

10-25-2011

State v. McLellan Clerk's Record Dckt. 39102

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. McLellan Clerk's Record Dckt. 39102" (2011). *Idaho Supreme Court Records & Briefs*. 3766.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3766

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

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant,
vs.
CHRIS J. MCLELLAN,

Defendant-Respondent.

Supreme Court Case No. 39102

CLERK'S RECORD ON APPEAL

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

HONORABLE RONALD J. WILPER

LAWRENCE G. WASDEN
ATTORNEY FOR APPELLANT
BOISE, IDAHO

STATE APPELLATE PUBLIC DEFENDER
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

State of Idaho vs. Chris J Mclellan

Date	Code	User		Judge
1/27/2011	NCRF	PRSCHOKF	New Case Filed - Felony	Magistrate Court Clerk
	PROS	PRSCHOKF	Prosecutor assigned Ada County Prosecutor	Magistrate Court Clerk
	WARI	PRSCHOKF	Warrant Issued - Arrest Bond amount: 20000.00 Defendant: Mclellan, Chris J	Magistrate Court Clerk
	XSEA	PRSCHOKF	Case Sealed	Magistrate Court Clerk
	STAT	PRSCHOKF	STATUS CHANGED: Inactive	Magistrate Court Clerk
1/31/2011	WART	TCWADAMC	Warrant Returned Defendant: Mclellan, Chris J	Magistrate Court Clerk
	XUNS	TCWADAMC	Case Un-sealed	Magistrate Court Clerk
	STAT	TCWADAMC	STATUS CHANGED: Pending	Magistrate Court Clerk
	HRSC	TCWADAMC	Hearing Scheduled (Arraignment 02/04/2011 09:30 AM)	Cawthon / Irby
	BNDS	TCWADAMC	Bond Posted - Surety (Amount 20000.00)	Magistrate Court Clerk
	BCON	TCWADAMC	Condition of Bond: Jail Reference Booking: 100479096 Jail Reference Stay: 1	Magistrate Court Clerk
2/1/2011	PROS	PRHARRSK	Prosecutor assigned James E Vogt	Magistrate Court Clerk
2/4/2011	HRHD	TCBELLHL	Hearing result for Arraignment held on 02/04/2011 09:30 AM: Hearing Held	Cawthon / Irby
	CHGA	TCBELLHL	Judge Change: Adminsitrative	Cawthon / Irby
	ORPD	TCBELLHL	Order Appointing Public Defender Ada County Public Defender	Cawthon / Irby
	CHGA	TCBELLHL	Judge Change: Adminsitrative	Michael Oths
	HRSC	TCBELLHL	Hearing Scheduled (Preliminary 02/18/2011 08:30 AM)	Michael Oths
	ORPD	TCPACKCF	Order Appointing Public Defender	Michael Oths
	NCON	TCBELLHL	No Contact Order: No contact order OR Civil Protection Order Issued for- Comment: w/Natalie Breann Needham DR# 10-029476 No Exceptions Expiration Days: 365 Expiration Date: 2/4/2012	Michael Oths
2/11/2011	MFBR	TCRAMISA	Motion For Bond Reduction	Michael Oths
	NOHG	TCRAMISA	Notice Of Hearing	Michael Oths
	RQDD	TCRAMISA	Defendant's Request for Discovery	Michael Oths
2/18/2011	CONT	CCMANLHR	Continued (Preliminary 03/03/2011 08:30 AM)	Michael Oths
3/3/2011	BOUN	CCMANLHR	Hearing result for Preliminary held on 03/03/2011 08:30 AM: Bound Over (after Prelim)	Michael Oths
	HRSC	CCMANLHR	Hearing Scheduled (Arraignment 03/15/2011 09:00 AM)	Michael Oths
	COMT	CCMANLHR	Commitment	Michael Oths
3/4/2011	INFO	TCFARANM	Information	Ronald J. Wilper

State of Idaho vs. Chris J Mclellan

Date	Code	User	Judge
3/15/2011	DCAR	DCJOHNSI	Hearing result for Arraignment held on 03/15/2011 09:00 AM: District Court Arraignment- Court Reporter:cromwell Number of Pages:50
	PLEA	DCJOHNSI	A Plea is entered for charge: - NG (118-6609 Video Voyeurism)
	HRSC	DCJOHNSI	Hearing Scheduled (Jury Trial 06/01/2011 09:00 AM)
	HRSC	DCJOHNSI	Hearing Scheduled (Pretrial Conference 05/24/2011 11:00 AM)
3/17/2011	NOTC	DCJOHNSI	Notice of Jury Trial
4/1/2011	MOTN	TCMCKEAE	Motion for PH Transcript
4/4/2011	ORDR	DCJOHNSI	Order for Transcript
4/6/2011	NOTC	TCFARANM	Notice Of Preparation of Transcript
4/20/2011	RSDS	TCBROXLV	State/City Response to Discovery
	RQDS	TCBROXLV	State/City Request for Discovery
5/6/2011	MOTN	TCFARANM	Motion To Continue
	NOHG	TCFARANM	Notice Of Hearing
5/18/2011	PHTF	TCBROXLV	Preliminary Hearing Transcript Filed
5/24/2011	DCHH	DCJOHNSI	Hearing result for Pretrial Conference held on 05/24/2011 11:00 AM: District Court Hearing Held Court Reporter: sue wolf Number of Transcript Pages for this hearing estimated: Motion to Continue-50
	HRSC	DCJOHNSI	Hearing Scheduled (Jury Trial 08/24/2011 09:00 AM)
	HRSC	DCJOHNSI	Hearing Scheduled (Pretrial Conference 08/16/2011 11:00 AM)
5/26/2011	NOTC	DCJOHNSI	Notice of Jury Trial
5/31/2011	RSDS	TCBROXLV	State/City Response to Discovery/Addendum
7/19/2011	MDIS	TCBROXLV	Motion To Dismiss
8/8/2011	OBJE	TCOLSOMC	Objection to Defendant's Motion to Dismiss
8/16/2011	DCHH	DCJOHNSI	Hearing result for Pretrial Conference scheduled on 08/16/2011 11:00 AM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated:50
	HRVC	DCJOHNSI	Hearing result for Jury Trial scheduled on 08/24/2011 09:00 AM: Hearing Vacated
	DSBC	DCJOHNSI	Dismissed by the Court (118-6609 Video Voyeurism)
	STAT	DCJOHNSI	STATUS CHANGED: closed pending clerk action
	BNDE	DCJOHNSI	Surety Bond Exonerated (Amount 20,000.00)

State of Idaho vs. Chris J Mclellan

Date	Code	User		Judge
8/16/2011	STAT	DCJOHNSI	STATUS CHANGED: closed	Ronald J. Wilper
	ORDR	DCJOHNSI	Memorandum Decision and Order Granting Motion to Dismiss	Ronald J. Wilper
8/22/2011	APSC	CCTHIEBJ	Appealed To The Supreme Court	Ronald J. Wilper
8/30/2011	ORDR	DCJOHNSI	Order Appointing SAPD	Ronald J. Wilper
10/25/2011	NOTC	CCTHIEBJ	Notice Of Transcript Lodged - Supreme Court Docket No. 39102	Ronald J. Wilper

JAN 27 2011

CHRISTOPHER D. RICH, Clerk
By STORMY McCORMACK
DEPUTY

DR # 10-029476

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.)
)
CHRIS J MCLELLEN,)
)
Defendant.)
_____)

Case No. CR-FE-2011-000 1478

COMPLAINT

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

PERSONALLY APPEARED Before me this 27th day of January 2011, 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 CHRIS J MCLELLEN, on or ~~about~~ ^{between} 2/1/10 ~~the~~ ^{and} 12th day of November, 2010, in the County of Ada, State of Idaho, did commit the crime of VIDEO VOYEURISM, FELONY, I.C. §18-6609(2)(b) as follows:

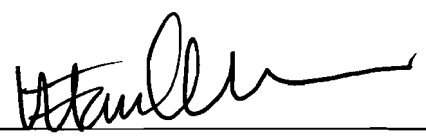
between 2/10/10 and

That the Defendant, CHRIS J MCLELLEN, on or ~~about~~ the 12th day of November, 2010, in the County of Ada, State of Idaho, did with the purpose of sexually degrading and/or abusing another person, to-wit: Natalie Needham, did intentionally disseminate, publish or sell any image or images of the intimate areas of Natalie Needham without the consent of Natalie Needham and with the knowledge that the image or images would sexually abuse or degrade her.

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.

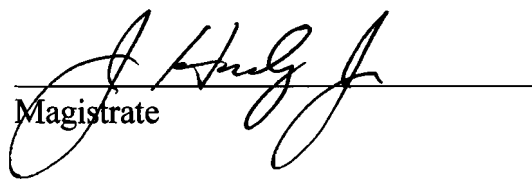
Said Complainant therefore prays that a Warrant issue for the arrest of the Defendant and that CHRIS J MCLELLEN, may be dealt with according to law.

GREG H. BOWER
Ada County Prosecutor



Whitney A. Faulkner
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 27th day of January 2011.


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. FE-2011-000

vs.

CLERK H. MANLEY

Chris J. McAllen

DATE 1/27/2011 TIME 10:55

PROSECUTOR W. Faulkner

TOXIMETER _____

COMPLAINING WITNESS _____

CASE ID. Hawley 012711 BEG. 105845

END 105825

Recall: to 114328
END.

JUDGE

STATUS

- BERECZ
- BIETER
- CAWTHON
- COMSTOCK
- DAY
- GARDUNIA
- HARRIGFELD
- HAWLEY
- HICKS
- _____
- _____
- MacGREGOR-IRBY
- MANWEILER
- McDANIEL
- MINDER
- OTHS
- REARDON
- STECKEL
- SWAIN
- WATKINS

- STATE SWORN
- PC FOUND _____
- COMPLAINT SIGNED
- AMENDED COMPLAINT SIGNED
- AFFIDAVIT SIGNED
- NO PC FOUND _____
- EXONERATE BOND
- SUMMONS TO BE ISSUED
- WARRANT ISSUED
- BOND SET \$ 20,000.-
- NO CONTACT
w/ Natalie Breann Needham
- D.R. # _____
- DISMISS CASE
- IN CUSTODY

COMMENTS

- AGENT'S WARRANT
- RULE 5(b)
- FUGITIVE

102296

DR # 10-029476
OFFICER: LEBAR
AGENCY: Boise Police Department

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

JAN 31 2011

CHRISTOPHER D. RICH, Clerk
By CHERYL WADAMS
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

RECEIVED
Ada County Sheriff
WARRANTS
JAN 27 2011
Gary Raney, Sheriff
BOISE, IDAHO

Whitney A. Faulkner
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,)
)
vs.)
)
CHRIS J MCLELLEN,)
)
Defendant.)
_____)

Case No. CR-FE-2011-000 1478
ARREST WARRANT

Address: 2529 W STATE ST, BOISE, ID 83702

DOB: [REDACTED] ✓ SSN: [REDACTED] ✓

Sex: Male Race: White Height: 6' Weight: 180 lbs.

