ROOM 3191
BOISE, IDAHO 83702

- U.S. Mail
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16 SOUTH MAIN STREET
PAYETTE, IDAHO 83661

- U.S. Mail
- (208) 642-0166
- Overnight Delivery
- Messenger Delivery


RICHARD W. STOVER

NO. _____
FILED
A.M. _____ P.M. 10:20

OCT 30 2009

By J. DAVID NAVAPRO, Clerk
[Signature]
DEPUTY

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

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 VANCE EVERETT THUMM,)
 and PARIS MARIE DAVIS,)
)
 Defendant.)
 _____)

Case No. CRFE090006798/
CRFE090010691

JURY INSTRUCTIONS

HONORABLE MIKE WETHERELL
DISTRICT JUDGE
PRESIDING

INSTRUCTION NO. 1

This is the case of State of Idaho v. VANCE EVERETT THUMM AND PARIS MARIE DAVIS. Are the parties ready to proceed?

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select 12 jurors and one alternate juror from among you.

I am Mike Wetherell, the judge in charge of the courtroom and this trial. The deputy clerk of the court marks the trial exhibits and administers oaths to you jurors and to the witnesses. The bailiff will assist me in maintaining courtroom order and working with the jury. The court reporter will keep a verbatim account of all matters of record during the trial.

Each of you is qualified to serve as a juror of this court. This call upon your time does not frequently come to you, but is part of your obligation for your citizenship in this state and country. No one should avoid fulfilling this obligation except under the most pressing circumstances. Service on a jury is a civic and patriotic obligation which all good citizens should perform.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

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To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The State of Idaho is the plaintiff in this action. The lawyer representing the State is Gabriel Haws, a member of the Ada County Prosecuting Attorney's staff.

The defendants in this action are VANCE EVERETT THUMM and PARIS MARIE DAVIS. The lawyer representing Mr. Thumm is Virginia Bond. The lawyer representing Ms. Davis is J. Layne Davis.

I will now read you the pertinent portion of the Information which sets forth the charges against each defendant. The Information is not to be considered as evidence but are mere formal charges against the defendants. You must not consider it as evidence of guilt and you must not be influenced by the fact that charges have been filed.

With regard to Mr. Thumm, the Information charges that the Defendant, VANCE EVERETT THUMM, on or about the 11th day of April, 2009, in the County of Ada, State of Idaho, did willfully and unlawfully use force and/or violence upon the person of Devin Ohls and/or did aid and abet others who willfully and unlawfully used force or violence upon the person of Devin Ohls, causing great bodily harm, permanent disability, or permanent disfigurement, to-wit: by kicking and/or stomping and/or punching and/or stabbing Devin Ohls about the face and/or body causing a nasal bone fracture, concussion, and/or facial lacerations, and/or a puncture wound.

To this charge Mr. Thumm has pled not guilty.

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With regard to Ms. Davis, the Information charges in Count I, that the Defendant, PARIS MARIE DAVIS, on or about the 11th day of April, 2009, in the County of Ada, State of Idaho, did with the purpose of promoting or facilitating the commission of a crime, solicit and/or encourage Vance Thumm and/or Chris Smith and/or Frankie Hughes to engage in conduct which would constitute the crime of Destruction and/or Concealment of Evidence by encouraging and/or soliciting those involved in an Aggravated Battery to destroy the clothing that they wore at the time of the incident.

The Information charges in Count II, that the Defendant, PARIS MARIE DAVIS, on or about the 15th day of April, 2009, in the County of Ada, State of Idaho, did willfully withhold and/or conceal knowledge of a felony that had been committed by denying knowledge of the Aggravated Battery that occurred on or about the 11th day of April, 2009, when questioned by Detective Brian Holland of the Boise Police Department and where witnesses identified the Defendant as being present at the time of the Aggravated Battery.

To these charges Ms. Davis has pled not guilty.

Under our law and system of justice, every defendant is presumed to be innocent. The effect of this presumption is to require the State to prove a defendant's guilt beyond a reasonable doubt in order to support a conviction against that defendant.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case.

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the

controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

In this part of the jury selection, you will be asked questions touching on your qualifications to serve as jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately.

If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you

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certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefor. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

The clerk will now swear the entire jury panel for the voir dire examination. Would you all please stand, raise your right hand and take an oath from the clerk.

