

10-22-2012

## State v. Hamlin Clerk's Record Dckt. 40026

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40026-2012

Vol. 1 of 9  
IN THE

**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

LAW CLERK

DENVIL R. HAMLIN

Petitioner and

Appellant,

vs.

LAW CLERK

STATE OF IDAHO,

Respondent.

Appealed from the District Court of the 4th  
Judicial District of the State of Idaho, in  
and for Elmore County

Hon. BARRY WOOD District Judge  
Hon. GEORGE HICKS Magistrate Judge

SARA THOMAS  
STATE APPELLATE PUBLIC DEFENDER

Attorney for Appellant

LAWRENCE G. WUSDEN  
ATTORNEY GENERAL

Attorney for Respondent

FILED - COPY

OCT 22 2012

Filed:

Supreme Court Court of Appeals  
Entered on ATS by:

40026

40026-2012

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	
	)	
vs.	)	Supreme Court
	)	Case No. 40026-2012
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant/Appellant.	)	
_____	)	

**HON. GEORGE HICKS**

**HON. BARRY WOOD**

**DISTRICT JUDGE**

**ELMORE COUNTY**

Lawrence G. Wasden  
ATTORNEY GENERAL  
Statehouse Mail  
P.O. Box 83720  
Boise, ID 83720-0010

Sara Thomas  
STATE APPELLATE PUBLIC DEFENDER  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703

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## TABLE OF CONTENTS

MEMORANDA	PAGE 1
AFFIDAVIT OF PROBABLE CAUSE FOR ARREST – AUG. 24, 2010	PAGE 5
COURT MINUTES – AUGUST 24, 2010	PAGE 8
COMPLAINT – CRIMINAL – AUGUST 24, 2010	PAGE 9
COURT MINUTES – AUGUST 24, 2010	PAGE 12
COURT MINUTES – AUGUST 25, 2010	PAGE 13
COMMITMENT – AUGUST 24, 2010	PAGE 14
ORDER APPOINTING PUBLIC DEFENDER – AUGUST 24, 2010	PAGE 15
NO CONTACT ORDER – AUGUST 24, 2010	PAGE 16
AFFIDAVIT OF COUNSEL IN SUPPORT OF 18-211 EVALUATION – SEPTEMBER 1, 2010	PAGE 17
MOTION FOR 18-211 EVALUATION – SEPTEMBER 1, 2010	PAGE 19
COURT MINUTES – SEPTEMBER 3, 2010	PAGE 21
ORDER APPOINTING PSYCHOLOGIST PURSUANT TO IDAHO CODE SECTION 18-211 – SEPTEMBER 8, 2010	PAGE 23
COURT MINUTES – OCTOBER 5, 2010	PAGE 26
ORDER OF COMMITMENT – OCTOBER 5, 2010	PAGE 28
COURT MINUTES – NOVEMBER 23, 2010	PAGE 30
ORDER TO TRANSPORT – DECEMBER 3, 2010	PAGE 32
COURT MINUTES – DECEMBER 9, 2010	PAGE 34
DISPOSITION – DECEMBER 7, 2010	PAGE 36
ORDER OF COMMITMENT – DECEMBER 10, 2010	PAGE 37
MOTION FOR PAYMENT OF EXPERT FEES – DECEMBER 15, 2010	PAGE 40
DISPOSITION – JANUARY 3, 2011	PAGE 42
COURT MINUTES – JANUARY 4, 2011	PAGE 43

ORDER TO TRANSPORT – JANUARY 4, 2011	PAGE 45
ORDER FOR PAYMENT OF EXPERT FEES – JANUARY 6, 2011	PAGE 47
DISPOSITION – JANUARY 14, 2011	PAGE 49
AMENDED ORDER TO TRANSPORT – JANUARY 19, 2011	PAGE 50
COURT MINUTES – JANUARY 28, 2011	PAGE 52
STIPULATION FOR ADDITIONAL TIME FOR SUBMISSION OF WRITTEN ARGUMENTS – FEBRUARY 11, 2011	PAGE 56
ORDER EXTENDING TIME FOR SUBMISSION OF WRITTEN ARGUMENTS – FEBRUARY 15, 2011	PAGE 57
WRITTEN ARGUMENT ON COMPETENCY DETERMINATION – FEBRUARY 17, 2011	PAGE 59
MEMORANDUM – FINAL ARGUMENT – FEBRUARY 25, 2011	PAGE 70
ORDER TO TRANSPORT – APRIL 5, 2011	PAGE 76
COURT MINUTES – APRIL 7, 2011	PAGE 78
WAIVER OF SPEEDY PRELIMINARY EXAMINATION – APRIL 7, 2011	PAGE 80
COMMITMENT – APRIL 7, 2011	PAGE 81
COURT MINUTES – MAY 3, 2011	PAGE 82
COURT MINUTES – JUNE 2, 2011	PAGE 83
MOTION TO MODIFY NO CONTACT ORDER – JUNE 7, 2011	PAGE 85
AFFIDAVIT OF KRISTINA SCHINDELE – JUNE 9, 2011	PAGE 87
EX PARTE MOTION FOR ORDER REVOKING DEFENDANT’S RELEASE ON BOND – JUNE 9, 2011	PAGE 97
COURT MINUTES – JUNE 23, 2011	PAGE 99
AMENDED NO CONTACT ORDER – JUNE 23, 2011	PAGE 101
COURT MINUTES – JULY 5, 2011	PAGE 102
ORDER HOLDING DEFENDANT TO ANSWER – JULY 7, 2011	PAGE 107
INFORMATION – JULY 7, 2011	PAGE 109

COURT MINUTES – JULY 11, 2011	PAGE 112
EX PARTE MOTION FOR PREPARATION OF PRELIMINARY HEARING TRANSCRIPT AT COUNTY EXPENSE – JULY 19, 2011	PAGE 114
MOTION TO DISMISS – JULY 25, 2011	PAGE 116
ORDER FOR PREPARATION OF PRELIMINARY HEARING TRANSCRIPT AT COUNTY EXPENSE – JULY 27, 2011	PAGE 118
SCHEDULING ORDER – JULY 27, 2011	PAGE 120
STIPULATION FOR ADDITIONAL TIME FOR SUBMISSION OF MOTIONS – JULY 29, 2011	PAGE 124
AMENDED MOTION TO DISMISS – AUGUST 3, 2011	PAGE 125
MOTION IN LIMINE – AUGUST 3, 2011	PAGE 128
MOTION FOR SUPPRSSION OF EVIDENCE – AUGUST 3, 2011	PAGE 130
MOTION FOR EXPERT WITNESS – AUGUST 3, 2011	PAGE 132
ORDER FOR ADDITIONAL TIME FOR SUBMISSION OF MOTIONS AND NOTICE OF HEARING – AUGUST 4, 2011	PAGE 134
MOTION FOR 18-211 EVALUATION – AUGUST 4, 2011	PAGE 136
AFFIDAVIT OF DR. DAVID SANFORD IN SUPPORT OF MOTIONS FOR DISMISSAL AND COMPETENCY TO STAND TRIAL – AUGUST 16, 2011	PAGE 138
COURT MINUTES – AUGUST 22, 2011	PAGE 167
ORDER APPOINTING PSYCHOLOGIST PURSUANT TO IDAHO CODE SECTION 18-211 – AUGUST 23, 2011	PAGE 169
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS – AUG. 24, 2011	PAGE 172
MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS – AUGUST 24, 2011	PAGE 179
SECOND MOTION FOR DISMISSAL OF CHARGES – SEPT. 8, 2011	PAGE 184
OBJECTION TO MOTION TO SUPPRESS – SEPTEMBER 12, 2011	PAGE 193
OBJECTION TO MOTION IN LIMINE AND NOTICE RE: I.R.E. 404(b) EVIDENCE – SEPTEMBER 12, 2011	PAGE 201

OBJECTION TO MOTION TO DISMISS ON EQUAL PROTECTION AND DUE PROCESS GROUNDS – SEPTEMBER 12, 2011	PAGE 205
COURT MINUTES – SEPTEMBER 12, 2011	PAGE 216
EX PARTE MOTION FOR EXPERT WITNESS AT COUNTY EXPENSE – SEPTEMBER 21, 2011	PAGE 217
SCHEDULING ORDER – OCTOBER 3, 2011	PAGE 219
EXHIBIT LIST – OCTOBER 3, 2011	PAGE 223
COURT MINUTES – OCTOBER 3, 2011	PAGE 224
EX PARTE ORDER FOR PAYMENT OF EXPERT FEES AT COUNTY EXPENSE – OCTOBER 5, 2011	PAGE 231
ORDER ON MOTIONS – NOVEMBER 3, 2011	PAGE 233
COURT MINUTES – NOVEMBER 21, 2011	PAGE 243
NO CONTACT ORDER – DECEMBER 6, 2011	PAGE 244
STATEMENT OF RIGHTS & EXPLANATION OF WAIVER BY PLEA OF GUILTY – DECEMBER 6, 2011	PAGE 245
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS – DECEMBER 6, 2011	PAGE 251
COURT MINUTES – DECEMBER 6, 2011	PAGE 252
ORDER FOR PSYCHOSEXUAL EVALUATION AT COUNTY – DECEMBER 15, 2011	PAGE 254
COURT MINUTES – FEBRUARY 6, 2012	PAGE 256
MOTION TO STRIKE – MARCH 2, 2012	PAGE 257
I.C.R. RULE 11 PLEA AGREEMENT AND ORDER – MARCH 9, 2012	PAGE 260
COURT MINUTES – MARCH 5, 2012	PAGE 264
COURT MINUTES – MARCH 9, 2012	PAGE 265
JUDGMENT OF CONVICTION AND ORDER OF PROBATION – MARCH 19, 2012	PAGE 267
NOTICE OF APPEAL – MARCH 22, 2012	PAGE 278

MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC  
DEFENDER – MARCH 22, 2012

PAGE 282

ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC  
DEFENDER – APRIL 5, 2012

PAGE 284

AMENDED NOTICE OF APPEAL – JUNE 18, 2012

PAGE 286



State of Idaho vs. Denvil R Hamlin

Date	Code	User	Judge
8/24/2010	NCRF	VICKY	New Case Filed - Felony
	PROS	VICKY	Prosecutor assigned Elmore County Prosecuting Atty
	HRSC	VICKY	Hearing Scheduled (Arrestment 08/24/2010 01:00 PM)
	ARRN	VICKY	Hearing result for Arrestment held on 08/24/2010 01:00 PM: Arrestment / First Appearance
	HRSC	VICKY	Hearing Scheduled (Attorney Appearance 08/25/2010 11:30 AM)
	ORPD	VICKY	Defendant: Hamlin, Denvil R Order Appointing Public Defender Court appointed Elmore County Public Defender
	AFPC	KRISANN	Affidavit Of Probable Cause
	CRCO	KRISANN	Criminal Complaint
	NCO	KRISANN	No Contact order
	ACKR	KRISANN	Acknowledgment Of Rights
	AFFD	KRISANN	Application For Public Defender/financial Statement
	ORPD	KRISANN	Order Appointing Public Defender
	COMM	KRISANN	Commitment - Held To Answer
	NOTH	KRISANN	Notice Of Hearing
3/25/2010	HRHD	KRISANN	Hearing result for Attorney Appearance held on 08/25/2010 11:30 AM: Hearing Held
	HRSC	KRISANN	Hearing Scheduled (Preliminary 09/03/2010 02:00 PM)
	NOTH	KRISANN	Notice Of Hearing
3/26/2010	NOTS	DAWN	Notice Of Service
	NOTS	DAWN	Notice Of Service
3/27/2010	NOTS	DAWN	Notice Of Service
3/30/2010	NOTS	DAWN	Notice Of Service
3/31/2010	AFFD	DONNA	Affidavit In Support of Subpoena Duces Tecum
	AFFD	DONNA	Affidavit In Support of Subpoena Duces Tecum
	NOTS	DONNA	Notice Of Service
3/1/2010	MOTN	DONNA	Motion For 18-211 Evaluation
	NOTH	DONNA	Notice Of Hearing RE: Motion For &18-211 Evaluation
	NOTS	DONNA	Notice Of Service
	AFFD	DONNA	Affidavit Of Counsel In Support of & 18-211 Evaluation

State of Idaho vs. Denvil R Hamlin

Date	Code	User	Judge
9/2/2010	HRSC	DONNA	Hearing Scheduled (Motion 09/03/2010 01:30 PM)
9/3/2010	NOTS	DONNA	Notice Of Service
	MNTG	VICKY	Hearing result for Motion held on 09/03/2010 01:30 PM: Motion Granted
	HRVC	VICKY	Hearing result for Preliminary held on 09/03/2010 02:00 PM: Hearing Vacated
9/8/2010	ORPE	VICKY	Order For Psychological Evaluation
	STAT	VICKY	STATUS CHANGED: inactive
9/13/2010	NOTS	DONNA	Notice Of Service
9/15/2010	AFFD	DONNA	Affidavit In Support of Subpoena Duces Tecum
	NOTS	DONNA	Notice Of Service
	VRNF	DONNA	Victims Rights Notification Form
9/16/2010	HRSC	VICKY	Hearing Scheduled (Status 09/17/2010 11:00 AM)
	HRVC	VICKY	Hearing result for Status held on 09/17/2010 11:00 AM: Hearing Vacated
	HRSC	VICKY	Hearing Scheduled (Status 10/05/2010 09:30 AM)
	NOTH	VICKY	Notice Of Hearing
	NOTH	VICKY	Amended Notice Of Hearing
9/20/2010	NOTS	HEATHER	Notice Of Service - 4th Supplemental Response to Request for Discovery
10/5/2010	HRHD	VICKY	Hearing result for Status held on 10/05/2010 09:30 AM: Hearing Held
	HRSC	VICKY	Hearing Scheduled (Status 01/04/2011 10:00 AM)
	NOTS	DONNA	Notice Of Service
	ORDR	VICKY	Order of Commitment
	NOTH	VICKY	Notice Of Hearing
10/20/2010	AFFD	DONNA	Affidavit In Support of Subpoena Duces Tecum
11/19/2010	HRSC	VICKY	Hearing Scheduled (Status 11/23/2010 11:45 AM)
	HRVC	VICKY	Hearing result for Status held on 01/04/2011 10:00 AM: Hearing Vacated
11/29/2010	HRHD	KRISANN	Hearing result for Status held on 11/23/2010 11:45 AM: Hearing Held
	HRSC	KRISANN	Hearing Scheduled (Hearing Scheduled 12/09/2010 10:30 AM)
	NOTH	KRISANN	Notice Of Hearing
12/3/2010	OTT	KRISANN	Order To Transport
12/7/2010	MISC	VICKY	Disposition

State of Idaho vs. Denvil R Hamlin

Date	Code	User		Judge
12/8/2010	NOTS	DONNA	Notice Of Service	George G. Hicks
12/10/2010	HRHD	VICKY	Hearing result for Hearing Scheduled held on 12/09/2010 10:30 AM: Hearing Held	George G. Hicks
	HRSC	VICKY	Hearing Scheduled (Status 01/04/2011 10:00 AM)	George G. Hicks
	ORDR	VICKY	Order of Commitment	George G. Hicks
12/15/2010	NOTH	DONNA	Notice Of Hearing; RE: Motion For Payment Of Expert Fees	George G. Hicks
	MOTN	DONNA	Motion For Payment Of Expert Fees	George G. Hicks
	HRSC	DONNA	Hearing Scheduled (Motion 01/04/2011 10:00 AM)	George G. Hicks
1/3/2011	MISC	DAWN	Disposition	George G. Hicks
1/4/2011	HRHD	KRISANN	Hearing result for Motion held on 01/04/2011 10:00 AM: Hearing Held	George G. Hicks
	HRHD	KRISANN	Hearing result for Status held on 01/04/2011 10:00 AM: Hearing Held	George G. Hicks
	HRSC	KRISANN	Hearing Scheduled (Evidentiary 01/28/2011 03:00 PM)	George G. Hicks
	NOTH	KRISANN	Notice Of Hearing	George G. Hicks
	OTT	KRISANN	Order To Transport	George G. Hicks
1/6/2011	ORDR	KRISANN	Order for Payment of Expert Fees	George G. Hicks
1/14/2011	MISC	DONNA	Disposition	George G. Hicks
1/19/2011	OTT	KRISANN	Order To Transport	George G. Hicks
1/24/2011	NOTS	DONNA	Notice Of Service	George G. Hicks
	NOTS	HEATHER	Notice Of Service - 7th Supplemental	George G. Hicks
1/28/2011	HRHD	VICKY	Hearing result for Evidentiary held on 01/28/2011 03:00 PM: Hearing Held	George G. Hicks
2/11/2011	STIP	DONNA	Stipulation For Additional Time For Submission Of Written Agruments	George G. Hicks
2/15/2011	ORDR	KRISANN	Order Extending Time for Submission of Written Arguments	George G. Hicks
2/17/2011	MISC	DONNA	Written Argument On Competency Determination	George G. Hicks
3/17/2011	MISC	VICKY	State's Written Argument	George G. Hicks
4/5/2011	HRSC	KRISANN	Hearing Scheduled (Oral Decision 04/07/2011 09:30 AM)	George G. Hicks
	OTT	KRISANN	Order To Transport	George G. Hicks
4/7/2011	HRHD	KRISANN	Hearing result for Oral Decision held on 04/07/2011 09:30 AM: Hearing Held	George G. Hicks
	HRSC	KRISANN	Hearing Scheduled (Preliminary 05/03/2011 04:00 PM)	George G. Hicks
	NOTC	KRISANN	Notice of Trial or Hearing	George G. Hicks
	WSPE	KRISANN	Waiver Of Speedy Preliminary Examination	George G. Hicks

State of Idaho vs. Denvil R Hamlin

Date	Code	User		Judge
4/7/2011	COMM	KRISANN	Commitment - Held To Answer	George G. Hicks
4/14/2011	BNDC	DANETTE	Bond Posted - Cash (Receipt 4066 Dated 4/14/2011 for 500.00)	George G. Hicks
4/20/2011	MISC	DANETTE	Amended Bond and Promise to Appear	George G. Hicks
	PTA	KRISANN	Posting of Bond & Promise To Appear	George G. Hicks
4/29/2011	NOTH	KRISANN	Notice Of Hearing	George G. Hicks
5/6/2011	NOTS	HEATHER	Notice Of Service - 8th Supplemental	George G. Hicks
5/9/2011	HRHD	KRISANN	Hearing result for Preliminary held on 05/03/2011 04:00 PM: Hearing Held	George G. Hicks
	HRSC	KRISANN	Hearing Scheduled (Preliminary 06/02/2011 10:00 AM)	George G. Hicks
	NOTH	KRISANN	Notice Of Hearing	George G. Hicks
6/3/2011	CONT	KRISANN	Hearing result for Preliminary held on 06/02/2011 10:00 AM: Continued	George G. Hicks
	HRSC	KRISANN	Hearing Scheduled (Preliminary 07/05/2011 09:00 AM)	George G. Hicks
	NOTH	KRISANN	Notice Of Hearing	George G. Hicks
6/7/2011	MOTN	DONNA	Motion To Modify No Contact Order	George G. Hicks
6/9/2011	AFFD	DONNA	Affidavit Of Kristina Schindele	George G. Hicks
	EXPR	DONNA	EX PARTE Motion For Order Revoking Defendants Realese On Bond	George G. Hicks
	NOTH	DONNA	Notice Of Hearing RE: Motion To Modify No Contact Order	George G. Hicks
6/10/2011	HRSC	DONNA	Hearing Scheduled (Motion to Modify or Dismiss No Contact Order 06/23/2011 09:00 AM)	George G. Hicks
6/23/2011	HRHD	VICKY	Hearing result for Motion to Modify or Dismiss No Contact Order scheduled on 06/23/2011 09:00 AM: Hearing Held	George G. Hicks
	NCO	VICKY	Amended No Contact order	George G. Hicks
7/5/2011	HRHD	VICKY	Hearing result for Preliminary scheduled on 07/05/2011 09:00 AM: Hearing Held	George G. Hicks
7/7/2011	OADC	VICKY	Order Holding Defendant To Answer To District Court	George G. Hicks
	INFO	VICKY	Information	George G. Hicks
	BOUN	VICKY	Hearing result for Preliminary scheduled on 07/05/2011 09:00 AM: Bound Over (after Prelim)	George G. Hicks
	HRSC	VICKY	Hearing Scheduled (Arrestment 07/11/2011 08:30 AM)	Temporary Judge
7/11/2011	PLEA	HEATHER	A Plea is Entered for Charge - NG (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Richard Greenwood

State of Idaho vs. Denvil R Hamlin

Date	Code	User		Judge
7/11/2011	PLEA	HEATHER	A Plea is Entered for Charge - NG (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Richard Greenwood
	PLEA	HEATHER	A Plea is Entered for Charge - NG (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Richard Greenwood
	DCHH	HEATHER	Hearing result for Arraignment scheduled on 07/11/2011 08:30 AM: District Court Hearing Held Court Reporter: N. Omsberg Number of Transcript Pages for this Hearing estimated: 8	Barry Wood
	CHJG	HEATHER	Change Assigned Judge	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Motion 08/22/2011 10:00 AM)	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Jury Trial 10/05/2011 09:00 AM) *3 days*	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Pretrial Conference 09/23/2011 09:00 AM)	Barry Wood
7/19/2011	EXPR	HEATHER	EX PARTE Motion for Preparation of Preliminary Hearing Transcript at County Expense	Barry Wood
7/25/2011	MOTD	DONNA	Motion To Dismiss	Barry Wood
7/27/2011	ORDR	HEATHER	Order for Preparation of Preliminary Hearing Transcript at County Expense	Barry Wood
	SCHE	HEATHER	Scheduling Order	Barry Wood
7/28/2011	NOTS	DONNA	Notice Of Service	Barry Wood
	AFFD	HEATHER	Affidavit in Support of Subpoena Duces Tecum	Barry Wood
	AFFD	HEATHER	Affidavit in Support of Subpoena Duces Tecum (Sufficiency Advocates)	Barry Wood
7/29/2011	STIP	HEATHER	Stipulation for Additional Time for Submission of Motions	Barry Wood
8/3/2011	AMEN	DONNA	*Amended* Motion To Dismiss	Barry Wood
	MOTN	DONNA	Motion In Limine	Barry Wood
	MOTN	DONNA	Motion For Suppression Of Evidence	Barry Wood
	MOTN	DONNA	Motion For Expert Witness	Barry Wood
8/4/2011	HRVC	HEATHER	Hearing result for Motion scheduled on 08/22/2011 10:00 AM: Hearing Vacated	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Motion 09/12/2011 09:00 AM)	Barry Wood
	ORDR	HEATHER	Order for Additional Time for Submission of Motions and Notice of Hearing	Barry Wood
	MOTN	DONNA	Motion For 18-211 Evaluation	Barry Wood
	MOTN	HEATHER	Motion for 18-211 Evaluation	Barry Wood
8/9/2011	HRSC	HEATHER	Hearing Scheduled (Motion 08/22/2011 02:00 PM) *Motion for 18-211*	Barry Wood

State of Idaho vs. Denvil R Hamlin

Date	Code	User		Judge
8/9/2011	NOTH	HEATHER	Notice Of Hearing	Barry Wood
8/11/2011	TRAN	DAWN	Transcript Filed	Barry Wood
	AKOS	HEATHER	Acknowledgment Of Service of Completed Transcript	Barry Wood
	AKOS	HEATHER	Acknowledgment Of Service of Completed Transcript	Barry Wood
8/16/2011	AFFD	HEATHER	Affidavit of Dr. David Sanford in Support of Motions for Dismissal and Competency to Stand Trial	Barry Wood
8/22/2011	DCHH	HEATHER	Hearing result for Motion scheduled on 08/22/2011 02:00 PM: District Court Hearing Held Court Reporter: M. Martorelli Number of Transcript Pages for this Hearing estimated: 33*Motion for 18-211*	Barry Wood
8/23/2011	NOTS	DONNA	Notice Of Service	Barry Wood
	AFFD	HEATHER	Affidavit	Barry Wood
	ORDR	HEATHER	Order Appointing Psychologist Pursuant to Idaho Code Section 18-211	Barry Wood
8/24/2011	MEMO	HEATHER	Memorandum in Support of Motion to Dismiss	Barry Wood
	MEMO	HEATHER	Memorandum in Support of Motion to Suppress	Barry Wood
9/8/2011	NOTH	DONNA	Notice Of Hearing RE: Second Motion For Dismissal Of Charges	Barry Wood
	MISC	DONNA	Second Motion For Dismissal Of Charges	Barry Wood
9/12/2011	NOTS	DONNA	Notice Of Service - 11th Supplemental	Barry Wood
	OBJC	HEATHER	Objection to Motion in Limine and Notice Re: I.R.E. 404(b) Evidence	Barry Wood
	OBJC	HEATHER	Objection to Motion to Dismiss on Equal Protection and Due Process Grounds	Barry Wood
	HRST	HEATHER	Hearing result for Jury Trial scheduled on 10/05/2011 09:00 AM: Hearing Re-set *3 days*	Barry Wood
	HRST	HEATHER	Hearing result for Pretrial Conference scheduled on 09/23/2011 09:00 AM: Hearing Re-set	Barry Wood
	DCHH	HEATHER	Hearing result for Motion scheduled on 09/12/2011 09:00 AM: District Court Hearing Held Court Reporter: M. Martorelli Number of Transcript Pages for this Hearing estimated: 8 *Motion to Dismiss; Motion in Limine; Motion to Suppress Evidence; Motion for Expert Witness*	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Motion 10/03/2011 02:00 PM) *Motion for Expert Witness; Motion for Suppression; Motion in Limine and Motion to Dismiss**	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Jury Trial 12/07/2011 09:00 AM) *3 days*	Barry Wood

State of Idaho vs. Denvil R Hamlin

Date	Code	User		Judge
9/12/2011	HRSC	HEATHER	Hearing Scheduled (Pretrial Conference 11/21/2011 10:00 AM)	Barry Wood
9/22/2011	EXMN	DONNA	Ex-parte Motion For Expert Witness At County Expense	Barry Wood
10/3/2011	SCHE	VICKY	Scheduling Order	Barry Wood
10/4/2011	DCHH	HEATHER	Hearing result for Motion scheduled on 10/03/2011 02:00 PM: District Court Hearing Held Court Reporter: P. Tardiff Number of Transcript Pages for this Hearing estimated: 116 *Motion for Expert Witness; Motion for Suppression; Motion in Limine and Motion to Dismiss**	Barry Wood
10/5/2011	EXPR	HEATHER	EX PARTE Order for Payment of Expert Fees at County Expense	Barry Wood
11/3/2011	ORDR	HEATHER	Order on Motions	Barry Wood
11/21/2011	HRVC	HEATHER	Hearing result for Jury Trial scheduled on 12/07/2011 09:00 AM: Hearing Vacated *3 days*	Barry Wood
	DCHH	HEATHER	Hearing result for Pretrial Conference scheduled on 11/21/2011 10:00 AM: District Court Hearing Held Court Reporter: P. Tardiff Number of Transcript Pages for this Hearing estimated: 3	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Entry of Plea 12/06/2011 09:30 AM)	Barry Wood
12/6/2011	CRNC	HEATHER	No Contact Order: Criminal No Contact Order Filed Comment: No contact; no staring or glaring at Mr. McCormack; defendant shall not go within 275 feet of residence Expiration Days: 71 Expiration Date: 2/15/2012	Barry Wood
	MISC	HEATHER	Statement of Rights & Explanation of Waivers by Plea of Guilty	Barry Wood
	PSMH1	HEATHER	Order for Pre-Sentence Investigation Report and Mental Health Assessment	Barry Wood
	DCHH	HEATHER	Hearing result for Entry of Plea scheduled on 12/06/2011 09:30 AM: District Court Hearing Held Court Reporter: P. Tardiff Number of Transcript Pages for this Hearing estimated: 27	Barry Wood
	HRSC	HEATHER	Hearing Scheduled (Sentencing 02/06/2012 09:00 AM)	Lynn G Norton
	PLEA	HEATHER	A Plea is Entered for Charge - GT (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Lynn G Norton
	PLEA	HEATHER	A Plea is Entered for Charge - GT (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Lynn G Norton

State of Idaho vs. Denvil R Hamlin

Date	Code	User		Judge
12/6/2011	PLEA	HEATHER	A Plea is Entered for Charge - GT (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Lynn G Norton
12/8/2011	CHJG	HEATHER	Change Assigned Judge	Lynn G Norton
12/15/2011	ORDR	HEATHER	Order for Psychosexual Evaluation at County	Lynn G Norton
2/6/2012	DCHH	HEATHER	Hearing result for Sentencing scheduled on 02/06/2012 09:00 AM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this Hearing estimated: 3	Lynn G Norton
	HRSC	HEATHER	Hearing Scheduled (Sentencing 03/05/2012 10:15 AM)	Lynn G Norton
3/2/2012	MOTN	HEATHER	Motion to Strike	Lynn G Norton
3/5/2012	DCHH	HEATHER	Hearing result for Sentencing scheduled on 03/05/2012 10:15 AM: District Court Hearing Held Court Reporter: P. Tardiff Number of Transcript Pages for this Hearing estimated: 5	Lynn G Norton
	HRSC	HEATHER	Hearing Scheduled (Sentencing 03/09/2012 03:30 PM)	Lynn G Norton
3/9/2012	MISC	HEATHER	ICR Rule 11 Plea Agreement and Order	Lynn G Norton
	DCHH	HEATHER	Hearing result for Sentencing scheduled on 03/09/2012 03:30 PM: District Court Hearing Held Court Reporter: K. Madsen Number of Transcript Pages for this Hearing estimated: 49	Lynn G Norton
	CAGP	HEATHER	Court Accepts Guilty Plea (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Lynn G Norton
	CAGP	HEATHER	Court Accepts Guilty Plea (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Lynn G Norton
	CAGP	HEATHER	Court Accepts Guilty Plea (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult)	Lynn G Norton
	PROB	HEATHER	Probation Ordered (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult) Probation term: 10 years 0 months 0 days. (Supervised)	Lynn G Norton
	PROB	HEATHER	Probation Ordered (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult) Probation term: 10 years 0 months 0 days. (Supervised)	Lynn G Norton
	PROB	HEATHER	Probation Ordered (I18-1505B Adult-Sexually Abuse or Exploitation of a Vulnerable Adult) Probation term: 10 years 0 months 0 days. (Supervised)	Lynn G Norton
4/19/2012	JDMT	DAWN	Judgment of Conviction and Order of Probation	Lynn G Norton