Hair/Eyes: Brown/Hazel

TO ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN IN THE
STATE OF IDAHO:

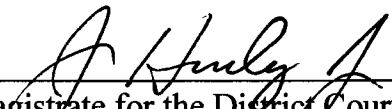
ARRESTED
ADA COUNTY SHERIFF 000008

[Handwritten signature]

A COMPLAINT UPON OATH having been this day laid before me by Whitney A. Faulkner, Deputy Prosecuting Attorney, stating that the crime of: VIDEO VOYEURISM, FELONY, I.C. §18-6609(2)(b) has been committed, and accusing CHRIS J MCLELLEN thereof;

YOU ARE THEREFORE COMMANDED to immediately arrest the Defendant named above at any time during the day or night, and to bring him/her before me at my office in the County of Ada, or in case of my absence or inability to act, before the nearest or most accessible Magistrate in Ada County.

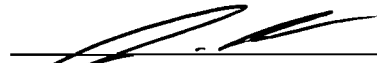
DATED This 27 day of JAN, 2011.


Magistrate for the District Court
of the Fourth Judicial District,
Magistrate Division

Bond \$ 20,000.00 + NCO (see attached)

RETURN OF SERVICE

I HEREBY CERTIFY that I served the foregoing Warrant by arresting the Defendant and bringing McLellen into Court this 29 day of Jan, 2011.

 747
(Deputy Sheriff) (State Policeman)
(City Policeman)

COMMITMENT FOR EXAMINATION AFTER APPEARANCE

THE WITHIN NAMED Defendant, having been brought before me under this Warrant, is committed for examination to the Sheriff of Ada County, State of Idaho, and is admitted to bail in the sum of \$ _____, surety, cash or by undertaking of two sufficient sureties, and is committed to the custody of the Sheriff of Ada County until such bail is given. This Cause is continued for further appearance until _____ day of _____, 2011.

Magistrate for the District Court
of the Fourth Judicial District,
Magistrate Division

ORDER OF RELEASE

TO THE SHERIFF OF ADA COUNTY, IDAHO:

YOU ARE HEREBY ORDERED to release the Defendant from your custody.

DATED: _____

Magistrate for the District Court
of the Fourth Judicial District,
Magistrate Division

NCIC ENTRY: (Additional Levels Inclusive)

North West Shuttle (ID, WA, OR)

Western States (ID, WA, OR, MT, CA, WY, SD, ND, UT, CO, AZ, NV)

Nationwide

BY: WAK

DATED: 1/29/11

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.
MCLELLEN CHRIS J
Defendant

NOTICE OF COURT DATE
AMND 1:30 P.M.

BOND RECEIPT
JAN 31 2011

CHRISTOPHER D. RICH, Clerk
By CHERYL WADAMS
DEPUTY

YOU ARE HEREBY NOTIFIED that you must appear in Court
on 04 February 2011 at 09:30AM hrs, at the:

Ada County Courthouse
200 West Front Street
Boise, 83702

You are further notified that if you fail to appear as specified herein, your bond
will be forfeited and a Warrant of Arrest will be issued against you.

BOND RECEIPT No: 483567

Charge: Arrest: {F} VIDEO VOYURISM
Bond Amount: \$ 20,000.00
Case # CRFE20110001478
Bond # DN25-2672056
Bond Type: Surety
Warrant #:
Agency: Aladdin/Anytime
Insurance: Danielson National Insurance Co
Bondsman: GOFF MICHAEL
Address: 80 N COLE RD
Boise, ID 83704

This is to certify that I have received a copy of this
NOTICE TO APPEAR. I understand that I am being released on the
conditions of posting bail and my promise to appear in the court
at the time, date, and place described in this notice.

DATED: 01/30/2011


DEFENDANT

ADA COUNTY MAGISTRATE MINUTES

Chris J Mclellan CR-FE-2011-0001478

DOB: [REDACTED]

Scheduled Event: Arraignment Friday, February 04, 2011

09:30 AM

Judge: Cawthon (Irby)

Clerk: HB

Interpreter:

Prosecuting Agency: AC BC EA GC MC

Pros: K. Bringhurst

PD / Attorney:

• 1 118-6609 Video Voyeurism F

094850

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 \$ ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

Prelim

~~Handwritten scribbles~~

2/18/11 @ 8:30 w/ OTHS

Finish () Release Defendant

Bring up NCO at Prelim - custody issues

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

NO. 9:57 FILED 9:57 P.M.

FEB 04 2011

STATE OF IDAHO,
Plaintiff.

vs.

Chris J Mclellan
2529 W State St
Boise, ID 83702

Defendant.

CHRISTOPHER D. RICH, Clerk
By COURTNEY PACKER
DEPUTY

Case No: CR-FE-2011-0001478

**NOTICE OF APPOINTMENT OF PUBLIC DEFENDER
AND SETTING CASE FOR HEARING**

Ada Boise Eagle Garden City Meridian

TO: Ada County Public Defender

YOU ARE HEREBY NOTIFIED that you are appointed to represent the defendant in this cause, or in the District Court until relieved by court order. The case is continued for:

Preliminary Judge: Friday, February 18, 2011 08:30 AM
Michael Oths

BOND AMOUNT: _____ The Defendant is: In Custody Released on Bail ROR

TO: The above named defendant

IT HAS BEEN ORDERED BY THIS COURT that the defendant is to contact the Ada County Public Defender's Office at 200 W. Front Street, Room 1107, Boise, Idaho 83702. Telephone: (208) 287-7400. If the defendant is unable to post bond and obtain his/her release from jail, that the proper authorities allow the defendant to make a phone call to the Ada County Public Defender.

IT HAS BEEN FURTHER ORDERED: That the parties, prior to the pre-trial conference, complete and comply with Rule 16 I.C.R. and **THAT THE DEFENDANT BE PERSONALLY PRESENT AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL: FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.**

Dated : 2/4/2011

Deputy Clerk

I hereby certify that copies of this Notice were served as follows on this date Friday, February 04, 2011.

Defendant: Mailed 2/4/11 Hand Delivered Signature [Signature]
Clerk / date Phone (208) 891 9117

Prosecutor: Interdepartmental Mail
Public Defender: Interdepartmental Mail 2/18

[Signature]
Deputy Clerk

FEB 04 2011

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
CHRISTOPHER D. RICH, Clerk
By HEIDI BELL DEPUTY

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
)
MCLELLEN CHRIS J)
)
)
DOB [REDACTED] SSN [REDACTED])
)
Defendant.)

Case No. _____ CRFE20110001478
Reference No. _____

NO CONTACT ORDER

AMENDED

DR # 10-029476
 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: NEEDHAM NATALIE BREANN

Exceptions are:

- no exceptions
- to contact by telephone between _____ .m. and _____ .m. on _____
_____ for the following purposes: _____
- to participate in counseling/mediation
- to provide for the exchange of children between the parties through _____
- to retrieve personal necessities from the residence/protected address through _____
- 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):

21178 Antrim Dr. Greenleaf, ID 83626
Residence Address

Work Address

A 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. A first and second conviction for the crime of violation of a no contact order is a misdemeanor and 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 for violation of a no contact order within five (5) years is a felony and 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 2/4/12
OR UPON DISMISSAL OF THIS CASE, WHICHEVER FIRST OCCURS.

[Signature]
Defendant Date

[Signature]
Judge Date 2/4/11

Served by: Jay DeLano #510

Date served: 2-4-11

NO CONTACT ORDER FILE ACSO PROSECUTOR

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. 11 P.M.
FEB 11 2011
CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
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.

CHRIS J MCLELLAN,
Defendant.

Case No. CR-FE-2011-0001478

MOTION FOR BOND REDUCTION

COMES NOW, CHRIS J MCLELLAN, the above-named defendant, by and through counsel DANICA M. COMSTOCK, 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, February 11, 2011.



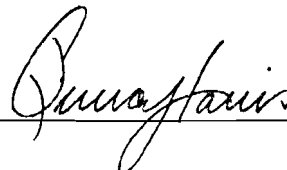
DANICA M. COMSTOCK
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Friday, February 11, 2011, I mailed a true and correct copy of the within instrument to:

JAMES E VOGT
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



MOTION FOR BOND REDUCTION

000015

8

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. 11 P.M.

FEB 11 2011

CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
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.

CHRIS J MCLELLAN,

Defendant.

Case No. CR-FE-2011-0001478

NOTICE OF HEARING

TO: THE STATE OF IDAHO, Plaintiff, and to JAMES E VOGT:

YOU, AND EACH OF YOU, are hereby notified that the defendant will call for a hearing on MOTION FOR BOND REDUCTION, now on file in the above-entitled matter, on Friday, February 18, 2011, at the hour of 08:30 AM, in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED, Friday, February 11, 2011.



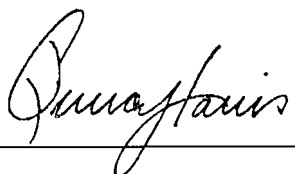
DANICA M. COMSTOCK
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Friday, February 11, 2011, I mailed a true and correct copy of the within instrument to:

JAMES E VOGT
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



NOTICE OF HEARING

000016

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. 11 P.M. _____

FEB 11 2011

CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
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.

CHRIS J MCLELLAN,

Defendant.

Case No. CR-FE-2011-0001478

REQUEST FOR DISCOVERY

TO: THE STATE OF IDAHO, Plaintiff, and to ADA COUNTY JUVENILE
PROSECUTOR:

PLEASE TAKE NOTICE, that the undersigned, pursuant to ICR 16, requests discovery
and photocopies of the following information, evidence, and materials:

- 1) All **unredacted** material or information within the prosecutor's possession or control, or which thereafter comes into his possession or control, which tends to negate the guilt of the accused or tends to reduce the punishment thereof. ICR 16(a).
- 2) Any **unredacted**, relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.
- 3) Any **unredacted**, written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.
- 4) Any prior criminal record of the defendant and co-defendant, if any.
- 5) All **unredacted** documents and tangible objects as defined by ICR 16(b)(4) in the possession or control of the prosecutor, which are material to the defense, intended for use by the prosecutor or obtained from or belonging to the defendant or co-defendant.

- 6) All reports of physical or mental examinations and of scientific tests or experiments within the possession, control, or knowledge of the prosecutor, the existence of which is known or is available to the prosecutor by the exercise of due diligence.
- 7) A written list of the names, addresses, records of prior felony convictions, and written or recorded statements of all persons having knowledge of facts of the case known to the prosecutor and his agents or any official involved in the investigatory process of the case.
- 8) A written summary or report of any testimony that the state intends to introduce pursuant to rules 702, 703, or 705 of the Idaho Rules of Evidence at trial or hearing; including the witness' opinions, the facts and data for those opinions, and the witness' qualifications.
- 9) All reports or memoranda made by police officers or investigators in connection with the investigation or prosecution of the case, including what are commonly referred to as "ticket notes."
- 10) Any writing or object that may be used to refresh the memory of all persons who may be called as witnesses, pursuant to IRE 612.
- 11) Any and all audio and/or video recordings made by law enforcement officials during the course of their investigation.
- 12) Any evidence, documents, or witnesses that the state discovers or could discover with due diligence after complying with this request.

The undersigned further requests written compliance within 14 days of service of the within instrument.

DATED, Friday, February 11, 2011.



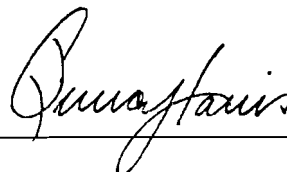
DANICA M. COMSTOCK
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Friday, February 11, 2011, I mailed a true and correct copy of the within instrument to:

ADA COUNTY JUVENILE PROSECUTOR
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



FILED 2/18/11 AT 953 A.M.
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY H Manley
 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.)
Chris J. Mclellan,)
 Defendant.)