INSTRUCTION NO. 2

1. You have heard the charges made in the Information against the defendants. Other than what I have told you, do any of you know anything about this case, either through your own personal knowledge, by discussion with anyone else or from radio, television or newspapers?

SUGGESTED FOLLOW UP QUESTIONS WHERE THERE IS KNOWLEDGE
OF THE CHARGE:

Do you have a state of mind with reference to the charge against these defendants which would in any way prevent you from acting with impartiality?

Do you feel that you can eliminate and disregard everything that you have heard or read pertaining to this case and render an impartial verdict based solely upon the evidence presented in this courtroom?

2. Are any of you related by blood or marriage to Vance Everett Thumm or Paris Marie Davis or do you know him or her from any business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE
OF DEFENDANT:

In which of those capacities have you known him/her?

Would your knowledge prevent you from acting with impartiality in this case?

Would your knowledge cause you to give greater or lesser weight to any statement that he might make in this case by reason of such knowledge?

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3. The individual who signed the complaint in this matter is Greg H. Bower. Are any of you related by blood or marriage to Mr. Bower, or do you know him from any business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COMPLAINANT:

In which of those capacities have you known him?

Would your knowledge prevent you from acting with impartiality in this case?

Would your knowledge cause you to give greater or lesser weight to any statement that he might make in this case by reason of such knowledge?

4. The alleged victim in this matter is Devin Ohls. Are any of you related by blood or marriage to the victim, or do you know him from any business or social relationship? Employed by, own stock in, or have any business relationship with victim?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF VICTIM:

In which of those capacities have you known victim?

Would your knowledge prevent you from acting with impartiality in this case?

5. Does the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, boarder or lodger exist between any of you and either defendant or the Ada County Prosecuting Attorney?

6. Are any of you a party in any civil action against Mr. Thumm and/or Ms. Davis?

7. Have any of you ever complained against Mr. Thumm and/or Ms. Davis or been accused by complainant, the Ada County Prosecuting Attorney in a criminal prosecution?

3. The individual who signed the complaint in this matter is Greg H. Bower. Are any of you related by blood or marriage to Mr. Bower, or do you know him from any business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COMPLAINANT:

In which of those capacities have you known him?

Would your knowledge prevent you from acting with impartiality in this case?

Would your knowledge cause you to give greater or lesser weight to any statement that he might make in this case by reason of such knowledge?

4. The alleged victim in this matter is Devin Ohls. Are any of you related by blood or marriage to the victim, or do you know him from any business or social relationship? Employed by, own stock in, or have any business relationship with victim?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF VICTIM:

In which of those capacities have you known victim?

Would your knowledge prevent you from acting with impartiality in this case?

5. Does the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, boarder or lodger exist between any of you and either defendant or the Ada County Prosecuting Attorney?

6. Are any of you a party in any civil action against Mr. Thumm and/or Ms. Davis?

7. Have any of you ever complained against Mr. Thumm and/or Ms. Davis or been accused by complainant, the Ada County Prosecuting Attorney in a criminal prosecution?

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8. Have any of you ever formed or expressed an unqualified opinion that the defendants, VANCE EVERETT THUMM and PARIS MARIE DAVIS, are guilty or not guilty of the offense charged?

9. I have introduced you to the lawyers representing the parties. Are any of you related by blood or marriage to any of the lawyers or do any of you know any of the lawyers from any professional, business or social relationship?

SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF
COUNSEL:

Who do you know and how do you know them?

Would your knowledge of [name of lawyer] prevent you from acting with impartiality in this case?

Would your knowledge of [name of lawyer] cause you to give greater or lesser weight to the evidence presented by [him/her]?

10. Do any of you have a religious or moral position that would make it impossible to render judgment?

11. Do any of you have any bias or prejudice either for or against the defendants?

12. I will now read to you the names of those who may possibly testify in this cause. I will read their names slowly and I ask that if you know any of them in any capacity that you immediately advise me of this fact.