State of Idaho vs. Denvil R Hamlin

Date	Code	User	Judge
3/22/2012	MOTN	DONNA	Motion For Appointment Of State Appellate Public Defender Lynn G Norton
	NTOA	HEATHER	Notice Of Appeal Lynn G Norton
	APSC	HEATHER	Appealed To The Supreme Court Lynn G Norton
	APDC	HEATHER	Appeal Filed In District Court Lynn G Norton
	NTOA	HEATHER	Notice Of Appeal Lynn G Norton
	APSC	HEATHER	Appealed To The Supreme Court Lynn G Norton
	APDC	HEATHER	Appeal Filed In District Court Lynn G Norton
	STAT	HEATHER	STATUS CHANGED: Reopened Lynn G Norton
3/23/2012	CRNC	DAWN	No Contact Order: Criminal No Contact Order Filed Comment: William McCormack Expiration Days: 3637 Expiration Date: 3/8/2022 Lynn G Norton
5/3/2012	BNDE	DAWN	Cash Bond Exonerated (Amount 500.00) Lynn G Norton
6/18/2012	AMEN	HEATHER	Amended Notice of Appeal Lynn G Norton
7/27/2012	NOTC	HEATHER	Notice of Transcript Lodged - Continued Sentencing - March 9, 2012 Lynn G Norton

# MEMORANDA

	DATE				RECORDED	
	Month	Day	Year		Book	Page
1	8	24	10	AFFIDAVIT FOR PROBABLE CAUSE FOR ARREST		
2				COMPLAINT		
3				NO CONTACT ORDER		
4				ACKNOWLEDGEMENT OF RIGHTS		
5				APPLICATION FOR PUBLIC DEFENDER		
6				ORDER APPOINTING PUBLIC DEFENDER		
7				COMMITMENT - HTA		
8				NOTICE OF HEARING		
9	8	27	10	NOTICE OF HEARING		
10	8	24	10	Notice of Service		
11	8	24	10	Notice of Service		
12	8	20	10	Notice of Service		
13	8	20	10	Notice of Service		
14	8	31	10	Affidavit In Support of Subpoena Duces Tecum		
15	8	31	10	Affidavit In Support of Subpoena Duces Tecum		
16	8	31	10	Notice of Service		
17	9	1	10	Motion For 18-211 Evaluation		
18	9	1	10	Notice of Hearing Motion For 18-211 Evaluation		
19	9	1	10	Notice of Service		
20	9	1	10	Affidavit A Counsel In Support of 18-211 Evaluation		
21	9	3	10	Notice of Service		
22	9	8	10	ORDER APPOINTING PSYCHOLOGIST PURSUANT TO J.S.M.C. Code		
23	9	15	10	Notice of Service		
24	9	14	10	Affidavit In Support of Subpoena Duces Tecum		
25	9	14	10	Notice of Service		
26	9	15	10	Written Right Adjudication Rights		
27	9	16	10	NOTICE OF HEARING		
28	9	16	10	AMENDED NOTICE OF HEARING		
29	9	20	10	Notice of Service		
30	10	5	10	Notice of Service		
31	10	5	10	ORDER OF COMMITMENT		
32	10	5	10	NOTICE OF HEARING		
33	10	20	10	Affidavit In Support of Subpoena Duces Tecum		
34	11	19	10	NOTICE OF HEARING		
35	11	24	10	NOTICE OF HEARING		
36	12	8	10	ORDER TO TRANSPORT		
37	12	7	10	Disposition		
38	12	9	10	Notice of Service		
39	12	10	10	Order For Commitment		
40	12	15	10	Motion For Payment of Ex parte Fee		
41	12	15	10	Notice of Hearing, Motion For Payment of Ex parte Fee		
42	12	24	10	ORDER TO TRANSPORT		

	Date	Memoranda
43	1 7 11	Disposition
44	1 14 11	Notice of Hearing
45	✓	Order to Transport
46	1 16 11	ORDER FOR PAYMENT OF EXPERT FEES
47	1 14 11	Disposition
48	1 19 11	AMENDED ORDER TO TRANSPORT
49	1 24 11	Motion of Seque
50	1 24 11	Motion of Seque
51	2 11 11	Stip For Additional Time for Submission of Written Arg
52	2 15 11	ORDER EXTENDING TIME FOR SUBMISSIONS OF WRITTEN ARG
53	2 17 11	Written Argument on Competency Determination
54	2 25 11	MEMORANDUM - FINAL ARGUMENT
55	4 5 11	ORDER TO TRANSPORT
56	4 7 11	NOTICE OF TRIAL OR HEARING
57	✓	WAIVER OF SPEEDY PRELIMINARY EXAMINATION
58	✓	COMMITMENT - HTA
59	4 20 11	POSTING OF BOND & PROMISE TO APPEAR
60	4 29 11	NOTICE OF HEARING
61	5 9 11	NOTICE OF HEARING
62	5 16 11	Motion of Seque
63	6 3 11	NOTICE OF HEARING
64	6 7 11	Motion to Modify No Contact Order
65	6 9 11	Affidavit of Kristina Schindler
66	6 9 11	Ex Parte Motion For Order Relating to Defendant's Release
67	6 9 11	Notice of Hearing - Motion to Modify No Contact Order
68	6 23 11	AMENDED NO CONTACT ORDER
69	7 7 11	ORDER HOLDING DEFENDANT TO ANSWER
70	7 7 11	INFORMED
71	7 19 11	Ex Parte Motion for Promotion of Preliminary Hearing
72	7 25 11	Motion to Dismiss
73	7 27 11	Order for Prep of Pretrial Memorandum at Court's Expense
74	7 27 11	Scheduling Order
75	7 28 11	Notice of Service (4th Supplemental)
76	7 28 11	Affidavit in Support of Subpoena Duces Tecum
77	7 28 11	Stip in Support of Subpoena Duces Tecum Sufficiency
78	7 29 11	Stipulation for Additional Time for Submission
79	8 3 11	Amended Motion to Dismiss
80	8 3 11	Motion in Limine
81	8 3 11	Motion for Suppression of Evidence
82	8 3 11	Motion for Expert Witness
83	8 4 11	Order for Additional Time for Submission of Motions
84	8 4 11	Motion for Bill Evaluation
85	8 9 11	Notice of Hearing
86	8 11 11	Transcript Filed
87	8 11 11	Acknowledgment of Service of Court-Placed Order

NO	DATE	MEMORANDA
88	8-11-11	Acknowledgment of Service of Completed Transcripts
89	8-16-11	Affidavit of Mr. David Bergend in support of Motions for
90	8-19-11	Affidavit
91		
92		
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2011  
 8/19/11  
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NO	DATE	MEMORANDA
91	8-23-11	Order Appointing Psychologist Pursuant to I.C. §18-2-11
92	8-23-11	Notice of Service
93	8-24-11	Memo. in Support of Motion to Dismiss
94	8-24-11	Memo. in Support of Motion to Suppress
95	9-8-11	Second Motion for Dismissal of Charges
96	9-8-11	Notice of Hearing Re: Second Motion for Dismissal of Charges
97	9-12-11	Objection to Motion in Dismissal - Notice Re: IRE 404(b) Evid
98	9-12-11	Objection to Motion to Dismiss on Equal Protection & Due
99	9-12-11	Notice of Service - 14th Supplemental
100	9-21-11	Ex Parte Motion for Expert Witness at County Ex
101	10-3-11	Scheduling Order
102	10-5-11	Ex Parte Order for Payment of Expert Fees at Co
103	11-3-11	Order on Motions
104	12-6-11	No Contact Order
105	12-16-11	Statement of Rights & Explanation of Waivers
106	12-16-11	Order for Pre-sentence Report & Evaluations
107	12-15-11	Order for Psychosocial Eval. at County
108	3-2-12	Motion to Strike
109	3-9-12	ICR Rule 11 Plea Agreement & Order
110	3-19-12	Judgment of Conviction & Order of Probation
111	3-22-12	Notice of Appeal
112	3-22-12	Motion for Appointment of State Appellate
113	3-27-12	Sheriff's Return
114	4-5-12	Order for Appointment of State Appellate Publi
115	6-18-12	Amended Notice of Appeal
116		
117		
118		

FILED

2010 AUG 24 AM 7:37

MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
190 South 4<sup>th</sup> East  
Mountain Home, Idaho 83647

Telephone (208) 587-2144

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

In the Matter of the Arrest  
Of: Denvil Ronald Hamlin  
Defendant.

\*  
--- \* ---  
\*  
)  
)  
\*  
--- \* ---  
\*

Citation No. CR 2010-4031  
**AFFIDAVIT OF PROBABLE  
CAUSE FOR ARREST**

STATE OF IDAHO )  
) ss  
COUNTY OF ELMORE, )

Detective Ty M. Larsen, being first duly sworn, deposes and states:

That I am an authorized Peace Officer, and on the 23rd day of August, 2010, at  
1300 o'clock p.m.,

I had probable cause to believe that Denvil Ronald Hamlin, the defendant herein,  
committed the following crime:

18-1505B  
Sexual Abuse and exploitation of a vulnerable adult

**The Probable Cause for defendant's arrest was as follows:**

On July 13<sup>th</sup> 2010, the Mountain Home Police Department responded to 340 East 8<sup>th</sup> North Apt 14, Mountain Home Idaho for a possible sexual abuse and theft report. Reporting party, Stephanie Malan who is a social worker with Sufficiency Advocates works with the victim, William McCormack. McCormack's date of birth is [REDACTED]. Malan assists McCormack because of his mental disabilities. Malan reported on behalf of McCormack that she had learned that a neighbor named Ike had possibly sexually abused McCormack. "Ike" also goes by the name Denvil Hamlin. Malan also reported that she also believed that Ike had also been stealing money from McCormack.

After receiving this report, McCormack was scheduled for a CARES interview with a specialist in Boise. Cecillee Torres at CARES interviewed McCormack. During the interview that I witnessed, I learned from McCormack that he was receiving touches that were not ok. He identified the person as the "guy living in the trailer" then identified the guy as "Ike". During the interview I learned that Ike's penis had touched McCormack. McCormack stated the clothes were off. When McCormack was asked where it happened at, he stated at home. McCormack resides at 340 East 8<sup>th</sup> North Mountain Home Idaho County of Elmore. When the acts took place no one else was in the residence.

McCormack described Ike's penis as being white and was pointing up. McCormack stated that Ike's hands would touch McCormack's penis. McCormack was also asked if Ike's penis ever touched his butt. McCormack stated yes, that it touched his cheeks and hole. When asked how that feels, McCormack stated "not good". McCormack was also asked if Ike's mouth had ever touched McCormack's penis, McCormack replied a little bit. McCormack also talked about Ike telling him not to tell anyone. It is believed this took place around May of 2009 when McCormack's mother was out of state, who lives with William. I also learned that sexual assault incident also took place in the mountains between Ike and McCormack.

After the interview, I obtained a letter from a Kathryn Gray, NP from Boise Behavioral Health Clinic, who works with McCormack. In the letter from Gray, she stated he is diagnosed with Schizoaffective Disorder and Mild Mental Retardation. McCormack has to take Risperdal Consta to prevent noncompliance of medications. McCormack is on an atypical antipsychotic and an antidepressant. He has admitted to auditory hallucinations with hearing command voices telling him to do things. Gray also stated that McCormack portrays the mind more of a child and Gray stated that his mental capacity makes him easily acquiescent to other suggestions or demands and submissive.

I also received a bill from Intermountain Gas Company. The bill was addressed to Mr. McCormack at his residences for services at 340 East 8<sup>th</sup> North Trailer 1. Trailer 1 residence belongs to Denvil Hamlin. The bill stated that this was a closing bill due to payments not being made. I contacted Liz Hubbert at Intermountain Gas. She provided me records when the services started and ended. This also showed no payments being

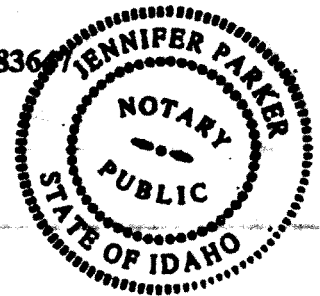
made since March 2010 when the services started. At this time the charges are at \$151.27 that are owed to Intermountain gas.

On August 23, 2010 Denvil Hamlin came to the Mountain Home Police Department to speak with me. We first spoke about William McCormack. Hamlin has known McCormack for about 20 years. Hamlin stated he was aware of McCormack's mental issues and that he was slow and needed an adult to help him in everyday duties. When we spoke about the Intermountain Gas bill, Hamlin stated that he asked McCormack in March 2010 to put the bill in his name so Hamlin could have gas services at Hamlin's residence. Hamlin had already had his gas shut off for non-payments. Hamlin stated he did not make payments on the account that McCormack's name was used in because times were tough. He stated that Stephanie Malan was made aware after the services were arranged. Hamlin admits to not making payment since services started in March 2010.

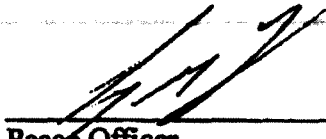
Hamlin and I then spoke about the sexual occurrences between McCormack and him. He stated one time in the desert in his van McCormack and Hamlin had touched each others penises. Hamlin also admitted to being at McCormacks trailer in Mountain Home Idaho where sexual contacts had taken place. Hamlin admitted to placing McCormack's penis in his mouth and also having anal sex where Hamlin had put his penis in McCormacks anus. Hamlin stated this happened because he thought McCormack was "gay" by the way he acted.

**Must be filled out on all battery charges:**

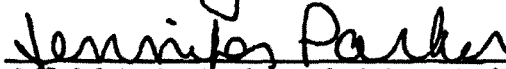
**Victim Name:** William McCormack  
**Date of Birth:** 09-09-1963  
**Address:** 340 East 8<sup>th</sup> North Trailer 14 Mountain Home Idaho 836  
**Home Phone:** 587-4153



Dated this 23<sup>rd</sup> Day of August 2010

  
\_\_\_\_\_  
Peace Officer

Subscribed and sworn to before me this 23<sup>rd</sup> day of August, 2010

  
\_\_\_\_\_  
Official Authorized to Administer Oath

Commission expires: 9-28-13



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

Docket No. CR 2010-4031

DENNIS HOMLIN

JUDGE George G. Hicks DATE August 24, 2010 TIME 1:00 PM

CLERK V. Trevathan TYPE OF ACTION \_\_\_\_\_ PC \_\_\_\_\_

CD NO. A-08-24-10

LEE FISHER NO. 3. \_\_\_\_\_ NO. 5  
Counsel for Prosecutor EC/MH Counsel for \_\_\_\_\_

\_\_\_\_\_ NO. 4. \_\_\_\_\_ NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

Index No's. | Phase of Case

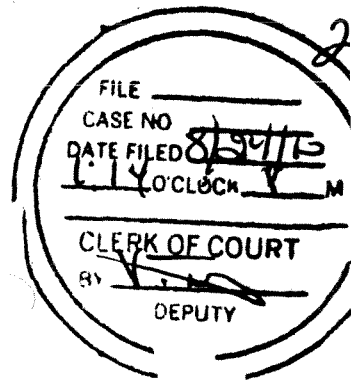
1:09 | 1. Before the Court with Probable Cause is: LEE FISHER - SWOR  
3. PROBABLE CAUSE GIVEN

1.  Probable Cause Found ( ) Probable Cause Not Found

Complaint to Issue  Defendant In Custody ( ) Summons issued

1:12 | ( ) Warrant to Issue Bond \$ \_\_\_\_\_

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
 190 South 4th East  
 Mountain Home, Idaho 83647  
 Telephone: (208) 587-2144 ext. 503  
 Facsimile: (208) 587-2147  
 I.S.B. No. 6090



**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE**

**STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE**

THE STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 DENVIL RONALD HAMLIN, )  
 DOB: [REDACTED] )  
 SSN: [REDACTED] )  
 )  
 Defendant. )

Case No. CR-2010- 4031  
 COMPLAINT - CRIMINAL

PERSONALLY APPEARED Before me this 24th day of August 2010, <sup>Lee Fisher JD</sup> Nathan Henkes,

Deputy Prosecuting Attorney in and for the County of Elmore, State of Idaho, who, being first duly sworn, complains and says: DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, then and there being, did then and there commit the crimes of SEXUAL ABUSE OF A VULNERABLE ADULT, Count I, a felony; SEXUAL ABUSE OF A VULNERABLE ADULT, Count II, a felony; and SEXUAL ABUSE OF A VULNERABLE ADULT, Count III, a felony, said crimes being committed as follows, to-wit:

ORIGINAL

**COUNT I**  
**SEXUAL ABUSE OF A VULNERABLE ADULT**  
Felony, I.C. §§ 18-1505; 18-1505B(1)(a) or (c)

That the Defendant, DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, did, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the Defendant, a vulnerable adult or a third party, (a) commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to, manual to genital contact, or (b) cause or have sexual contact with a vulnerable adult not amounting to lewd conduct, to-wit: the Defendant and W. M. touched each others' penises with their hands, in violation of I.C. §§ 18-1505 and 18-1505B(1)(a) or (c).

**COUNT II**  
**SEXUAL ABUSE OF A VULNERABLE ADULT**  
Felony, I.C. §§ 18-1505; 18-1505B(1)(a) or (c)

That the Defendant, DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, did, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the Defendant, a vulnerable adult or a third party, (a) commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to, oral to genital contact, or (b) cause or have sexual contact with a vulnerable adult not amounting to lewd conduct, to-wit: the Defendant touched W. M.'s penis with the Defendant's mouth, in violation of I.C. §§ 8-1505 and 18-1505B(1)(a) or (c).

**COUNT III**  
**SEXUAL ABUSE OF A VULNERABLE ADULT**  
Felony, I.C. §§ 18-1505; 18-1505B(1)(a) or (c)

That the Defendant, DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, did, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the Defendant, a vulnerable adult or a third party, (a) commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to, anal to genital contact, or (b) cause or have sexual contact with a vulnerable adult not amounting to lewd conduct, to-wit: the Defendant performed anal sex on W. M., in violation of I.C. §§ 18-1505 and 18-1505B(1)(a) or (c).

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

Said Complainant therefore prays that the Defendant, DENVIL RONALD HAMLIN, be brought before the Court to be dealt with according to law.

DATED This 24th day of August 2010.

KRISTINA M. SCHINDELE  
ELMORE COUNTY PROSECUTING ATTORNEY

BY:   
Nathan Henkes, Deputy Prosecuting Attorney

*Lee Fisher*

SUBSCRIBED AND SWORN To before me this 24th day of August 2010.

  
JUDGE PRESIDING

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF UTAH, IN AND FOR THE COUNTY OF KANE

Docket No. CR-2010-4031

DENVIL HAMLEN

JUDGE George G Hicks DATE August 24, 2010 TIME 1:00 PM

CLERK V. Trevathan TYPE OF ACTION ARRAIGNMENT - In Custody

CD NO. A-08-24-10

LEE FISHER NO. 3 NO. 5  
 Counsel for Plaintiff/Prosecutor MH/EC. Counsel for \_\_\_\_\_

NO. 4 NO. 6  
 Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case

1:20 1. Case Called

4. Understands  Request PD ( ) Will Hire Own ( ) Request Continuance ( ) Waives Attorney

Enters Plea of: ( ) Not Guilty ( ) Guilty

3.  No Objection to P.D. ( ) Objects to P.D. ( ) Recommendations

1.  P.D. Appointed  Subject to Reimbursement ( ) P.D. Denied ( ) Plea Accepted ( ) Not Accepted

3. ( ) Recommendations ( ) No Objection to OR release  Comments on Bond

1. ( ) Judgment ( ) OR Release  Remanded, Bond set at \$ 75,000 Cash or Surety

ATTORNEY APPEARANCE SET FOR  
AUGUST 25, 2010 @ 11:30 AM  
CONTACT P.D. TODAY

1:31 No CONTACT ORDER ISSUED

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

Docket No. CA-2010-4031

DENVIL R. HAMLIN

JUDGE George G Hicks DATE August 25, 2010 TIME 11:30 AM

CLERK V. Trevathan TYPE OF ACTION ATTORNEY APPEARANCE

CD NO. B-08-17-10

Lee FISHER NO. 3 NO. 5

Counsel for Plaintiff/Prosecutor MH/EC Counsel for \_\_\_\_\_

E.R. FROCHESSEUR NO. 4 NO. 6

Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
11:55	1. CASE CALLED
	PARTIES PRESENT
	TIME SET FOR ATTORNEY APPEARANCE
	DEFENDANT IN CUSTODY
	4. REQUESTS PRELIMINARY HEARING
	1. PRELIMINARY HEARING SET FOR
	SEPTEMBER 3, 2010 @ 2:00 PM
	REMAINDERS, BOUND AS SET
11:57	

11:55

11:57

7

Fourth Judicial District Court, State of Idaho

FILED

2010 AUG 24 PM 3:47

In and For the County of Elmore

STATE OF IDAHO )  
Plaintiff, )  
vs. )  
Denvil R Hamlin )  
Defendant. )

MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY *[Signature]*

Case No: CR-2010-0004031

DOB: [Redacted] )  
DL: [Redacted] NV )

COMMITMENT - HTA

THE STATE OF IDAHO TO ELMORE COUNTY SHERIFF DEPARTMENT:

An Order having been made this day by me that Denvil R Hamlin, be held to answer upon a charge of Adult-Sexually Abuse or Exploitation of a Vulnerable Adult, a Felony Adult-Sexually Abuse or Exploitation of a Vulnerable Adult, a Felony Adult-Sexually Abuse or Exploitation of a Vulnerable Adult, a Felony , committed as set forth in the Complaint on file in the above-entitled action, said crime alleged to have been committed in Elmore County, State of Idaho.

YOU, THE SAID Elmore County Sheriff's Department, are commanded to receive him, the said defendant, into your custody, and detain him/her until legally discharged.

The defendant is to be admitted to bail in the sum of \$ 75,000.00

Next hearing is scheduled for:

Attorney Appearance on Wednesday, August 25, 2010 at 11:30 AM  
Judge: George G. Hicks

DATED This 24th day of August, 2010.

*[Signature]*  
MAGISTRATE JUDGE

Elmore County Detention  Faxed  Hand Delivered

Copy to: \_\_\_\_\_ Defendant \_\_\_\_\_ Defendant's Attorney

Commitment - HTA

Fourth Judicial District Court, State of Idaho  
In and For the County of Elmore  
150 South 4th East, Suite #5  
Mountain Home, Idaho 83647-3095

FILED

6

2010 AUG 24 PM 3:47

MARSA PLUMMER  
CLERK OF THE COURT

DEPUTY

STATE OF IDAHO  
Plaintiff,

vs.

Denvil R Hamlin  
340 E 8th N, #1  
Mountain Home, ID 83647

Defendant.

DL:



Case No: CR-2010-0004031

ORDER APPOINTING PUBLIC DEFENDER

The Court being fully advised as to the application of Denvil R Hamlin, and it appearing to be a proper case,

NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

Public Defender's Office  
Elmore County Public Defender  
290 South 2nd East  
Mountain Home ID 83647

Public Defender for the County of Elmore, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Denvil R Hamlin, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

DATED This 24th day of August, 2010.

\_\_\_\_\_  
Judge

Copies to:

\_\_\_\_ Public Defender

\_\_\_\_ Prosecutor

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

Order Appointing Public Defender

DOC30 10/88



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

FILED

STATE OF IDAHO, )  
Plaintiff, )  
 )  
v. )  
Denver R. Hamlin )  
Defendant, )

Case No. CR- 2010-0935 )  
AUG 24 PM 3:47 )  
MARSA PLUMMER )  
CLERK OF THE COURT )  
DEPUTY )  
(Criminal) )

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

IT IS HEREBY ORDERED that the above-named Defendant shall not contact, or attempt to contact, harass, follow, communicate with or knowingly remain within one hundred (100) feet of: William McCormack "contact" means, but is not limited to contact in person, through third persons, by telephone or facsimile, in writing, by email or other electronic means.

Exceptions - the Defendant may have contact for the following reasons under the following conditions:

- None.
- to contact by telephone between \_\_\_\_\_, \_\_\_\_m. and \_\_\_\_\_, \_\_\_\_m. on \_\_\_\_\_; for the following purpose: \_\_\_\_\_;
- to participate in counseling or mediation;
- to meet with or through attorneys and / or during legal proceedings;
- to respond to emergencies involving the natural or adopted children of both parties;
- Other: \_\_\_\_\_.

IT IS FURTHER ORDERED that the above-named Defendant shall not go within three hundred (300) yards of the above-named person's residence or workplace as follows:

Residence address	Workplace Address
<u>340 East 8th North</u>	_____
<u>Trailer #19</u>	_____
<u>Masonville, ID</u>	_____

IT IS FURTHER ORDERED that this Order can be modified only by a judge and will remain in effect until further order of the Court or upon dismissal of this case or at 11:59 p.m. on Aug. 24, 2010 whichever occurs first.

NOTICES

1. 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, 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. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment. Any such violation may also result in the modification of the above terms or the increase or revocation of the bond set on the underlying charge in this matter.
2. When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order.
3. This Order controls and supercedes any previous No Contact Order entered in the above-entitled matter.
4. This Order may only be modified by a judge.
5. This Order may subject you to federal prosecution under the United States Code, Title 18, section 922 if you possess, receive or transport a firearm.

Dated this 24<sup>th</sup> day of August, 2010.

Acknowledged and Received on the above date:

Denver R. Hamlin  
Defendant

Craig C. Hicks  
Judge

2

FILED

2010 SEP -1 PM 2:41

MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY *[Signature]*

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL RONALD HAMLIN,

Defendant.

Case No. CR 2010-4031

**AFFIDAVIT OF COUNSEL  
IN SUPPORT OF §18-211  
EVALUATION**

STATE OF IDAHO            )  
  )        ss.  
COUNTY OF ELMORE        )

E.R. Frachiseur, being first duly sworn upon oath, deposes and states as follows:

1. That he is a licensed attorney practicing in Mountain Home, Elmore County, Idaho;
2. That he has been assigned to Denvil R. Hamlin on a charge of Sexual Abuse of a Vulnerable Adult;
3. That your Affiant has consulted with the Defendant about the charges and possible defenses and based upon said consultation, your Affiant has reason to believe that the Defendant lacks the capacity to understand the proceedings and assist in his own defense.

WHEREFORE, the Affiant prays that this Court appoint a licensed psychologist, to wit: Dr. David Sanford of Boise, Idaho, to conduct an appropriate evaluation of the Defendant pursuant to statute.

FURTHER YOUR AFFIANT SAIGTH NAUGHT.

DATED this day of 31<sup>st</sup> day of August, 2010.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of September, 2010.



Andrea M. Rodrigues  
Notary Public for Idaho  
Residing at Mountain Home, Idaho  
My Commission Expires: 7/27/2015

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 1<sup>st</sup> day of September, 2010, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By: \_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Federal Express  
\_\_\_\_\_ Certified Mail  
\_\_\_\_\_ U.S. Mail  
 Facsimile Transmission

Andrea M. Rodrigues  
ANDEE RODRIGUES  
Legal Assistant

17

FILED

2010 SEP -1 PM 2: 26

MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY *JP*

**E.R. FRACHISEUR, ISB No. 1388  
RATLIFF LAW OFFICES, CHTD.  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940**

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL RONALD HAMLIN,

Defendant.

Case No. CR 2010-4031

**MOTION FOR 18-211  
EVALUATION**

COMES NOW the Defendant, DENVIL HAMLIN, by and through counsel of record, E.R. FRACHISEUR, of the firm Ratliff Law Offices, Chtd., and pursuant to Idaho Code §§18-210 and 18-211, and does submit to this Court as a result of mental disease or defect, the Defendant may lack the capacity to understand the proceedings against him and assist in his own defense.

Based upon counsel's consultations with the Defendant, there is reason to doubt that he is fit to proceed and counsel requests that the Court, pursuant to Idaho Code §18-211, appoint Dr. David Sanford, a licensed psychologist in Boise, Idaho, to examine and report upon the mental condition of the Defendant to assist counsel and understand the proceedings.

Further, said examiner shall evaluate and report upon whether the Defendant lacks the capacity to make an informed decision about his treatment.

DATED this 31<sup>st</sup> day of August, 2010.

**RATLIFF LAW OFFICES, CHTD.**


By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 1<sup>st</sup> day of ~~August~~ <sup>September</sup>, 2010, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By: \_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Federal Express  
\_\_\_\_\_ Certified Mail  
\_\_\_\_\_ U.S. Mail  
 Facsimile Transmission

  
\_\_\_\_\_  
ANDEE RODRIGUES  
Legal Assistant

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

Docket No. CR-2010-4031

DENVIL R. HAMLIN

JUDGE George G Hicks DATE September 3, 2010 TIME 1:30

CLERK V. Trevathan TYPE OF ACTION MOTION For 18-211

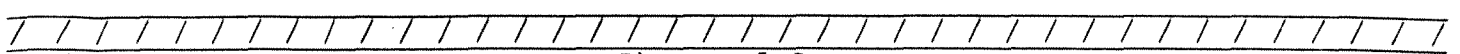
CD NO. A-09-01-10

LEE FISHER NO. 3 NO. 5  
Counsel for Plaintiff/Prosecutor MH/EC. Counsel for \_\_\_\_\_

E.R. FRACHISSEUR NO. 4 NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
-------------	---------------

1:54	1. CASE CALLED
	PARTIES PRESENT
	TIME SET FOR MOTION FOR EXAMINATION UNDER 18:211
	DEFENDANT IN CUSTODY
3:4	READY TO PROCEED
1:55	4. ARGUMENT
1:57	3. NO OBJECTION TO MOTION
	OBJECTS TO APPOINTMENT OF DR. SAUFORD
1:57	4. ARGUMENT ON STATE'S OBJECTION
	1. MOTION GRANTED
	REPORT SHALL BE PREPARED BY EXAMINER



Index | Phase of Case  
No's. |

STATE'S REQUEST GRANTED  
DR. WARD OR DR. SOMKEY WILL BE APPOINTED

MR. FROCHISEUR TO PREPARE ORDER

STATUS CONFERENCE SET FOR  
SEPTEMBER 17, 2010 @ 11:00 AM

IF REPORT IS NOT PREPARED STATUS  
CONFERENCE WILL BE RESCHEDULED TO  
OCTOBER 5, 2010 @ 9:30 AM

ALL OTHER PROCEEDINGS SUSPENDED  
PENDING REPORT

2:03

COURT

MINUTES

FILED

2010 SEP -8 AM 11:46

MARSA PLUMMER  
CLERK OF THE COURT

DEPUTY 

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL HAMLIN,

Defendant.

Case No. CR 2010-4031

**ORDER APPOINTING  
PSYCHOLOGIST PURSUANT  
TO IDAHO CODE §18-211**

The Court has determined that there exists sufficient reason to doubt the Defendant's fitness to proceed as set forth in I.C. §18-210. Accordingly, IT IS HEREBY ORDERED, pursuant to I.C. §18-211, that Dr. Chad Sombke, a qualified psychologist, is appointed to examine and report on the mental condition of the Defendant to assist his counsel with his defense or to understand the proceedings herein.

Should Dr. Sombke accept this appointment, IT IS FURTHER ORDERED that, within three (3) days, excluding Saturdays, Sundays and legal holidays, said examiner shall determine the best location for the examination, which, if practical, shall be conducted locally on an out-patient basis. If the examiner determines that confinement is necessary for the examination, the Court may order the Defendant be confined to a suitable facility for a period not exceeding thirty

**ORIGINAL**



(30) days. Upon request from the examiner, the Court may make available to him any court records relating to the Defendant.