PRELIMINARY HEARING NOTICE / MINUTE SHEET

Case Number FE-2011-1478
 Case Called Oths 95152
 Ada Special J. Vogt
 PD Attorney D. Comstock

- Defendant: Present Not Present In Custody _____ PD Appointed Waived Attorney
 Advised of Rights Waived Rights In Chambers Interpreter _____
 Bond \$ 20,000 Motion for Bond Reduction Denied / Granted _____
 Amended Complaint Filed Complaint Amended by Interlineation Reading of Complaint Waived
 State / Defense Mutual Request for Continuance Unavail witness; D wants to hire prt atty
 State / Defense Objection / No Objection to Continuance _____
 Case continued to 3/3/11 at 8:30 am pm for PH
 Defendant Waives Preliminary Hearing Hearing Held Commitment Signed
 Case Bound Over to Judge _____ on _____ at _____ am/pm
 Case Dismissed after Preliminary Hearing / On State's Motion Release Defendant, This Case Only

ADA COUNTY COURTHOUSE, 200 W. FRONT ST., BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

DATED 2/18/11

CHRISTOPHER D. RICH, Clerk of the District Court
 By: H Manley
 Deputy Clerk

I hereby certify that copies of this notice were served as follows:

- Defendant Hand Delivered
 Defense Attorney Hand Delivered
 Public Defender Hand Delivered
 Prosecutor Hand Delivered

Signature [Signature]

Clerk Hm Date 2/18/11

FILED 3/3/11 AT 251P.M.
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY C. Mitchell
 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. CHRIS Mclellan,)
 Defendant.)

PRELIMINARY HEARING NOTICE / MINUTE SHEET

Case Number FE-11-1478
 Case Called OTHS 144933
 Ada Special J. Vogt
 PD/Attorney D. Comstock

- Defendant: Present Not Present In Custody _____ PD Appointed Waived Attorney
- Advised of Rights Waived Rights In Chambers Interpreter _____
- Bond \$ 20,000. Motion for Bond Reduction Denied / Granted _____
- Amended Complaint Filed Complaint Amended by Interlineation Reading of Complaint Waived
- State / Defense / Mutual Request for Continuance _____
- State / Defense Objection / No Objection to Continuance _____
- Case continued to _____ at _____ am/pm for _____
- Defendant Waives Preliminary Hearing Hearing Held Commitment Signed
- Case Bound Over to Judge Wilper on 3/15/11 at 9:00 am/pm
- Case Dismissed after Preliminary Hearing / On State's Motion Release Defendant, This Case Only

ADA COUNTY COURTHOUSE, 200 W. FRONT ST., BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

DATED 3/3/11

CHRISTOPHER D. RICH, Clerk of the District Court

By: H. Manley
 Deputy Clerk

I hereby certify that copies of this notice were served as follows:

- Defendant Hand Delivered
- Defense Attorney Hand Delivered
- Public Defender Hand Delivered
- Prosecutor Hand Delivered

Signature [Signature]

Clerk 3/3/11 Date HM

Session: Oths030311
Session Date: 2011/03/03
Judge: Oths, Michael J.
Reporter:

Division: MC
Session Time: 08:35

Courtroom: CR204

Clerk(s):
Manley, Heidi
Mitchell, Camille

State Attorneys:
Alidjani, Fafa
Vogt, James

Public Defender(s):
Botimer, Steven
Toothman, Rick

Prob. Officer(s):

Court interpreter(s):

Case ID: 0007

Case Number: FE-11-1478
Plaintiff:
Plaintiff Attorney:
Defendant: Mcllellan, Chris
Co-Defendant(s):
Pers. Attorney:
State Attorney: Vogt, James
Public Defender:

2011/03/03

14:49:33 - Operator
Recording:
14:49:33 - New case
Mcllellan, Chris
14:49:42 - State Attorney: Vogt, James
14:50:01 - Public Defender:
Danica Comstock
14:50:18 - Defendant: Mcllellan, Chris
Defendant present, on bond.
14:50:24 - Judge: Oths, Michael J.
14:50:35 - State Attorney: Vogt, James
Amends Complaint by Interlineation
14:51:31 - Public Defender:
Waives Formal Reading
14:52:22 - Other: Needham, Thomas
Sworn.
14:52:29 - State Attorney: Vogt, James
Direct examination of witness.
14:53:06 - Other: Needham, Thomas
ID's Defendant

14:54:27 - Other: Needham, Thomas
Became aware of video's of wife

14:55:19 - Other: Needham, Thomas
Middle of Nov. 2010

14:56:46 - Other: Needham, Thomas
3 Video's

14:58:33 - Other: Needham, Thomas
After speaking to Atty. notified Ada Co. Sheriffs

14:58:56 - Public Defender:
Cross-examination of the witness.

15:00:19 - Other: Needham, Thomas
Nothing further, witness steps down.

15:01:33 - Other: Needham, Natalie
Sworn.

15:01:40 - State Attorney: Vogt, James
Direct examination of witness.

15:02:14 - Other: Needham, Natalie
ID's Defendant

15:03:08 - Other: Needham, Natalie
Used drugs with the defendant

15:03:29 - Other: Needham, Natalie
Learned from her husband that video's of her existed

15:05:01 - Other: Needham, Natalie
Viewed video's posted online

15:05:55 - Other: Needham, Natalie
Unaware of video files

15:06:36 - Other: Needham, Natalie
Did not give promission to publish any videos

15:07:55 - Other: Needham, Natalie
Spoke w/ atty. advised to go to police

15:08:28 - Public Defender:
Cross-examination of the witness.

15:11:22 - Other: Needham, Natalie
Nothing further, witness steps down.

15:12:28 - Other: Lebar, Det. Charlie
Employed by BPD, for 10 years. Post cert.

15:13:55 - Other: Lebar, Det. Charlie
Tried to supeona websites

15:14:04 - Other: Lebar, Det. Charlie
ID's Defendant

15:14:39 - Other: Lebar, Det. Charlie
Defendat admits to posting video

15:14:57 - Other: Lebar, Det. Charlie
Search warrant issued 1/18/11.

15:15:51 - Other: Lebar, Det. Charlie
Views report- 1/19/11

15:16:06 - Other: Lebar, Det. Charlie
Defendant admitted to posting video to several websites

15:16:41 - Other: Lebar, Det. Charlie
During excution of search warrant, found video on Defendant'
s computer

15:17:26 - Other: Lebar, Det. Charlie
Describes video

15:19:38 - Other: Lebar, Det. Charlie
ID's defendant- wearing black jacket at Defense table.

15:20:12 - Public Defender:
Cross-examination of the witness.

15:20:36 - State Attorney: Vogt, James

Objects

15:20:43 - Judge: Oths, Michael J.
Overruled
15:21:38 - Other: Lebar, Det. Charlie
Nothing further, witness steps down.
15:21:46 - State Attorney: Vogt, James
State Rests
15:21:54 - State Attorney: Vogt, James
Closing Argument
15:23:37 - Public Defender:
Closing Argument
15:24:41 - Judge: Oths, Michael J.
15:26:51 - Public Defender:
Addresses State's Response
15:27:28 - Judge: Oths, Michael J.
15:28:26 - Public Defender:
Reponse to Judge's Inquiry
15:29:34 - Judge: Oths, Michael J.
Finds PC
15:30:43 - Judge: Oths, Michael J.
Bound over w/ Judge Wilper 3/15/11 @ 9:00 a.m.. Commitment
signed
15:31:15 - Operator
Stop recording:

MAR 03 2011

CHRISTOPHER D. RICH, Clerk
By CAMILLE MITCHELL
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

James E. Vogt
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-2011-0001478
)	
vs.	)	COMMITMENT
)	
CHRIS J. MCLELLEN,	)	Defendant's DOB: [REDACTED]
	)	Defendant's SSN: [REDACTED]
Defendant.)	
_____)	

THE ABOVE NAMED DEFENDANT, CHRIS J. MCLELLEN, having been brought before this Court for a Preliminary Examination on the 3 day of March, 2011, on a charge that the Defendant(s) on or ~~about~~ ^{between February 1, 2010} the 12th day of November, 2010, in the County of Ada, State of Idaho, did commit the crime(s) of: VIDEO VOYEURISM, FELONY, I.C. §18-6609(2)(b) as follows:

am

That the Defendant, CHRIS J. MCLELLEN, on or ^{between February 1, 2010 and} ~~about~~ the 12th day of November, 2010, in the County of Ada, State of Idaho, did with the purpose of sexually degrading and/or abusing another person, to-wit: Natalie Needham, did intentionally disseminate, publish or sell any image or images of the intimate areas of Natalie Needham without the consent of Natalie Needham and with the knowledge that the image or images would sexually abuse or degrade her.

The Defendant(s) 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(s) is/are guilty of committing the offense as charged.

WHEREFORE, IT IS ORDERED that the Defendant(s) 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 \$ 20,000.

DATED this 3 day of March, 2011.



MAGISTRATE

MAR - 4 2011

CHRISTOPHER D. RICH, Clerk
By NATALIE FARACA
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.)
)
CHRIS J. MCLELLEN,)
)
Defendant.)
_____)

Case No. CR-FE-2011-0001478

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 CHRIS J. MCLELLEN is/are accused by this Information of the crime(s) of: VIDEO VOYEURISM, FELONY, I.C. §18-6609(2)(b), which crime(s) was/were committed as follows:

That the Defendant, CHRIS J. MCLELLEN, on or between the 1st day of February, 2010, and the 12th day of November, 2010, in the County of Ada, State of Idaho, did with the purpose of sexually degrading and/or abusing another person, to-wit: Natalie Needham,

UM

did intentionally disseminate, publish or sell any image or images of the intimate areas of Natalie Needham without the consent of Natalie Needham and with the knowledge that the image or images would sexually abuse or degrade her.

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.

For 

GREG H. BOWER
Ada County Prosecuting Attorney

Ada County Mugshot - Prosecutor's Office



User: PRCURTAH



000028

Photo Taken: 2011-01-29 21:41:00

Name: MCLELLEN, CHRIS J

Case #: ---

LE Number: 102296

DOB: [REDACTED]

SSN: [REDACTED]

Height: 511

Weight: 205

Drivers License Number:

Drivers License State:

Sex: M Race: W Eye Color: HAZ Hair Color: BRO Facial Hair:

Marks: ARM, RIGHT

Scars:

Tattoos:

Session: Wilper031511
Session Date: 2011/03/15
Judge: Wilper, Ronald J.
Reporter: Cromwell, Dianne

Division: DC
Session Time: 08:19

Courtroom: CR507

Clerk(s):
Johnson, Inga

State Attorneys:
Duggan, Barbara
Fleming, Tim
Gunn, George
Harmer, Ben
Vogt, Jim

Public Defender(s):
Jones, Teri
Loschi, Jonathon
Simonaitis, David

Prob. Officer(s):

Court interpreter(s):

Case ID: 0011

Case Number: CRFE11-01478
Plaintiff:
Plaintiff Attorney:
Defendant: McLellan, Chris
Co-Defendant(s):
Pers. Attorney:
State Attorney: Vogt, Jim
Public Defender: Loschi, Jonathon

2011/03/15

09:57:27 - Operator
Recording:
09:57:27 - New case
McLellan, Chris
09:57:40 - General:
def present on bond for Arr, adv. of group rites, Info serve
d
09:58:05 - Defendant: McLellan, Chris
true name
09:58:09 - Public Defender: Loschi, Jonathon
waives reading Info
09:58:13 - Judge: Wilper, Ronald J.
Adv. charges, penalties
09:59:00 - Public Defender: Loschi, Jonathon
Not Guilty
09:59:03 - Judge: Wilper, Ronald J.
JT- 6/1/11, PTC- 5/24/11 at 11

10:00:05 - Operator
Stop recording:

MAR 17 2011

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
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.