WITNESS LIST

- 1) Officer Ransom, Boise City Police Department
- 2) Detective Leavitt, Boise City Police Department
- 3) Detective Holland, Boise City Police Department

- 4) Officer Kelly Montoya, Boise City Police Department
- 5) Officer Josh Arend, Boise City Police Department
- 6) Officer Josh Kinkaid, Boise City Police Department
- 7) Officer Eric Urian, Boise City Police Department
- 8) CSS Jim Kling, Boise City Police Department
- 9) Amanda Clough, Boise City Police Department
- 10) Bridget Kinney, Boise City Police Department
- 11) Aaron Childers
- 12) Kaylan Speers
- 13) Helen Fisher
- 14) Deven Ohls
- 15) Jeremy Steinmetz
- 16) Frankie Hughes
- 17) Chris Smith
- 18) Loretta Hansen
- 19) Mark Tompkins, Ada County EMT
- 20) Dr. Frederick Foss
- 21) Danny Arnold
- 22) Lee Reiber
- 23) Anne Greenwalt, State of Idaho
- 24) Christine McIntire, State of Idaho
- 25) Mike Coolige, State of Idaho
- 26) Tim Higgins, State of Idaho
- 27) Sgt. Paul Stoltenberg, Ada County Sheriff's Office
- 28) Juliatt McKay, Ada County Sheriff's Office
- 29) Mike Nugent
- 30) Dr. Jessica Wasielewski
- 31) Ariel Carpenter
- 32) Heather Barr

33) Dan Kukak

SUGGESTED FOLLOW UP QUESTIONS WHERE THERE IS KNOWLEDGE
OF POSSIBLE WITNESSES:

In what capacity have you known [witness]?

Do you feel you have a state of mind with reference to your knowledge of in the event of
[his] [her] testifying in this cause which would prevent you from acting with impartiality?

Would your relationship or knowledge of [name of witness] cause you to give greater or
lesser weight to [his] [her] testimony by reason of such knowledge?

[Repeat as necessary for each witness]

13. Are there any of you who are unwilling to follow my instructions to you, the jury, as
to the law that you must apply in determining this case?

14. Is anyone on the jury panel currently a nursing mother?

15. Are there any of you, if selected as a juror in this case, who is unwilling or unable to
render a fair and impartial verdict based upon the evidence presented in this courtroom and the
law as instructed by the Court?

16. Do any of you have any other reason why you cannot give this case your undivided
attention and render a fair and impartial verdict?

Do you feel you have a state of mind with reference to your knowledge of in the event of [his] [her] testifying in this cause which would prevent you from acting with impartiality?

Would your relationship or knowledge of [name of witness] cause you to give greater or lesser weight to [his] [her] testimony by reason of such knowledge?

[Repeat as necessary for each witness]

13. Are there any of you who are unwilling to follow my instructions to you, the jury, as to the law that you must apply in determining this case?

14. Is anyone on the jury panel currently a nursing mother?

15. Are there any of you, if selected as a juror in this case, who is unwilling or unable to render a fair and impartial verdict based upon the evidence presented in this courtroom and the law as instructed by the Court?

16. Do any of you have any other reason why you cannot give this case your undivided attention and render a fair and impartial verdict?

INSTRUCTION NO. 3

The Court believes it is appropriate that panel members hear the definition of reasonable doubt as defined under Idaho law prior to the voir dire examination by counsel. You are therefore advised that reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, 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 charges.

INSTRUCTION NO. 4

Now that you have been sworn as 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 charges against the defendants. 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. 5

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

The defendants are charged by the State of Idaho with a violation of the law. The charges against the defendants are contained in the Information. The clerk shall read the Information as to each defendant and state that defendant's plea.

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

INSTRUCTION NO. 6

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 the defendant. If, after considering all the evidence and my instructions on the 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, 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. 7

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 role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an 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 the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

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INSTRUCTION NO. 8

The Court instructs you as jurors that your individual decisions as to whether a defendant is not guilty or guilty of the offense or offenses charged must be based upon the evidence and only the evidence presented in this courtroom. That means that no juror may obtain, and must not obtain, information from any other source, outside of the testimony and evidence presented in this courtroom, including the internet. The reason for this rule is simple: this would be unfair to both the State and the defendant. Reporters, bloggers, writers of letters to the editor and commentators are not subject to cross-examination in court under oath to point out inaccuracies in the facts they present or the opinions they hold. Their information may be second hand or may come from sources which have only limited knowledge of the facts or simply an ax to grind. These people, as well, are not subject to cross-examination in court under oath.