The Defendant can be contacted at the Elmore County Detention Center, Mountain Home, Idaho.

IT IS FURTHER ORDERED that upon completion of the examination, which shall be no later than thirty (30) days from the date of this Order, a report shall be submitted to the Court, which shall include the following:

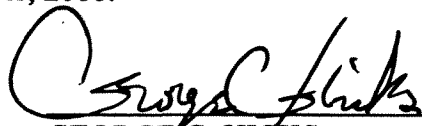
1. A description of the nature of the examination;
2. A diagnosis or evaluation of the mental condition of the Defendant;
3. An opinion as to the Defendant's capacity to understand the proceedings against him and to assist in his own defense; and
4. An opinion whether the Defendant lacks the capacity to make informed decisions about treatment, as defined in I.C. § 18-211(5)(d).

If the examination cannot be conducted by reason of the unwillingness of the Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the Defendant was the result of mental disease or defect.

IT IS FURTHER ORDERED that the report of examination shall be turned over to Defendant's counsel only, as the evaluator is to be acting as Defendant's expert at the trial of this matter.

IT IS FURTHER ORDERED that the costs of examination shall be paid at the expense of Elmore County.

DATED this 8<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
GEORGE G. HICKS  
Magistrate Judge

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 8<sup>TH</sup> day of September, 2010, served a copy of the within and foregoing **ORDER FOR PSYCHOLOGICAL EVALUATION AT COUNTY EXPENSE** to:

Lee Fisher  
Elmore County Deputy  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

E.R. Frachiseur  
RATLIFF LAW OFFICES, CHTD.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208)587-6940

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Marsa Plummer  
C/O Elmore County Courthouse  
Mountain Home, ID 83647  
Boise, ID 83702

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile

Dr. Chad Sombke  
2498 N. Stokesberry Place, Ste. 160  
Meridian, ID 83646  
Fax No. (208) 898-9222

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Idaho Department of Health & Welfare  
Attn: Valerie Vogel  
1720 Westgate Drive  
Boise, ID 83704  
Facsimile No. 334-0788

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

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

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

Docket No. CR-2010-4031

DENVIL R. HAMKIN

JUDGE George G Hicks DATE October 5, 2010 TIME 9:30 AM

CLERK V. Trevathan TYPE OF ACTION STATUS

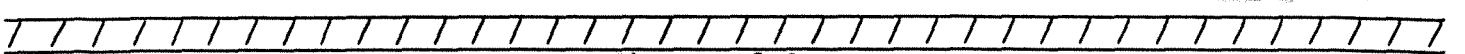
CD NO. A-10-05-10

KRISTINA SCHJODALE NO. 3. \_\_\_\_\_ NO. 5  
Counsel for Plaintiff/Prosecutor MH/EC. Counsel for \_\_\_\_\_

E. R. FROCHISEUR NO. 4. \_\_\_\_\_ NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
-------------	---------------

9:52 1. CASE CALLED  
PARTIES PRESENT  
TIME SET FOR STATUS CONFERENCE  
DEFENDANT IN CUSTODY  
EVALUATION REVIEWED  
3:4. EVALUATION REVIEWED  
3. NO OBJECTION TO ENTRY OF 212 ORDER  
4. ACCRES  
1. 18-212 ORDER TO ENTER  
DEFENDANT DOES NOT LACK CAPACITY TO  
MAKE INFORMED DECISIONS REGARDING  
TREATMENT



Index | Phase of Case  
No's. |

Court Will Prepare Order

3. Will Provide Copy of Evaluation  
To Department

1. Status Conference Set For  
January 4, 2010 @ 10:00 AM

Remanded

9:59

COURT

MINUTES

FILED

2010 OCT -5 AM 10:58

MARSA PLUMMER  
CLERK OF THE COURT

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
v. )  
)  
DENVIL R. HAMLIN, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-2010-4031

**ORDER OF COMMITMENT**

The above-entitled matters came before the Court on Tuesday, October 5, 2010. Counsel stated that they had fully reviewed Dr. Sombke's report. Counsel for the State advised the Court that they did contest the findings in said report. The Court then heard argument from both counsel regarding the findings in the report.

Based upon said report, the Court determines that the Defendant lacks fitness to proceed in this matter. The Court further finds that the Defendant does not lack the capacity to make informed decisions regarding treatment.

Accordingly, and pursuant to I.C. § 18-212, it is HEREBY ORDERED that the above-entitled proceedings are hereby suspended and the Defendant is HEREBY COMMITTED to the custody of the director of the State of Idaho, Department of Health and Welfare, for a period not to exceed ninety (90) days, for care and treatment at an appropriate facility of said department.

IT IS FURTHER ORDERED that the Elmore County Sheriff shall transport the Defendant to and from an appropriate facility designated by the Department of Health and Welfare.

IT IS FURTHER ORDERED that an evaluation of the Defendant's mental condition be performed at the time of his admission to the facility and that a progress report regarding his progress be made to the Court pursuant to I.C. § 18-212(2).

Dated this 5<sup>th</sup> day of October, 2010.

  
George G. Kicks, Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5<sup>th</sup> day of October, 2010, I served a true and correct copy of the foregoing document upon the following parties at the following addresses, via U.S.

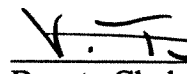
Mail, postage pre-paid:

Kristina M. Schindele  
190 South 4<sup>th</sup> East  
Mountain Home, ID 83647

Elmore County Public Defender  
290 South 2<sup>nd</sup> east  
Mountain Home, ID 83647

Idaho Department of Health and Welfare  
Valerie Vogel  
FAX:334-0788

Elmore County Sheriff

  
Deputy Clerk

ORDER OF COMMITMENT - 2

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

Docket No. CR-2010-4031

DENVIL R. HAMLEN

JUDGE George G Hicks DATE November 23, 2010 TIME 11:45 AM

CLERK V. Trevathan TYPE OF ACTION STATUS

CD NO. A-11-23-10

KRISTINA SCHUBERT NO. 3. \_\_\_\_\_ NO. 5  
Counsel for Plaintiff/Prosecutor MH/EC. Counsel for \_\_\_\_\_

E.R. FROCHISEUR NO. 4. \_\_\_\_\_ NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
11:53	<p>1. CASE CALLED BOTH ATTORNEYS PRESENT TIME SET FOR STATUS CONFERENCE LETTER AND PROPOSED ORDER REVIEWED</p>
	<p>4. CONTACTED DR. SOMKEY HAS NOT HEARD BACK FROM HIM WOULD LIKE HIS INPUT ON EVALUATION</p>
	<p>3. DR. SOMKEY CONTACTED BOTH ATTORNEYS PRIOR TO EVALUATION BELIEVES MR. HAMLEN IS COMPETENT TO PROCEED ACCEPTS REPORT</p>

DATE

November 23, 2010

TAPE NO.

A-11-2010-10

PAGE

2

JUDGE

Hicks

CLERK V Trevathan

CASE NAME

HAMILTON

Index  
No's.

Phase of Case

4. HAS QUESTIONOUS RECURSIVE REPORT

1. HEARING SET FOR

December 9, 2010 @ 10:30 am

3. NO OBJECTION TO WITNESSES

APPEARING TELEPHONICALLY

1. WILL ALLOW TELEPHONIC APPEARANCE

12:00

COURT

MINUTES



36

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**

2010 DEC -3 PM 4: 36

**MARSA PLUMMER**  
CLERK OF THE COURT

DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DENVIL HAMLIN, )  
 )  
 Defendant. )

CASE NO. CR 2010-4031

**ORDER TO TRANSPORT**

IT APPEARING that the above-named Defendant, DENVIL HAMLIN, is under the care of the Idaho Department of Health and Welfare, and requires transportation to Elmore County Courthouse, Mountain Home, Idaho, and for release into the custody of Elmore County Sheriff. **The Defendant is currently being housed at 1602 Todd Way, Meridian, Idaho.**

IT IS THEREFORE ORDERED, that the Sheriff of Elmore County bring the above-named Defendant to the Elmore County Courthouse for a STATUS CONFERENCE scheduled for **Thursday, December 9, 2010, at the hour of 10:30 a.m.**

IT IS FURTHER ORDERED that the Sheriff of Elmore County return the Defendant, DENVIL HAMLIN, to 1602 Todd Way in Meridian, Idaho, at the conclusion of said hearing, unless otherwise ordered by this court.

DATED this 2nd day of December, 2010.

\_\_\_\_\_  
GEORGE G. HICKS  
Magistrate Judge

**ORIGINAL**

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 3<sup>rd</sup> day of December, 2010, served a copy of the within and foregoing documents to:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208) 587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

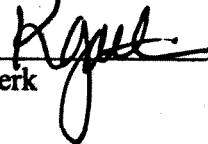
E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6490

By:  Hand delivery  
 Federal Express  
 U.S. Mail  
 Facsimile

Elmore County Sheriff  
Fax No. (208) 587-3438

By:  Hand delivery  
 Facsimile

**MARSA PLUMMER**

  
Deputy Clerk

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

Docket No. CR-2010-4031

DENVIL R. HAMLIN

JUDGE George G. Hicks DATE 12-9-10 TIME 10:30 AM

CLERK K. Gatlin TYPE OF ACTION COMPETENCY HEARING

CD NO. A-12-07-10

KRISTINA SCHINDELE NO. 3. Counsel for Plaintiff/Prosecutor M.H./EC NO. 5

ED FRACHISEUR NO. 4. Counsel for Defendant P.D. NO. 6

Index No's. Phase of Case

11:18 1. CASE CALLED

PARTIES PRESENT

TIME SET FOR COMPETENCY HEARING

CONFERENCE HELD IN CHAMBERS

3. WILL STIPULATE TO COMMITMENT

REQUESTS LEAST RESTRICTIVE CONFINEMENT

4. AGREES

1. DEFENDANT COMMITTED TO DEPT OF HEALTH & WELFARE

LEAST RESTRICTIVE COMMITMENT

LANGUAGE TO INCLUDE:

CONTINUED TRAINING

STATUS CONFERENCE ALREADY SCHEDULED

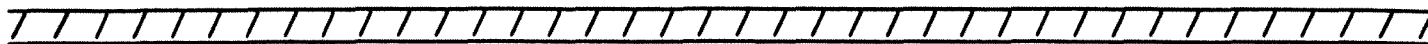
JANUARY 4, 2011 10:00 AM

COURT MINUTES

CONTINUATION SHEET

DATE DECEMBER 9, 2010 CD NO. A 12-07-10 PAGE 2

JUDGE G. Hicks CLERK X. Gatlin CASE NAME DENVIL R. HAMLIN



**Index  
No's.**

**Phase of Case**

11:26

1. MR. FRACHISEUR TO SUBMIT ORDER

COURT MINUTES

FILED

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

DEC -7 PM 4:50  
MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY

STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

MAGISTRATES DIVISION

In the Matter of: )  
Denvil R. Hamlin ) Case No. CR-2010-4031  
Respondent )  
DISPOSITION

I, Suzanne L. Story, LSW, being duly authorized by the Director of the Department of Health and Welfare to make placement decisions of developmentally disabled persons committed to his custody, have considered the available facilities and the Respondent needs and have determined the following placement is the current facility consistent with said needs.

The Respondent is therefore dispositioned to Inclusion Residential Habilitation facility located at 1602 Todd Way, Meridian, ID 83642, for care and treatment.

A copy of this Disposition has been faxed to the Elmore County Prosecuting Attorney at 190 South 4<sup>th</sup> East, Mountain Home, Idaho 83647 and to the Elmore County Public Defender at 290 South 2<sup>nd</sup> East, Mountain Home, ID 83647.

DATED this 7<sup>th</sup> day of December, 2010.

Suzanne L. Story, LSW

Dispositioner

FILED

2010 DEC 10 PM 4:53

MARSA PLUMMER  
CLERK OF THE COURT  
~~DEPUTY~~

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DENVIL R. HAMLIN, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-2010-4031  
ORDER OF COMMITMENT


The above-entitled matters came before the Court on Thursday, December, 2010. Based on the Defendant's objection to the progress report filed by the Idaho Department of Health and Welfare claiming restoration to competency and recommending resumption of proceedings. The Defendant obtained an additional competency evaluation from Dr. Dave Sanford. Counsel stated that they had fully reviewed Dr. Sanford's report. Counsel also advised the Court that they did not contest the findings in said report. Based upon the stipulation of the parties, the Court then elected to determine that the Defendant's fitness to proceed based upon the report. Based upon said report, the Court determines that the defendant continues to lack fitness to proceed in these matters. The Court finds that the Defendant does not lack the capacity to make informed decisions regarding treatment. The Court specifically finds that there is a substantial probability that the defendant will be fit to proceed in the foreseeable future.

Accordingly, and pursuant to I.C. § 18-212, it is HEREBY ORDERED that the above-entitled proceedings continue to be suspended and the Defendant is HEREBY RECOMMENDED to the custody of the director of the State of Idaho, Department of Health and Welfare, for a period not to exceed ninety (90) days, for care and treatment at an appropriate facility as determined by the Department of Health and Welfare. The Court does not have an objection to the Department using the least restrictive alternative for disposition pending competency restoration, including outpatient commitment for education and/or treatment if the Department deems such placement appropriate.

IT IS FURTHER ORDERED that the Elmore County Sheriff shall transport the Defendant to and from an appropriate facility designated by the Department of Health and Welfare, if requested by the Department of Health and Welfare.

IT IS FURTHER ORDERED that an evaluation of the Defendant's mental condition be performed at the time of his admission to the facility or other placement deemed appropriate during disposition, and that a progress report regarding his progress be made to the Court pursuant to I.C. § 18-212(2). The Court specifically requests the Department provide details regarding the Defendant's placement as well as education and/or training sessions including duration and frequency of such sessions.

Dated this 10<sup>th</sup> day of December, 2010.

  
George G. Hicks, Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10<sup>TH</sup> day of December, 2010, I served a true and correct copy of the foregoing document upon the following parties at the following addresses, via U.S. Mail, postage pre-paid:

Elmore County Prosecutor  
South 4<sup>th</sup> East  
Mountain Home, ID 83647

Elmore County Public Defender  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647

Idaho Department of Health and Welfare  
Valerie Vogel  
FAX: 334-0788

Idaho Attorney General's Office  
Mary Jo Beig  
FAX: 334-7638

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



2/1

FILED

2010 DEC 15 AM 11:57

MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY *[Signature]*

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR-2010-4031
Plaintiff,	)	
	)	<b>MOTION FOR PAYMENT</b>
-vs-	)	<b>OF EXPERT FEES</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	

COMES NOW the Defendant in the above-entitled case, by and through counsel, E.R. FRACHISEUR of Ratliff Law Offices, Chtd., and hereby moves this Honorable Court pursuant to I.C. §§19-853 and 19-854, to order payment of expert fees by the county.

This Motion is made on the ground that the Defendant is indigent. Defendant and his wife ordinarily rely on social security/disability payments for their income and the Defendant is developmentally disabled. However, this source of income is no longer available to the Defendant due to the fact of his incarceration.

WHEREFORE, Defendant prays that this Court order the payment of Dr. David Sanford's expert fees incurred in the evaluation, expert testimony and travel in this matter, be paid by the County.

/  
/

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

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR, of the firm  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

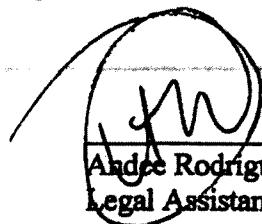
I HEREBY CERTIFY That I have on this 15<sup>th</sup> day of December, 2010, served a copy of the within and foregoing document to:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Marsa Plummer  
Clerk of the District Court  
Elmore County Courthouse  
Mountain Home, ID 83647

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile

  
\_\_\_\_\_  
Andee Rodrigues  
Legal Assistant

**FILED**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE COURT  
 MAGISTRATES DIVISION

2011 JAN 3 PM 3:42  
 MARSA PLUMMER  
 DEPUTY  
*Pal*

In the Matter of: )  
 )  
 Denvil R. Hamlin ) Case No. CR-2010-4031  
 )  
 Respondent ) **DISPOSITION**

I, Suzanne L. Story, LSW, being duly authorized by the Director of the Department of Health and Welfare to make placement decisions of developmentally disabled persons committed to his custody, have considered the available facilities and the Respondent needs and have determined the following placement is the current facility consistent with said needs.

The Respondent is therefore dispositioned to Idaho State School and Hospital located at 1660 11<sup>th</sup> Ave North, Nampa, Idaho 83686 for care and treatment.

A copy of this Disposition has been faxed to the Elmore County Prosecuting Attorney at 190 South 4<sup>th</sup> East, Mountain Home, Idaho 83647 and to the Elmore County Public Defender at 290 South 2<sup>nd</sup> East, Mountain Home, ID 83647.

DATED this 3<sup>rd</sup> day of January, 2011.

*Suzanne L. Story, LSW*

Dispositioner

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF UTAH, IN AND FOR THE COUNTY OF KANE

Docket No. CR 2010-4031

DENVIL R. HAMLEN

JUDGE George G Hicks DATE January 4, 2011 TIME 10:00 AM

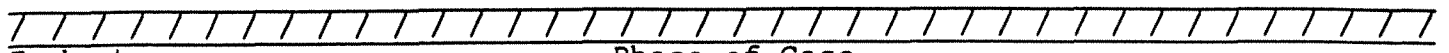
CLERK V. Trevathan TYPE OF ACTION STATUS: MOTION

CD NO. A-01-03-11

KRISTINA SCHUBERT NO. 3. \_\_\_\_\_ NO. 5  
Counsel for Plaintiff/Prosecutor MH/EC. Counsel for \_\_\_\_\_

E.R. FRANCHISEUR NO. 4. \_\_\_\_\_ NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
10:14	1. CASE CALLED PARTIES PRESENT TIME SET FOR STATUS CONFERENCE DEFENDANT IN CUSTODY OF DEPARTMENT AND PRESENT CONFERENCE HELD IN CHAMBERS TIME ALSO SET FOR MOTION FOR PAYMENT OF WITNESS
3.	DEPARTMENT WORKING ON REPORT REQUESTS COURT SET EVIDENTIARY HEARING NO OBJECTION TO MOTION FOR PAYMENT
4.	



Index | Phase of Case  
No's. |

1. HEARING VACATED  
EVIDENTIARY HEARING SET FOR  
JANUARY 28, 2011 @ 3:00 PM  
FOLLOW UP EVALUATION: REPORT ALSO  
AT COUNTY EXPENSE  
REMOVED TO DEPARTMENT OF HEALTH  
AND WELFARE

10:18

45

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**

2011 JAN -4 PM 3: 52

MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	CASE NO. CR 2010-4031
Plaintiff,	)	
	)	
vs.	)	<b>ORDER TO TRANSPORT</b>
	)	
DENVIL HAMLIN,	)	
	)	
Defendant.	)	

IT APPEARING that the above-named Defendant, DENVIL HAMLIN, is under the care of the Idaho Department of Health and Welfare, and requires transportation to Elmore County Courthouse, Mountain Home, Idaho, and for release into the custody of Elmore County Sheriff. **The Defendant is currently being housed at the Idaho State School and Hospital, located at 1660 11<sup>th</sup> Avenue, Nampa, Idaho 83687.**

IT IS-THEREFORE ORDERED, that the Sheriff of Elmore County bring the above-named Defendant to the Elmore County Courthouse for a STATUS CONFERENCE scheduled for **JANUARY 4, 2011, at the hour of 10:00 a.m.**

IT IS FURTHER ORDERED that the Sheriff of Elmore County return the Defendant, DENVIL HAMLIN, to the Idaho State School and Hospital in Nampa, Idaho, at the conclusion of said hearing, unless otherwise ordered by this court.

DATED this 28<sup>th</sup> day of December, 2010.

\_\_\_\_\_  
GEORGE G. HICKS  
Magistrate Judge

**ORIGINAL**

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 29<sup>th</sup> day of December, 2010, served a copy of the within and foregoing documents to:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208) 587-2147

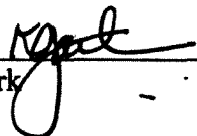
By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6490

By:  Hand delivery  
 Federal Express  
 U.S. Mail  
 Facsimile

Elmore County Sheriff  
Fax No. (208) 587-3438

By:  Hand delivery  
 Facsimile

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

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 JAN -6 PM 4:34  
MARSA PLUMMER  
CLERK OF THE COURT  
DEPUTY *[Signature]*

Attorneys for Defendant

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 DENVIL R. HAMLIN, )  
 )  
 Defendant. )

Case No. CR-2010-4031

**ORDER FOR PAYMENT  
OF EXPERT FEES**

THIS MATTER came before the Court on the 4<sup>th</sup> day of January, 2011, for a status conference concerning the Defendant's competency to stand trial, as well as the Defendant's Motion for Payment of Expert Fees at public expense, and the parties stipulated to the following:

That the county pay for and be responsible for the expert witness fees of Dr. David Sanford in connection with the Status Conference held on December 9, 2010, as well as one ~~additional evaluation and associated fees in connection with a status conference currently~~ scheduled for the 28<sup>th</sup> day of January, 2011.

The Stipulation of the parties appears to be a reasonable resolution at the present time, payment of <sup>reasonable</sup> the fees as outlined above at public expense and is hereby ORDERED and the Motion is, to the extent indicated, GRANTED.

/  
  
/

**ORIGINAL**



**IT IS SO ORDERED.**

DATED this 5<sup>th</sup> day of January, 2011.



GEORGE G. HICKS  
Magistrate Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 6<sup>th</sup> day of January, 2011, served a copy of the within and foregoing document to:

Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, Idaho 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

Marsa Plummer  
Clerk of the District Court  
Elmore County Courthouse  
Mountain Home, ID 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile


E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6940

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

Dr. Sanford  
6010 Overland Road  
Boise, ID 83709

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile (208) 377-4873

**MARSA PLUMMER**

  
Clerk of the Court

FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE: 39

STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

MAGISTRATES DIVISION

In the Matter of:	)	
Denvil R. Hamlin	)	Case No. CR-2010-4031
Respondent	)	DISPOSITION

I, Suzanne L. Story, LSW, being duly authorized by the Director of the Department of Health and Welfare to make placement decisions of developmentally disabled persons committed to his custody, have considered the available facilities and the Respondent's needs and have determined the following placement is the current facility consistent with said needs.

The Respondent is therefore dispositioned to **Aspen Ridge Residential Care** located at **11359 Tloga St., Boise, ID 83709** for care and treatment.

A copy of this Disposition has been faxed to the Elmore County Prosecuting Attorney at 190 South 4<sup>th</sup> East, Mountain Home, Idaho 83647 and to the Elmore County Public Defender at 290 South 2<sup>nd</sup> East, Mountain Home, ID 83647.

DATED this 14<sup>th</sup> day of January, 2011.

Suzanne L. Story, LSW

Dispositioner

48

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 JAN 19 PM 2:21

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY  
*[Signature]*

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	CASE NO. CR 2010-4031
Plaintiff,	)	
	)	<b>**AMENDED**</b>
vs.	)	<b>ORDER TO TRANSPORT</b>
	)	
DENVIL HAMLIN,	)	
	)	
Defendant.	)	

IT APPEARING that the above-named Defendant, DENVIL HAMLIN, is under the care of the Idaho Department of Health and Welfare, and requires transportation to Elmore County Courthouse, Mountain Home, Idaho, and for release into the custody of Elmore County Sheriff. **The Defendant is currently being housed at 11359 Tioga Street, Boise ID 83709.**

IT IS THEREFORE ORDERED, that the Sheriff of Elmore County bring the above-named Defendant to the Elmore County Courthouse for a STATUS CONFERENCE scheduled for **JANUARY 28, 2011, at the hour of 3:00 p.m.**

IT IS FURTHER ORDERED that the Sheriff of Elmore County return the Defendant, DENVIL HAMLIN, to the Idaho State School and Hospital in Nampa, Idaho, at the conclusion of said hearing, unless otherwise ordered by this court.

DATED this 18<sup>th</sup> day of January, 2011.

*[Signature]*  
GEORGE G. HICKS  
Magistrate Judge

ORIGINAL

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 19<sup>th</sup> day of January, 2011, served a copy of the within and foregoing documents to:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208) 587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission


E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6490

By:  Hand delivery  
 Federal Express  
 U.S. Mail  
 Facsimile

Elmore County Sheriff  
Fax No. (208) 587-3438

By:  Hand delivery  
 Facsimile

**BARBARA STEELE**

Deputy Clerk 

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

Docket No. CR 2010-4031

DEVIL R. HAMLIN

JUDGE George G Hicks DATE January 28, 2011 TIME 3:00 PM

CLERK V. Trevathan TYPE OF ACTION EVIDENTIARY HEARING

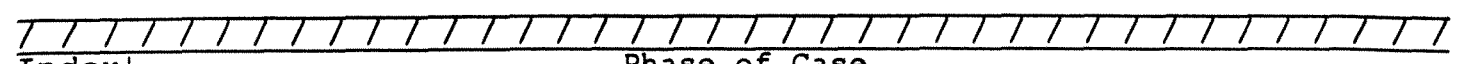
CD NO. A

KRISTINA SCHUBERT NO. 3 NO. 5  
Counsel for Plaintiff/Prosecutor MH/EC Counsel for \_\_\_\_\_

E.R. FRANCHISER NO. 4 NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
-------------	---------------

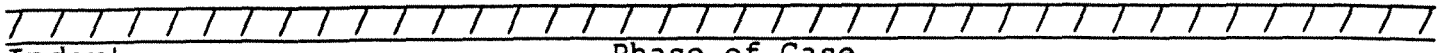
3:32	1. CASE CALLED
	PARTIES PRESENT
	TIME SET FOR EVIDENTIARY HEARING
	DEFENDANT PRESENT IN THE CUSTODY
	OF THE DEPARTMENT OF HEALTH & WELFARE
	CONFERENCE HELD IN CHAMBERS
	REPORTS
	ANY PRELIMINARY MATTERS
3:4	NO PRELIMINARY MATTERS, STIPULATE TO REPORT
	3. CALLS BLAKE BRUMFIELD
3:34	D3. BLAKE BRUMFIELD - SWORN
	WITNESS IDENTIFIES DEFENDANT AS



Index No's.	Phase of Case
	INDIVIDUAL HE HAS BEEN WORKING WITH
3:51	4. OBJECTION
3:51	3. RESPONSE
3:51	1. OVERRULED
	D3. BLAKE BRUMFIELD
3:55	X4. BLAKE BRUMFIELD
3:57	DEFENDANT'S EXHIBIT # A MARKED, OFFERED
	X4. BLAKE BRUMFIELD CONT.
4:02	3. QUESTION IN AID OF OBJECTION
	RENEWS OBJECTION
	1. DEFENSE MAY CONTINUE
4:04	X4. BLAKE BRUMFIELD CONT
4:09	RD3. BLAKE BRUMFIELD
	RX4. BLAKE BRUMFIELD
	3. NO FURTHER QUESTIONS
4:14	1. WITNESS MAY STEP DOWN
	3. CALLS SUSAN STUMP
4:15	D3. SUSAN STUMP - SWORN
4:18	WITNESS IDENTIFIED DEFENDANT
	D3. SUSAN STUMP
4:26	4. OBJECTION
	1. SUSTAINED
	D3. SUSAN STUMP CONT

COURT

MINUTES



Index | Phase of Case  
No's. |

4:26 X4. SUSAN STUMP

3. NO FURTHER QUESTIONS

1. WITNESS MAY STEP DOWN

4:27 3. RESTS

4. CALLS DR. SANFORD

4:28 D4. DAVID SANFORD - SWORN

4:32 3. OBJECTION

4. RESPONSE

4:32 1. SUSTAINED

4:33 D4. DAVID SANFORD CONT

3. OBJECTION

1. OVERRULED

4:42 D4. DAVID SANFORD CONT

4:50 1. RECESS

5:04 BACK ON RECORD

5:04 X3. DAVID SANFORD

5:23 4. OBJECTION

1. OVERRULED

5:23 X3. DAVID SANFORD CONT

4. NO FURTHER QUESTIONS

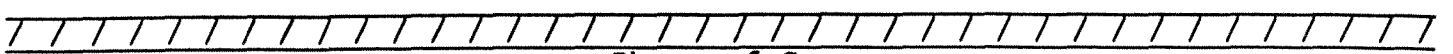
5:32 1. WITNESS MAY STEP DOWN

4. RESTS

3. RECALLS SUSAN STUMP

COURT

MINUTES



Index No's. Phase of Case

S:33 D3. SUSAN STUMP

4. NO QUESTIONS

S:34 3. NO FURTHER REBUTTAL

S:35 4. NO SURREBUTTAL

1. PARTIES MAY PRESENT CLOSING ARGUMENTS

NOW OR WRITTEN ARGUMENT

3:4. WILL SUBMIT WRITTEN ARGUMENT

1. ARGUMENTS TO BE SUBMITTED WITHIN

14 DAYS

S:37



FILED

2011 FEB 11 AM 10:28

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

**E.R. FRACHISEUR, ISB NO. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL R. HAMLIN,

Defendant.

Case No. CR 2010-4031

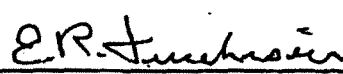
**STIPULATION FOR ADDITIONAL  
TIME FOR SUBMISSION OF  
WRITTEN ARGUMENTS**

COME NOW the parties hereto, the State, by and through Kristina Schindele, Elmore County Prosecuting Attorney, and the Defendant, by and through E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and do stipulate and agree that the closing arguments briefing schedule be continued for period of one week, being the 18<sup>th</sup> day of February, 2011.

This Stipulation is entered into on ground that defense counsel's health problems make it difficult to meet the deadline as set.

DATED this 9<sup>th</sup> day of February, 2011.

  
KRISTINA SCHINDELE  
Attorney for State

  
E.R. FRACHISEUR  
Attorney for Defendant

FILED

2011 FEB 15 PM 5:49

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

*[Handwritten Signature]*

**E.R. FRACHISEUR, ISB NO. 1388  
RATLIFF LAW OFFICES, CHTD.  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940**

Attorneys for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL R. HAMLIN,

Defendant.

Case No. CR 2010-4031

**ORDER EXTENDING  
TIME FOR SUBMISSION OF  
WRITTEN ARGUMENTS**

THIS MATTER having come on before the court upon the Stipulation of the parties and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for submission of written argument is extended by one week. Defense counsel shall have his brief filed no later than February 18, 2011.

**IT IS SO ORDERED.**

DATED this 15<sup>th</sup> day of February, 2011.

*[Handwritten Signature]*

GEORGE G. HICKS  
Magistrate Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 15th day of February, 2011, served a copy of the within and foregoing document to:

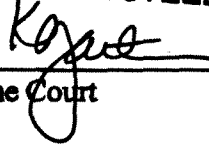
Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, Idaho 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6940

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

**BARBARA STEELE**



\_\_\_\_\_  
Clerk of the Court

FILED

2011 FEB 17 PM 3:38

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY



Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL RONALD HAMLIN,

Defendant.