CHRIS MCLELLAN,
Defendant.

Case No. CRFE-11-01478
NOTICE OF JURY TRIAL

Appearances:

Prosecuting Attorney
Inter Dept. Mail

Counsel for the State

Public Defender
Inter Dept. Mail

Counsel for Defendant

THIS IS YOUR NOTICE OF TRIAL SETTING

THE ABOVE ENTITLED MATTER HAS BEEN SET FOR TRIAL BEFORE THE COURT
AND A JURY ON JUNE 1, 2011, TO COMMENCE AT THE HOUR OF 9:00 A.M.

A PRE-TRIAL CONFERENCE IS SET FOR MAY 24, 2011, AT 11:00 A.M. THE
DEFENDANT WILL BE AVAILABLE PERSONALLY WITH COUNSEL AT THIS PRE-TRIAL
CONFERENCE UNLESS EXCUSED BY THE COURT.

THIS TRIAL WILL CONTINUE DAILY THEREAFTER UNTIL COMPLETED, SKIPPING
TUESDAYS.

All requested jury instructions must be submitted to the Court five (5) days prior to trial.

Hon. G.D. Carey	Hon. Daniel Meehl
Hon. Dennis Goff	Hon. George R. Reinhart, III
Hon. Daniel C Hurlbutt, Jr	Hon. Gerald Schroeder
Hon. James Judd	Hon. Kathryn A. Sticklen
Hon. Peter McDermott	Hon. Linda Trout
Hon. Duff McKee	Hon. Barry Wood
Hon. W.H. Woodland	Any sitting Fourth District Judge

Copies sent to above counsel.

APR - 1 2011

CHRISTOPHER D. RICH, Clerk
By AMY MCKENZIE
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

DANICA M. COMSTOCK, ISB #8165
Deputy Public Defender
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.

CHRIS J. MCLELLAN,

Defendant.

Case No. CR-FE-2011-0001478

MOTION FOR PRELIMINARY
HEARING TRANSCRIPT

COMES NOW, CHRIS J. MCLELLAN, the defendant above-named, by and through counsel DANICA M. COMSTOCK, 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 March 3, 2011, 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.

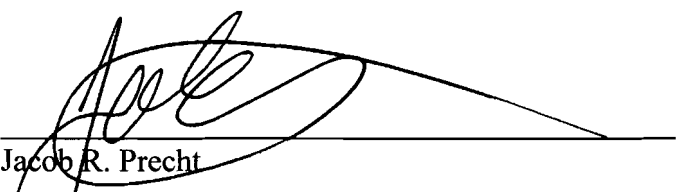
DATED, Friday, April 01, 2011.



DANICA M. COMSTOCK
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Friday, April 01, 2011, 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

AM

NO. _____ FILED _____
A.M. 1:00 P.M.

APR 04 2011

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

DANICA M. COMSTOCK, ISB #8165
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

RECEIVED
APR - 1 2011
ADA COUNTY CLERK

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.

CHRIS J. MCLELLAN,

Defendant.

Case No. CR-FE-2011-0001478

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 held March 3, 2011, shall be prepared at the expense of Ada County, and as soon as possible.

SO ORDERED AND DATED, this 4th day of April 2011.



RONALD J. WILPER
District Judge



APR 06 2011

CHRISTOPHER D. RICH, Clerk
By PAMELA BOURNE
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.	)	Case No. CRFE-2011-0001478
)	
CHRIS J. MCLELLAN,	)	NOTICE OF PREPARATION
	)	OF TRANSCRIPT
Defendant,)	
_____)	


An Order for transcript was filed in the above-entitled matter on April 4, 2011, and a copy of said Order was received by the Transcription Department on April 4, 2011. I certify the estimated cost of preparation of the transcript to be:

Type of Hearing: Preliminary Hearing
Date of Hearing: March 3, 2011 Judge: Michael Oths
46 Pages x \$3.25 = \$149.50

In this case, the Ada County Public Defender's Office has agreed to pay for the cost of the transcript fee upon completion of the transcript.

The Transcription Department will prepare the transcript and file it with the Clerk of the District Court within thirty (30) days (or expedited days) from the date of this notice. The transcriber may make application to the District Judge for an extension of time in which to prepare the transcript.

Date: April 6, 2011



Pamela Bourne
Transcript Department

MD

CERTIFICATE OF MAILING

I certify that on this 6th day of April, 2011, a true and correct copy of the Notice of Preparation of Transcript was forwarded to Defendant's attorney of record, by first class mail, at:

Ada Co. Public Defender
200 W. Front St. Ste. 1107
Boise ID 83702
DANICA COMSTOCK



Pamela Bourne
Transcript Department

APR 20 2011

CHRISTOPHER D. RICH, Clerk
By NATALIE FARACA
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

James E. Vogt
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, ID 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

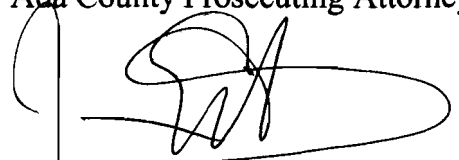
THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
CHRIS J. MCLELLEN,)
)
Defendant.)
_____)

Case No. CR-FE-2011-0001478
DISCOVERY RESPONSE
TO COURT

COMES NOW, James E. Vogt, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted a Response to Discovery.

RESPECTFULLY SUBMITTED this 20 day of April, 2011.

GREG H. BOWER
Ada County Prosecuting Attorney



James E. Vogt
Deputy Prosecuting Attorney



APR 20 2011

CHRISTOPHER D. RICH, Clerk
By **NATALIE FARACA**
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

James E. Vogt
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Fax: (208) 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,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0001478
)	
vs.	)	REQUEST FOR DISCOVERY
)	
CHRIS J. MCLELLEN,)	
)	
Defendant.)	
_____)	

TO THE ABOVE NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

(1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

(2) Reports of Examinations and Tests:

The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense Witnesses:

The prosecution requests the defendant to furnish the State with a list of names and addresses of witnesses the defendant intends to call at trial.

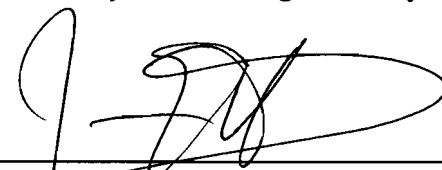
(4) Expert Witnesses:

The prosecution requests the defendant to provide a written summary or report of any testimony that the defense intends to introduce pursuant to Idaho Criminal Rule 16(c)(4), including the facts and data supporting the opinion and the witness's qualifications.

(5) Pursuant to Idaho Code Section 19-519, the State hereby requests that the defendant state in writing within ten (10) days any specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 20 day of April, 2011.

GREG H. BOWER
Ada County Prosecuting Attorney



James E. Vogt
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Request for Discovery to Danica Comstock, Ada County Public Defender, by depositing same in the Ada County Interdepartmental mail, this 20 day of April, 2011.

Umaris

MAY 06 2011

CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

DANICA M. COMSTOCK, ISB #8165
Deputy Public Defender
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.

CHRIS J. McLELLAN,

Defendant.

Case No. CR-FE-2011-0001478

MOTION TO CONTINUE

COMES NOW, DANICA M. COMSTOCK of the Ada County Public Defender's office, counsel of record for Defendant above-named, and moves this Court to continue the jury trial set for June 1, 2011, to a time convenient to both Court and counsel, as undersigned counsel is unavailable at the end of the week of June 1, 2011.

DATED, Thursday, May 05, 2011.

Danica Comstock

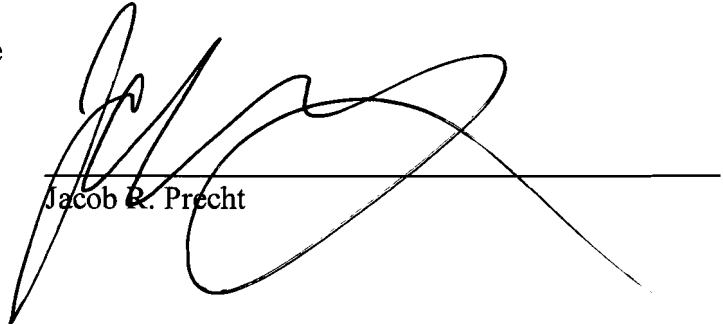
DANICA M. COMSTOCK
Attorney for Defendant

UW

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 5 day of May 2011, I mailed (served) a true and correct copy of the within instrument to:

JAMES E. VOGT
Ada County Prosecutor's Office
Interdepartmental Mail



Jacob R. Precht

MAY 06 2011

CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
DEPUTY

**ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant**

**DANICA M. COMSTOCK, ISB #
Deputy Public Defender
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.
CHRISTOHPER J. MCLELLAN,
Defendant.**

Case No. CR-FE-2011-0001478

**NOTICE OF HEARING
(Motion to Continue)**

**TO: THE STATE OF IDAHO, Plaintiff, and to JAMES VOGT, Ada County
Prosecutor's office:**

YOU, AND EACH OF YOU, are hereby notified that Defendant will call on for hearing Motion to Continue. Said hearing shall take place on May 24, 2011, at the hour of 11:00 a.m., in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED, Thursday, May 05, 2011.

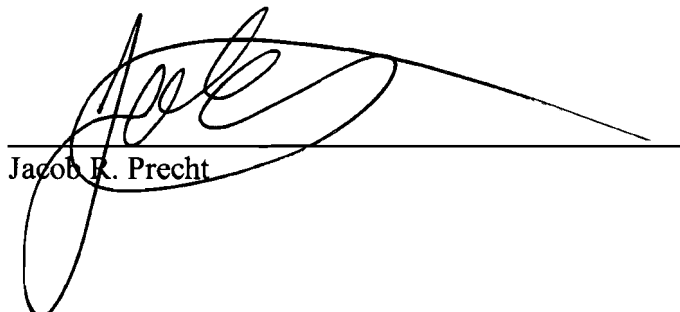


**DANICA M. COMSTOCK
Attorney for Defendant**

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, May 05, 2011, I mailed (served) a true and correct copy of the within instrument to:

**JAMES VOGT
Ada County Prosecutor's office
Interdepartmental Mail**



Jacob R. Precht

CMO

Session: Wilper052411
Session Date: 2011/05/24
Judge: Wilper, Ronald J.
Reporter: Wolf, Sue

Division: DC
Session Time: 08:10

Courtroom: CR507

Clerk(s):
Johnson, Inga

State Attorneys:
Duggan, Barbara
Gunn, George
Guzman, Cathy
Howe, Jean
Moody, Melissa
Vogt, Jim

Public Defender(s):
Comstock, Danica
Jones, Teri
Simonaitis, David

Prob. Officer(s):

Court interpreter(s):

Case ID: 0022

Case Number: CRFE11-01478
Plaintiff:
Plaintiff Attorney:
Defendant: McLellan, Chris
Co-Defendant(s):
Pers. Attorney:
State Attorney: Vogt, Jim
Public Defender: Comstock, Danica

2011/05/24

12:06:46 - Operator
Recording:
12:06:46 - New case
McLellan, Chris
12:07:23 - General:
def present on bond for pretrial
12:07:40 - Public Defender: Comstock, Danica
moves cont- unavailable
12:08:03 - State Attorney: Vogt, Jim
concur, witness unavailable too
12:08:12 - Judge: Wilper, Ronald J.
Grants, Q. def. who waives speedy trial
12:08:57 - Judge: Wilper, Ronald J.
q on specifics
12:10:56 - Judge: Wilper, Ronald J.
JT- 8/24/11 at 9, PTC- 8/16/11 at 11

12:11:47 - Operator
Stop recording:

MAY 26 2011

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
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.