In addition, neither counsel can address facts or opinions which you may have formed based upon facts they have never heard and which in reality might not even exist. For the same reason, when you begin your deliberations, the bailiff will take and hold your cell phones and other electronic communication devices because you are not allowed to call or communicate with other parties and discuss the case during deliberations. If you have so-called smart phones or other electronic communication devices, you cannot use them during the trial to obtain information about the case.

There is another very practical reason not to do these things as well. If a mis-trial were to be declared because a juror violated these rules, that juror could be required to reimburse the court and the parties for the costs incurred to that point in trial.

INSTRUCTION NO. 9

You are instructed that any terms in these instructions which have a special legal meaning are defined for you in these instructions. Under Idaho law, if a word or phrase is not otherwise defined in these instructions, you are to construe that word or phrase according to its context and the approved usage of the language as the ordinary reading public would read and understand it. Words not otherwise defined should be given their ordinary significance as popularly understood. They do not have some mysterious or specialized meaning simply because they are a part of a jury instruction unless the Court has specifically defined them for you.

INSTRUCTION NO. 10

You must give separate, personal consideration to the charge against each defendant.
Each is entitled to a verdict based upon the evidence and the law which applies to that defendant.

INSTRUCTION NO. 11

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant. Each is entitled to a verdict based upon the evidence and the law which applies to that defendant.

All of the instructions apply to each defendant unless a specific instruction states that it applies to only a specific defendant.

INSTRUCTION NO. 12

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendants may be found guilty or not guilty on any or all of the offenses charged.

INSTRUCTION NO. 13

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.

INSTRUCTION NO. 14

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 defendants guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 15

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.

Although the court reporter will create a verbatim account of all matters of record occurring in this trial, you should be aware that transcripts of witness testimony will not be available to you for your deliberations.

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. 16

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. 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 any place mentioned in the testimony without an explicit

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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.

INSTRUCTION NO. 17

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. 1B

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. 18(a)

In any criminal case, the State must prove beyond a reasonable doubt that the defendant was the perpetrator of the crime alleged.

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may take into account the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also take into account:

1. the capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation;
2. whether the identification was the product of the eyewitness' own recollection or was the result of subsequent influence or suggestiveness;
3. any inconsistent identifications made by the eyewitness;
4. whether the witness had known or observed the offender at earlier times; and
5. the totality of circumstances surrounding the eyewitness' identification.
6. the cross-racial or ethnic nature of the identification.

INSTRUCTION NO. 19

In order for the defendant, VANCE EVERETT THUMM to be guilty of COUNT I:
AGGRAVATED BATTERY or AIDING AND ABETTING AGGRAVATED BATTERY, the
State must prove each of the following:

1. On or about the 11th day of April, 2009;
2. in the State of Idaho;
3. the defendant VANCE EVERETT THUMM committed a battery upon Devin Ohls; and/or
4. did aid and abet others who committed a battery upon Devin Ohls;
5. by kicking and/or stomping and/or punching and/or stabbing him; and
6. when doing so the defendant caused great bodily harm, permanent disability, or permanent disfigurement.

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

INSTRUCTION NO. 20

A "battery" is committed when a person:

- (1) willfully and unlawfully uses force or violence upon the person of another; or
- (2) actually, intentionally and unlawfully touches or strikes another person against the will of the other; or
- (3) unlawfully and intentionally causes bodily harm to an individual.

INSTRUCTION NO. 21

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 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. 21(a)

If your unanimous verdict is that the defendant, VANCE EVERETT THUMM is not guilty of AGGRAVATED BATTERY or AIDING AND ABETTING AGGRAVATED BATTERY, you must acquit the defendant of that charge. In that event, you must next consider the included offense of SIMPLE BATTERY OR AIDING AND ABETTING SIMPLE BATTERY.

INSTRUCTION NO. 21(b)

In order for the defendant, VANCE EVERETT THUMM to be guilty of COUNT I:
SIMPLE BATTERY or AIDING AND ABETTING SIMPLE BATTERY, the State must prove
each of the following:

1. On or about the 11th day of April, 2009;
2. in the State of Idaho;
3. the defendant VANCE EVERETT THUMM committed a battery upon Devin Ohls; and/or
4. did aid and abet others who committed a battery upon Devin Ohls;
5. by kicking and/or stomping and/or punching and/or stabbing him.