Case No. CR 2010-4031

**WRITTEN ARGUMENT ON  
COMPETENCY DETERMINATION**

COMES NOW the Defendant, DENVIL HAMLIN, by and through counsel, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and submits the following written argument on the issue of the Defendant's competency to stand trial.

**PROCEDURAL BACKGROUND**

On or about the 24<sup>th</sup> day of August, 2010, the Defendant was charged with offenses of Abuse of a Vulnerable Adult. Subsequently thereto and on the 31<sup>st</sup> day of August, 2010, defense counsel moved the Court pursuant to Idaho Code §18-211, for a competency examination of the Defendant. The defense desired that the examination be conducted by Dr. David Sanford but the State requested that Dr. Chad Sombke do the evaluation. The evaluation was conducted on September 15, 2010.

Dr. Sombke used several instruments in evaluating Mr. Hamlin. In his clinical interview, at Page 2 of his report, Dr. Sombke determined that Mr. Hamlin "...appeared to be easily led into

answering questions one way or another." He also determined that "...Mr. Hamlin's [has] limited ability to remember..."

Further, and at page 3 of the evaluation, under **Mental Status Evaluation**, Dr. Sombke noted that the Defendant "...also seems to try to present himself as more knowledgeable than he actually is." Dr. Sombke determined that "he (Defendant) has only a cursory understanding of his current situation." Finally, under **Mental Status**, Dr. Sombke noted that Mr. Hamlin's "...abstract reasoning was very concrete and limited..."

On the Shipley-II, which is designed to assess general intellectual functioning, Mr. Hamlin scored in the less than 1% range. Dr. Sombke also found his reading level to be at 3<sup>rd</sup> grade or below. The last instrument used by Dr. Sombke was the Competence Assessment for Standing Trial for Defendant's with Mental Retardation or CAST-MR. As he noted, this is a validated instrument which consists of three parts; a test of Basic Legal Concepts consisting of twenty-five multiple choice questions; a test consisting of 15 multiple choice questions on Skills to Assist Defense; and a 10 question multiple-choice test on Understanding Case Events. Each subsection presents three possible answers per question. On Basic Legal Concepts, Mr. Hamlin scored 12 of 25, or 48%; on Skills to Assist Defense he scored 8 of 15, or 53%; and, on Understanding Case Events, he scored 9 of 10, or 90%, for a total score of 29 of 50, or 58%.

Dr. Sombke noted that the normative group taking the CAST-MR who were mentally retarded but found competent to stand trial scored 37 of 50 or 74%, whereas Mr. Hamlin's total score was 58%. The doctor noted that: "scores of 70% or above are generally considered as representing someone who is competent to proceed in a court hearing. Mr. Hamlin's overall score of 58% appears to suggest that he is NOT competent to proceed."

Perhaps most importantly, Dr. Sombke also stated the following:

"The CAST-MR authors are careful to point out that the results from the CAST-MR are intended to be used as one part of an overall assessment for competence to stand trial. Therefore, further information was gathered." Further, Dr. Sombke found "Mr. Hamlin does not appear to have the capacity to make *rational decisions* in response to well explained alternatives." Sombke Report, page 5, paragraph 2. (emphasis added)

Dr. Sombke outlined the Defendant's life, stating that: "he reportedly graduated from high school but he was involved in special education classes and he functions in the mild mental retardation range. He lived in assisted living homes after graduating from high school and he has worked in the construction business for employment. Mr. Hamlin met his wife 14 years ago and they have been married for four (4) years. She appears to be taking care of him, since she is his payee and it appears as though he has only been living independently since he has met her."

In conclusion, Dr. Sombke stated: "as a result of the information and observations obtained during the current evaluation, it is this examiner's opinion that Mr. Hamlin does not have the capacity to understand the proceedings against him and he also does not have the capacity to assist in his own defense. Furthermore, he does not currently have the capacity to meaningfully understand what is involved in a court hearing and he does not have *rational* understanding of his current situation and of the court process. It is *possible* with some education and training of the court process, Mr. Hamlin could become competent in the future."

Sombke Report, page 6. (emphasis added)

As a result of Dr. Sombke's evaluation of the Defendant, he was committed to the Idaho Department of Health and Welfare (IDHW) where he underwent competency training by Blake D. Brumfield, M.S. Mr. Brumfield evaluated Denvil Hamlin on November 17, 2010, and wrote up his report on the same date. It is interesting to note that under **Procedure** on page 1, of the evaluation, Mr. Brumfield states "pre-training evaluation using the CAST-MR indicated scores falling well above the means for competence on both sub-tests (see results below) for individuals

**WRITTEN ARGUMENT ON COMPETENCY DETERMINATION – Page 3**

with mental retardation who are found competent to stand trial.” On the 2<sup>nd</sup> page of Brumfield’s evaluation he indicates that the pre-training scores on Basic Legal Concepts was 12 of 25, or 48%, and Skills to Assist Defense were 8 of 15, or 53%. Brumfield’s conclusion is in direct contradiction to Dr. Sombke’s statement in his evaluation at page 4, in paragraph 4, that “according to the CAST-MR manual, Mr. Hamlin scored lower than a normative group taking the CAST-MR who were mentally retarded but found competent to stand trial, 37 (74%).” Sombke Report, page 4, paragraph 4.

Mr. Hamlin’s pre-training scores on Brumfield’s testing when averaged (48% plus 53%, divided by 2, equals 50.5%) was 23.5 points less than the test manual’s author’s standards to determine competency in mildly mentally retarded persons. The statement in Brumfield’s report is obviously an oversight or an error.

After additional work with the multiple choice CAST-MR, Mr. Hamlin’s scores improved to 20 of 25 on Basic Legal Concepts or 80% and 15 of 15 on Skills to Assist Defense or 100%. Averaging these percentages results in a score of 90%, which definitely (at that point in time) demonstrates competency on the part of the Defendant. Under **Summary** on page 3 of the report, Mr. Brumfield states “It is the examiner’s opinion that Mr. Hamlin does meet the overall level of competency, evidenced by the average adult offender with mental retardation on the CAST-MR.” However, Mr. Brumfield acknowledged that Mr. Hamlin had “...difficulty with abstract and complex concepts...” Brumfield Evaluation, page 3, paragraph 5.

With conflicting reports in hand, the defense sought an evaluation from Dr. David Sanford, who, along with Dr. Chad Sombke, is a board certified clinical psychologist trained in the use of clinical testing instruments. Dr. Sanford used the MacArthur Competency Assessment Tool, otherwise known as the MACAT-CA in testing and evaluating Mr. Hamlin’s abilities to understand and assist in legal proceedings. In contrast to the CAST-MR, which is a multiple

choice examination with the test subject being presented with three possible answers for each question, the MACAT-CA presents the test taker with a simple factual situation and then asks open ended questions about the factual situation and the roles of various participants in the legal process in relation to that factual situation. In this sense, it eliminates the chance factor which is obviously present in the CAST-MR whereby simply guessing at the multiple choice responses would result in a score of approximately 7 out of 24 or 28%. At page 4 of Dr. Sanford's evaluation, in the final paragraph, he notes:

"On the Understanding portion of the MACAT-CA, Mr. Hamlin did not receive credit for any of the test items. Many of his answers were off task and unresponsive to the examiner's question. Even after the prompts were read and the questions were explained to him, his responses were off task."

"Further, he was unable to describe the role of either his own attorney, the prosecuting attorney, or the Judge. On the Reasoning portion of the MACAT-CA, he received only partial credit for three of the eight items presented...on the Appreciation portion, Mr. Hamlin's score of 8 was in the clinically significant range of impairment."

In summary, on page 5 of the evaluation, Dr. Sanford concluded as follows:

"The most recent assessment indicated Mr. Hamlin retained little or nothing of what he had learned at the Health and Welfare Program. People with mental retardation require repetition of information over a period of time in order to remember and apply what they have learned."

"At the time of the evaluation, Mr. Hamlin was unable to understand the proceedings against him. He was (*sic*) would not be able to provide appropriate assistance to counsel to aid in his defense and would easily lose track of the proceedings and become confused during a trial."

Following receipt of Dr. Sanford's evaluation, the parties concluded that recommitment to the Department was appropriate and the Court agreed. Mr. Hamlin was initially given 5 one hour sessions of training at the Elmore County Detention Center. Subsequently, Mr. Hamlin was Dispositioned to the Idaho State School and Hospital and received additional formal training in one hour sessions on ten different occasions. At this point in time, according to Mr. Brumfield,



Denvil Hamlin had completed fifty (50) hours of didactic instruction and twenty (20) hours of review. He was given the WAS-III intelligence test and scored a full intelligence scale of 62.

Mr. Hamlin was improving with the retesting. The CAST-MR was given a third time and Mr. Hamlin scored 23 of 25 on Basic Legal Concepts, for a 92% score and 11 of 15 on Skills to Assist Defense, for a 73% score. The overall score was 82.5%.

However, as optimistic as Mr. Brumfield was in the evaluation as well as his testimony, he still recognized that the Defendant had reasoning difficulties.

**“Give Mr. Hamlin’s difficulty with abstract and complex concepts, avoiding technical language as well as relying less on semantic and more on procedural aspects of the legal system may be effective in reducing repetitious offenses. Any court process involving complicated legal vocabulary *will likely be ineffective.*”**  
**Brumfield Evaluation, January 3, 2011, page 6, paragraph 2. (Emphasis added)**

Three days later, on January 6, 2011, Susan Stumph, a Ph.D. in psychology, but not board certified, also performed the CAST-MR test on Mr. Hamlin. On this test, just three days after the testing just described above, Mr. Hamlin scored 19 of 25 on Basic Legal Concepts, or 76%, and 12 of 15 on Skills to Assist Defense, or 80% for an overall score of 78%. These scores were 4% less than the testing done by Mr. Brumfield.

As noted by Dr. Sombke in the initial evaluation, “according to the CAST-MR manual, Mr. Hamlin scored lower than a normative group taking the CAST-MR who were mentally retarded by found competent to stand trial, 37 (74%).” Thus, after extensive educational efforts and three rounds of testing, Mr. Hamlin exceeded the minimal standards by four (4) percentage points.

Dr. Stumph, like Mr. Brumfield, had words of caution for the reader of the evaluation. She indicated that “...he (the Defendant) will likely have difficulty understanding complex sentences and higher level vocabulary.” **Stumph Evaluation, page 3, paragraph 2.**

Following Dr. Stump's evaluation, the defense requested that Dr. Sanford perform another evaluation. Dr. Sanford administered a wide range achievement test resulting in a reading score at a 3<sup>rd</sup> grade capability, and a mathematics score at 2<sup>nd</sup> grade capability for Mr. Hamlin. Dr. Sanford again tested Mr. Hamlin with the MACAT-CA testing tool as previously described. Dr. Sanford indicates in his evaluation "the test also evaluates an individual's ability to *reason* through a legal scenario and demonstrates some appreciation of their current legal circumstances." Sanford Evaluation, page 3, paragraph 1. (Emphasis added)

On the second testing on Mr. Hamlin by Dr. Sanford on the MACAT-CA, the doctor noted:

"On the previous administration of the MACAT-CA, Mr. Hamlin's scores were all in the clinically significant range of impairment. His score for the three areas were: Understanding 0, Reasoning 3, Appreciation 8, for a point total of 11. On the most recent administration of the MACAT-CA, his raw scores were Understanding 1, Reasoning 2, Appreciation 2, for a total score of 5. All Mr. Hamlin's scores were in the clinically significant range of impairment.

On the most recent administration, Mr. Hamlin's score on the Appreciation portion was considerably less than on the initial administration. Some of his answers were off task and unrelated to the questions. He had a very difficult time demonstrating any appreciation of his current legal circumstances."

In his summary of his evaluation performed January 25, 2011, Dr. Sanford had the following to say:

"On two administrations of the MACAT-CA, Mr. Hamlin's score consistently was in the clinically significant range of impairment. His reading and math skills were at the 3<sup>rd</sup> and 2<sup>nd</sup> grade level respectively. Test results indicated a consistent picture of mild mental retardation.

Because of Mr. Hamlin's limited capabilities it would be extremely difficult if not impossible for him to provide adequate assistance to counsel and follow court proceedings knowledgably." Sanford Evaluation, January 25, 2011, page 4, SUMMARY.

## LEGAL STANDARDS

In *Dusky vs. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960), a per curiam opinion, the court held that the record did not contain adequate information concerning the defendant's competency to stand trial to permit the conviction to stand. The court held that:

"...the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of *rational* understanding – and whether he has a *rational* as well as factual understanding of the proceedings against him." *Dusky, supra*, 80 S.Ct. at 789. (Emphasis added)

Idaho has followed the federal standard. *State vs. Longoria*, 133 Idaho 819, 992 P.2d 1219 (Ct. App. 1999); *State vs. Powers*, 96 Idaho 833, 537 P.2d 1369, 1378 (1975); *State vs. Potter*, 109 Idaho 967, 712 P.2d 668 (Ct. App. 1985).

According to the Idaho Court of Appeals, "Competency to stand trial is a two-pronged test. A defendant must be competent to both understand the proceedings against him and assist in his own defense. I.C. §18-210." *Longoria, supra*, 133 Idaho 819, at 822.

The Supreme Court in *Powers* emphasized the reasoning capabilities of the Defendant in determining competency:

"...[the] test must be whether he (defendant) has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as a factual understanding of the proceedings against him." *Powers, supra*, 133 Idaho 819, at 842.

According to Webster's New World College Dictionary, 3<sup>rd</sup> Ed., 1996, the word rational means:

"1. of, based on, or derived from reasoning 2. able to reason; reasoning; in possession of one's reason"

The requirement of understanding applies to both prongs of the *Dusky* test – rational understanding of the attorney's advice concerning the case and rational understanding of the proceedings themselves. *Powers, supra*.

### ANALYSIS

When first evaluated by Dr. Sombke with the CAST-MR in September of 2010, Mr. Hamlin was found to be incompetent to understand the proceeding and assist in his own defense. After many hours of competency education and three re-tests, Mr. Hamlin's score on the CAST-MR improved markedly from incompetence to scores the test creators considered to be indicative of competence to stand trial.

On both occasions when Dr. Sanford evaluated Mr. Hamlin using the MACAT-CA, Mr. Hamlin's scores reflected incompetence both in understanding the process and assisting in his defense. In fact, the scores on the second testing with the MACAT-CA had degenerated from eleven to eight points. Viewing the matter strictly from the point of view of the CAST-MR, Mr. Hamlin progressed from incompetence to guarded competence following many hours of instruction and retesting three times. On the MACAT-CA, he remained incompetent throughout.

The logical conclusion is that the apparent inconsistency is a function of the testing instruments themselves. The CAST-MR is a multiple choice testing instrument. It is axiomatic that multiple choice testing lends itself to learning by rote and memorization of the "correct" answers as furnished by the tests authors.

The MACAT-CA, on the contrary, presents the test taker with a simplified factual situation and then asks open ended questions based on that factual situation. The answers are furnished entirely by the test subject; requiring the subject to reason from the factual situation to the question asked to arrive at a conclusion and an answer. The reason Mr. Hamlin's scores improved noticeably on the CAST-MR is that he was given hours of instruction on the "correct" answers to the test. If a person of normal intelligence were given a forty (40) question multiple choice test on four occasions and his incorrect answers were revealed to him between testing sessions, it would be expected that he would be letter perfect at the end of the process; that is, he

would know the response deemed to be "correct" by the authors of the test and could make the correct choice.

The MACAT-CA on the other hand, requires a reasoning process because there are no "correct" answers. The test subject must have a basic understanding of the simplified factual situation presented in order to compose a relevant and intelligible answer. This, as was amply demonstrated in Dr. Sanford's testing, Mr. Hamlin cannot do.

A note on the witnesses: Mr. Brumfield and Dr. Stumph have extensive experience in working with developmentally disabled persons. Both of them are helpers and *teachers* of the developmentally disabled. The test of the quality of a teacher's job performance is, of course, what they are able to teach the pupil and what the pupil is able to learn from them. The pupil's success validates the teacher's efforts. To some degree, consciously or otherwise, the teacher is emotionally and/or intellectually invested in the pupil's success. This should not be overlooked in judging the testimony of Mr. Brumfield and Dr. Stumph.

On the other hand, Dr. Dave Sanford and Dr. Chad Sombke are both board certified psychologists and experienced clinicians. Mr. Hamlin, to them, was not a pupil to be taught, but an individual to be evaluated. Neither of them had any investment in the Defendant's condition or state of knowledge and their function was simply one of reporting, not of educating.

### CONCLUSION

The *Dusky* test is essentially reiterated in Idaho Code §18-210:

"No person who as a result of a mental disease or defect lacks capacity to *understand* the proceedings against him or to assist in his own defense should be tried, convicted, sentenced or punished for the commission of an offense as long as such incapacity endures." (Emphasis added)

The United States Supreme Court's iteration of capacity to understand was "present ability to consult with his lawyer with a *reasonable* degree of rational understanding – and whether he has a *rational* as well as a factual understanding of the proceedings against him."

(Emphasis added). The operative language in both the statute and the legal standard are a rational understanding. When confronted with the need to reason from a simple fact situation to a conclusion concerning that fact situation, Mr. Hamlin failed miserably and his performance and ability degenerated over time. It is submitted that based upon the totality of the evidence, Mr. Hamlin does not have a present ability to consult with his lawyer with a reasonable degree of rational understanding, or a rational, as well as a factual, understanding of the proceedings against him and therefore the criminal prosecution should not go forward.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of February, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. Frachiseur  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 17<sup>th</sup> day of February, 2011, served a copy of the within and foregoing document to:

Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, Idaho 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

Andee Rodrigues  
Legal Assistant



**ELMORE COUNTY  
PROSECUTING ATTORNEY**

**KRISTINA M. SCHINDELE**  
Prosecuting Attorney

190 South 4th East  
Mountain Home, Idaho 83647  
e-mail: prosecutor@elmorescounty.org



Lee Fisher  
Deputy Prosecuting  
Attorney

Nathan Henkes  
Deputy Prosecuting  
Attorney

Phone (208) 587-2144  
Ext 503  
Fax (208) 587-2147

February 25, 2011

The Honorable George Hicks  
Elmore County Courthouse  
150 South 4th East, Suite 5  
Mountain Home, Idaho 83647

E.R. Frachiseur  
Ratliff Law Office, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, Idaho 83647

RE: State of Idaho v. Denvil Ronald Hamlin  
Elmore County Case Number: CR-2010-0004031

Dear Judge Hicks and Mr. Frachiseur:

The State hereby offers the following closing argument in support of the Court entering a finding of competency. Please accept this argument in lieu of a formal memorandum.

The Court has received ample evidence on the issue concerning Defendant's competency to stand trial. Idaho Code § 18-212(4) requires the Court to determine the Defendant's fitness to proceed following receipt of the progress report from the Idaho Department of Health and Welfare. The Idaho appellate courts have recently reiterated the standard for competency:

The test to determine whether a criminal defendant is competent to stand trial is whether the defendant has a rational as well as factual understanding of the proceedings against him and whether the defendant has sufficient present ability to assist in preparing his defense.

State v. Hawkins, 148 Idaho 774, 229 P.3d 379 (Ct. App. 2009) (citing Dusky v. United States, 362 U.S. 402 (1960)).

Most of the dispute in this case arises over which competency test should be relied upon in formulating an opinion regarding Defendant's competency.<sup>1</sup> The Defendant is clearly mildly

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<sup>1</sup> Researchers have been working to develop competence assessment tools for specialized populations of defendants. Roesch, Zapf, Golding & Skeem, *Defining and Assessing Competency to Stand Trial*, (<http://www.unl.edu/ap-ls/student/CST%20assess.pdf>) at page 13. Two such specialized areas are persons with mental retardation and juveniles. *Id.*

mentally retarded. He was initially examined by Dr. Chad Sombke who determined that Defendant was in need of further education and training in order to understand the court process and assist in his defense. Dr. Sombke noted that Defendant appeared to have a grasp of the alleged case facts or events but did not understand key legal concepts or the role of persons in the proceedings. Dr. Sombke relied upon the CAST-MR and other basic intellectual functioning testing. The CAST-MR is a multiple-choice examination administered as an interview.<sup>2</sup> The Court entered a commitment order on October 5, 2010.

The Defendant was committed to the custody of the State of Idaho, Department of Health and Welfare, for training and education. DHW filed its progress report on November 17, 2010. This report concluded that Defendant was competent. The report omitted key facts concerning the frequency and duration of education and training sessions. Counsel for Defendant then retained another expert, Dr. Dave Sanford, to examine the Defendant. Dr. Sanford opined that Defendant had not retained any of the education and training provided by the Department. Based on the dearth of information in the Department's progress report, the parties stipulated to the Court's entry of another order of commitment. That order was entered on December 10, 2010.

On January 3, 2011, the Department filed a second progress report to the Court recommending the Court find the Defendant competent. Mr. Blake Brumfield, M.S., provided the Court with a variety of information concerning the Defendant's on-going education and training. Mr. Brumfield explained that the Defendant had received, in toto, approximately 10 hours of formal training and over 30 daily sessions to review his understanding.<sup>3</sup> The report also contained

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<sup>2</sup>Evaluating Competency to Stand Trial with Evidence-Based Practice, *J Am Acad Psychiatry Law* 37:4:450-460 (2009) at pages 7-8 ([www.jaapl.org/cgi/content/full/37/4/450](http://www.jaapl.org/cgi/content/full/37/4/450)); *see also State v. M.J.K.*, 849 A.2d 1105, 1110-1113 (N.J. Super. A.D. 2004) (discussing the CAST-MR as well as the credentials of the developers of the assessment tool). The State acknowledges that the only cases discussing the CAST-MR that it could find are from other jurisdictions and most are unpublished. The State was not able to find a single Idaho case addressing competency in the context of intellectual disabilities.

<sup>3</sup>In his report, Mr. Brumfield stated there were 50 hours of didactic training and 20 hours of review. During his testimony, he clarified that there were 10 one-hour sessions between October and December as well as daily sessions each day the Defendant was at the State



other information concerning the Defendant's ability to understand legal proceedings and assist in his defense. Mr. Brumfield advised the Court of many of Defendant's lifeskills that suggest he possesses the rudimentary skills to understand the proceedings and assist in his defense. Mr. Brumfield cited several factors to the court, including Defendant's ability to obtain a driver's license, maintain liability insurance and follow traffic laws, and enter into a purchase contract for his home. Mr. Brumfield utilized the CAST-MR in assessing the Defendant's competency. Furthermore, Mr. Brumfield noted that the Defendant is able to verbalize a viable defense to his alleged crimes and identify appropriate reasons to contact his defense counsel.

On or about January 6, 2011, Dr. Susan Stumph conducted an independent assessment of the Defendant's competency. Mr. Brumfield asked Dr. Stumph to evaluate the Defendant in order to ensure the Court that the Department had made every effort to educate the Defendant and restore competency. Dr. Stumph also utilized the CAST-MR. Both Mr. Brumfield and Dr. Stumph have extensive experience dealing with individuals with development disabilities. Mr. Brumfield is responsible for competency restoration efforts on behalf of the Department. Both professionals provided written opinions supporting a finding of competence. Both experts testified to the same.

On or about January 25, 2011, Dr. Sanford performed another evaluation of the Defendant. Dr. Sanford again proffered the opinion that the Defendant had not retained the education and training provided by the Department. Dr. Sanford, in determining competency, utilized the Mac-CAT test. Dr. Sanford observed that some of Defendant's answers were off task and unrelated to the questions.

The Court held an evidentiary hearing on January 28, 2011. The parties stipulated to admission of all of the evaluations. In addition, Mr. Brumfield, Dr. Stumph and Dr. Sanford all provided testimony. Mr. Brumfield and Dr. Stumph testified that the CAST-MR is the accepted instrument for assessing the competency of individuals with mental retardation. Dr. Sanford testified that he had never heard of the CAST-MR. Dr. Sanford further testified that he has a primarily forensic practice and that approximately 10 percent of his time is devoted to competency assessments. He also testified that less than 5 percent of his practice, in toto, involves individuals with intellectual disabilities. He has not had extensive experience with individuals with intellectual disabilities since the 1960s. On the other hand, the State's experts

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school. The Defendant was at the school approximately 30 days, and the review sessions were 20 minutes each.

both testified regarding their extensive knowledge of and experience with individuals with intellectual disabilities. Dr. Stumph testified that the CAST-MR has been utilized with this population since the 1990s.

The State submits that Dr. Sanford's examination of the Defendant and resulting opinions, while based on Dr. Sanford's observations of the Defendant and his experience, do not provide the correct picture of Defendant's competency. Dr. Sanford used the Mac-CAT, an evaluation that relies upon a hypothetical situation and questions regarding the situation.<sup>4</sup> During his testimony, Dr. Sanford conceded that Defendant, given his mental retardation and psychological profile, has difficulty with abstract reasoning. The Defendant is a concrete thinker. The Mac-CAT quite simply is not an appropriate assessment tool for individuals with mental retardation in general and the Defendant specifically.<sup>5</sup> Dr. Sanford opined, in his report and on the stand, that the Defendant was preoccupied with the facts of his case rather than staying on task with the assessment tool. Dr. Sanford explained that the Mac-CAT does not permit the evaluator to ask the questions of the examinee in relation to the examinee's own legal situation. Rather, the assessment requires responses related to the hypothetical situation. This scenario presented a very difficult task for the Defendant and understandably so.

On the other hand, the CAST-MR focused on the Defendant's rudimentary understanding of the legal process and his relationship with counsel. The questions were succinct and limited to the Defendant's situation. Mr. Brumfield testified, consistent with his January 2011 evaluation, that the Defendant's scores on the CAST-MR changed over time. On test 1, legal concepts, the Defendant received a 48% correct on Dr. Sombke's pretest, an 80% correct on the November 17, 2010, test, and a 92% correct on the December 22, 2010, test. On test 2, skills to assist defense, the Defendant scored 53% on the pretest, a 100% on the November test and a 73% on the December test. Mr. Brumfield did not use the third sub-test as it deals with the

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<sup>4</sup>See Practical Application of the MacArthur Competence Assessment Tool - Criminal Adjudication (Mac-CAT-CA) in a Public Sector Forensic Setting, J Am Acad Psychiatry Law 34:2:179-188 at page 2 ([www.jaapl.org/cgi/content/full/34/2/179](http://www.jaapl.org/cgi/content/full/34/2/179)) (2006).

<sup>5</sup>In a recent analysis, researchers noted, "several defendants with mental retardation were unable to comprehend the hypothetical scenario presented in the Mac-CAT-CA." Practical Application of the MacArthur Competence Assessment Tool - Criminal Adjudication, J Am Acad Psychiatry Law 34:2:179-188 at page 11 ([www.jaapl.org/cgi/content/full/34/2/179](http://www.jaapl.org/cgi/content/full/34/2/179)).

facts of the underlying charged offense. Dr. Stumph tested the Defendant on January 6, 2011. At that time, the Defendant scored a 76% on the basic legal concepts subtest and an 80% on skills to assist defense subtest. Dr. Stumph also asked open-ended questions of the Defendant regarding the legal process and his relationship with his attorney. Dr. Stumph opined, "He discussed the charges being brought against him in adequate detail and sufficiently understood the seriousness of the charges. He also appears to understand that certain behaviors have consequences which can result in legal action."

Mr. Brumfield and Dr. Stumph both clarified that the Defendant, while competent to proceed, will require accommodations. The Defendant may need extra time with his attorney. Complex language or sentences may have to be broken down. The Defendant, eager to please, will need to be questioned to make sure he understands the issues pending in the case. However, the Defendant's need for extra time and consideration does not negate his competency. It simply makes his case more time-consuming and difficult to process.

During the hearing, in light of some of his responses, the State asked Dr. Sanford whether, in his opinion, a person with mental retardation would ever be competent to stand trial. Dr. Sanford did not provide a direct response to this question. Rather, Dr. Sanford made reference to a television sitcom actor with an intellectual disability who was able to learn script and act.<sup>6</sup> Apparently, Dr. Sanford attempted to explain that persons with intellectual disabilities can learn, but only with effort and time. The State submits that Dr. Sanford's testimony suggests that, in his opinion, most individuals with intellectual disabilities are not competent to stand trial. The facts and law do not support Dr. Sanford's conclusions in this matter.

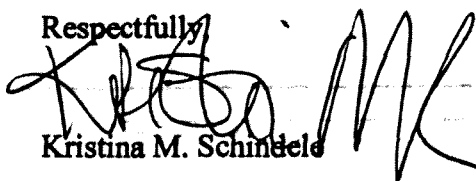
The record is replete with evidence that Defendant is competent. The Defendant has received education on the legal process. The Defendant has been able to answer questions about the role of the various players, including his defense attorney. The Defendant has successfully participate in a role play involving his interaction with his counsel. He has repeatedly raised a legal and factual defense to the charged crime. The Defendant's inability to respond to a hypothetical situation and fixation on the facts of his case do not support Dr. Sanford's conclusion that he is not competent. Based on the totality of the circumstances presented

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<sup>6</sup>The State believes Dr. Sanford was referring to Chris Burke, a gentleman with Down Syndrome, who portrayed Corky on Life Goes On.

herein, the State respectfully requests the Court enter an order finding the Defendant competent and resuming proceedings.

Respectfully,

A handwritten signature in black ink, appearing to read 'Kristina M. Schindele', written over a horizontal dashed line. The signature is stylized and extends to the right.

Kristina M. Schindele

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FILED

2011 APR -5 AM 11:38

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

*Keg*

**E.R. FRACHISEUR, ISB No. 1388  
RATLIFF LAW OFFICES, CHTD.  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940**

Attorneys for Defendant

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

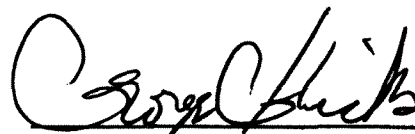
STATE OF IDAHO,	)	
	)	CASE NO. CR 2010-4031
Plaintiff,	)	
	)	
vs.	)	<b>ORDER TO TRANSPORT</b>
	)	
DENVIL HAMLIN,	)	
	)	
Defendant.	)	
	)	

IT APPEARING that the above-named Defendant, DENVIL HAMLIN, is under the care of the Idaho Department of Health and Welfare, and requires transportation to Elmore County Courthouse, Mountain Home, Idaho, and for release into the custody of Elmore County Sheriff. **The Defendant is currently being housed at Aspen Ridge Group Home, 11359 Tloga Street, Boise ID 83709.**

IT IS THEREFORE ORDERED, that the Sheriff of Elmore County bring the above-named Defendant to the Elmore County Courthouse for ORAL DECISION scheduled for **April 7, 2011, at the hour of 9:30 a.m.**

IT IS FURTHER ORDERED that the Sheriff of Elmore County return the Defendant, DENVIL HAMLIN, to Aspen Ridge Group Home, at the conclusion of said hearing, unless otherwise ordered by this court.

DATED this 5 day of April, 2011.