CHRIS MCLELLAN,
Defendant.

Case No. CRFE-11-01478
NOTICE OF JURY TRIAL

Appearances:

Prosecuting Attorney
Inter Dept. Mail

Counsel for the State

Public Defender
Inter Dept. Mail

Counsel for Defendant

THIS IS YOUR NOTICE OF TRIAL SETTING

THE ABOVE ENTITLED MATTER HAS BEEN SET FOR TRIAL BEFORE THE COURT
AND A JURY ON AUGUST 24, 2011, TO COMMENCE AT THE HOUR OF 9:00 A.M.

A PRE-TRIAL CONFERENCE IS SET FOR AUGUST 16, 2011, AT 11:00 A.M. THE
DEFENDANT WILL BE AVAILABLE PERSONALLY WITH COUNSEL AT THIS PRE-TRIAL
CONFERENCE UNLESS EXCUSED BY THE COURT.

THIS TRIAL WILL CONTINUE DAILY THEREAFTER UNTIL COMPLETED, SKIPPING
TUESDAYS.

All requested jury instructions must be submitted to the Court five (5) days prior to trial.

Hon. G.D. Carey	Hon. Daniel Meehl
Hon. Dennis Goff	Hon. George R. Reinhart, III
Hon. Daniel C Hurlbutt, Jr	Hon. Gerald Schroeder
Hon. James Judd	Hon. Kathryn A. Sticklen
Hon. Peter McDermott	Hon. Linda Trout
Hon. Duff McKee	Hon. Barry Wood
Hon. W.H. Woodland	Any sitting Fourth District Judge

Copies sent to above counsel.

MAY 31 2011

CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

James E. Vogt
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, ID 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

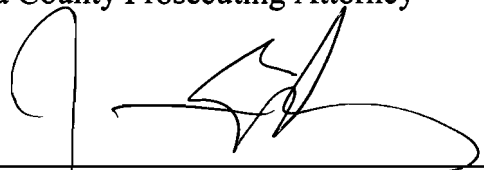
THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
CHRIS J. MCLELLEN,)
)
Defendant.)
_____)

Case No. CR-FE-2011-0001478
ADDENDUM TO DISCOVERY
RESPONSE TO COURT

COMES NOW, James E. Vogt, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 31 day of May, 2011.

GREG H. BOWER
Ada County Prosecuting Attorney



James E. Vogt
Deputy Prosecuting Attorney



JUL 19 2011

CHRISTOPHER D. RICH, Clerk
By LANI BROXSON
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,)	
	)	Criminal No. CR-FE-2011-001478
Plaintiff,)	
	)	MOTION TO DISMISS PURSUANT TO
vs.	)	IDAHO CODE SECTION 19-815A AND
	)	MEMORANDUM IN SUPPORT
CHRIS MCLELLAN,)	
)	
Defendant.)	
_____)	

COMES NOW, CHRIS MCLELLAN, the defendant above-named, by and through counsel, JONATHAN LOSCHI, Ada County Public Defender's Office, and hereby moves to dismiss the above numbered case pursuant to Idaho Code Section 19-815A, and offers this memorandum in support of that motion.

PROCEDURE

Defendant is charged with Video Voyeurism, a felony, Idaho Code Section 18-6609(2)(b). A preliminary hearing was held on this matter, and the matter was bound over to District Court. This Motion to Dismiss and Memorandum follows.

APPLICABLE LAW

N Idaho Code Section 19-815A provides that once a defendant has been held to answer to a criminal charge, the defendant may

challenge the sufficiency of the evidence presented at the preliminary hearing by filing with the district court a motion to dismiss. If the district court finds that no public offense was committed or that the defendant was held to answer without probable cause, it must dismiss the complaint and order the defendant discharged. I.C. 19-815A. A magistrates finding of probable cause that a defendant has committed a public offense should be overturned only upon a showing that the magistrate abused its discretion. State v. Gibson, 106 Idaho 54, 675 P.2d 33 (1983). When a trial court's discretionary decision is reviewed, the reviewing court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. State v. Hedger, 115 Idaho 598, 768 P.2d 1331 (1989).

The legal standard applicable to a finding of probable cause at a preliminary hearing does not require the state to prove the defendant guilty beyond a reasonable doubt. State v. Phelps, 131 Idaho 249, 953 P.2d 999 (Ct.App.1998). Rather, the state need only show that a crime was committed and that there is probable cause to believe the accused committed it. Id. A finding of probable cause must be based upon substantial evidence as to every material element of the offense charged. ICR 5.1(b). The requirement may be satisfied through circumstantial evidence and reasonable inferences to be drawn from that evidence by the committing magistrate. State v. Munhall, 18 Idaho 602, 798 P.2d 61 (Ct.App.1990). A magistrate's finding of probable cause at a preliminary hearing will not be disturbed if, under any reasonable view of the

evidence including permissible inferences, it appears likely that an offense occurred and that the accused committed it. State v. Holcomb, 128 Idaho 296, 912 p.2d 664 (Ct.App.1995).

ARGUMENT

Idaho Code Section 18-6609(2)(b) reads as follows:

(2) A person is guilty of video voyeurism when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person...

(b) He intentionally disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained with the intent set forth above.

In the present case, the defendant has been accused of posting sexual images of his ex-girlfriend, Natalie Needham, with derogatory captions, on the internet. In the Information filed on March 4, 2011, the state alleges that the defendant did this with the "purpose of sexually degrading and/or abusing" her, and without her consent and "with the knowledge that the image or images would sexually abuse or degrade her".

Idaho Code Section 18-6609(2)(b) as applied to the defendant requires that the state prove that the defendant "for the purpose of sexually degrading or abusing any other person" published these images on the internet "with knowledge that such image or images were obtained with the intent set forth above."

In the present case, even assuming that the defendant posted sexual images of Natalie Needham on the internet without her consent, the state has not provided any evidence upon which the magistrate could have found the necessary knowledge and intent to meet the elements of the crime of Video Voyeurism.

If statutory language is unambiguous, "the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction." Garza v. State, 139 Idaho 533, 82 P.3d 445 (2003). The plain meaning of a statute therefore will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. Id. Idaho Code Section 18-66609(2)(b) as charged in this case requires that the defendant have knowledge that these images were obtained with the intent to sexually degrade and/or abuse Natalie Needham. The intent to sexually degrade must have existed at the time the images were obtained.

Natalie Needham testified at the preliminary hearing that she had been in a relationship with the defendant. PH trans., p. 13, ll. 18-21. During that time, Ms. Needham admitted that she had participated in naked videos with the defendant. Id. At p.16, ll. 17-24. Ms. Needham was not aware that the video still existed. Id. Detective Lebar testified that the person in the video seemed aware that the camera was there. Id. At p.29, ll.1-3. The evidence was that Ms. Needham was a willing and aware participant in the making of the video at the time she was in a consensual relationship with the defendant.

In finding probable cause, the magistrate stated that he was reading the word "obtain" to include "adding the language". Id. At 36, ll. 9-11. In other words, the magistrate reasoned that the addition of derogatory captions seemed to change the time of "obtaining" from when the video was taken to when it was edited to add the language.

The evidence is clear that the defendant obtained the images during his relationship with Ms. Needham between 2004 and 2007. Pursuant to the statute, that is the time at which the defendant must have had the intent of "sexually degrading or


abusing" Ms. Needham. Idaho Code Section 18-6609(2) (b) explicitly states that it is the "image or images" of the "intimate areas of another person" that must be obtained with this intent. There is no reference to words or text within the statute. Therefore, it would be in contravention of the plain language of the statute to hold that the addition of words or text somehow changes the time at which an image was obtained.

Idaho Code Section 18-6609 became a law during the 2004 legislative session. In the Statement of Purpose accompanying the legislation, it is clear that the legislature was concerned with instances of "surreptitious photograph, film, video or digital recording of persons without their consent." See attached. While the defendant's actions might be inappropriate, and a breach of privacy, they do not constitute a crime under Idaho Code Section 18-6609(2) (b).

CONCLUSION

Based upon the foregoing argument, Defendant moves this Court for an order dismissing the current charge against him. AND IT IS SO MOVED.

Dated this 19 of July, 2011.




Jonathan Loschi
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 19 day of July 2011, I mailed a true and correct copy of the within instrument to:

James Vogt
DEPUTY PROSECUTOR, ADA COUNTY

by placing said same in the Interdepartmental Mail.



Jacob R. Precht

SENATE BILL NO. 1243

[View Bill Status](#)

[View Bill Text](#)

[View Amendment](#)

[View Engrossed Bill \(Original Bill with Amendment\(s\) Incorporated\)](#)

[View Statement of Purpose / Fiscal Impact](#)

Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

This sentence is marked with bold and underline to show added text.

~~This sentence is marked with strikethrough and italic, indicating text to be removed.~~

Bill Status

S1243aa.....by JUDICIARY AND RULES
VIDEO VOYEURISM - Adds to and amends existing law to provide for the crime of video voyeurism; to define terms; to provide a penalty; and to include the crime of video voyeurism for purposes of the Sexual Offender Registration Notification and Community Right-to-Know Act.

01/29 Senate intro - 1st rdg - to printing

01/30 Rpt prt - to Jud

02/16 Rpt out - to 14th Ord

02/19 Rpt out amen - to engros

02/20 Rpt engros - 1st rdg - to 2nd rdg as amen

02/23 2nd rdg - to 3rd rdg as amen

02/26 3rd rdg as amen - PASSED - 32-0-3

AYES -- Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett

NAYS -- None

Absent and excused -- Sweet, Werk, Williams

Floor Sponsor - Darrington

Title apvd - to House

02/27 House intro - 1st rdg - to Jud

03/08 Rpt out - rec d/p - to 2nd rdg

03/09 2nd rdg - to 3rd rdg

03/10 3rd rdg - PASSED - 65-0-5

AYES -- Andersen, Barraclough, Barrett, Bauer, Bayer, Bedke, Bell, Black, Block, Boe, Bolz, Bradford, Cannon, Clark, Collins, Crow, Cuddy, Deal, Denney, Douglas, Eberle, Edmunson, Ellsworth, Eskridge, Field(18), Field(23), Garrett, Harwood, Henbest, Jaquet, Jones, Kellogg, Kulczyk, Lake, Langford, Langhorst, Martinez, McGeachin, McKague, Meyer, Miller, Mitchell, Moyle, Naccarato, Nielsen, Pasley-Stuart, Ridinger, Ring, Ringo, Roberts, Robison, Rydalch, Sali, Saylor, Shepherd, Shirley, Skippen, Smith(30), Smith(24), Smylie, Snodgrass, Stevenson, Trail, Wood, Mr. Speaker

NAYS -- None

Absent and excused -- Campbell, Gagner, Raybould, Schaefer, Wills

Floor Sponsor - Nielsen

Title apvd - to Senate

03/11 To enrol
03/12 Rpt enrol - Pres signed
03/15 Sp signed
03/16 To Governor
03/19 Governor signed
Session Law Chapter 122
Effective: 03/19/04

Bill Text

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
Fifty-seventh Legislature Second Regular Session - 2004

IN THE SENATE

SENATE BILL NO. 1243

BY JUDICIARY AND RULES COMMITTEE

1 AN ACT
2 RELATING TO VIDEO VOYEURISM; AMENDING CHAPTER 66, TITLE 18, IDAHO CODE, BY THE
3 ADDITION OF A NEW SECTION 18-6609, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE
4 FOR THE CRIME OF VIDEO VOYEURISM AND TO PROVIDE A PENALTY; AMENDING SEC-
5 TION 18-8304, IDAHO CODE, TO INCLUDE THE CRIME OF VIDEO VOYEURISM FOR PUR-
6 POSES OF THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY
7 RIGHT-TO-KNOW ACT; AND DECLARING AN EMERGENCY.