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

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 intent to promote or assist in its commission. Both can be found guilty of the crime. Mere presence at, acquiescence in, or silent consent to, the planning or commission of a crime is not sufficient to make one an accomplice.

INSTRUCTION NO. 23

In order for the defendant, PARIS MARIE DAVIS to be guilty of COUNT I:
SOLICITATION OF DESTRUCTION, ALTERATION OR CONCEALMENT OF EVIDENCE,
the State must prove each of the following:

1. On or about the 11th day of April, 2009;
2. in the State of Idaho;
3. the defendant PARIS MARIE DAVIS did solicit and/or encourage Vance Thumm and/or others to engage in conduct which could constitute the crime of Destruction and/or Concealment of Evidence, to-wit: by encouraging and/or soliciting those involved in an Aggravated Battery to destroy the clothing that they wore at the time of the incident; and
4. the defendant did so with the purpose of promoting or facilitating the commission of a crime.

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

INSTRUCTION NO. 24

A person is guilty of criminal solicitation to commit a crime if with the purpose of promoting or facilitating its commission he solicits, importunes, commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish complicity in its commission or attempted commission.

“Importunes” as used in this instruction means to solicit forcefully; to request persistently, and sometimes irksomely.

INSTRUCTION NO. 25(a)

Where knowledge is a requirement of the crime, the State need not prove the defendant had actual knowledge that a crime had been committed. The State need only prove that the defendant had such information as would lead a reasonable person to conclude that a felony had been committed.

INSTRUCTION NO. 25

Every person who, knowing that any book, paper, record, instrument in writing, or other object, matter or thing, is about to be produced, used or discovered as evidence upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, wilfully destroys, alters or conceals the same, with intent thereby to prevent it from being produced, used or discovered, is guilty of a misdemeanor, unless the trial, proceeding, inquiry or investigation is criminal in nature and involves a felony offense, in which case said person is guilty of a felony.

INSTRUCTION NO. 26

In order for the defendant, PARIS MARIE DAVIS to be guilty of COUNT II:
ACCESSORY TO AGGRAVATED BATTERY or AIDING AND ABETTING
AGGRAVATED BATTERY, the State must prove each of the following:

1. On or about the 15th day of April, 2009;
2. in the State of Idaho;
3. the defendant PARIS MARIE DAVIS did willfully withhold and/or conceal knowledge of a felony that had been committed, to-wit: by denying knowledge of the Aggravated Battery that occurred on or about the 11th day of April, 2009 upon Devin Ohls;
4. where witnesses identified her as being present at the time of the Aggravated Battery.

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

INSTRUCTION NO. 27

A person who knows a felony was committed, and willfully conceals it from a peace officer or harbors or protects the person charged with or convicted thereof, is guilty as an accessory.

INSTRUCTION NO. 28

In every crime or public offense there must exist a union or joint operation of act and intent.

INSTRUCTION NO. 28(a)

Intent or intention is manifested by the commission of the acts and surrounding circumstances connected with the offense.

INSTRUCTION NO. 29

“Willfully” when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to.

INSTRUCTION NO. 30

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to each 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 defendants do not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 31

Certain evidence was admitted for a limited purpose.

At the time this evidence was admitted you were admonished that it could not be considered by you for any purpose other than the limited purpose for which it was admitted.

Do not consider such evidence for any purpose except the limited purpose for which it was admitted.

INSTRUCTION NO. 31

It is alleged that the crime charged was committed "on or about" 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. 33

The fact the Court either overrules or sustains an objection to a question, or to testimony made, or to an argument advanced, is not a comment on the innocence or the guilt of the defendants or upon which counsel's argument is or is not to be believed. Counsel's statements are not evidence, nor are my rulings on objections made in a case. It is the job of counsel to raise objections they feel are appropriate just as it is my job to rule upon them.

INSTRUCTION NO. 34

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 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. 35

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. Counsel have completed their closing remarks to you, and now 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

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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 defendants because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 36

Upon retiring to the jury room, select one of you as a presiding juror, 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 verdicts must be unanimous. As to each charge, when you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdicts 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.

Verdict forms suitable to any conclusion you may reach will be submitted to you with these instructions.