  
\_\_\_\_\_  
GEORGE G. HICKS  
Magistrate Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 5<sup>th</sup> day of April, 2011, served a copy of the within and foregoing documents to:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208) 587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

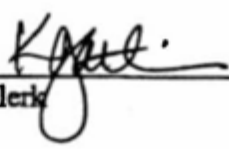
E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6490

By:  Hand delivery  
 Federal Express  
 U.S. Mail  
 Facsimile

Elmore County Sheriff  
Fax No. (208) 587-3438

By:  Hand delivery  
 Facsimile

BARBARA STEELE

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

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

Docket No. CR-2010-4031

DENVIL R. HAMLIN

JUDGE George G. Hicks DATE April 7, 2011 TIME 9:30 AM

CLERK K. Gatlin TYPE OF ACTION ORAL Decision

COURTROOM C

LEE FISHER NO. 3 SUZANNE STOREY NO. 5  
Counsel for Plaintiff/Prosecutor MJH/EC. Counsel for IDH & W

ED FRACHISEUR NO. 4 NO. 6  
Counsel for Defendant P/D Counsel for \_\_\_\_\_

Index No's.	Phase of Case
	1. CASE CALLED
	PARTIES PRESENT
	TIME SET FOR ORAL DECISION
	DEFENDANTS COMPETENCY TESTS HAVE BEEN REVIEWED BY 3 EXPERTS
	COURT HAS REVIEWED WRITTEN BRIEFS PRESENTED BY COUNSEL
	THE COURT FEELS THAT THE DEFENDANT IS COMPETENT & ABLE TO FOLLOW PROCEEDINGS
	4. DEFENDANT HAS BEEN IN CUSTODY FOR APPROX. 5 MONTHS
	3. RECOMMENDATIONS

CONTINUATION SHEET

DATE April 7, 2011 colvetroom C PAGE 2  
~~CD NO.~~

JUDGE G. Hicks CLERK K. Gatlin CASE NAME DENVIL Hamlin

Index No's.	Phase of Case
1.	DEFENDANT REMANDED. BOND SET \$500 <sup>00</sup>
4.	DEFENDANT SIGNS WAIVER OF SPEEDY PRELIM. EXAM
	PRELIMINARY HEARING SET FOR:
	MAY 3 <sup>rd</sup> , 2011 AT 4:00 pm
	CONTACT WITH LEGAL COUNSEL TWICE A WEEK
	CONTINUED EDUCATION & UNDERSTANDING OF PROCEEDINGS
11:36	
12:44	1. BACK ON RECORD
	SUZANNE STOREY OF IDH & W NOW PRESENT
	AFTER REVIEWING PROCEEDINGS WITH MS. STOREY
	MS. STOREY WILL WORK WITH DEFENDANT TO ASSIST
	IN EDUCATION AND DISCUSSING PROCEEDINGS AND KEEPING
	MR. FRACHISEUR INFORMED
15:45	

COURT MINUTES



FILED

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

2011 APR -7 AM 10:41

BARBARA STEVE  
CLERK OF THE COURT  
DEPUTY *ps*

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 Dennis R. Hamlin, )  
 )  
 Defendant. )

Case No. CR-2010-4031

WAIVER OF SPEEDY  
PRELIMINARY EXAMINATION

I, Dennis R. Hamlin, hereby waive my right to a speedy preliminary hearing. I understand that I am entitled to a preliminary hearing within 14 days if incarcerated or 21 days if not incarcerated. By signing this document I am not waiving my right to a preliminary hearing or any other rights that I am entitled to under the united States Constitution or the Idaho Constitution.

DATED This 7<sup>th</sup> day of April, of 19 11,  
at 9:40 o'clock a.M.

Dennis R Hamlin  
Defendant

WITNESSED:  
*George Clark*  
Magistrate

*E.K. French*  
Witness

52

FILED

Fourth Judicial District Court, State of Idaho

2011 APR -7 AM 10:41

In and For the County of Elmore

BARBARA STELLER  
CLERK OF THE COURT  
DEPUTY

STATE OF IDAHO )  
Plaintiff, )

vs. )  
Denvil R Hamlin )  
Defendant. )

Case No: CR-2010-0004031

DOB: [REDACTED] )  
DL: [REDACTED] )  
\_\_\_\_\_ )

COMMITMENT - HTA

THE STATE OF IDAHO TO ELMORE COUNTY SHERIFF DEPARTMENT:

An Order having been made this day by me that Denvil R Hamlin, be held to answer upon a charge of Adult-Sexually Abuse or Exploitation of a Vulnerable Adult, a Felony Adult-Sexually Abuse or Exploitation of a Vulnerable Adult, a Felony Adult-Sexually Abuse or Exploitation of a Vulnerable Adult, a Felony , committed as set forth in the Complaint on file in the above-entitled action, said crime alleged to have been committed in Elmore County, State of Idaho.

YOU, THE SAID Elmore County Sheriff's Department, are commanded to receive him, the said defendant, into your custody, and detain him/her until legally discharged.

The defendant is to be admitted to bail in the sum of \$ 500.00

Next hearing is scheduled for:

Preliminary on Tuesday, May 03, 2011 at 04:00 PM  
Judge: George G. Hicks

DATED This 7th day of April, 2011.

MAGISTRATE JUDGE

Elmore County Detention       X  Faxed       X  Hand Delivered

FAXED

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

) ) ) )  
Docket No. CR 2010-4031

DENVIL R. HOMLIN)

JUDGE GEORGE G. HICKS DATE May 3, 2010 TIME 4:00 PM

CLERK V. Trevathan TYPE OF ACTION PRELIMINARY HEARING

CD NO. \_\_\_\_\_  
 //

KRISTINA SCHUSLER NO. 3. \_\_\_\_\_ NO. 5  
 Counsel for Plaintiff Counsel for \_\_\_\_\_

E. R. FRACHISER NO. 4. \_\_\_\_\_ NO. 6  
 Counsel for Defendant Counsel for \_\_\_\_\_

//

Index No's.	Phase of Case
1	<p>CONFERENCE HELD IN CHAMBERS            BOTH ATTORNEYS PRESENT            STEPLATE TO RESET PRELIMINARY            HEARING TO  <u>JUNE 2, 2011 @ 10:00 AM</u></p>

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

Docket No. CR-2010-4031

DENVIL R. HAMLIN

JUDGE GEORGE G. HICKS DATE June 2, 2011 TIME 10:00 AM

CLERK V. Trevathan TYPE OF ACTION PRELIMINARY HEARING

CD NO. A

KRISTINA SCHUEDE NO. 3. \_\_\_\_\_ NO. 5  
Counsel for Plaintiff Counsel for \_\_\_\_\_

E. R. FROENISER NO. 4. \_\_\_\_\_ NO. 6  
Counsel for Defendant Counsel for \_\_\_\_\_

////////////////////////////////////

Index No's.	Phase of Case
10:52	CASE CALLED
	PARTIES PRESENT
	TIME SET FOR PRELIMINARY HEARING
	CONFERENCE HELD IN CHAMBERS
	3. STATE WILL MAKE COPIES OF DOCUMENTS
	NO OBJECTION TO CONTINUANCE WITH
	STIPULATED TO DOCUMENTARY EVIDENCE
	4. WILL STIPULATE TO ADMISSION OF DOCUMENTS
	1. PRELIMINARY HEARING CONTINUES TO
	<u>JULY 5, 2011 @ 9:00 AM</u>
	3. DEPARTMENT HAS CONTINUED COURT TRAINING
	WITH MR. HAMLIN

DATE JUNE 2 2011 COURTROOM A PAGE 2

JUDGE Hicks CLERK v Trevathan CASE NAME HAMILTON



Index No's. | Phase of Case

DOES THE COURT WANT THAT TO CONTINUE?

1. COURT CONTINUES THAT ORDER

HEARDUC VACATED

10:58

COURT

MINUTES

64

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 JUN -7 PM 4: P2  
**BARBARA STEELE**  
CLERK OF THE COURT  
DEPUTY

Attorney for Defendant

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

STATE OF IDAHO, )  
 )  
 ) Plaintiff, )  
 )  
-vs- )  
 )  
DENVIL R. HAMLIN, )  
 )  
 ) Defendant. )  
\_\_\_\_\_ )

Case No. CR-2010-4031

**MOTION TO MODIFY NO-  
CONTACT ORDER**

COMES NOW the Defendant, by and through counsel of record, E.R. Frachiseur of Ratliff Law Offices, Chtd., and moves this Court to modify the No-Contact Order in this matter as follows:

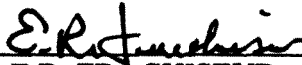
THAT the No-Contact Order issued herein be amended to allow the Defendant to continue to reside in his current home. The Defendant and his wife are purchasing the trailer home they currently live in from the lot owner and movement of the trailer is restricted. Defendant has and continues to consciously avoid coming within the sight of the alleged victim. Enforcement of the distance restriction would result in the Defendant being rendered homeless. That home is currently not an allowable distance from the alleged victim's home and the Defendant would request a modification to the No Contact Order to allow him to remain in his home.

**ORIGINAL**

A hearing is requested.

DATED this 7<sup>th</sup> day of June, 2010.

**RATLIFF LAW OFFICES CHTD.**

By   
E.R. FRACHISEUR  
Attorney at Law

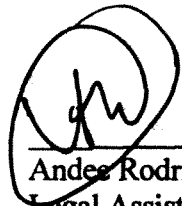
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on the herein below signed date served a copy of the within and foregoing **MOTION TO MODIFY NO CONTACT ORDER** to:

KRISTINA M. SCHINDELE  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile (208) 587-2147

DATED this 1 day of June, 2011.

  
Andes Rodrigues  
Legal Assistant

62

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
190 South 4th East  
Mountain Home, Idaho 83647  
Telephone: (208) 587-2144 ext. 503  
Facsimile: (208) 587-2147  
I.S.B. No. 6090

**FILED**

2011 JUN -9 AM 9:45

**BARBARA STEELE**  
**CLERK OF THE COURT**  
**DEPUTY**

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

THE STATE OF IDAHO, )  
Plaintiff, )  
vs. )  
DENNIS R. HAMLEN, )  
SSN [REDACTED] )  
DOB [REDACTED] )  
Defendant. )

Case No. CR-2010-0004031  
**AFFIDAVIT OF KRISTINA SCHINDELE**

STATE OF IDAHO )  
 ) SS.:  
COUNTY OF ELMORE )

Kristina M. Schindele, Prosecuting Attorney in and for the County of Elmore, State of Idaho, being first duly sworn, deposes and says:

1. That on the 8th day of August 2010, the above-named Defendant appeared before the Honorable George G. Hicks, Magistrate Judge in and for the County of Elmore, upon the charges of **SEXUAL ABUSE OF A VULNERABLE ADULT, Count I, a felony; SEXUAL ABUSE OF A VULNERABLE ADULT, Count II, a felony; and SEXUAL ABUSE OF A VULNERABLE ADULT, Count III, a felony.** The Court set bond in the amount of one hundred thousand dollars (\$100,000.00).

2. That on the 7th day of April 2011, the Defendant again appeared before the Honorable George G. Hicks, Magistrate Judge in and for the County of Elmore, for his Oral  
**AFFIDAVIT**



Decision. The Defendant's bond amount was amended to five hundred dollars (\$500). When or if the Defendant was to bond he would have certain conditions, to include that he abides by the No Contact Order, attached hereto and marked as Exhibit A.

3. That said Defendant was represented by an attorney licensed to practice law in the State of Idaho during all phases of procedure in the above-entitled matter.

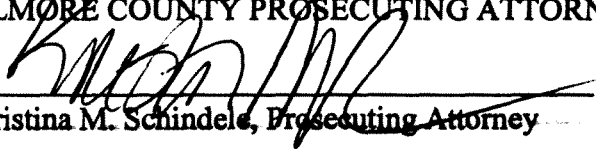
4. That the Defendant has violated the terms of his release, in that he is in violation of the No Contact Order. See Mountain Home Police Department Report No. 110001558E prepared by Detective Ty Larsen on the 5<sup>th</sup> day of May 2011, attached hereto and marked as Exhibit B.

5. The State requests bond in the amount of twenty thousand dollars (\$20,000.00) or whatever amount the Court deems fair and reasonable.

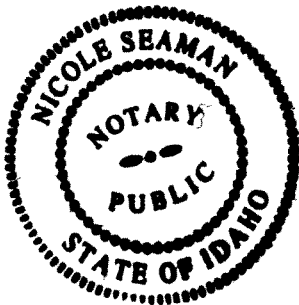
WHEREFORE, Your Affiant prays for an Order of this Court directing the Clerk of this Court, to Issue a Bench Warrant requiring the Defendant to appear before this Court, at which time to show cause why the Defendant's release on bond in this cause should not be revoked.


DATED This 8<sup>th</sup> day of June 2011.

KRISTINA M. SCHINDELE  
ELMORE COUNTY PROSECUTING ATTORNEY

  
\_\_\_\_\_  
Kristina M. Schindele, Prosecuting Attorney

SUBSCRIBED AND SWORN To before me this \_\_\_ day of June 2011.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Mountain Home, ID  
My Commission expires: 7/27/2012

**CERTIFICATE OF SERVICE**

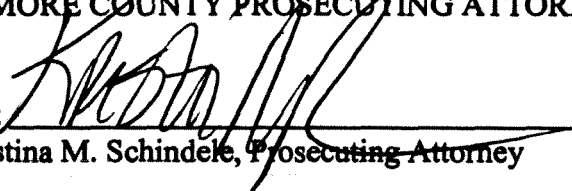
I hereby certify that on this 8<sup>th</sup> day of June 2011, I served a copy of the foregoing document to the following attorney by the following manner:

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2nd East  
Mountain Home, Idaho 83647

Hand Delivered  
 U.S. Mail  
 Certified Mail  
 Facsimile

DATED this 8<sup>th</sup> day of June 2011.

**KRISTINA M. SCHINDELE**  
ELMORE COUNTY PROSECUTING ATTORNEY

BY:   
Kristina M. Schindele, Prosecuting Attorney

# EXHIBIT A

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

STATE OF IDAHO,  
Plaintiff,

Case No. CR- 2010-935

v.  
DENNIS R. HAMLIN  
Defendant,

**NO CONTACT ORDER**  
(Criminal)

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

**IT IS HEREBY ORDERED** that the above-named Defendant shall not contact, or attempt to contact, harass, follow, communicate with or knowingly remain within one hundred (100) feet of: WILLIAM MCCORMACK "contact" means, but is not limited to contact in person, through third persons, by telephone or facsimile, in writing, by email or other electronic means.

Exceptions - the Defendant may have contact for the following reasons under the following conditions:

- None.
- to contact by telephone between \_\_\_\_\_, \_\_.m. and \_\_\_\_\_, \_\_.m. on \_\_\_\_\_; for the following purpose: \_\_\_\_\_;
- to participate in counseling or mediation;
- to meet with or through attorneys and / or during legal proceedings;
- to respond to emergencies involving the natural or adopted children of both parties;
- Other: \_\_\_\_\_.

**IT IS FURTHER ORDERED** that the above-named Defendant shall not go within three hundred (300) yards of the above-named person's residence or workplace as follows:

Residence address	Workplace Address
<u>340 EAST 8TH NORTH</u>	_____
<u>TRAILS II 14</u>	_____
<u>MOUNTAIN VIEW, ID</u>	_____

**IT IS FURTHER ORDERED** that this Order can be modified only by a judge and will remain in effect until further order of the Court or upon dismissal of this case or at 11:59 p.m. on Aug. 24, 2011 whichever occurs first.

**NOTICES**

1. 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, 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. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment. Any such violation may also result in the modification of the above terms or the increase or revocation of the bond set on the underlying charge in this matter.
2. When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order.
3. This Order controls and supercedes any previous No Contact Order entered in the above-entitled matter.
4. This Order may only be modified by a judge.
5. This Order may subject you to federal prosecution under the United States Code, Title 18, section 922 if you possess, receive or transport a firearm.

Dated this 24th day of August, 2010.

Acknowledged and Received on the above date:  
Dennis R Hamlin  
Defendant

Cory C. Hicks  
Judge

**EXHIBIT B**



City of Mountain Home  
**CRIME / INCIDENT  
 REPORT**  
 2775 East 8th North  
 Mountain Home, ID 83647  
 ID0200200

HIT Ux20x7

CODE SECTION 18-6108	CASE # 10001558 E
CRIME Sodomy - Strongarm	<input type="checkbox"/> ATTEMPT
CLASSIFICATION 1108	

CASE TYPE <b>SEX</b>	JURIS. AREA MHPD	REPORTED	DATE	TIME	DAY
LOCATION OF INCIDENT 340 E 8TH NORTH STREET ST N # 14, MOUNTAIN HOME 83647		REPORTED	07/13/2010	11:27	TUE
PREMISE NAME GLEN PARKE VILLAGE		REPORTED	07/13/2010	11:27	TUE
ADDITIONAL VIOLATION CODE SECTIONS 18-3002      Fraud - Swindle		REPORTED	07/13/2010	11:27	TUE
PREMISE TYPE Residence/Home				ENTERED	

ADDITIONAL VIOLATION CODE SECTIONS  
 18-3002      Fraud - Swindle

NATURE OF INCIDENT

<input type="checkbox"/> Computer Used	<input type="checkbox"/> Hate/Bias Motivated	<input type="checkbox"/> Child Abuse	<input type="checkbox"/> Thefts	<input type="checkbox"/> Adult Missing
<input type="checkbox"/> Alcohol Related	<input type="checkbox"/> Officer Assault	<input type="checkbox"/> Domestic Violence	<input checked="" type="checkbox"/> Felony	<input type="checkbox"/> K-9
<input type="checkbox"/> Drug Related	<input type="checkbox"/> Senior Citizen	<input type="checkbox"/> Arson	<input type="checkbox"/> Misdemeanor	<input type="checkbox"/> Information
<input type="checkbox"/> Gang Related	<input type="checkbox"/> Juvenile	<input type="checkbox"/> Burglary	<input type="checkbox"/> Use of Force	

SYNOPSIS  
**HAMLIN, DENVIL RONALD - ARREST NO. 02324**  
**RAPE - MALE**  
**FRAUD - SWINDLE**  
~~COCOUNTY PROSECUTOR~~

ACS

CASE STATUS <b>ARREST</b>	DEPARTMENT DISPOSITION <b>ARREST</b>					
ASSOCIATED CASE NUMBERS	OTHER ROUTING					
OFFICER'S NAME FUENTES JR, HUMBERTO	ID NUMBER 018	DATE 07/14/2010	SUPERVISOR REVIEW ROBINSON, RANDY	ID NUMBER 008	DATE 12/13/2010	PAGE 1

CASE REPORT		City of Mountain Home Police Department				CASE NUMBER 10001558			
INVOLVED NAMES		ID NUMBER	DATE	SUPERVISOR REVIEW		ID NUMBER	PAGE		
FUENTES JR. HUMBERTO		018	07/14/2010	ROBINSON, RANDY		008	2		
2-VI	LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) MCCORMACK JR, WILLIAM THOMAS	RACE W	<input checked="" type="checkbox"/> M <input type="checkbox"/> F	DOB 09/09/1963	AGE 46	HT 606	WT 136	HAIR BRO	EYES BLK
ADDRESS 340 E 8TH NORTH STREET ST N # 14, MOUNTAIN HOME ID 83647				PHONE (208) 587-4153	DL NUMBER QA130881A			STATE ID	
BUSINESS NAME / SCHOOL NAME AND ADDRESS				PHONE	OCCUPATION			SSN 316-78-8848	
NAME INFORMATION <input type="checkbox"/> NON DISCLOSURE <input type="checkbox"/> JUVENILE									
3-G	LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) MCCORMACK, MARY ANNE	RACE W	<input type="checkbox"/> M <input checked="" type="checkbox"/> F	DOB 10/09/1937	AGE 72	HT 411	WT 136	HAIR BRO	EYES BRO
ADDRESS 340 E 8TH NORTH STREET ST N # 14, MOUNTAIN HOME ID 83647				PHONE (208) 587-0153	DL NUMBER 1440078288			STATE IN	
BUSINESS NAME / SCHOOL NAME AND ADDRESS				PHONE	OCCUPATION			SSN 024-78-4760	
NAME INFORMATION <input type="checkbox"/> NON DISCLOSURE <input type="checkbox"/> JUVENILE									
4-O	LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) MALAN, STEPHENIE ANN	RACE W	<input type="checkbox"/> M <input checked="" type="checkbox"/> F	DOB 06/24/1976	AGE 34	HT 502	WT 160	HAIR BRO	EYES HAZ
ADDRESS 1530 FAIRWAY COURT CT, MOUNTAIN HOME ID 83647				PHONE (208) 598-1788	DL NUMBER QA128152D			STATE ID	
BUSINESS NAME / SCHOOL NAME AND ADDRESS SUFFICIENCY ADVOCATES				PHONE (208) 587-2391	OCCUPATION			SSN 162-58-8167	
NAME INFORMATION <input type="checkbox"/> NON DISCLOSURE <input type="checkbox"/> JUVENILE									

<b>CASE REPORT OFFENDERS</b>	<b>City of Mountain Home Police Department</b>			<b>CASE NUMBER 10001558</b>	
OFFICER'S NAME FUENTES JR. HUMBERTO	ID NUMBER 016	DATE 07/14/2010	SUPERVISOR REVIEW ROBINSON, RANDY	ID NUMBER 008	PAGE 3

1-AR	LAST, FIRST, MIDDLE (FIRM, IF BUSINESS) HAMLIN, DENVIL RONALD	RACE W	<input checked="" type="checkbox"/> M F	AGE 51	HT 509	WT 200	HAIR GRY	EYES BLU
------	--	-----------	--	-----------	-----------	-----------	-------------	-------------

AKA / MONIKER HAMLIN, IKE;	RELATIONSHIP TO VICTIM Victim was Acquaintance
-------------------------------	---

ADDRESS 340 E 8TH NORTH STREET ST N # 1, MOUNTAIN HOME ID 83647	PHONE (208) 366-3363	Local 62324
--	-------------------------	----------------

BUSINESS NAME / SCHOOL NAME AND ADDRESS	PHONE	SSN
---	-------	-----

OCCUPATION	STATE NV	SSN 236-66-6117	FBI
------------	-------------	--------------------	-----

ARREST LOCATION 2775 E 8TH NORTH STREET	ARRESTING OFFICER 048	ARREST DATE 08/23/10 16:30	CUSTODY STATUS JAIL
--	--------------------------	-------------------------------	------------------------

WHERE BOOKED ECDC	PARENT/GUARDIAN <input type="checkbox"/> Notified	ARREST # 02324	DISPOSITION
----------------------	--	-------------------	-------------

UNDER THE INFLUENCE OF	TEST ADMINISTERED	LEVEL	TIME OF TEST	WARRANTS	CITE#
------------------------	-------------------	-------	--------------	----------	-------

SCARS, MARKS, TATTOOS ETC
---------------------------

REMARKS
---------

CHARGES	NCIC	ATTEMPTED	LEVEL	COUNTS	SAL	SAL REQ.
18-6108 Rape - Male	1101	<input type="checkbox"/>	F	1		<input type="checkbox"/>
18-3002 Fraud - Swindle	2802	<input type="checkbox"/>	M	1		<input type="checkbox"/>





**Mountain Home  
Police Department  
SUPPLEMENTAL INCIDENT REPORT**

**10001558**  
REPORT NUMBER

**NARRATIVE**

**SUPPLEMENT DATE 05/05/2011  
APPROVAL DATE**

**OFFICER 040 LARSEN, TY  
OFFICER**

**SUPPLEMENT REPORT**

**CASE NO. 10-1558E**

**EVENT NO. 1007130019.E40**

**RE: ORIGINAL REPORT 10-1558; 1007130019.A15; DATED 7/13/2010  
SUPPLEMENT REPORT 10-1558B; 1007130019.B40; DATED 8/24/2010  
SUPPLEMENT REPORT 10-1558C; 1007130019.C40; DATED 8/27/2010  
SUPPLEMENT REPORT 10-1558D; 1007130019.D40; DATED 9/13/2010**

**SUBJECT: ARREST - RAPE (MALE)**

**HAMLIN, DENVIL RONALD**

**ARREST NO. 02324**

On May 3, 2011 Kristina Schindele of the Elmore County Prosecutor's Office requested I go to 340 E 8th N, Glenn Park Village. I was requested to take measurements between DENVIL HAMLIN's residence and WILLIAM MCCORMACK's residence. Hamlin lives at trailer 1 and McCormack lives at trailer 14. I was also asked to take measurements between the mailbox and Hamlin's residence. The measurements were taken and from the mailbox directly north to Hamlin's front porch was 79 feet 3 inches. I took a second measurement from the mailbox going at an angle to Hamlin's southeast property marker which measured 59 feet 9 inches. I then took a measurement from Hamlin's trailer on the northeast property corner and went directly north to McCormack's residence, the center of the property line, which measured 275 feet.

Please forward this report to the County Prosecutor for review.

Nothing further.

**Detective Ty Larsen/140  
Mountain Home Police Department**

TL/jp

**Attachments  
None**

ll

**KRISTINA M. SCHINDELE**  
ELMORE COUNTY PROSECUTING ATTORNEY  
190 South 4th East  
Mountain Home, Idaho 83647  
Telephone: (208) 587-2144 ext. 503  
Facsimile: (208) 587-2147  
I.S.B. No. 6090

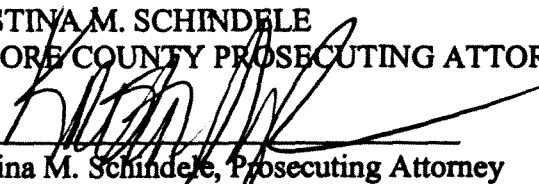
**FILED**  
2011 JUN -9 AM 9:45  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

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

THE STATE OF IDAHO,	)	Case No. CR-2010-0004031
Plaintiff,	)	
vs.	)	EX PARTE MOTION FOR ORDER
	)	REVOKING DEFENDANT'S RELEASE
	)	ON BOND
DENNIS R. HAMLEN	)	
SSN: [REDACTED]	)	
DOB: [REDACTED]	)	
Defendant.	)	

COMES NOW, Kristina M. Schindele, Prosecuting Attorney in and for the County of Elmore, State of Idaho, and hereby moves this Court for its Order revoking Defendant's release on bond and to issue a bench warrant for the arrest of the Defendant. The State requests increased bond in the Court's discretion. This motion is based on I.C.R. 46(e) and (h). This Motion is based upon the Affidavit of Kristina M. Schindele and the exhibits attached thereto, filed contemporaneously herewith. The State requests a hearing on the continued custody of the Defendant at a date and time convenient for court and counsel.

DATED This 8<sup>th</sup> day of June 2011.

KRISTINA M. SCHINDELE  
ELMORE COUNTY PROSECUTING ATTORNEY  
BY:   
Kristina M. Schindele, Prosecuting Attorney

EX PARTE MOTION FOR ORDER REVOKING DEFENDANT'S  
RELEASE ON BOND-

ORIGINAL

**CERTIFICATE OF SERVICE**

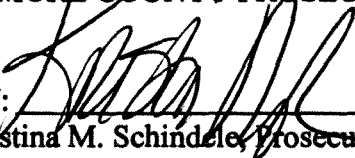
I hereby certify that on this\_\_ day of June 2011, I served a copy of the foregoing document to the following attorney by hand delivery (interoffice mail) and/or facsimile was served as marked:

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2nd East  
Mountain Home, Idaho 83647

Hand Delivered  
 U.S. Mail  
 Certified Mail  
 Facsimile

DATED this 9<sup>th</sup> day of June 2011.

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**

BY:   
Kristina M. Schindele, ~~Prosecuting Attorney~~

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

Docket No. CR 2010-4031

DENVIL R. Hamlin

JUDGE GEORGE G. HICKS DATE June 23, 2011 TIME 11:30 AM

CLERK V. Trevathan TYPE OF ACTION MOTION TO MODIFY OR

CD NO. B DISMISS NCO

KRISTINA SCHUBERT NO. 3 NO. 5

Counsel for Plaintiff Counsel for \_\_\_\_\_

E.R. FRANCISZUK NO. 4 NO. 6

Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
-------------	---------------

11:39	1. CASE CALLED
-------	----------------

PARTIES PRESENT

TIME SET FOR MOTION TO MODIFY NCO

MOTION TO REVOKE O.R. BOND

3:4. READY TO PROCEED

11:39	3. ARGUMENT
-------	-------------

11:45	4. ARGUMENT
-------	-------------

11:49	3. FINAL ARGUMENT
-------	-------------------

1. DEFENDANT IS NOT TO REMAIN OUT IF

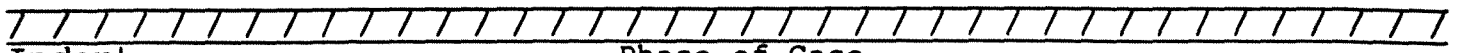
VICTIM IS PRESENT

DEFENDANT NOT TO WALK IN THE DIRECTION

OF THE VICTIM'S RESIDENCE

DATE June 23, 2011 COURTROOM B PAGE 2

JUDGE Hicks CLERK V Trevathan CASE NAME HAMLIN



Index  
No's.

Phase of Case

3. STATEMENTS OF VICTIM REDACTED FROM  
DOCUMENTS FILED WITH COURT TODAY  
1. DOCUMENTS FILED UNDER SEAL

11:59

COURT

MINUTES

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

FILED

2011 JUN 23 AM 11:59

STATE OF IDAHO, Plaintiff, v. DENVER R. HAMILIN Defendant,

Case No. CR-2011-4231 \*Amended\* DEPUTY NO CONTACT ORDER (Criminal)

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

IT IS HEREBY ORDERED that the above-named Defendant shall not contact, or attempt to contact, harass, follow, communicate with or knowingly remain within one hundred (100) feet of: WILTON MCCOMACK "contact" means, but is not limited to contact in person, through third persons, by telephone or facsimile, in writing, by email or other electronic means.

Exceptions - the Defendant may have contact for the following reasons under the following conditions:

- None. to contact by telephone between ... to participate in counseling or mediation; to meet with or through attorneys and / or during legal proceedings; to respond to emergencies involving the natural or adopted children of both parties; Other: NO Staring or glaring at Wilton McComack

IT IS FURTHER ORDERED that the above-named Defendant shall not go within three hundred (300) yards of the above-named person's residence or workplace as follows:

Residence address: 340 E. 8TH N. TRAILER #14 MOUNTAIN VIEW, ID Workplace Address: 275 Pae

IT IS FURTHER ORDERED that this Order can be modified only by a judge and will remain in effect until further order of the Court or upon dismissal of this case or at 11:59 p.m. on June 24, 2011, whichever occurs first.

NOTICES

- 1. 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, 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. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment. Any such violation may also result in the modification of the above terms or the increase or revocation of the bond set on the underlying charge in this matter. 2. When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order. 3. This Order controls and supercedes any previous No Contact Order entered in the above-entitled matter. 4. This Order may only be modified by a judge. 5. This Order may subject you to federal prosecution under the United States Code, Title 18, section 922 if you possess, receive or transport a firearm.

Dated this 23rd day of June, 2011.