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Chapter 66, Title 18, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of a **NEW SECTION**, to be known and des-
11 ignated as Section 18-6609, Idaho Code, and to read as follows:

12 18-6609. CRIME OF VIDEO VOYEURISM. (1) As used in this section:
13 (a) "Broadcast" means the electronic transmittal of a visual image with
14 the intent that it be viewed by a person or persons.
15 (b) "Disseminate" means to make available by any means to any person.
16 (c) "Imaging device" means any instrument capable of recording, storing,
17 viewing or transmitting visual images.
18 (d) "Intimate areas" means the buttocks, genitals or genital areas of
19 males or females, and the breast area of females.
20 (e) "Person" means any natural person, corporation, partnership, firm,
21 association, joint venture or any other recognized legal entity or any
22 agent or servant thereof.
23 (f) "Place where that person has a reasonable expectation of privacy"
24 means:
25 (i) A place where a reasonable person would believe that he could
26 undress, be undressed or engage in sexual activity in privacy, with-
27 out concern that he is being viewed, photographed, filmed or other-
28 wise recorded by an imaging device; or
29 (ii) A place where a person might reasonably expect to be safe from
30 casual or hostile surveillance by an imaging device; or
31 (iii) Any public place where a person, by taking reasonable steps to
32 conceal intimate areas, should be free from the viewing, recording,
33 storing or transmitting of images obtained by imaging devices
34 designed to overcome the barriers created by a person's covering of
35 intimate areas.

36 (g) "Publish" means to:
37 (i) Disseminate with the intent that such image or images be made
38 available by any means to any person; or
39 (ii) Disseminate with the intent that such images be sold by another
40 person; or
41 (iii) Post, present, display, exhibit, circulate, advertise or allow
42 access by any means so as to make an image or images available to the
43 public; or

2

1 (iv) Disseminate with the intent that an image or images be posted,
2 presented, displayed, exhibited, circulated, advertised or made
3 accessible by any means and to make such image or images available to
4 the public.

5 (h) "Sell" means to disseminate to another person, or to publish, in
6 exchange for something of value.

7 (2) A person is guilty of video voyeurism when, with the intent of arous-
8 ing, appealing to or gratifying the lust or passions or sexual desires of such
9 person or another person, or for his own or another person's salacious or las-
10 civious entertainment or satisfaction of prurient interest, or for the purpose
11 of sexually degrading or abusing a person:

12 (a) He uses, installs or permits the use or installation of an imaging
13 device without that person's knowledge and consent and while that person
14 is in a place where that person would have a reasonable expectation of
15 privacy; or

16 (b) He intentionally disseminates, publishes or sells such image or
17 images of the lawful sexual activity or intimate areas of another person
18 or persons with knowledge of the unlawful conduct by which an image or
19 images were obtained; or

20 (c) He uses, installs or permits the use or installation of an imaging
21 device without that person's knowledge and consent, which permits viewing,
22 recording, imaging or photographing areas that have been reasonably
23 shielded from public view.

24 (3) A violation of this section is a felony.

25 SECTION 2. That Section 18-8304, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter shall
28 apply to any person who:

29 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
30 solicitation, or a conspiracy to commit a crime provided for in section
31 18-909 (assault with attempt to commit rape, infamous crime against
32 nature, or lewd and lascivious conduct with a minor, but excluding mayhem,
33 murder or robbery), 18-911 (battery with attempt to commit rape, infamous
34 crime against nature, or lewd and lascivious conduct with a minor, but
35 excluding mayhem, murder or robbery), 18-1506 (sexual abuse of a child
36 under sixteen years of age), 18-1506A (ritualized abuse of a child),
37 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually
38 exploitative material for other than a commercial purpose), 18-1508 (lewd
39 conduct with a minor child), 18-1508A (sexual battery of a minor child
40 sixteen or seventeen years of age), 18-1509A (enticing a child over the
41 internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116
42 (indecent exposure, but excluding a misdemeanor conviction), 18-4502
43 (first degree kidnapping committed for the purpose of rape, committing the
44 infamous crime against nature or for committing any lewd and lascivious
45 act upon any child under the age of sixteen, or for purposes of sexual
46 gratification or arousal), 18-4503 (second degree kidnapping where the
47 victim is an unrelated minor child), 18-6101 (rape, but excluding
48 18-6101(1) where the defendant is eighteen years of age or younger),

49 18-6108 (male rape), 18-6602 (incest), 18-6605 (crime against nature), ~~or~~
 50 18-6608, ~~Idaho Code~~ (forcible sexual penetration by use of a foreign
 51 object), or 18-6609, Idaho Code (video voyeurism);
 52 (b) Enters the state on or after July 1, 1993, and who has been convicted
 53 of any crime, an attempt, a solicitation or a conspiracy to commit a crime

3

1 in another state, territory, commonwealth, or other jurisdiction of the
 2 United States, including tribal courts and military courts, that is sub-
 3 stantially equivalent to the offenses listed in subsection (1)(a) of this
 4 section.

5 (c) Pleads guilty to or has been found guilty of a crime covered in this
 6 chapter prior to July 1, 1993, and the person, as a result of the offense,
 7 is incarcerated in a county jail facility or a penal facility or is under
 8 probation or parole supervision, on or after July 1, 1993.

9 (d) Is a nonresident regularly employed or working in Idaho or is a stu-
 10 dent in the state of Idaho and was convicted, found guilty or pleaded
 11 guilty to a crime covered by this chapter and, as a result of such convic-
 12 tion, finding or plea, is required to register in his state of residence.

13 (2) The provisions of this chapter shall not apply to any such person
 14 while the person is incarcerated in a correctional institution of the depart-
 15 ment of correction, a county jail facility or committed to a mental health
 16 institution of the department of health and welfare.

17 (3) A conviction for purposes of this chapter means that the person has
 18 pled guilty or has been found guilty, notwithstanding the form of the judgment
 19 or withheld judgment.

20 SECTION 3. An emergency existing therefor, which emergency is hereby
 21 declared to exist, this act shall be in full force and effect on and after its
 22 passage and approval.

Amendment

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
 Fifty-seventh Legislature Second Regular Session - 2004

Moved by Darrington

Seconded by Lodge

IN THE SENATE
 SENATE AMENDMENTS TO S.B. NO. 1243

AMENDMENTS TO SECTION 1

1 On page 1 of the printed bill, in line 23 delete "that person" and insert:
 2 "a person"; on page 2, in line 9, delete "salacious or"; in line 11, delete "a
 3 person" and insert: "any other person"; delete lines 13 through 15 and insert:
 4 "device at a place where a person would have a reasonable expectation of pri-
 5 vacy, without the knowledge or consent of the person using such place; or"; in
 6 line 16, delete "such" and insert: "any"; and delete lines 17 through 23 and
 7 insert: "images of the intimate areas of another person or persons without the
 8 consent of such other person or persons and with knowledge that such image or
 9 images were obtained with the intent set forth above."
 10

AMENDMENT TO SECTION 2

12 On page 2, in line 51, following "or" insert: "upon a second or subsequent
13 conviction under".

Engrossed Bill (Original Bill with Amendment(s) Incorporated)

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
Fifty-seventh Legislature Second Regular Session - 2004

IN THE SENATE

SENATE BILL NO. 1243, As Amended

BY JUDICIARY AND RULES COMMITTEE

1 AN ACT
2 RELATING TO VIDEO VOYEURISM; AMENDING CHAPTER 66, TITLE 18, IDAHO CODE, BY THE
3 ADDITION OF A NEW SECTION 18-6609, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE
4 FOR THE CRIME OF VIDEO VOYEURISM AND TO PROVIDE A PENALTY; AMENDING SEC-
5 TION 18-8304, IDAHO CODE, TO INCLUDE THE CRIME OF VIDEO VOYEURISM FOR PUR-
6 POSES OF THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY
7 RIGHT-TO-KNOW ACT; AND DECLARING AN EMERGENCY.

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Chapter 66, Title 18, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of a **NEW SECTION**, to be known and des-
11 ignated as Section 18-6609, Idaho Code, and to read as follows:

- 12 18-6609. CRIME OF VIDEO VOYEURISM. (1) As used in this section:
- 13 (a) "Broadcast" means the electronic transmittal of a visual image with
- 14 the intent that it be viewed by a person or persons.
- 15 (b) "Disseminate" means to make available by any means to any person.
- 16 (c) "Imaging device" means any instrument capable of recording, storing,
- 17 viewing or transmitting visual images.
- 18 (d) "Intimate areas" means the buttocks, genitals or genital areas of
- 19 males or females, and the breast area of females.
- 20 (e) "Person" means any natural person, corporation, partnership, firm,
- 21 association, joint venture or any other recognized legal entity or any
- 22 agent or servant thereof.
- 23 (f) "Place where a person has a reasonable expectation of privacy" means:
- 24 (i) A place where a reasonable person would believe that he could
- 25 undress, be undressed or engage in sexual activity in privacy, with-
- 26 out concern that he is being viewed, photographed, filmed or other-
- 27 wise recorded by an imaging device; or
- 28 (ii) A place where a person might reasonably expect to be safe from
- 29 casual or hostile surveillance by an imaging device; or
- 30 (iii) Any public place where a person, by taking reasonable steps to
- 31 conceal intimate areas, should be free from the viewing, recording,
- 32 storing or transmitting of images obtained by imaging devices
- 33 designed to overcome the barriers created by a person's covering of
- 34 intimate areas.
- 35 (g) "Publish" means to:
- 36 (i) Disseminate with the intent that such image or images be made
- 37 available by any means to any person; or
- 38 (ii) Disseminate with the intent that such images be sold by another
- 39 person; or
- 40 (iii) Post, present, display, exhibit, circulate, advertise or allow

41 access by any means so as to make an image or images available to the
42 public; or
43 (iv) Disseminate with the intent that an image or images be posted,

2

1 presented, displayed, exhibited, circulated, advertised or made
2 accessible by any means and to make such image or images available to
3 the public.

4 (h) "Sell" means to disseminate to another person, or to publish, in
5 exchange for something of value.

6 (2) A person is guilty of video voyeurism when, with the intent of arous-
7 ing, appealing to or gratifying the lust or passions or sexual desires of such
8 person or another person, or for his own or another person's lascivious enter-
9 tainment or satisfaction of prurient interest, or for the purpose of sexually
10 degrading or abusing any other person:

11 (a) He uses, installs or permits the use or installation of an imaging
12 device at a place where a person would have a reasonable expectation of
13 privacy, without the knowledge or consent of the person using such place;
14 or

15 (b) He intentionally disseminates, publishes or sells any image or images
16 of the intimate areas of another person or persons without the consent of
17 such other person or persons and with knowledge that such image or images
18 were obtained with the intent set forth above.

19 (3) A violation of this section is a felony.

20 SECTION 2. That Section 18-8304, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter shall
23 apply to any person who:

24 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
25 solicitation, or a conspiracy to commit a crime provided for in section
26 18-909 (assault with attempt to commit rape, infamous crime against
27 nature, or lewd and lascivious conduct with a minor, but excluding mayhem,
28 murder or robbery), 18-911 (battery with attempt to commit rape, infamous
29 crime against nature, or lewd and lascivious conduct with a minor, but
30 excluding mayhem, murder or robbery), 18-1506 (sexual abuse of a child
31 under sixteen years of age), 18-1506A (ritualized abuse of a child),
32 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually
33 exploitative material for other than a commercial purpose), 18-1508 (lewd
34 conduct with a minor child), 18-1508A (sexual battery of a minor child
35 sixteen or seventeen years of age), 18-1509A (enticing a child over the
36 internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116
37 (indecent exposure, but excluding a misdemeanor conviction), 18-4502
38 (first degree kidnapping committed for the purpose of rape, committing the
39 infamous crime against nature or for committing any lewd and lascivious
40 act upon any child under the age of sixteen, or for purposes of sexual
41 gratification or arousal), 18-4503 (second degree kidnapping where the
42 victim is an unrelated minor child), 18-6101 (rape, but excluding
43 18-6101(1) where the defendant is eighteen years of age or younger),
44 18-6108 (male rape), 18-6602 (incest), 18-6605 (crime against nature), ~~or~~
45 ~~18-6608, Idaho Code~~ (forcible sexual penetration by use of a foreign
46 object), or upon a second or subsequent conviction under 18-6609, Idaho
47 Code (video voyeurism);

48 (b) Enters the state on or after July 1, 1993, and who has been convicted
49 of any crime, an attempt, a solicitation or a conspiracy to commit a crime
50 in another state, territory, commonwealth, or other jurisdiction of the
51 United States, including tribal courts and military courts, that is sub-
52 stantially equivalent to the offenses listed in subsection (1)(a) of this
53 section.

1 (c) Pleads guilty to or has been found guilty of a crime covered in this
2 chapter prior to July 1, 1993, and the person, as a result of the offense,
3 is incarcerated in a county jail facility or a penal facility or is under
4 probation or parole supervision, on or after July 1, 1993.

5 (d) Is a nonresident regularly employed or working in Idaho or is a stu-
6 dent in the state of Idaho and was convicted, found guilty or pleaded
7 guilty to a crime covered by this chapter and, as a result of such convic-
8 tion, finding or plea, is required to register in his state of residence.

9 (2) The provisions of this chapter shall not apply to any such person
10 while the person is incarcerated in a correctional institution of the depart-
11 ment of correction, a county jail facility or committed to a mental health
12 institution of the department of health and welfare.

13 (3) A conviction for purposes of this chapter means that the person has
14 pled guilty or has been found guilty, notwithstanding the form of the judgment
15 or withheld judgment.

16 SECTION 3. An emergency existing therefor, which emergency is hereby
17 declared to exist, this act shall be in full force and effect on and after its
18 passage and approval.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE RS 13648C1

Instances of surreptitious photograph, film, video or digital recording of persons without their consent, while in a place where the person has a reasonable expectation of privacy, or in a public place when the person has taken reasonable steps to shield intimate areas from public view, for the purpose of arousing or gratifying the sexual desire of the person making the recording or any other person, are increasing both regionally and in Idaho. Currently nothing in statute defines these acts as crimes. This proposal amends Idaho Code Chapter 66, Title 18 by the addition of a new section defining the crime of video voyeurism as a felony, and amends section 18-8304 to require persons convicted of video voyeurism to register as sex offenders.

FISCAL IMPACT

There is no anticipated impact to the state general fund or other dedicated funds.

Contact

Name: Chief David Moore
Blackfoot Police Department

Phone: (208) 785-1235

STATEMENT OF PURPOSE/FISCAL NOTE

S 1243

AUG 08 2011

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

James E. Vogt
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-2011-0001478
vs.)	
	)	OBJECTION TO DEFENDANT'S
CHRIS J MCLELLEN,	)	MOTION TO DISMISS
	)	PURSUANT TO IDAHO CODE
Defendant.	)	§ 19-815A and MEMORANDUM
_____	)	in SUPPORT

COMES NOW, James E. Vogt, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and objects to Defendant's Motion to Dismiss for the reasons laid out below:

Facts

Between February and November of 2010, Defendant created and published a video to the internet consisting of naked images of his former girlfriend and mother of his children, Natalie Needham. The image consisted of text containing derogatory language referring to Natalie Needham, images of her smoking drugs, and images of her naked and masturbating. The video images were taken when the Defendant and Needham were a couple—between 2004 and 2007. The Defendant admitted editing those images with text and publishing it to the internet between February and November of 2010. The Defendant admitted he published this image because he was angry with Needham over a child custody issue.

MD

Needham and her husband, Tom Needham, became aware of the image through an acquaintance. They contacted their attorney and the Boise City Police. Detective Charles LeBar conducted an investigation and seized the image in question from the Defendant's computer. He also obtained the admissions that the Defendant created the image because the Defendant was angry with Ms. Needham.

The State filed a Complaint and a warrant was issued January 27, 2011. A preliminary hearing was held March 3, 2011. Magistrate Judge Michael Oths heard the evidence and determined the State had established probable cause that a public offense was committed and the Defendant probably committed the offense.

Current Posture

Defendant is charged with a violation of Idaho Code § 18-6609(2)(b). Subsection (2)(b) requires that the Defendant:

[I]ntentionally disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained with the intent set forth above.

Idaho Code § 18-6609(2)(b). The intent element that is alleged in the Information is “for the purpose of sexually degrading or abusing any other person.” *Id.*

Defendant argues that the Magistrate abused its discretion in determining probable cause. Defendant is reasserting the argument he made at the preliminary hearing that there is insufficient evidence to establish that the Defendant possessed the intent to sexually degrade when he obtained the images of the victim, Natalie Needham. The Defendant asserts that because one element of the image—the naked images of Natalie Needham—were obtained sometime between 2004 and 2007 that there is insufficient evidence that the Defendant possessed the intent to sexually degrade when he created the full image by editing derogatory language to the naked pictures of Natalie Needham. Essentially, Defendant asks the Court to ignore the fact that an image is the sum of its parts, and the image that the Defendant published to the internet with the intent to sexually degrade was not complete until he edited in captions that include derogatory terms.

Law and Argument

The standard of review for challenges to the finding of probable cause by the Magistrate is laid out in *State v. Pole*:

A magistrate's finding of probable cause that a defendant has committed a public offense should be overturned only upon a showing that the magistrate abused its discretion. *State v. Gibson*, 106 Idaho 54, 57, 675 P.2d 33, 36 (1983); *State v. Phelps*, 131 Idaho 249, 251, 953 P.2d 999, 1001 (Ct.App.1998). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

The legal standard applicable to a finding of probable cause at a preliminary hearing does not require the state to prove the defendant guilty beyond a reasonable doubt. *Phelps*, 131 Idaho at 251, 953 P.2d at 1001. Rather, the state need only show that a crime was committed and that there is probable cause to believe the accused committed it. *Id.* A finding of probable cause must be based upon substantial evidence as to every material element of the offense charged. I.C.R. 5.1(b). This requirement may be satisfied through circumstantial evidence and reasonable inferences to be drawn from that evidence by the committing magistrate. *State v. Munhall*, 118 Idaho 602, 606, 798 P.2d 61, 65 (Ct.App.1990). A reviewing court will not substitute its judgment for that of the magistrate as to the weight of the evidence. *Id.* Stated another way, a magistrate's finding of probable cause at a preliminary hearing will not be disturbed if, under any reasonable view of the evidence including permissible inferences, it appears likely that an offense occurred and that the accused committed it. *Holcomb*, 128 Idaho at 299, 912 P.2d at 667.

79 P.3d 729, 731 (Idaho Ct. App. 2003). In the instant case the Magistrate did not abuse its discretion. The Magistrate spent considerable time and heard argument concerning exactly the argument the Defendant reasserts now. The Magistrate found “that it is both visual and the text included in combination and given the words that were used to describe somebody in, you know, crack whore and so forth coupled with that person’s actual body included is very different than just their body alone. So I think the broader approach that’s urged by the State is probably sufficient for this [probable cause] purpose.” *See* Preliminary Hearing Transcript at 36.

Defendant also attacks the sufficiency of the evidence on the intent element of Idaho Code § 18-6609(2)(b). However, the Magistrate received evidence that the Defendant edited the image. *See* Preliminary Hearing Transcript at 25-26. That the image included nude video of Natalie Needham with derogatory names and language overlaid on the image. *Id.* at 27. The Defendant edited and published the image because he was upset with Natalie Needham. *Id.* at 26. Given the evidence the Magistrate received and the reasonable inferences that can be drawn from that evidence, the

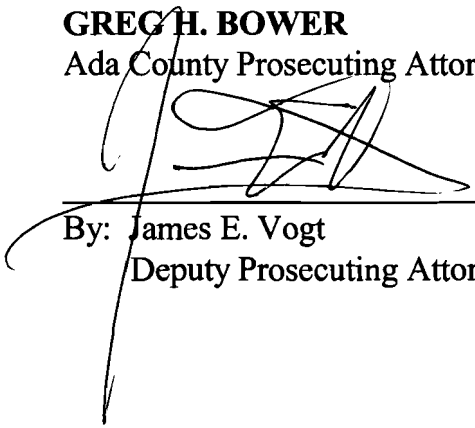
Magistrate did not abuse his discretion in finding that the public offense of Video Voyeurism, a violation of Idaho Code 18-6609 probably occurred and the Defendant committed said offense.

Conclusion

For the foregoing reasons the State urges the Court to DENY Defendant's Motion to Dismiss.

DATED this 8 day of August 2011.

GREG H. BOWER
Ada County Prosecuting Attorney

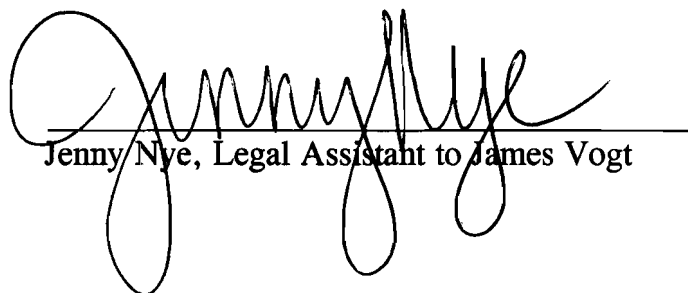


By: James E. Vogt
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August 2011, a true and correct copy of the foregoing **OBJECTION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO IDAHO CODE § 19-815A and MEMORANDUM in SUPPORT** was served to Danica Comstock, Ada County Public Defender's Office, 200 West Front St., Rm. 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: _____



Jenny Nye, Legal Assistant to James Vogt



Session: Wilper081611
Session Date: 2011/08/16
Judge: Wilper, Ronald J.
Reporter: Cromwell, Dianne

Division: DC
Session Time: 08:01

Courtroom: CR507

Clerk(s):
Johnson, Inga

State Attorneys:
Dinger, Dan
Duggan, Barbara
Gunn, George
Harmer, Ben
Howe, Jean
Reilly, Heather

Public Defender(s):
Comstock, Danica
Jones, Teri
Loschi, Jonathon
Simonaitis, David

Prob. Officer(s):

Court interpreter(s):

Case ID: 0024

Case Number: CRFE11-01478
Plaintiff:
Plaintiff Attorney:
Defendant: McLellan, Christopher
Co-Defendant(s):
Pers. Attorney:
State Attorney: Harmer, Ben
Public Defender: Loschi, Jonathon

2011/08/16

11:56:31 - Operator
Recording:
11:56:31 - New case
McLellan, Christopher
11:56:47 - General:
def present on bond for pretrial
11:56:56 - Judge: Wilper, Ronald J.
Reviews, notes motion to dismiss taken under advisement
11:57:56 - Judge: Wilper, Ronald J.
Grants Motion to Dismiss, makes findings
11:59:21 - Judge: Wilper, Ronald J.
Mr. Loschi to prepare order, trial vacated
12:00:02 - Operator
Stop recording:

AUG 16 2011

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

JONATHAN D. LOSCHI, ISB #6002
Deputy Public Defender
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.