Acknowledged and Received on the above date: Denver R Hamlin, Defendant

[Signature] Judge

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

Docket No. CR-2010-4031

DENVIL R. HAMLIN

JUDGE George G Hicks DATE July 5, 2011 TIME 9:00 AM

CLERK V. Trevathan TYPE OF ACTION PRELIMINARY HEARING - CONT

COURTROOM A

KRISTIAN SCHUBERT NO. 3. NO. 5

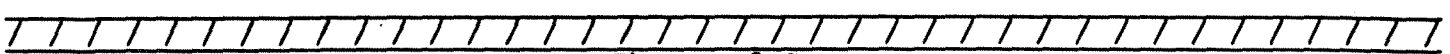
Counsel for Plaintiff/Prosecutor MH/EC. Counsel for \_\_\_\_\_

E. R. FRACHISER NO. 4. NO. 6

Counsel for Defendant Counsel for \_\_\_\_\_

Index No's.	Phase of Case
-------------	---------------

9:10	1. CASE CALLED PARTIES PRESENT TIME SET FOR CONTINUATION OF PRELIMINARY HEARING DOCUMENTS REVIEWED ANY PRELIMINARY MATTERS
3:4	2. NO PRELIMINARY MATTERS STIPULATES TO RECORDING
	3. CALLS TY HARSEN
9:12	D3. TY HARSEN - SWORN WITNESS IDENTIFIES DEFENDANT STATE'S EXHIBIT # 2 MARKED, OFFERED ADMITTED



Index No's. | Phase of Case

Moves To Admit State's Exhibit 2

4. No OBJECTION

9:16 1. STATE'S EXHIBIT #2 ADMITTED

D3. TY HARSEN COURT

4. OBJECTION

3. RESPONSE

1. OVERRULED

9:17 D3. TY HARSEN COURT

4. OBJECTION

3. RESPONSE

1. OVERRULED

9:20 D3. TY HARSEN COURT

4. OBJECTION

1. SUSTAINED

9:21 D3. TY HARSEN COURT.

9:24 X4. TY HARSEN

3. OBJECTION

1. SUSTAINED

9:25 X4. TY HARSEN COURT.

4. MOVES TO STRIKE TESTIMONY REGARDING DEFENDANT'S STATEMENT

3. QUESTION IN AID OF OBJECTION

9:28 D3. TY HARSEN

COURT

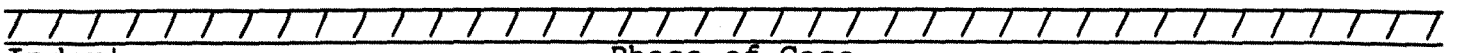
MINUTES



Index No's.	Phase of Case
9:28	3. OBJECTS TO DEFENSES MOTION TO STRIKE
	4. RESPONSE
9:31	3. RESPONSE
9:33	1. MOTION DENIED
	4. NO FURTHER QUESTIONS
	3. NO FURTHER QUEST
9:33	1. WITNESS MAY STEP DOWN
	3. RESTS
9:34	4. CALLS DENVER HAMLIN
9:34	D4. DENVER HAMLIN - SWORN
9:41	X3. DENVER HAMLIN
	4. OBJECTION
9:43	1. OVERRULED
	X3. DENVER HAMLIN
9:44	4. OBJECTION
	3. RESPONSE
	4. RESPONSE
9:46	1. OVERRULED
	X3. DENVER HAMLIN CONT
	4. OBJECTION
9:47	1. OVERRULED
	X3. DENVER HAMLIN CONT.

COURT

MINUTES



Index No's.	Phase of Case
9:48	4. No Rejoinder
9:48	1. DEFENDANT MAY STEP DOWN
	4. RESTS
9:49	3. Closing Argument
9:52	4. Closing Argument
	3. OBJECTION
	1. PARTIES STIPULATED TO PACKET OF DOCUMENTS REGARDING VICTIM
9:54	4. Closing Argument CONT.
9:59	3. FINAL ARGUMENT
	1. PROBABLE CAUSE FOUND ON ALL COUNTS BOUND OVER TO DISTRICT COURT MS. SCHUBERT TO PREPARE JUDGE ARRANGEMENT SET FOR <u>JULY 11, 2011 @ 8:30 AM</u>
10:05	

COURT

MINUTES

MOUNTAIN HOME POLICE DEPARTMENT  
2775 East 8<sup>th</sup> North  
Mountain Home, ID. 83647  
Ph. (208)587-2101 Fax (208) 587-0180

NOTIFICATION OF RIGHTS

(Place initial at the end of each statement below only after you completely understand what such statement means)

- 1. I have the absolute right to remain silent. PH
- 2. Anything I say, can and will be used against me in court. PH
- 3. I have the right to the advice of a lawyer before answering any questions. PH
- 4. I have the right to have a lawyer present during any questioning. PH
- 5. I have the right to a lawyer even if I cannot afford one, and if I cannot afford one, I may use the services of the Public Defender at any time and at public expense. PH
- 6. If I choose to answer any questions without the advice of a lawyer, or without a lawyer being present, I have the right to stop answering questions at any time and remain silent. PH

NAME: Dennis Hamlin  
Please Print

SIGNATURE: Dennis Hamlin

PLACE: MH PD.

[Signature]  
WITNESS

8/23/10 1410  
DATE & TIME

\_\_\_\_\_  
WITNESS

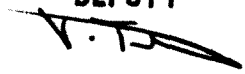
\_\_\_\_\_  
DATE & TIME



**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
190 South 4th East  
Mountain Home, Idaho 83647  
Telephone: (208) 587-2144 ext. 503  
Facsimile: (208) 587-2147  
I.S.B. No 6090

**FILED**  
2011 JUL -7 AM 8:55

**BARBARA STEELE**  
**CLERK OF THE COURT**  
**DEPUTY**



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

THE STATE OF IDAHO, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 DENVER RONALD HAMLIN, )  
 )  
 SSN: [REDACTED] )  
 )  
 DOB: [REDACTED] )  
 )  
 ) Defendant. )  
 )  
 \_\_\_\_\_ )

Case No. CR-2010-0004031

ORDER HOLDING DEFENDANT  
TO ANSWER

ON THE 5th day of July 2011, at the hour of 9:00 AM, the Defendant appeared before the undersigned Magistrate with E.R. Frachiseur, Attorney at Law, his attorney of record, this being the time and place set for the preliminary examination herein. The State of Idaho was represented by Kristina M. Schindele, Prosecuting Attorney in and for the County of Elmore, State of Idaho. The Defendant waived the reading of the Complaint on file herein. The Defendant was advised of the right to a preliminary examination, the nature of which was explained to the Defendant. The Defendant thereupon had his preliminary examination.

The Court, being fully advised in the premises, finds that the crimes of: SEXUAL ABUSE OR EXPLOITATION OF A VULNERABLE ADULT, Counts I - III, felonies, as set forth in the Information on file herein, have been committed in Elmore County, State of Idaho, and that there is sufficient cause to

ORIGINAL

believe that the Defendant committed said crimes.

IT IS THEREFORE ORDERED That the Defendant be and hereby is held to answer to the charges as set forth in the Information on file herein, before a District Judge in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore.

IT IS FURTHER ORDERED That Defendant's bond remain as previously set.

DATED This 7<sup>th</sup> day of July 2011.

  
George G. Hicks, Magistrate Judge

CELEBRATE

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the poked art

ORDER HOLDING DEFENDANT TO ANSWER - Page 2

to yob

art no

Deputy Clerk of the District Court

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
190 South 4th East  
Mountain Home, Idaho 83647  
Telephone: (208) 587-2144 ext. 503  
Facsimile: (208) 587-2147  
I.S.B. No. 6090

**FILED**  
2011 JUL -7 AM 8:55  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

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

THE STATE OF IDAHO,	)	
	)	Case No. CR-2010-0004031
Plaintiff,	)	
	)	
vs.	)	INFORMATION
	)	
DENVIL RONALD HAMLIN,	)	
SSN: [REDACTED]	)	
DOB: [REDACTED]	)	
Defendant.	)	
_____		

Kristina M. Schindele, Prosecuting Attorney in and for the County of Elmore, State of Idaho, who, in the name of and by the authority of said State, prosecutes in its behalf, in proper person, comes now before the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Elmore, and gives the Court to understand and be informed that the Defendant is accused by this Information of the crimes of: SEXUAL ABUSE OF A VULNERABLE ADULT, Count I; SEXUAL ABUSE OF A VULNERABLE ADULT, Count II; and SEXUAL ABUSE OF A VULNERABLE ADULT, Count III, felonies, upon which charges the said Defendant, having duly appeared before a Magistrate on the 5th day of July 2011, and then and there having had his preliminary examination upon said charges, was, by said Magistrate, thereupon held to answer before the District Judge of the Fourth

Judicial District of the State of Idaho, in and for the County of Elmore, to said charges, which crimes were committed as follows:

**COUNT I**  
**SEXUAL ABUSE OF A VULNERABLE ADULT**  
Felony, I.C. §§ 18-1505; 18-1505B(1)(a) or (c)

That the Defendant, DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, did, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the Defendant, a vulnerable adult or a third party, (a) commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to, manual to genital contact, or (b) cause or have sexual contact with a vulnerable adult not amounting to lewd conduct, to-wit: the Defendant and W. M. touched each others' penises with their hands, in violation of I.C. §§ 18-1505 and 18-1505B(1)(a) or (c).

**COUNT II**  
**SEXUAL ABUSE OF A VULNERABLE ADULT**  
Felony, I.C. §§ 18-1505; 18-1505B(1)(a) or (c)

That the Defendant, DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, did, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the Defendant, a vulnerable adult or a third party, (a) commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to, oral to genital contact, or (b) cause or have sexual contact with a vulnerable adult not amounting to lewd conduct, to-wit: the Defendant touched W. M.'s penis with the Defendant's mouth, in violation of I.C. §§ 8-1505 and 18-1505B(1)(a) or (c).

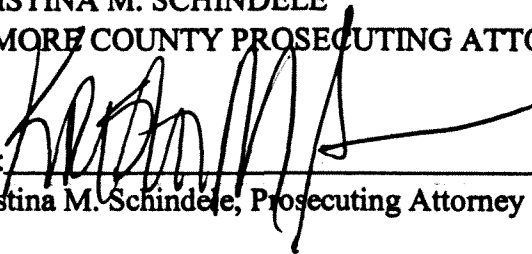
**COUNT III**  
**SEXUAL ABUSE OF A VULNERABLE ADULT**  
Felony, I.C. §§ 18-1505; 18-1505B(1)(a) or (c)

That the Defendant, DENVIL RONALD HAMLIN, on or between and about the 1st day of May 2009, and the 13th day of July 2010, in the County of Elmore, State of Idaho, did, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the Defendant, a vulnerable adult or a third party, (a) commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to, anal to genital contact, or (b) cause or have sexual contact with a vulnerable adult not amounting to lewd conduct, to-wit: the Defendant performed anal sex on W. M., in violation of I.C. §§ 18-1505 and 18-1505B(1)(a) or (c).

All of which is contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

DATED This 5th day of July 2011.

KRISTINA M. SCHINDELE  
ELMORE COUNTY PROSECUTING ATTORNEY

BY:   
\_\_\_\_\_  
Kristina M. Schindele, Prosecuting Attorney

RECEIVED  
The following information was received from the  
[illegible text]  
[illegible text]  
[illegible text]  
[illegible text]  
[illegible text]



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE  
HONORABLE BARRY WOOD JULY 11, 2011

COURT MINUTES

THE STATE OF IDAHO, )  
 )  
Plaintiff, ) Case No. CR-2010-4031  
 )  
vs. ) Sex Abuse of a Vul. Adult  
 ) Sex Abuse of a Vul. Adult  
DENVIL RONALD HAMLIN, ) Sex Abuse of a Vul. Adult  
 )  
Defendant. )

APPEARANCES:

Kristina Schindele  
Prosecuting Attorney Counsel for State  
Terry Ratliff for Ed Frachiseur  
Public Defender Counsel for Defendant

MAIN COURTROOM - No CD

8:36 a.m. Call of case.

Time and date set for INITIAL ARRAIGNMENT, defendant present, bond posted.

Information and papers filed.

The Court informed the defendant of the charge(s) filed against him being a felony and of the possible penalties which could be imposed.

The Court advised the defendant of his right to counsel at public expense in all the proceedings in this Court.

The Court advised the defendant of his right to appeal from any Judgment entered, to be represented by counsel in said appeal and payment of costs incurred in said appeal at public expense and of the appeal time being forty-two (42) days.

True copy of the Information furnished to the defendant and counsel.

True name of defendant, DENVIL RONALD HAMLIN.

Formal reading of the Information waived by defendant.

The Court advised the defendant of the different pleas he could enter to the charge(s) set forth in the Information and of the statutory time, not less than one (1) day, he would be entitled to before entering his plea.

Defendant advised that he understood his rights, the charge(s) and the possible penalties that could be imposed.

In answer to the Court, defendant entered a plea of "NOT GUILTY".

Counsel advised that three days would be needed for trial.

There being no objection by defendant, the Court set this case for trial before the Court and a JURY TRIAL at 9:00 o'clock a.m. on October 5, 2011; PRETRIAL CONFERENCE set for September 23, 2011 at 9:00 a.m.

**Counsel requested that a jury panel of 80 be pulled for this case.**

Mr. Ratliff advised that Mr. Frachiseur may have a motion to hear on this case. Court set the motion hearing for August 22, 2011 at 10:00 a.m.

Defendant continued on bond.

8:43 a.m. End.

8:56 a.m. Back on record.

Court inquired of the defense if a transcript was going to be requested. Mr. Ratliff advised that yes, it would be.

Court verbally ordered that pursuant to Rule 5.1, a transcript of the preliminary hearing be prepared at county expense. Court will sign the order when presented.

8:57 a.m. End.

BARBARA STEELE  
Clerk of the District Court

Reporter: N. Omsberg  
Clerk: H. Furst  
Reporter's Est. 8 pages

By   
Deputy Clerk

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, Chtd.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 JUL 19 PM 4:31  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DENVIL HAMLIN, )  
)  
Defendant. )

Case No. CR-2010-4031

**EX PARTE MOTION FOR  
PREPARATION OF PRELIMINARY  
HEARING TRANSCRIPT AT  
COUNTY EXPENSE**

COMES NOW, the Defendant in the above-entitled action, by and through counsel, E.R. FRACHISEUR of RATLIFF LAW OFFICES, Chtd., and moves this Honorable Court pursuant to I.C. §§19-853 and 19-854, to order preparation of Preliminary Hearing Transcript at County expense.

This Motion is made on the ground that the Defendant is indigent and cannot afford to pay for the preparation of Preliminary Hearing Transcript at this time and would request the help of the county for payment. Said Preliminary Hearing Transcript is necessary for the representation of said Defendant.

WHEREFORE, Defendant prays that this Court will order the preparation of the preliminary hearing transcript at County expense.

DATED this 19<sup>th</sup> day of July, 2011.

**RATLIFF LAW OFFICE, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 19<sup>th</sup> day of July, 2011, served a copy of the within and foregoing document to:

Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, ID 83647  
Fax No. (208)385-2147

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile



\_\_\_\_\_  
Andee Rodrigues  
Legal Assistant

76

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**

2011 JUL 25 PM 3:06

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR-2010-4031
Plaintiff,	)	
	)	<b>MOTION TO DISMISS</b>
-vs-	)	
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Order dismissing the present case on the ground that the prosecution of the Defendant denies him equal protection of the law pursuant to Article 1, Section 3 of the Idaho Constitution and Article 1, Section 17 of the Idaho Constitution, and the 14<sup>th</sup> Amendment to the United States Constitution.

DATED this 25<sup>th</sup> day of July, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**ORIGINAL**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 25<sup>th</sup> day of July, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission



\_\_\_\_\_  
ANDEE RODRIGUES  
*Legal Assistant*

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, Chtd.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

FILED  
2011 JUL 27 AM 10:05  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY *BS*

Attorneys for Defendant

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DENVIL HAMLIN, )  
 )  
 Defendant. )

Case No. CR-2010-4031

**ORDER FOR PREPARATION  
OF PRELIMINARY  
HEARING TRANSCRIPT AT  
COUNTY EXPENSE**

THE COURT having reviewed and considered the Defendant's Ex Parte Motion for Preparation of Preliminary Hearing Transcript at County Expense, and good cause appearing therefrom,

IT IS HEREBY ORDERED that transcripts from the Preliminary Hearing held in this matter shall be prepared at County expense.

Dated this 26 day of July, 2011.

*B Wood*  
\_\_\_\_\_  
DISTRICT JUDGE

ORDER FOR PREPARATION OF PRELIMINARY  
HEARING TRANSCRIPT AT COUNTY EXPENSE- 1

**ORIGINAL**

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 27<sup>th</sup> day of July, 2011, served a copy of the within and foregoing **ORDER FOR PREPARATION OF PRELIMINARY HEARING TRANSCRIPT AT COUNTY EXPENSE** to:

Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, ID 83647  
Fax No. (208)385-2147

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
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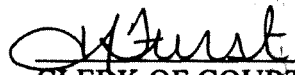
Barbara Steele  
C/O Elmore County Courthouse  
Mountain Home, ID 83647

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile

E.R. Frachiseur  
RATLIFF LAW OFFICES, CHTD.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208)587-6940

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile

**BARBARA STEELE**  
Clerk of Court

  
CLERK OF COURT, Deputy



FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

2011 JUL 27 AM 10:06

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

STATE OF IDAHO,  
Plaintiff,

Case No. CR-2010-4031

v.

SCHEDULING ORDER

DENVIL HAMLIN,  
Defendant.

This matter came before the court on July 11, 2011 at 8:36 a.m. for an Arraignment of the above named Defendant. The attorneys present were:

For the State: Kristina Schindele

For the Defendant: Terry Ratliff for Ed Frachiseur

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The three (3) day jury trial of this action shall commence before this court on **October 5, 2011 at 9:00 a.m.**
- 2) Notice is hereby given, that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Phillip M. Becker  
 Hon. G.D. Carey  
 Hon. Dennis Goff  
 Hon. George R. Reinhart, III  
 Hon. Nathan Higer  
 Hon. Daniel C. Hurlbutt, Jr.  
 Hon. Linda Copple-Trout

Hon. James Judd  
 Hon. Duff McKee  
 Hon. Daniel Meehl  
 Hon. Barry Wood  
 Hon. W. H. Woodland  
 Hon. Ronald Schilling  
 Hon. Kathryn A. Sticklen  
 Any Fourth District Judge

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later


than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **September 23, 2011 at 9:00 a.m.** for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h).

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 26 day of July, 2011.



\_\_\_\_\_  
BARRY WOOD  
Senior District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on this 27<sup>th</sup> <sup>July</sup> day of ~~August~~, 2011 I mailed (served) a

true and correct copy of the within instrument to:

**ELMORE COUNTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL**

**ELMORE COUNTY PUBLIC DEFENDER'S OFFICE  
INTERDEPARTMENTAL MAIL**

**ELMORE COUNTY JURY CLERK  
HAND DELIVERY**

**BARBARA STEELE**  
Clerk of the District Court

By   
Deputy Court Clerk

**EXHIBIT LIST**

Barry Wood, SENIOR DISTRICT JUDGE  
Heather Furst, DEPUTY CLERK  
\_\_\_\_\_ COURT REPORTER

CASE NO. CR-2010-4031

DATE: October 5, 2011

CASE: STATE OF IDAHO VS.  
State's List \_\_\_\_\_

DENVIL HAMLIN  
Defendant (s) List \_\_\_\_\_

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

Exhibit 1

FILED

2011 JUL 29 PM 3:36

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

**E.R. FRACHISEUR, ISB NO. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL R. HAMLIN,

Defendant.

Case No. CR 2010-4031

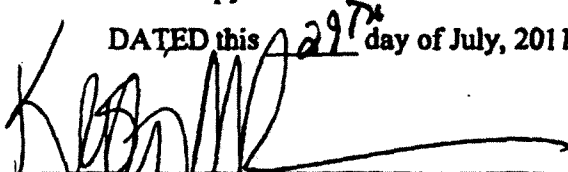
**STIPULATION FOR ADDITIONAL  
TIME FOR SUBMISSION  
OF MOTIONS**

COME NOW the parties hereto, the State, by and through Kristina Schindele, Elmore County Prosecuting Attorney, and the Defendant, by and through E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and do stipulate and agree that the deadline for the Defendant's Motions to be filed be extended for a period of two weeks, with the new due date being the 24<sup>th</sup> day of August, 2011. The State will have two weeks from that date to file their responses.

The parties further stipulate that the hearing currently scheduled for August 22, 2011, be vacated and reset for September 12, 2011, at 9:00 a.m.

This Stipulation is entered into on ground that defense counsel's recent eye surgery and a new chemotherapy session has made it difficult to meet the deadline as set.

DATED this 29<sup>th</sup> day of July, 2011.

  
KRISTINA SCHINDELE  
Attorney for State

  
E.R. FRACHISEUR  
Attorney for Defendant

ORIGINAL

79

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**

2011 AUG -3 PM 3: 28

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY  
*M*

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR-2010-4031
Plaintiff,	)	
	)	<b>**AMENDED**</b>
-vs-	)	<b>MOTION TO DISMISS</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Order dismissing the action against the Defendant on the following grounds:

The statute under which the Defendant is being prosecuted; to wit: Idaho Code §18-1505B(1)(a) and/or (c) is unconstitutional and a violation of Article 1, Section 13 of the Constitution of the State of Idaho and the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

The statute violates the 5<sup>th</sup> Amendment as applied to the States through the 14<sup>th</sup> Amendment to the United States Constitution as well as Article 1, Section 13 of the Idaho Constitution in that it violates due process of law because the language of the statute is so vague in its use and definition of the term "vulnerable adult" as to necessarily require

**ORIGINAL**

reasonable and normally intelligent people to guess as to its meaning. Idaho Code §18-1505(4)(e) defines "vulnerable adult" as "a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources."

In the present case, the "judgment or behavior" relates to the communication or implementation of decisions regarding the purported victim's person. Only a trained psychologist could make an appropriate judgment as to whether some deficiency in intelligence renders an individual lacking in understanding or capacity to communicate or implement decisions made in a relationship concerning contact between the parties to that relationship. Any person, even another vulnerable adult, as in this case, involved in a relationship with any sexual intimacy whatsoever with an individual meeting the definition of "vulnerable adult" runs the risk of felony prosecution for maintaining such a relationship or for acts and conduct engaged in during the course of such relationship. Such jeopardy attends the described conduct even when the Defendant is himself a "vulnerable adult".

Idaho Code §18-1505B(1)(a) and/or (c) violates the equal protection clause of Section 1, of the 14<sup>th</sup> Amendment to the United States Constitution and Article 1, Section 2 of the Constitution of the State of Idaho inasmuch as said statute denies the equal protection of the law to persons of an established class, to wit, vulnerable adults, by grossly burdening the right of such people to engage in personal relationships of a sexual nature, either with persons of normal intelligence or with persons suffering developmental disabilities or mental retardation; the right to pursue an intimate relationship with another human being,

including sexual contact in the context thereof, being a fundamental right of all citizens of the United States and of the State of Idaho.

DATED this 2<sup>nd</sup> day of August, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 2<sup>nd</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Michelle Meyers  
MICHELLE MEYERS  
Certified Paralegal



8C

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**

2011 AUG -3 PM 3: 28

**BARBARA STEELE**  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR-2010-4031
Plaintiff,	)	
	)	<b>MOTION IN LIMINE</b>
-vs-	)	
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
	)	

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Order directing that evidence concerning the opening of a utilities account by the alleged victim herein at the behest of the Defendant, not be introduced at trial pursuant to Rule 404B of the Idaho Rules of Criminal Procedure.

This Motion is made on two grounds:

First, because the evidence is irrelevant to the charges against the Defendant and secondly, because evidence of the financial transaction would be sought to be introduced by the State for the sole purpose of demonstrating a propensity on the part of the Defendant to manipulate or take advantage of the alleged victim herein.

Propensity evidence is, by its nature, extremely prejudicial; with the prejudicial effect for outweighing any probative values of such evidence.

DATED this 2<sup>nd</sup> day of August, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 2<sup>nd</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

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\_\_\_\_\_ Certified Mail  
\_\_\_\_\_ U.S. Mail  
  X   Facsimile Transmission

Michelle Meyers  
MICHELLE MEYERS  
Certified Paralegal

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

81  
**FILED**

2011 AUG -3 PM 3: 28

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

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

STATE OF IDAHO, )

Plaintiff, )

-vs- )

DENVIL R. HAMLIN, )

Defendant. )

Case No. CR-2010-4031

**MOTION FOR SUPPRESSION  
OF EVIDENCE**

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Order suppressing as evidence any and all statements made by Defendant to investigating authorities, whether or not mirandized.

As it is often phrased, such a statement or confession must be voluntarily and intelligently made. Due to the fact that the Defendant is mentally retarded, and a developmentally disabled vulnerable adult, his understanding of the words and concepts contained in the Miranda warnings was not adequate to apprise him of the consequences and dangers of discussing purported criminal activities with law enforcement officials, all in violation of the Fifth and 14<sup>th</sup> Amendments to the United States Constitution, and Article 1, Section 13 of the Constitution of the State of Idaho.

DATED this 2nd day of August, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 2nd day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

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 Facsimile Transmission

Michelle Meyers  
MICHELLE MEYERS  
Certified Paralegal

Sc

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 AUG -3 PM 3: 28  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 DENVIL R. HAMLIN, )  
 )  
 Defendant. )

Case No. CR-2010-4031  
**MOTION FOR EXPERT  
WITNESS**

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Order permitting the Defendant to have the services of a qualified psychiatrist or psychologist; in the present case, Drs. Chad Sombke and David Sanford have assisted earlier in evaluating Defendant and an adequate presentation of Defendant's Motions for Dismissal, as well as his Motion for Suppression of Evidence requires their services and testimony. Said experts should be reimbursed at public expense because the Defendant is indigent; represented by the public defender; and would most assuredly hire such expert witness to establish his positions on the pretrial motions herewith filed if he had the financial resources to do so.

**ORIGINAL**

DATED this 3<sup>rd</sup> day of August, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 3<sup>rd</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
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Michelle Meyers  
MICHELLE MEYERS  
Certified Paralegal

**E.R. FRACHISEUR, ISB NO. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

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**FILED**  
2011 AUG -4 PM 12: 10  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL R. HAMLIN,

Defendant.

Case No. CR 2010-4031

**ORDER FOR ADDITIONAL  
TIME FOR SUBMISSION  
OF MOTIONS AND NOTICE OF  
HEARING**

THIS MATTER having come before the Court on the Stipulation for Additional Time for Submission of Motions and good cause appearing therefore,

IT IS HEREBY ORDERED that the deadline for the Defendant's Motions is extended for a period of two weeks, with the new due date being the 24<sup>th</sup> day of August, 2011, and the State have two weeks from that date to file their responses.

IT IS HEREBY FURTHER ORDERED that hearing currently scheduled for August 22, 2011, be vacated and reset for **September 12, 2011, at 9:00 a.m.**

DATED this 1 day of ~~July~~ <sup>August</sup>, 2011.

  
\_\_\_\_\_  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 4<sup>th</sup> day of ~~July~~ August, 2011, served a copy of the within and foregoing document to:

Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, Idaho 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6940

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

Barbara Steele  
Clerk of Court  
[Signature]  
Clerk of the Court, Deputy



84

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

2011 AUG -4 PM 4: 02

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY  
*[Signature]*

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL RONALD HAMLIN,

Defendant.

Case No. CR 2010-4031

**MOTION FOR 18-211  
EVALUATION**

COMES NOW the Defendant, DENVIL HAMLIN, by and through counsel of record, E.R. FRACHISEUR, of the firm Ratliff Law Offices, Chtd., and pursuant to Idaho Code §§18-210 and 18-211, and does submit to this Court as a result of mental disease or defect, the Defendant may lack the capacity to understand the proceedings against him and assist in his own defense.

Based upon counsel's consultations with the Defendant as well as forensic psychologists, Dr. Chad Sombke and particularly Dr. David Sanford, counsel states to the Court that it is a basic axiom of mental retardation that memory as well as cognitive functions is independently impaired.

Thus, while Magistrate George G. Hicks found Defendant competent upon conflicting evidence at a pervious time, there is no way of knowing whether he retains

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any of the competency "training" that he has previously received, from the Department of Health and Welfare, and therefore presently lacks the capacity to understand the proceedings.

Wherefore, counsel for the Defendant requests that the Court appoint Dr. David Sanford, a licensed psychologist, in Boise, Idaho to examine and report upon the Defendant's mental condition to assist counsel and understand the proceedings.

Further, said examiner should evaluate and report upon whether the Defendant lacks the capacity to make an informed decision about his treatment.

DATED this 4<sup>th</sup> day of August, 2010.

**RATLIFF LAW OFFICES, CHTD.**

By *E.R. Frachiseur*  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 4<sup>th</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

*Michelle Meyers*  
MICHELLE MEYERS  
Certified Paralegal

FILED

2011 AUG 16 PM 4:37

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY *J*

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Defendant

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

STATE OF IDAHO,  
  
Plaintiff,

-vs-

DENVIL RONALD HAMLIN,  
  
Defendant.

Case No. CR 2010-4031

**AFFIDAVIT OF DR. DAVID SANFORD  
IN SUPPORT OF MOTIONS FOR  
DISMISSAL AND COMPETENCY  
TO STAND TRIAL**

STATE OF IDAHO            )  
                                  )  
COUNTY OF ADA            )        ss.

Dr. David Sanford, being first duly sworn upon oath, deposes and states as follows:

1. That he is a licensed psychologist, having been licensed in 1976 and having practiced psychology in the state of Idaho since 1973. Please see Curriculum Vitae marked as Exhibit "A".

2. During the course of his practice, your Affiant has had occasion with some frequency to evaluate and treat the mildly mentally retarded, otherwise known as developmentally disabled persons.

3. That in the present matter, your Affiant has had the opportunity to psychologically evaluate Denvil "Ike" Hamlin on two (2) occasions. The first occurred on

**ORIGINAL**

December 6, 2010, (please see "Psychological Evaluation" annexed hereto and made a part hereof as Exhibit B).

4. During the course of the evaluation, your Affiant used the following assessment techniques:

- a. Document review;
- b. General Observations;
- c. History of Conditions;
- d. Mental Status Examination;
- e. MacArthur Competency Assessment Tool - Criminal Adjudication (MaCAT-CA).

5. Your Affiant also had the benefit of a Psychological Evaluation previously conducted by Dr. Chad Sombke, a licensed Psychologist practicing in Boise, Idaho. Said Evaluation being annexed hereto and made a part hereof as Exhibit C.

6. Your Affiant found that Mr. Hamlin had a significantly reduced fund of information about current events; and that his abstract reasoning ability was nil.

7. Mr. Hamlin, during the course of the initial evaluation, reported to your Affiant experiences of auditory hallucinations telling him what to do.