CHRIS J. McLELLAN,

Defendant.

Case No. CR-FE-2011-0001478

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

I. INTRODUCTION

The Defendant has filed Motion to Dismiss pursuant to Idaho Code § 19-815A, challenging the sufficiency of evidence educed at the preliminary examination proceedings conducted in this case. On August 16, 2011, Defendant appeared before this Court with counsel, Jonathan D. Loschi, for oral argument concerning his Motion to Dismiss.

II. MOTION TO DISMISS

Idaho Code § 19-815A provides that once a defendant has been held to answer to a criminal charge, the defendant may challenge the sufficiency of the evidence educed at the

preliminary hearing by filing with the district court a motion to dismiss. If the district court finds that no public offense was committed or that the defendant was held to answer without probable cause, it must dismiss the complaint and order the defendant discharged. I.C. § 19-815A. A magistrate's finding of probable cause that a defendant has committed a public offense should be overturned only upon a showing that a magistrate abused its discretion. *State v. Gibson*, 106 Idaho 54, 675 P.2d 33 (1983). When a trial court's discretionary decision is reviewed, the reviewing court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of direction; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 768 P.2d 1331 (1989).

At a preliminary hearing, the State need only show that a crime was committed and there is probable cause to believe the person accused committed said crime. *State v. Phelps*, 131 Idaho 249, 953 P.2d 999 (Ct.App.1998). A finding of probable cause must be based upon substantial evidence as to every material element of the offense charged. I.C.R. 5.1(b). The requirement may be satisfied through circumstantial evidence and reasonable inferences to be drawn from that evidence by the committing magistrate. *State v. Munhall*, 18 Idaho 602, 78 P.2d 61 (Ct.App.1990). A magistrate's finding of probable cause at a preliminary hearing will not be disturbed if, under any reasonable view of the evidence including permissible inferences, it appears likely that an offense occurred and that the accused committed it. *State v. Holcomb*, 128 Idaho 296, 912 P.2d 664 (Ct.App.1995).

III. BRIEF SUMMARY OF FACTS AND APPLICABLE LAW

Defendant was charged by Complaint with Video Voyeurism, a felony violation pursuant to Idaho Code § 18-6609(2)(b), which states a person:

[I]s guilty of video voyeurism when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person:

....

(b) He intentionally disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained with the intent set forth above.

I.C. § 18-6609(2)(b). In the present case, the Defendant was accused of posting sexual images of his ex-girlfriend, Natalie Needham, with derogatory captions, on the Internet. In the Information filed on March 4, 2011, the State alleged that the Defendant did this with the "purpose of sexually degrading and/or abusing" her, and without her consent and "with the knowledge that the image or images would sexually abuse or degrade her."

As applied to this case, I.C. § 18-6609(2)(b) requires that the State prove that the Defendant "for the purpose of sexually degrading or abusing any other person" published these images on the Internet "with knowledge that such image or images were obtained with the intent set forth above." Even assuming that the Defendant posted sexual images of Natalie Needham on the Internet without her consent, the State needed to provide evidence upon which the magistrate could have found the requisite knowledge and intent to meet the elements of the charged offense.

If statutory language is unambiguous, "the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory

construction.” *Garza v. State*, 139 Idaho 533, 82 P.3d 445 (2003). The plain meaning of a statute will therefore prevail unless clearly expressed legislative intent is contrary, or unless plain meaning leads to an absurd result. *Id.* Therefore, this Court must take the plain meaning of I.C. § 18-6609(2)(b) when rendering its decision. As charged in this case, I.C. § 18-6609(2)(b) requires that the Defendant must have had knowledge that these images were obtained with the intent to sexually degrade and/or abuse Natalie Needham, and that the intent to sexually degrade Natalie Needham must have existed at the time the images were obtained.

A review of the transcript of the preliminary examination proceedings reveals that Natalie Needham had been in a relationship with the Defendant, had participated in making nude videos with the Defendant, and was not aware the video still existed. Detective Lebar testified that the person in the video, Ms. Needham, seemed aware that the camera was there. The evidence presented at the preliminary hearing was that Natalie Needham was a willing, aware participant in the making of the video.

In finding probable cause, the magistrate stated at the preliminary hearing that he was reading the word “obtain” to include “adding the language.” Meaning, that because the Defendant added derogatory captions to the nude images of Natalie Needham, the time Defendant “obtained” these images “for the purpose of sexually degrading or abusing” Ms. Needham seemed to change from when the images were taken to when the images were altered.

In this case, the evidence is clear that the Defendant obtained the images during his relationship with Ms. Needham between 2004 and 2007. Pursuant to the statute, the years from 2004 to 2007 is the timeframe during which the Defendant must have had the intent of “sexually degrading or abusing” Ms. Needham. The statute explicitly states that it is the “image or images” of the “intimate areas of another person” that must be obtained with this intent. There is

no reference to words, captions, statements, or text within the statute. Therefore, it would be in contravention of the plain language of the statute to hold that the addition of words, captions, statements, text, etc., somehow changes the time in which an image was obtained.

By making Video Voyeurism a crime in the state of Idaho, the intent of the legislature in enacting I.C. § 18-6609(2)(b) was to curtail “Instances of surreptitious photograph, film, video or digital recording of persons without their consent[] while in a place where the person has a reasonable expectation of privacy . . .”. SB 1243, Ch.122 (2004 Sess.Laws).

IV. CONCLUSION

This Court can neither find that a crime was committed in this case, nor that probable cause exists to believe the Defendant committed a crime. While this Court finds the Defendant’s actions to be inappropriate, they do not constitute a crime under Idaho Code § 18-6609(2)(b). Therefore, the Information, Commitment, and Complaint filed against Defendant are hereby dismissed and the Defendant shall be discharged forthwith.

SO ORDERED AND DATED, this 16th day of August 2011.



RONALD J. WILPER
District Judge

LAWRENCE G. WARDEN
Attorney General
State of Idaho

STEPHEN A. BYWATER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

NO. _____
A.M. _____ P.M. 3:00

AUG 22 2011

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

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

STATE OF IDAHO)	
)	
Plaintiff-Appellant,	)	Case No. CR-FE-2011-0001478
)	
vs.	)	NOTICE OF APPEAL
)	
CHRIS J. MCLELLAN,)	
)	
Defendant-Respondent.)	

TO: CHRIS J. MCLELLAN, THE ABOVE-NAMED RESPONDENT,
JONATHAN D. LOSCHI, DEPUTY PUBLIC DEFENDER, 200 WEST FRONT
STREET, SUITE 1107, BOISE, IDAHO 83702, AND THE CLERK OF THE
ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS,

entered in the above-entitled action on the 16th day of August 2011, the Honorable Ronald J. Wilper presiding.

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

3. Preliminary statement of the issue on appeal: Whether the district court erred as a matter of law in dismissing the video voyeurism charge in this case because it misunderstood the mental state element applicable to the crime as charged?

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript:

(a) Hearing on defendant's motion to dismiss held August 16, 2011 (Dianne Cromwell, reporter, estimated pages: 50).

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R. Because the Preliminary Hearing transcript was considered by the district court in making its ruling, the state requests that the already prepared Preliminary hearing transcript be included in the record as an exhibit.

7. I certify:

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

DIANNE CROMWELL
Court Reporter
Ada County District Court
200 West Front Street
Boise, Idaho 83702

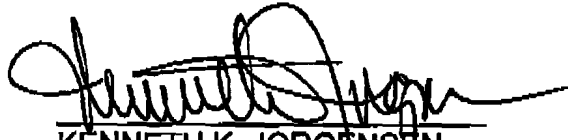
(b) That arrangements have been made with the Ada County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 22nd day of August 2011.


KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 22nd day of August 2011, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:


THE HONORABLE RONALD J. WILPER
Ada County District Court
200 West Front Street
Boise, Idaho 83702

JAMES E. VOGT
Ada County Prosecutor's Office
200 West Front Street, Room 3191
Boise, Idaho 83702

JONATHAN D. LOSCHI
Ada County Public Defender's Office
200 West Front Street, Suite 1107
Boise, Idaho 83702

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

RECEIVED

AUG 29 2011

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

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

ADA COUNTY CLERK

AUG 30 2011

CHRISTOPHER B. RICH, Clerk
By INGA JOHNSON
DEPUTY

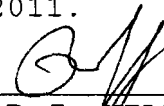
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)	
)	
Plaintiff-Appellant,	)	Criminal No. CR-FE-2011-0001478
)	
vs.)	
)	
CHRIS J. MCLELLAN,	)	ORDER APPOINTING STATE
	)	APPELLATE PUBLIC DEFENDER
Defendant-Respondent.	)	ON DIRECT APPEAL
)	

The above-named Defendant, **Chris J. McLellan**, being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, and the State, having elected to pursue an appeal in the above- entitled matter;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Idaho State Appellate Public Defender is appointed to represent the above named Defendant, **Chris J. McLellan**, in all matters pertaining to the appeal by the State of Idaho.

DATED This 30th day of August, 2011.



RONALD J. WILPER
District Judge

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER ON DIRECT APPEAL

8

NO. _____
A.M. 8:00 FILED P.M. _____

OCT 25 2011

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

Stephen W. Kenyon
Clerk of Supreme Court
451 W State Street
Boise, Idaho 83720

In re: State of Idaho v. Chris J. McLellan, Docket No. 39102-2011

Notice is hereby given that on Tuesday, October 4, 2011, I lodged a transcript of 7 pages in length for the above-referenced appeal with the district court clerk of Ada County in the Fourth Judicial District.

The following files were lodged:

Proceeding 08/16/2011

David Cromwell
Tucker & Associates

cc: kloertscher@idcourts.net
PDF format of completed files emailed to Supreme Court

000076

BT

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-Appellant,
vs.

CHRIS J. MCLELLAN,

Defendant-Respondent.

Supreme Court Case No. 39102

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Preliminary Hearing Held March 3, 2011, Boise, Idaho, filed May 18, 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 25th day of October, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF EXHIBITS

000077

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-Appellant,
vs.

CHRIS J. MCLELLAN,

Defendant-Respondent.

Supreme Court Case No. 39102

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

LAWRENCE G. WASDEN

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

Date of Service: OCT 25 2011

By 
Deputy Clerk

CERTIFICATE OF SERVICE

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-Appellant,
vs.

CHRIS J. MCLELLAN,

Defendant-Respondent.

Supreme Court Case No. 39102

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 22nd day of August, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE TO RECORD

000079