8. Mr. Hamlin was significantly below average in his ability to concentrate and, despite what was reported to your Affiant as competency training by the Department of Health and Welfare, Mr. Hamlin did not receive credit for any responses for the MaCAT-CA, a commonly used testing device for competency to stand trial. At the time of the evaluation, Mr. Hamlin was not competent to stand trial. The same conclusion was arrived at by Dr. Sombke in his previous evaluation.

9. Your Affiant found that "Mr. Hamlin retained little or anything of what he had learned at the Health and Welfare program. People with mental retardation require repetition of

information over a protracted period of time in order to remember and apply what they have learned. People who are mentally retarded learn very slowly and have considerable difficulty retaining information. This finding was consistent with Mr. Hamlin's prior diagnosis of mental retardation." Initial evaluation, p. 5.

10. On January 25, 2011, your Affiant had the opportunity to again evaluate Mr. Hamlin. This was after extensive competency training by the Idaho Department of Health and Welfare. The assessment techniques utilized in the second evaluation were as follows:

- a. Document review;
- b. Interview;
- c. Wide range achievement test – REVISION III;
- d. MacArthur Competency Assessment Tool – CRIMINAL ADJUDICATION; and,
- e. Rorschach Ink Blot Test.

11. In the interview and document review portions of the evaluation, your Affiant had the opportunity to review reports from the Idaho Department of Health and Welfare. Your Affiant noted that the Department psychologist found that Mr. Hamlin was slow to process information and take time on answering questions. Mr. Hamlin was also administered the WAIS-3 test, which produced a full scale IQ of 62.

12. In the interview portion of the evaluation, Mr. Hamlin was able to state the day of his next court appearance and the time thereof, and also the name of his attorney.

13. On the Wide Range Achievement Test – 3<sup>rd</sup> Edition, Mr. Hamlin produced a reading score of 30, which produced a standard score of 60. This score was equivalent to a 3<sup>rd</sup> grade reading capability. The Mathematics raw score of 23, produced a standard score of 53, which is equivalent to 2<sup>nd</sup> grade capability.

14. Your Affiant again conducted the MacArthur Competency Assessment Tool – Criminal Adjudication, otherwise known as the MaCAT-CA. Mr. Hamlin had previously

**AFFIDAVIT OF DR. DAVID SANFORD IN SUPPORT OF MOTIONS FOR DISMISSAL AND COMPETENCY TO STAND TRIAL – Page 3**

produced a point total of 11 on the MaCAT-CA given by your Affiant on the initial evaluation. On the second evaluation following the competency training by the Department of Health and Welfare, Mr. Hamlin scored a total of 5 on the MaCAT-CA.

15. In summary, Mr. Hamlin's IQ score of 62 places him squarely in the mild range of mental retardation. The mentally retarded have greater difficulty in learning than persons of normal intelligence. Consistent with this is a truncated short term memory for events and information. It is highly unlikely at the present time that Mr. Hamlin has retained all or any of the competency training previously furnished by the Idaho Department of Health and Welfare.

16. Your Affiant is also of the opinion that Mr. Hamlin, at the time of his interview with police authorities, was not capable of understanding the import of the Miranda warnings which may have been given to him prior to making statements to the police and would not understand the consequences of doing so despite a review of the warnings by law enforcement authorities. Thus, your Affiant is of the opinion that any damaging statements made by Mr. Hamlin in the course of any interviews with law enforcement was not made intelligently.

17. Your Affiant is familiar with the definition in the Idaho Code of a vulnerable adult, as provided in Idaho Code §18-1505(e). That definition is as follows: "Vulnerable adult means a person eighteen (18) years of age or older who is unable to protect themselves from abuse, neglect or exploitation due to physical or mental impairment which affects a persons judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person."

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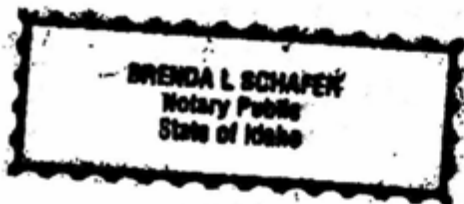
18. Without question, based upon your Affiants' psychological evaluations of Mr. Hamlin, and his past, present and ongoing mental retardation, your Affiant states that Mr. Hamlin is, in fact, a "vulnerable adult."

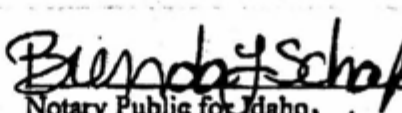
FURTHER YOUR AFFIANT SAIGTH NAUGHT.

DATED this day of 16<sup>th</sup> day of August, 2011.

  
Dr. David Sanford  
Licensed Psychologist

SUBSCRIBED AND SWORN to before me this 16 day of August, 2011.




  
Notary Public for Idaho  
Residing at Boise Idaho  
My Commission Expires: JUNE 1, 2015

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 11<sup>th</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindler  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

  
ANDEE RODRIGUES  
Legal Assistant

**Dave Sanford, Ph.D.**  
**Licensed Psychologist**

6010 Overland Road  
 Boise, Idaho 83709  
 Ph: (208) 377-5720  
 Fax: (208) 377-4873

**EDUCATION**

B.A. Psychology  
 August 1963  
 Central Washington Univ.

M.Ed. School Psychology  
 March 1968  
 Central Washington Univ.

Ph.D. Psychology  
 August 1973  
 Texas Tech University

**LICENSES**

<u>Year</u>	<u>License</u>	<u>State/Agency</u>
1968-1970	Standard School Psychologist	Washington
1976-Present	Psychologist (Board Examined)	Idaho
1978-Present	Designated Examiner	Idaho Department of Health and Welfare
1983-Present	Alcohol and Drug Abuse Evaluator	Idaho Department of Health and Welfare
1996-Present	Domestic Violence Evaluator	Idaho State Supreme Court
2000-Present	Certification of Professional Qualification in Psychology	Association of State and Provincial Psychology Boards

**WORK EXPERIENCE**

<u>Year</u>	<u>Title</u>	<u>Location</u>
1963-1964	Psychological Trainee	Rainier State School Buckley, Washington
1966-1970	School Psychologist	Bethel School District Spanaway, Washington
1968	Psychologist	Goodwill Industries Tacoma, Washington
1971-1973	Graduate Psychology Trainee: Neuropsychiatric Unit Alcoholism Treatment Unit Therapeutic Community General Hospital	Veterans Admin. Hospital Temple, Texas





1971-1973	Staff Therapist	Texas Tech Counseling Center Lubbock, Texas
1973	Intern Psychologist: Alcoholism Treatment Unit Chronic Psychiatric Unit Therapeutic Community	Veterans Administration Neuropsychiatric Hospital Waco, Texas
1973-1976	Chief Psychologist	Idaho Dept. of Corrections Boise, Idaho
1976-1979	Administrator	Idaho Security Medical Facility Boise, Idaho
1979-1981	Chief: Information Services & Research	Idaho Dept. of Corrections Boise, Idaho
1979-1982	Licensed Psychologist	Treasure Valley Psychiatric Center Boise, Idaho
1982-present	Licensed Psychologist	Private Practice Boise, Idaho

#### **SPECIALIZED TRAINING AND CONTINUING EDUCATION**

<u>Year</u>	<u>Subject</u>	<u>Instructor</u>
1971 & 1972	Multiple Impact Family Therapy	Harry Goolishian, Ph.D.
1974	Transactional Analysis Psychosynthesis and Group Therapy	Dr. Edward Turner, Ph.D.
1975	Psychodrama of Death	American Psychological Association Workshop
1976 & 1977	Law, Psychiatry, and the Mentally Disordered Offender	Southern Illinois University
1977	Matrix Management and Organizational Designs	Jay Galbreath, Ph.D.
1978	The Criminal Personality	Stanton E. Samenow, Ph.D.
1980	Clinical Neuropsychology	Carl Dodrill, Ph.D. Central Washington University
1981	Clinical Hypnosis	John G. Watkins, Ph.D. Central Washington University

1982	Evaluation and Treatment of the Sexual Offender	Irwin S. Dreiblat, Ph.D.
1983	Evaluation and Treatment of the Sexually Abused Children	Katherine Day, Ph.D.
1983	Treatment of Eating Disorders: Anorexia and Bulimia	Kim Lampson
1985	The MMPI: Clinical Interpretation	Charles S. Newmark, Ph.D.
1986	Treatment of Eating Disorders	Jane Hirschmann Intermountain Hospital of Boise
1987	Ritualized Abuse	Larry Jones Boise Police Department
1987	Differential Diagnosis of Depression and Anxiety Implications for Drug Treatment	Joseph Talley, M.D. Intermountain Hospital
1988	Psychopharmacology for the Non-Psychiatrist	Idaho Psychological Association Boise, Idaho
1988	Forensic Psychology	David Shapiro, Ph.D. Idaho Law Foundation Boise, Idaho
1988	Recent Clinical Applications in Neuropsychology	Paul Satz, Ph.D. Idaho Psychological Association
1988	Ritualized Crime	Det. Bill Lightfoot Dr. Lawrence Pazder, Ph.D. Cult Crime Impact Network
1988	Child Custody Mediation Training	Dr. John. M. Haynes Idaho Law Foundation
1989	Sexual Dysfunction	Joseph L.o Piccolo, Ph.D. Idaho Psychological Association
1990	Victimizing the Victim: Child Sexual Abuse Training	Sue White, Ph.D. Health Psychology, Inc., P.A.
1990	Private lies: Infidelity and the Betrayal of Intimacy	Frank Pittman, III, MD Idaho Psychological Association
1990	Transactional Analysis, Theory and Techniques Applied to Addictions and Co-dependency	The Alcoholism Council of Southwest Idaho

1990	Dual Relationships in Rural Settings & Other Ethical Concerns	Sherry Skidmore, Ph.D. Idaho Psychological Association
1990	Interview and Assessment Techniques in Child Sexual Abuse Cases	University of Utah M. Steller; D. Raskin; P. Esplin; & T. Boychuk
1991	Seventh Annual Idaho Conference on Alcohol and Drug Dependency	The Governor's Commission on Alcohol-Drug Abuse Boise State University
1991	Critical Incident Stress Debriefing (CISD)	City of Boise Boise Air Terminal
1991	Keeping Your Practice Clean	Sherry Skidmore, Ph.D. Idaho Psychological Association
1991	Beyond Survival: Treating Adults Molested as Children	John Briere, Ph.D. Idaho Psychological Association
1991	The Rorschach: An Introduction to the Exner System	Philip Erdberg, Ph.D. Idaho Psychological Association
1992	Screening and Assessment of Alcohol and Drug Problems	Joan Nelson Boise State University
1992	Step by Step Sexual Abuse Investigation	Jan Hindman Alexandria Association
1992	Assessment and Treatment of Satanic Cult Survivors	Sue Schander, Ph.D. Paul Kimmel, M.D. Coeur d'Alene, Idaho
1992	Male Survivors of Sexual Abuse	Mike Lew, M.Ed. Coeur d'Alene, Idaho
1992	Perspectives on AIDS	Russ Centani, Ph.D. Boise State University
1993	The Rorschach: Advanced Workshop with the Exner System	Philip Erdberg, Ph.D. Idaho Psychological Association
1993	Multiple Personality and Dissociative Disorders	Peter Maues, Ph.D. John K. Luck, M.D.
1993	The Impact of Psychotherapy on the Therapist	Michael Mahoney, Ph.D.

1994	Ethics of Forensic Expertise	Stephen L. Golding, Ph.D. University of Utah
1994	Is Mother Nature a Good Mother	Kathy Hoyt, Ph.D. Boise State University
1994	Health Care Reform and Managed Care	Susan Ledbetter, Ph.D. Am. Psychological Assn.
1994	Native American Healing and Substance Abuse	Robert L. Jones "Black Wolf" Green Bay, WN
1995	Developments and Issues in Psychology	Sol Garfield, Ph.D. Washington University
1995	Prescription Privileges for Psychologists	Elizabeth Cullen, J.D. Am. Psychological Assoc.
1995	Interviewing Children: Statement Validity Analysis	David Raskin, Ph.D. Phillip Esplin, Ph.D.
1996	Street Drugs: Identification, Packaging, Use, and Influence	Ron Shankles
1996	Acceptance & Commitment Therapy	Steven C. Hayes, Ph.D. University of Nevada
1996	New Perspectives on Antisocial Behavior: Inside the Criminal Mind	Stanton E. Samcnow
1996	Preparing for the Diplomate Exam in Forensic Psychology	Robert G. Meyer, Ph.D. AM. Academy of Forensic Psychology
1997	Batterers & the Domestic Assault of Women	Donald Dutton, Ph.D.
1997	Risk Management	APA Insurance Trust
1997	Head Injury & Post-Concussive Syndrome	Scott Mills, Ph.D. Joseph Ricker, Ph.D.
1997	The Neuropsychology of Head Trauma and Post-Concussive Syndrome	Scott R. Mills, Ph.D., ABPB Joseph H. Ricker, Ph.D., ABPP
1998	1st Annual Idaho Domestic Violence Evaluation & Issues Seminar	Boise Centre on the Grove Boise, Idaho

1998	Physical Abuse Investigations Advanced Investigation of Domestic Violence Cases	5th Annual Governor's Training Conference on Crime Victim Assistance
1998	Child Death Investigation	Boise Centre on the Grove Mary Fran Brown, RN, MSN
1998	Psychopharmacological Update	Bill Gibson, Ph.D. University of Idaho
1998	Issues in the Diagnosis and Treatment of Panic Disorder	Drs. Ferson; Watkins; Purdy Oregon State University
1999	Memory! Real, Repressed, or Reconstructed	Elizabeth Loftus, Ph.D. University of Washington
1999	Evaluation and Interventions of Learning Disabilities	Jan Culbertson, Ph.D. University of Oklahoma
1999	Street Drug Update-Alcohol and Drug Abuse	Treasure Valley Continuing Nursing Education Network
2000	Legal & Ethical Risk Management in Specific High Risk Arenas	Eric Harris, Ed.D., J.D. APA Insurance Trust
2000	Primitive Character Disorders	Robert J. Broch, M.D.
2000	Public Response to Private Violence	Training and Conference Boise, Idaho
2001	Substance Abuse: Across the Life Span	St. Alphonsus Regional Medical Center
2001	Comprehensive Child Custody Evaluation Advancements in Practice	Mary Connell, Ph. D. American Academy of Forensic Psychology
2001	The Complex Multi-Problem Patient	Michael Tompkins, Ph. D.
2001	Syndrome Testimony: Science or Fiction	Lenore Walker, Ph. D., ABPP David Shapiro, Ph. D., ABPP
2001	Spousal Assault Risk Assessment Training	Randall Kropp and The Idaho Supreme Court
2001	Advanced Training Psychology Practice	American Academy of Forensic Psychology
2002	Ethical Decision Making and Risk Management In Clinical Practice	Jeffery N. Younggrom, Ph.D.

2002	Latest Trends in Drugs	Trinca Porrata-Idaho Conference on Alcohol and Drug Dependency
2002	Designated Examiner Training	Idaho Depart. of Health & Welfare
2002	Getting Ready for HIPAA	Robert McPherson, Ph. D.
2002	Marketing The Value of Psychology To The Work Place	Ginger Blume, Ph. D.
2003	Basic ASAM PPCLR	Idaho Department of Health and Welfare
2003	Psychopharmacology: Recent Advances Clinical Applications & The Role of Health Care Professionals	Morgan T. Summons, Ph.D.
2003	Forensic Practice Issues in Mental Health	Idaho Psychological Association
2003	Child and Adolescent Assessment & Intervention Using Neuropsychological Models Of Intelligence.	Cecil R. Reynolds, Ph. D.
2003	Perspective in Recovery	19 <sup>th</sup> Annual Idaho Conference on Alcohol and Drug Dependency.
2003	Three Days in June: Topics Related to Domestic Violence	Idaho Council on Domestic Violence
2003	Exploring the Therapeutic Relationship: Changes and Innovations.	British Psychological Society. London, England
2003	Documenting and Prosecuting Strangulation	George McClane, M. D.
2004	Department of Transportation Substance Abuse Professional	American Substance Abuse Professionals
2004	Designated Examiner Training	Idaho Department of Welfare
2004	Travels Though Recovery	Idaho Conference on Alcohol and Drug Dependency
2004	Current Trends in Street Drugs	Steve Cole, Ada County Paramedics
2004	Re-evaluating the Domestic Battery	Idaho Council on Domestic Violence and Victim Assistance
2004	Advanced Rorschach: Scoring and Interpretation	Phil Erdberg, Ph. D., Rorschach Workshop

2004	Non-pharmacological Interventions in Chronic Pain Management	Kathleen S. Brown, Ph. D.
2004	Childhood Sleep Disorders	Janat O'Donnell M.D. and Mark Stephenson Ph. D.
2004	Eating Disorders: Myths Facts and Digressions	Millie Smith, M. Ed., LCPC
2004	Legal and Ethical Risks and Risk Management in Professional Psychological Practice.	Jeff Youngman, Ph. D. ABPP
2004	Strengthening Families to Prevent Child Abuse and Neglect.	Idaho Children's Trust Fund
2005	Risk Assessment Tool Seminar	Frank Colistro, BD. D.
2005	Domestic Batterer Treatment and Lethality Assessment	Idaho Council on Domestic Violence
2005	Methamphetamine Addiction and Marijuana Dependence	Idaho Conference on Alcohol & Drug Dependency
2005	Psychology and the Obesity Epidemic	Edward Abramson, Ph. D.
2005	Racism, Homophobia, et.al. in Domestic Violence	Idaho Council on Domestic Violence & Victim Assistance
2006	Advanced Forensic Psychology Practice Issues & Applications	American Academy of Forensic Psychology
2006	New Treatment in Addition Medicine	Leslie Lundt, M.D.
2006	Co-occurring Psychiatric and Substance Disorders	Idaho Conference on Alcohol and Drug Dependency
2006	Expert Witnesses in Domestic Violence Criminal and Civil Cases	Sarah Buel, J. D.
2006	Victim and Office Safety	Mark Wynn, Nashville, TN, P. D.
2006	Global Mental Health Congress New Delhi, India	NBCC International
2006	Child Developmental Disorders and Brain-Behavior Relationships	Marilyn Thatcher, Ph. D.
2006	Borderline Personality Disorders	Alex Chapman, Ph. D.

2006	Mental Status and Risk Assessment	Karl D. La Rowe, LCSW
2006	Batterer Treatment Training	Idaho Counsel On Domestic Violence
2006	Idaho Summit on Domestic Violence	Neil Websdale, Ph. D.
2006	Actuarial Risk Assessment for Adult Sex Offenders	Assn. For the Treatment of Sexual Abusers
2006	Idaho Conference on Alcohol & Drug Dependency.	Boise State University
2007	Ethical Decision Making & Risk Management	Jeffrey N. Younggren, Ph. D., ABPP
2007	Despliegue Del Potencial Humano Buenos Aires, Argentina	Tercer Congreso De Counselin, De Las Americas
2007	Ethical Pitfalls: Avoiding Professional Hazards	Cross County Education
2007	Violence Risk and Threat Assessment	Reid Maloy, Ph. D.
2007	Creating Safety for Immigrant Victims	Idaho Summit on Domestic Violence
2007	The Invisible Psychologist	Gerald Koucher, Ph. D.
2007	Therapeutic Assessment with Psychological Testing	Stephen Finn, Ph. D.
2008	Pediatric Mental Health Conference	Idaho Psychological Assn.
2008	Optimizing the GAIN-I DUI – What is needed?	Cross County Education
2008	Rorschach Assessment of Personality Disorders	Phillip Erdberg, Ph. D.
2008	Gangs, Drugs, and Violence	Manwaring Diversified
2008	Behavioral Aspects of Neurological Disease	Idaho Psychological Conference
2008	Batterer Treatment Training	Idaho Council on Domestic Violence
2009	Risk Management in High Risk Areas	Jeffery Younggren, Ph. D. ABPP
2009	Recovery Process, DUI Evaluator, Healing Families	Idaho Council on Alcohol and Drug Dependency



2010	Toxic Anger	PESI, LLC
2010	At Risk Youth, HIV/AIDS, Children and Families, Heroin	Idaho Conference on Alcohol and Drug Dependency
2010	Designated Examiner Training	Department of Health and Welfare Region IV
2010	Multicultural Competence Ethical Sensitivity	Idaho Psychological Assn.

**TEACHING**

<u>Year</u>	<u>Subject</u>	<u>Recipient</u>
1969	Introductory Psychology	Ft. Steilacoom Comm. College Tacoma, Washington
1976-77-78	Adolescent Psychology	Boise State University
1982	Forensic Hypnosis	Idaho Dept. of Law Enforcement
1982-1984	Coping with Stress and Personal Problems	Boise Community Schools Boise, Idaho

**CONSULTATIONS**

<u>Year</u>	<u>Subject</u>	<u>Recipient</u>
1975	Rage Based Murder	University of Wyoming
1976	The Role of Sodium Amytol in Criminal Investigation	Nampa Police Department Nampa, Idaho
1977-1978	Psychological Profile of Rapists	Rape Crisis Alliance Boise, Idaho
1995	Case Review and Consultation	Disability Determinations Unit Social Security Administration
1977	Employee Burnout	Idaho Department of Health and Welfare Region VII
1979	Marathon Group Therapy	Family Advocate Program
1979	Employee Burnout	Family Advocate Program

1979	Crisis Intervention and Suicide	Junior League of Idaho
1981-present	Consultation and Review of Disability Claims	Social Security Disability Determinations Unit
1981-1985	Psychological Testing	Ada County Counseling Center
1982-present	Mental Status/ Competency Evaluations	Ada County Juvenile Detention Facility
1982-1984	Consulting Psychologist	Central District Health Dept. Boise, Idaho
1983-1985	Consulting Psychologist Sexual Abuse Grant	Idaho Department of Health & Welfare Region IV
1983-1989	Adolescent Group Therapy	Intermountain Hospital of Boise
1985	Mental Disability Listings Nationwide Training	Office of Hearings and Appeals Social Security Administration
1988-1993	Individual Therapy and Treatment Planning	Northwest Passages Adolescent Hospital
1992	Psychometric Assessment and Consultation of Adolescents, Adults, and Geriatric Patients	Northview Hospital
2000-present	Patient Care and Management	Community Partnerships

## RESEARCH PROJECTS

<u>Year</u>	<u>Title</u>	<u>Organization</u>
1966	Standardization of a Library Library Skills Test for a Metropolitan School District	Tacoma Public Schools Tacoma, WA
1969	Perceptual Development Through Kindergarten	Bethel School District Spanaway, WA
1973	A Work Inhibition Scale for a Hospitalized Veteran Sample	Veterans Administration Temple, Texas
1975	Cottonwood Project: Phase I	Idaho Department of Corrections

1977	A Comparison of Correctional Employees: High Achievers vs. Survivors	Idaho Department of Corrections
1979	The Effect of Advocate Intervention in At-Risk Families	Family Advocate Program Boise, Idaho
1980-1992	Evaluation of Patient and Family Support Services	Mountain States Tumor Institute Boise, Idaho

### **VOLUNTEER COMMUNITY SERVICES**

<u>Year</u>	<u>Assignment</u>	<u>Location</u>
1967	Counselor for Economically Disadvantaged	Hilltop Community Center Tacoma, Washington
1973	Instructor: Telephone Hot-Line	Help Is Possible Waco, Texas
1976	Training Consultant	Idaho Volunteers in Corrections Boise, Idaho
1982-1987	Hospice Advisory Committee	Mountain States Tumor Institute Boise, Idaho
1982-1987	Hospice Advisory Committee Chairman, Speakers Bureau	Mountain States Tumor Institute Boise, Idaho

### **TASK FORCE AND COMMITTEE APPOINTMENTS**

<u>Year</u>	<u>Title</u>	<u>Organization</u>
1976	Legislative Mental Health Study Committee	Idaho State Legislature
1977	Admission and Discharge Planning Committee	Dept. of Health and Welfare Boise, Idaho
1977-1978	Intermediate Security Task Force	State Hospital South Blackfoot, Idaho
1978	Steering Committee Statewide Forensic Evaluation	Dept. of Health and Welfare Boise, Idaho

1982-1983	Sexual Abuse Task Force	Family Advocate Program Boise, Idaho
1983-1989	Credentials Committee	Intermountain Hospital of Boise
1987-1988	Central Regional Representative	Idaho Psychological Association
1988-1991	State Ethics Chair	Idaho Psychological Association.
1993	Standardization of Custody Evaluations and Home Studies	Hon. Michael Dennard, Chair
1996	Past President	Idaho Psychological Association
1998	EAP Task Force	Idaho Association of Commerce & Industry Gary Peoples, Chair
1999-2003	Idaho Board of Psychologist Examiners	Appointed by Dirk Kempthorne, Governor, State of Idaho
2003-present	Canyon County Domestic Violence Task Force	Canyon County, Idaho

#### HOSPITAL AFFILIATIONS

<u>Year</u>	<u>Hospital</u>	<u>Affiliation</u>
1985-present	St. Alphonsus Regional Medical Center	Allied Health Professional
1985-present	St. Luke's Regional Medical Center	Allied Health Professional
1992-present	Sun Health of Boise	Allied Health Professional

Evaluation 1

**DAVE SANFORD, Ph. D.**  
**NORTHWEST PSYCHOLOGICAL SERVICES**  
6010 Overland Road, Boise, Idaho 83709  
Phone: (208) 377-5720  
Fax: (208) 377-4873

**PSYCHOLOGICAL EVALUATION**

**NAME: Hamlin, Denvil "Ike"**  
**DOB: 06/29/1959**  
**AGE: 51 years**  
**DATE: 12/06/2010**

**PLACE OF EVALUATION**

1602 Todd Way, Meridian, Idaho

**REFERRAL INFORMATION**

Mr. Hamlin was referred for a competency to precede evaluation through his attorney Ed Frachiscur. In addition to the general referral the examiner received some documents for review.

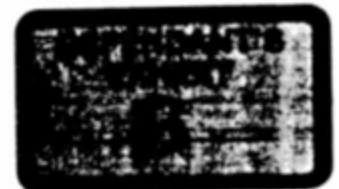
**INFORMED CONSENT**

The examiner informed Mr. Hamlin he would conduct a psychological evaluation and release a copy of the report to his attorney, Mr. Frachiscur. The examiner explained the release of information would expire in June of 2011. The examiner would review the Idaho Supreme Court Data Repository regarding any violence related offences he may have had. The examiner would also contact his attorney for documentation and relevant records. Mr. Hamlin stated he understood the release and contacts and signed the Informed Consent Agreement.

**ASSESSMENT TECHNIQUES**

For purposes of evaluation the examiner used the following assessment techniques:

1. Document Review
2. General Observations
3. History of Condition
4. Mental Status Examination
5. Macarthur Competency Assessment Tool- Criminal Adjudication



## DOCUMENT REVIEW

The examiner received a psychological evaluation conducted by Dr. Chad Sombke, a Licensed Psychologist. Dr. Sombke had evaluated Mr. Hamlin on September 15, 2010. Mr. Hamlin had been referred by the Honorable George Hicks, Magistrate Judge.

Dr. Sombke noted Mr. Hamlin was reported to have a developmental disability in the form of mild mental retardation. Mr. Hamlin had been involved in special education classes throughout his schooling, and had resided in assisted living homes after graduating from high school. He received supplemental Social Security income because of his cognitive deficits.

Mr. Hamlin was given a Competency Assessment for Standing Trial for Defendants with Mental Retardation (CAFT-MR). Mr. Hamlin's scores indicated he was not competent to proceed. An assessment of his general intellectual ability indicated Mr. Hamlin was functioning in the one-tenth percentile in the areas of vocabulary and abstraction.

Dr. Sombke diagnosed Mr. Hamlin with DSM-IV 317, Mild Mental Retardation. Dr. Sombke noted, "Mr. Hamlin does not have the capacity to understand the proceedings against him and he also does not have the capacity to assist in his own defense".

The examiner received a confidential psychological competency evaluation completed by Blake D. Brumfield, M.S. of the Idaho Department of Health and Welfare. At the request of Judge Hicks, Mr. Hamlin had received skills training in regard to competency to stand trial and assist in his own defense. This was followed by a post training assessment of his competency to proceed.

Mr. Brumfield noted Mr. Hamlin was willing and cooperative throughout the training process. Mr. Brumfield did not, however, note the length of the training process or where the training had occurred.

The training focused on both basic legal concepts and skills to assist in his defense. Two sessions covered elemental concepts and Mr. Hamlin also participated in several role playing and exercises interactive vignettes.

Post instruction assessment indicated Mr. Hamlin's scores for basic legal concepts and skills to assist with the defense on the CAST-MR had increased. Mr. Brumfield noted the increase was above norms for individuals with mental retardation who had been found competent.

## OBSERVATIONS

As noted above, the examiner met with Mr. Hamlin on December 6, 2010 at the group home where he was staying in Meridian. He wore a T shirt, camel cargo pants, and casual fabric shoe. He also wore his glasses. Mr. Hamlin was 5' 9" tall, weighing 180 pounds. He sat comfortably attentive to the examiner's questions. His speech was characterized by occasional nervous laughter, but otherwise was generally within normal limits, as was his personal hygiene.

## HISTORY OF CONDITION

The examiner asked him specifically he had ever been diagnosed with a psychiatric condition. He stated he had not. He indicated he was not taking any medication.

Evaluation 3

The examiner asked Mr. Hamlin if he had ever been hospitalized. He stated he had not. He added he had been to the Idaho State School and Hospital in Nampa. He stated he had with Department of Health and Welfare there for approximately two weeks, then was transferred to the group home in Meridian. The examiner suspects Mr. Hamlin was referring to the competency to precede education noted above.

The examiner did not take an additional social history from Hamlin as Dr. Sombke had completed a rather thorough social history in his evaluation dated September 15, 2010.

#### Daily Activities

Mr. Hamlin stated he would usually get up at 10:00 in the morning and go to bed at approximately 11:00 at night. He spent his time watching television, smoking cigarettes and drinking coffee.

#### Social Relationships

Mr. Hamlin stated he had not seen any of his friends since he had come to the group home. When asked about activities he enjoyed, he stated people in the group home would take the residents different places. He was also at liberty to walk around the nearby neighborhood streets. He did not attend church on a regular basis. He had maintained a relationship with his mother and two brothers who lived in Nevada. He would visit them during the summer time. His relationship with the examiner was within normal limits. When asked about hobbies, he stated he enjoyed reading.

#### MENTAL STATUS

Mr. Hamlin was cooperative during the evaluation. His general mood and motor activity were within normal limits. He described his general energy level as, "Okay". His speech quality was generally within normal limits with some occasional nervous laughter at the beginning of the evaluation.

#### Orientation

Mr. Hamlin was oriented to person, time of day, and date. When asked the name of the place where he was currently staying, he stated, "I forgot". He stated the purpose of the evaluation was to, "See if I need help".

#### Information

When the examiner asked Mr. Hamlin to identify the current President of the United States, he stated it was George Bush. However, when the examiner asked him to name Bush's immediate predecessors he was able to state, "Obama now, Bush and Clinton". When asked to name five cities with over one million population, he initially replied: Las Vegas and New York. He then began naming states, including Idaho, Oregon, and California. He indicated he was not aware of any national current events. When asked about local current events he indicated there was, "Lots of football". He had lived in Idaho since March. He was able to name only two of the six states that bordered Idaho.

### Abstract Reasoning

Mr. Hamlin was able to name the essential similarity between a banana and an orange, cat and mouse identifying the latter as animals. He could not find a similarity between south and east or work and play. He was unable to interpret proverbs.

### Ideation

The examiner asked Mr. Hamlin if he had any experiences of thought broadcasting or being able to make someone think something specific. He stated that occurred, "At times". When the examiner asked him to explain he indicated, "I say my thoughts". He denied episodes of mind control, as well as, feelings of worthlessness. He had not experienced episodes of visual hallucinations, but stated he had some experiences of auditory hallucinations. He denied any recent thoughts of suicide.

### Memory Function

The examiner gave Mr. Hamlin five numbers to remember and after five minutes came back to see if he could recall the numbers. He was able to recall four of the numbers. Two of them were in their proper place. Mr. Hamlin was able to recall his Social Security Number from memory, but did not know the telephone number of the place where he was staying. He indicated he had consumed one meal in the last 24 hours, a TV dinner. He had difficulty reading or remembering newspaper articles, but did not have any problem following a show or story on television.

### Concentration Calculation

Mr. Hamlin was able to recall five digits forward and three in reverse. His ability to remember four unrelated words after five minutes was significantly below average. He was unable to spell the word "world". He was able to calculate the change he would receive from making some simple purchases at a store, but as the purchases became more complex. He was unable to do the calculation correctly.

### MACARTHUR COMPETENCY ASSESSMENT TOOL- Criminal Adjudication

The MacCAT-CA measures an individual's ability to understand basic courtroom proceedings and identify the roles of different individuals within the courtroom. The test also evaluates an individual's ability to reason through a legal scenario and demonstrate some appreciation of their current legal circumstances.

On the Understanding portion of the MacCAT-CA Mr. Hamlin did not receive credit for any of the test items. Many of his answers were off task and unresponsive to the examiner's questions. Even after the prompts were read and the questions were explained to him, his responses were off task. He seemed intent on asserting his innocence and making sure the examiner knew he was not guilty and had not broken the law.

He was unable to describe the roles of either his own attorney, the prosecuting attorney, or the judge. On the Reasoning portion of the MacCAT-CA he received only partial credit for



Evaluation 5


three of the eight items presented. He was able to select the most relevant of two facts presented in a case scenario, but was unable to articulate an appropriate reason for selecting those facts.

On the Appreciation portion, Mr. Hamlin's score of 8 was in the clinically significant range of impairment. He was able to indicate he would tell his attorney everything about how he got into trouble with the law and explain he would do that because he was, "Just trying to help him out". He also indicated he would be just as likely as other people to except a plea bargain. When asked why he would do so, he stated, "Get it over". Again he appeared intent on denying any wrong doing.

### SUMMARY

Mr. Hamlin had been evaluated in September of 2010 and was found not be competent to proceed with his legal matters. Immediately following some education and role playing instruction thought Department of Health and Welfare, he scored much better on the CAST-MR and was declared competent to proceed. The most recent assessment indicated Mr. Hamlin retained little or anything of what he had learned at the Health and Welfare program. People with mental retardation require repetition of information over a protracted period of time in order to remember and apply what they have learned. People, who are mentally retarded, learn very slowly and have considerable difficulty retaining information. This finding was consistent with Mr. Hamlin's prior diagnosis of mental retardation.

At the time of the evaluation Mr. Hamlin was unable to understand the proceedings against him. He was would not be able to provide appropriate assistance to counsel to aid in his defense, and would easily lose track of the proceedings and become confused during a trial.



Dave Sanford, Ph. D.  
Licensed Psychologist

DS/de

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**Chad Sombke, Ph.D.**

Chad Sombke, Ph.D., PC

*Forensic & Clinical - Assessment, Consultation, & Therapy*

---

**PSYCHOLOGICAL EVALUATION**

**Evaluation to Determine Defendant's Capacity to Understand Proceedings:**

**IDAHO CODE 18-211**

**At the request of the Honorable Judge George G. Hicks, Magistrate Judge**

**CASE NUMBER:** CR-2010-4031  
**DEFENDANT:** Denvil Hamlin  
**DOB/AGE:** June 29, 1959/51  
**Date of Evaluation:** September 15, 2010  
**AUTHOR:** Chad Sombke, Ph.D.  
Licensed Psychologist

**Description of the Nature of Examination:**

**Notification of Lack of Confidentiality:** Mr. Hamlin was referred for an evaluation pursuant to Idaho Code 18-211, ordered by the Honorable Judge George Hicks, Magistrate Judge. Mr. Hamlin was interviewed and evaluated in a private room of the Elmore County Jail. He was informed that this evaluation was being undertaken to help the court determine his current mental condition and whether he was competent to proceed and assist his counsel with the presentation of a defense. He was told that all of the information reported would be used to generate a report for the court. He was also told that I might have to testify in court about this evaluation. He stated an understanding of this. Mr. Hamlin appeared to be competent to understand what I was saying and make informed decisions about whether or not he was going to participate. He agreed to participate and after the informed consent form was read to him, he signed it.

**Evaluation Procedures:**

Competence Assessment for Standing Trial for Defendants with Mental Retardation  
(CAST-MR)  
Rapid Estimate of Adult Literacy in Medicine (REALM)  
Shipley-2  
Review of police reports and NCIC reports  
Clinical Interview

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2498 N. Stokesberry Pl. Suite 160  
Meridian, ID 83646  
(208) 855-9922 Voice (208) 898-9922 Fax  
[www.chadsombkephd.com](http://www.chadsombkephd.com)

I.C. 18-211, Deavil Hamlin  
CR-2010-4031

## **Pertinent History:**

The history summarized here represents a synthesis of self-report information gathered from Mr. Hamlin during the evaluation.

**Identifying Information/Brief Social History:** Mr. Hamlin is a 51-year-old married male with the birthday of [REDACTED]. He is currently in custody at the Elmore County Jail and he has reportedly been charged with Rape. Mr. Hamlin came to the interview unrestrained and he was appropriate and cooperative throughout the evaluation.

Mr. Hamlin reportedly has a developmental disability and he appears to function in the mild mental retardation range of intellectual functioning. He was somewhat vague in his descriptions of his past and his timelines did not always coincide. However, he did not appear to be intentionally misleading this evaluator and he also appeared to be easily lead into answering questions one way or another. Due to Mr. Hamlin's limited ability to remember and describe his past, the accuracy of this account of his history is questionable.

Mr. Hamlin stated that he was raised in Ohio until he was 16 years old, which is when his stepfather moved the family from Ohio to Elko, Nevada. He stated that his biological father passed away from a car accident in 1974 and his mother reportedly remarried shortly after his father's death. He was unable to describe his biological father and he did not know what he did for a living. His stepfather was reportedly a "rancher" who died "a few years ago" from cancer. Mr. Hamlin initially stated that his growing up experiences were very "happy" but then he stated that his stepfather was rather "rough on me." He stated that his stepfather was also an alcoholic. His mother lives in Elko, Nevada and she is retired from "cleaning houses." Mr. Hamlin described her as being "a nice lady" but he found it difficult to describe her in any more detail. He stated that he spent his childhood playing with cars, playing games, riding his bike and going to school.

Mr. Hamlin stated that he graduated from high school in 1981 or 1982 and he was involved in special education classes. He stated that reading is very difficult for him and he had a very difficult time learning in school. He is most likely mildly mentally retarded and he reports having lived in assisted living homes after he graduated from high school. He stated that he worked on ranches when he was in high school and after he graduated, but he began working in the construction field as a laborer in approximately 1985. He has reportedly worked in many different types of construction jobs throughout his life and most of his jobs have been in the labor field. Mr. Hamlin stated that over the last 14 years, he has moved back and forth between Elko, Glens Ferry, and Mountain Home a number of different times looking for employment. He reportedly met his wife in Glens Ferry and he met his alleged victim in Elko at a group home over 20 years ago.

Mr. Hamlin initially denied having any history of mental illness of any kind. He denied ever experiencing any significant anxiety or depression and he has reportedly never made a suicide attempt. He stated that he does hear a voice in his head that tells him "what to do and what not to do." He stated that he thought the voice was "God's voice" but he did not know how he knew it was God's voice. Upon further discussion with Mr. Hamlin, it appears as though his "voice" is most likely his own thoughts that he has misinterpreted as being a voice from outside of his head. He did not appear to be distracted by any internal stimuli during the course of the evaluation but he did have periods of time where he became somewhat unresponsive and had to be redirected. Mr. Hamlin denied ever being hospitalized for psychiatric reasons or ever receiving a psychiatric

I.C. 18-211, Denvil Hamlin  
CR-2010-4031

diagnosis. He denied ever being prescribed any psychotropic medications and he is currently not taking any psychotropic medications. He lived in assisted living homes after he graduated from high school and he appears to function in the mild mental retardation range. He has received Supplemental Security Income (SSI) since 1975 for being "slow" and "handicapped" and his wife is reportedly his payee. He has also reportedly been living independently for more than 12 years and he stated that he has had a driver's license for the last 20 years.

Mr. Hamlin stated that he has never experimented with using any illegal drugs at any time in his life. He stated that he "tried" marijuana one (1) time but he has not used any other drugs. He admitted that he was a heavy drinker when he was younger but he has not drunk alcohol since he met his wife 14 years ago. He stated that his wife told him that it was either her "or the booze" and he choose her.

Mr. Hamlin denied ever being arrested or charged for a crime as a juvenile. He stated that he was "thrown in the drunk tank" one (1) night when he lived in Nevada but he denied having any other convictions for criminal behavior. There is some indication that Mr. Hamlin engaged in a sexual offense in 1985, but it also appears as though he was never charged or convicted of those alleged offenses. He has had a couple of other traffic citations in his life and he has never been incarcerated in jail or prison for any significant amount of time. Mr. Hamlin apologized a few times during the evaluation for not knowing the answers to some court questions, saying, "This is my first case."

Mr. Hamlin stated that he was married in 2006 and he and his wife dated for 10 years before they married. They met when he was living in Glens Ferry, Idaho and she has two (2) children who are currently 21 and 28 years old. The 21-year-old son reportedly still lives with Mr. Hamlin and his wife. Mr. Hamlin stated that he does not have any children of his own. He stated that his wife is his payee but he also stated she was "slow" too and she is currently not employed. She usually works cleaning motel rooms.

### **Mental Status Examination:**

During this evaluation, Mr. Hamlin came to the evaluation unrestrained and dressed in regular jail attire. His attitude was very cooperative and agreeable and he made efforts to answer the questions asked of him. His speech was somewhat slow and he was not able to elaborate on questions very well. He stated that he understood the purpose of the evaluation but he also seems to try to present himself as more knowledgeable than he actually is. He was overly agreeable in that he would quickly change an answer if this evaluator questioned him in any manner about an answer he had previously given. He has only a cursory understanding of his current situation. He knew the correct date and he knew he was in the Elmore County Jail. He also stated that he had been in the jail for three (3) or four (4) weeks. He has an adequate understanding of his intellectual deficits but his overall insight appears to be rather limited. His judgment also appears to be somewhat impulsive and childish in nature. His affect was described as "okay" and he rated his mood to be a "five" on a scale of 1 to 10 with one (1) being the worst he could feel and 10 the best. He denied having any current suicidal ideations. Mr. Hamlin was able to count backward from 20 to zero and recite the alphabet adequately. He had a difficult time calculating serial threes forward and he was able to recall who the last two (2) Presidents of the United States were. He was able to repeat five (5) numbers forward and three (3) numbers backward from immediate memory. His abstract reasoning was very concrete and limited as evidenced by his answers to the meaning of simple proverbs and how two (2) items are similar.

I.C. 18-211, Denvil Hamlin  
CR-2010-4031

## Testing Results:

The testing for this evaluation focused on answering the court's competency related questions, because Mr. Hamlin's intellectual deficits prevented him from completing personality inventories or assessments that required the participant to have a reading level above the third grade. Mr. Hamlin's reading level was assessed to be at a third grade or below range by the Rapid Estimate of Adult Literacy in Medicine (REALM) test and his intellectual deficits appear to be rather significant.

Shipley-2: Mr. Hamlin was administered the Shipley-2 which is designed to assess general intellectual functioning and provide an intellectual screening for psychiatric patients. His overall estimated level of intelligence from this administration of the Shipley-2 was in the Low (<0.1%ile) range. In other words, given a random sampling of 100 people, Mr. Hamlin would have scored better on the Shipley-2 than <0.1 of the 100 random people. He scored in the low (<0.1%ile) range on the vocabulary subtest and in the low (0.1%ile) range on the abstraction subtest. Overall, Mr. Hamlin appears to function in the Mild Mental Retardation range of intellectual functioning.

## Competency Issues:

### Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR):

The CAST-MR is a validated instrument designed to provide information on competence to stand trial in defendants with mental retardation. It is divided into three (3) sections that address the basic elements of the *Dusky* criteria: Basic Legal Concepts, Skills to Assist Defense, and Understanding Case Events. Mr. Hamlin's scores on the CAST-MR are as follows:

Basic Legal Concepts	12/25	48%
Skills to Assist Defense	8/15	53%
Understanding Case Events	9/10	90%
<b>Total Score</b>	<b>29/50</b>	<b>58%</b>

According to the CAST-MR manual, Mr. Hamlin scored lower than a normative group taking the CAST-MR who were mentally retarded but found competent to stand trial, 37 (74%). Mr. Hamlin's total score was 29 out of 50 (58%). He scored poorly on the first two sections of the CAST-MR but he was able to describe the alleged case events rather well. He has a limited understanding of court procedures and his skills to assist in his defense are also poor. Scores of 70% or above are generally considered as representing someone who is competent to proceed in a court hearing. Mr. Hamlin's overall score of 58% appears to suggest that he is NOT competent to proceed; however, the CAST-MR authors are careful to point out that the results from the CAST-MR are intended to be used as one part of an overall assessment for competence to stand trial. Therefore, further information was gathered.

Regarding the defendant's awareness of the nature of the proceedings, I have considered the following during my evaluation with him. Mr. Hamlin stated that he has been charged with "sexual abuse" but he was unable to describe what someone had to do in order to be charged with sexual abuse. He only had a vague understanding of his current legal situation and he was vague in his understanding of what a guilty or a not guilty plea meant. He was able to describe the circumstances surrounding his alleged crime to this examiner adequately but his ability to testify in his own defense appears to be limited, in that he changes his answers to questions frequently in

I.C. 18-211, Deavil Hamlin  
CR-2010-4031

an apparent attempt to please the person asking the questions. In other words, Mr. Hamlin would not be able to maintain a consistent defense in his case at this time. Mr. Hamlin has a very vague, cursory, and inaccurate understanding of the roles and purposes of a Judge, jury, prosecutor, defense attorney, and witnesses during a trial. For instance, he thought that that prosecutor's job was to "help me" and that the prosecutor was the detective who investigated his case. He also initially did not know what a jury was and he thought a jury was there to "help you". Then he stated that a jury decides if "you're guilty or not guilty" but he thought that they decide this with the Judge. He did know that his attorney was there to "help me out", but did not know how he would do that.

Regarding his ability to assist in his defense, I considered the following during the evaluation. Mr. Hamlin stated that has met with his attorney and that he has a positive view of him. He is willing to work with his attorney in order to find a resolution to his case. He is able to describe his side of the event in vague terms. Mr. Hamlin does not know what is involved in a plea bargain and he was unable to retain the information after it was explained to him. He also has a limited rational understanding of the possible penalty he would face if convicted of the alleged crime. He stated that he could receive five (5) to 10 years, 10 to 20 years, or 20 to 30 years in prison if convicted. He did not appear to appreciate the seriousness of the charges against him, since he stated that the best outcome of his case would be to "let bygones, be bygones." Mr. Hamlin does not appear to have the capacity to make rational decisions in response to well explained alternatives. He has a very difficult time sticking to one (1) answer and he can be easily persuaded to answer in one manner or another.

### **Summary and Conclusions:**

**Summary:** Mr. Hamlin is a 51 year-old male charged with Rape and he is currently incarcerated at the Elmore County Jail. Mr. Hamlin was raised in Ohio but his family moved to Nevada when he was 16 years old. He has lived in Glens Ferry, Idaho and Mountain Home, Idaho along with Elko, Nevada for most of his adult life. He reportedly graduated from high school but he was involved in special education classes and he functions in the mild mental retardation range. He lived in assisted living homes after he graduated from high school and he has worked in the construction business for employment. Mr. Hamlin met his wife 14 years ago and they have been married for four (4) years. She appears to be taking care of him, since she is his payee and it appears as though he has only been living independently since he has met her. Mr. Hamlin denies having any history of mental health problems and he denies ever suffering from any psychotic or mood disorder. He denies any recent substance or alcohol abuse saying that he has not drunk alcohol in 14 years. He has received SSI for many years for his developmental disability and appears to be a low functioning individual with limited cognitive functioning abilities.

As far as the competency related questions are involved, Mr. Hamlin was not able to adequately answer and elaborate on court related questions. He showed limited factual knowledge and limited rational understanding of courtroom procedures and his ability to appropriately consult with his attorney is also limited. However, he was able to describe to this evaluator some of the events of the alleged incident but they were vague. He does not understand the concept of a plea bargain and he does not appear to have the capacity to testify in his own defense. He scored in the incompetent range on the CAST-MR with a score of 58 and he currently does not appear to have the capacity to make rational decisions that are in his best interest. Therefore, the diagnostic impression is as follows:

I.C. 18-211, Denvil Hamlin  
CR-2010-4031


### Diagnostic and Statistical Manual IV-TR (DSM-IV-TR) Diagnoses:

AXIS I: 799.9 Diagnosis Deferred  
AXIS II: 317 Mild Mental Retardation  
AXIS III: Deferred to the physician  
AXIS IV: Problems related to the social environment and problems related to interaction with the legal system: arrest  
AXIS V: GAF: 40: Major impairment in work, judgment, and thinking

**Conclusions:** As a result of the information and observations obtained during this evaluation, it is this examiner's opinion that Mr. Hamlin currently understands the risks and benefits of treatment and he has the capacity to make informed decisions about treatment. However, he has not been receiving any psychiatric treatment and he does not appear to be in need of any psychiatric treatment at this time.

**Ability to Understand the Proceedings and Assist Counsel:** As a result of the information and observations obtained during the current evaluation, it is this examiner's opinion that Mr. Hamlin does not have the capacity to understand the proceedings against him and he also does not have the capacity to assist in his own defense. Furthermore, he does not currently have the capacity to meaningfully understand what is involved in a court hearing and he does not have a rational understanding of his current situation and of the court process. It is possible that with some education and training of the court process, Mr. Hamlin could become competent in the future.

Respectfully submitted,

  
Chad Sombke, Ph.D.  
Licensed Psychologist

  
Date

**CR-2010-0004031**

**State of Idaho vs. Denvil R Hamlin**

**Judge: Barry Wood**

**Hearing type: Motion for an 18-211**

**Hearing date: 8/222011**

**Time: 3:12 p.m**

**Courtroom: Main**

**Court reporter: Mia Martorelli**

**Minutes Clerk: Heather Furst**

**Defense Attorney: Ed Frachiseur, Elmore Public Defender**

**Prosecutor: Kristina Schindele, Elmore Prosecuting Atty**

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF ELMORE  
District Court Criminal Minute Entry**

Court calls case at time noted above.  
The defendant is present personally  
Matter is scheduled for a Motion for an 18-211.

Court has affidavit from the State. Court reviewed the affidavit from Dr. Sanford.

Mr. Frachiseur requests the psychological evaluation based on Dr. Sanford's evaluation and Dr. Sombke's evaluation. Developmental disability affects a person cognitively but also effects on short term memory. Not stating that Dept. of Health & Welfare have not given him education and they have rendered him competent in June and that is two months ago. By the time we get to trial more time will have passed. Need the evaluation to determine how much prior competency training has been retained.

Defendant was previously found under 18-210 not to be competent. Court ordered proceedings be suspended. Defendant was provided on-going training once Judge Hicks found defendant competent. Need evaluation to see if the defendant has retained information provided to him. If he has not retained then he would be found to not be competent under 18-210.

Ms. Schindele responded. She gave an overview of case history. No real demonstration that defendant doesn't understand or provide counsel with a defense. Dr. Sanford's affidavit is quite broad. State submits that Dr. Sanford would not be an expert in developmental disabilities. No grounds for an 18-211 order.

Mr. Frachiseur responds. This is not a game. Mild retardation does have an effect on memory. Defendant has an IQ of 62. Not competent to stand trial. Submit that we are agreeable to a psychological evaluation (not from Sombke or Department of Health & Welfare) perhaps the individual who did the first assessment. Could compare to first report done.



Court does not see where defendant meets criteria of 18-210 if you base upon retention. Does Dr. Sanford say that he is not competent? Mr. Frachiseur referred Court to page 4, mildly retardation. This is not a statement by doctor that Mr. Hamlin is incompetent. This is the reason for the re-evaluation.

State will rest on previous argument.

Dr. Sombke did original evaluation; not sure of work status now.

Mr. Frachiseur planned to call Dr. Sanford to testify to the ability of Mr. Hamlin to understand. If court grants relief then I would call the other psychologist appointed.

Ms. Schindele is concerned about combining competency and understanding of Miranda. Competency evaluations are not admissible.

Court stated that normally when there is an issue of competence, appoint a designated examiner to visit with defendant. If there is still a question then appoint another qualified individual. This situation is different - was found competent and then now found not competent.

If going to appoint, see if Dr. Sombke to do it. Will it be limited to 18-210 issue was asked by Ms. Schindele or address Miranda rights also? Mr. Frachiseur intends to call witnesses at hearing to state that defendant was untrained and not competent to understand his rights under Miranda at the time.

Court ordered Dr. Sombke to do evaluation. Ms. Schindele's office will contact Mr. Sombke and then let Mr. Frachiseur know so he can prepare order.

3:45 p.m. End. Minute Entry.

Attest   
Heather Furst

FILED

2011 AUG 23 PM 2:53

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY *BS*

**E.R. FRACHISEUR**, ISB No. 1388  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

-vs-

DENVIL HAMLIN,

Defendant.

Case No. CR 2010-4031

**ORDER APPOINTING  
PSYCHOLOGIST PURSUANT  
TO IDAHO CODE §18-211**

The Court has determined that there exists sufficient reason to doubt the Defendant's fitness to proceed as set forth in I.C. §18-210. Accordingly, IT IS HEREBY ORDERED, pursuant to I.C. §18-211, that Dr. Chad Sombke, a qualified psychologist, is appointed to examine and report on the mental condition of the Defendant to assist his counsel with his defense or to understand the proceedings herein.

Should Dr. Sombke accept this appointment, IT IS FURTHER ORDERED that, within three (3) days, excluding Saturdays, Sundays and legal holidays, said examiner shall determine the best location for the examination. Upon request from the examiner, the Court may make available to him any court records relating to the Defendant.

IT IS FURTHER ORDERED that upon completion of the examination, a report shall be submitted to the Court **no later than September 9, 2011**, which shall include the following:

**ORIGINAL**

1. A description of the nature of the examination;
2. A diagnosis or evaluation of the mental condition of the Defendant;
3. An opinion as to the Defendant's capacity to understand the proceedings against him and to assist in his own defense; and
4. An opinion whether the Defendant lacks the capacity to make informed decisions about treatment, as defined in I.C. § 18-211(5)(d).

If the examination cannot be conducted by reason of the unwillingness of the Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the Defendant was the result of mental disease or defect.

IT IS FURTHER ORDERED that the report of examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the Prosecuting Attorney and to counsel for the Defendant.

IT IS FURTHER ORDERED that the costs of examination shall be paid at the expense of Elmore County.

DATED this 23 day of August, 2011.

  
\_\_\_\_\_  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 23<sup>rd</sup> day of August, 2011, served a copy of the within and foregoing **ORDER FOR PSYCHOLOGICAL EVALUATION AT COUNTY EXPENSE** to:

Lee Fisher  
Elmore County Deputy  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

E.R. Frachiseur  
RATLIFF LAW OFFICES, CHTD.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208)587-6940

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Barbara Steele  
C/O Elmore County Courthouse  
Mountain Home, ID 83647

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile

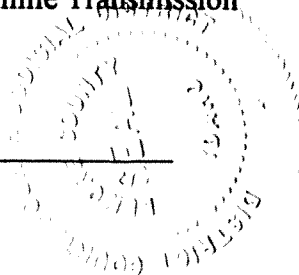
Dr. Chad Sombke  
2498 N. Stokesberry Place, Ste. 160  
Meridian, ID 83646  
Fax No. (208) 898-9222

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Idaho Department of Health & Welfare  
Attn: Valerie Vogel  
1720 Westgate Drive  
Boise, ID 83704  
Facsimile No. 334-0788

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

**BARBARA STEELE**  
*Barbara Steele*  
*Deputy Clerk*  
Deputy Clerk



9=

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 AUG 24 PM 4:07  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR-2010-4031
Plaintiff,	)	
	)	<b>MEMORANDUM IN SUPPORT</b>
-vs-	)	<b>OF MOTION TO DISMISS</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
	)	

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and submits the following Memorandum in Support of his Motion to Dismiss.

**BACKGROUND**

In the summer of 2010, the Defendant, Denvil "Ike" Hamlin and his wife Kathy Hamlin, resided in a trailer court at 340 East 8<sup>th</sup> North, Mountain Home, Idaho. One of their neighbors was the alleged victim, William McCormack.

At the time of the occurrences in question, Mr. McCormack lived alone and independently, although he was receiving assistance from social services.

In the Information on file in this case, it is alleged in three separate counts that the Defendant, Denvil Hamlin, on the 1<sup>st</sup> of May, 2009, and the 13<sup>th</sup> of July, 2010, did engage in sexual contact with the alleged victim, Mr. McCormack, by means of mutual touching of genitals, oral sex,

and anal sex, all in violation of Idaho Code §18-1505(B). No allegation of force or coercion on the part of the Defendant is alleged or implied.

Idaho Code §18-1505(B) reads, in pertinent part, as follows:

**“18-1505(B). Sexual Abuse and Exploitation of a Vulnerable Adult. –**

(1) It is a felony for *any person* with the intent of arousing, appealing to, or gratifying the lust, passion or sexual desires of such person, a vulnerable adult, or a third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult...” (emphasis added)

The issues in this case derive not simply from the fact that various rehabilitation specialists and social workers have classified William McCormack as a vulnerable adult, but also because the Defendant, Denvil Hamlin, is classified as a “vulnerable adult.” (Please see Affidavit of David Sanford, page 4)

ISSUES

1. Does the prosecution of Denvil Hamlin under Idaho Code §18-1505(B)(1) deny him the equal protection of the laws as guaranteed by the 14<sup>th</sup> Amendment to the United States Constitution?

2. Does the prosecution of Denvil Hamlin for the offenses alleged deny him liberty without due process of law in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution and Article 1, Section 13 of the Constitution of the State of Idaho?

**Equal Protection of the Law.**

The 14<sup>th</sup> Amendment to the United States Constitution states:

“No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”

In discussing equal protection issues, the question is whether a specific individual or class of individuals are treated differently than other individuals who are not of that class. *City of Cleburne*

*Texas vs. Cleburne Living Center*, 473 U.S. 432 (1985). The first step, according to the Idaho Supreme Court, is to determine and identify the challenged classification. "The Court, must then determine the standard of review to be applied and whether that standard has been satisfied." *Tarbox vs. Tax Commission*, 107 Idaho 957, 695 P.2d 342 (1984). Both Mr. Hamlin and Mr. McCormack are mildly retarded. The United States Supreme Court has held, as a general matter, that legislative classification of the mentally retarded is not necessarily subject to the standard of strict scrutiny of the classification. *Cleburne, supra.*

However, the Idaho Statute does not concerns itself only with the mentally retarded, but rather with a classification of "vulnerable adult" which the legislature in its wisdom has defined in Idaho Code §18-1505(1)(e) as follows:

"(e) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources."

It is submitted that the Idaho legislature's classification is such that it should be examined on a strict scrutiny basis inasmuch as the definition deals with physically and mentally handicapped persons as well as the interaction of such persons with each other and the population in general. Further, the Idaho legislature has chosen to legislate specifically concerning this class of persons' sexual conduct and has done so with a broad brush, implicating Due Process.

"A classification must be reviewed with strict scrutiny where the distinction is based upon a suspect classification, such as nationality (citations omitted), race (citations omitted); or where "fundamental rights" are involved. *San Antonio Independent School District vs. Rodriguez*, 411 U.S. 1 (1973).

In this case, the "fundamental rights" of the mentally retarded are definitely at issue. The strict scrutiny standard of review requires that the State has the burden of proving not only that it has a compelling interest which justifies the classification but also that the

discrimination is necessary to promote that interest. *Thompson vs. Hagen*, 96 Idaho 19, 523 P.2d 1365 (1974); *Newlan vs. State*, 96 Idaho 711, 535 P.2d 1348 (1975).”

The legislature has made it felony offense for “**any person**” to have sexual contact with a vulnerable adult.

There is no proscription of sexual contact between persons of “normal” intelligence; rather, the statute prohibits all sexual contact and activity with, by and between “vulnerable adults,” a burden which citizens who are not so classified do not bear.

The State has a distinct interest in avoiding the exploitation of the weak and vulnerable, sexually or otherwise. However, the statute, by its terms, grossly burdens the class by abolishing their legal ability to have sexual relations with anyone.

The right to have private sexual contact and sexual intercourse between consenting adults in the privacy of a residence without interference from the State or federal government is well established. *Griswold vs. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt vs. Ford*, 405 U.S. 438 (1972); *Lawrence vs. Texas*, 539 U.S. 558 (2003). There can be little question that consensual sexual relations are fundamental rights as the above cited cases clearly indicate.

If the statute were simply changed from “any person” to “any person of normal intelligence and/or physical attributes,” there would be no issue of equal protection.

The legal elimination of all sexual activity by vulnerable adults is unnecessary to the State’s interest in their protection. *Thompson, supra*; *Newlan, supra*.

**Due Process of Law.**

Since *Griswold vs. Connecticut*, 381 U.S. 479 (1965), the United States Supreme Court has been carving out a due process liberty interest in individual, interpersonal and sexual conduct.

In *Griswold*, the court invalidated a state law prohibiting the use of drugs or devices of contraception or counseling or aiding and abetting the use of contraceptives. The court described



the protected interest *as a right to privacy* and placed emphasis on the marriage relation and the “...protective space of the marital bedroom.”

“After *Griswold*, it was established that the right to make certain decisions regarding sexual conduct extends beyond the marital relationship. In *Eisenstadt vs. Baird*, 405 U.S. 438 (1972), the Court invalidated a law prohibiting the distribution of contraceptives to unmarried persons. The case was decided under the equal protection clause, *id.*, at 454; but with respect to unmarried persons, the court went on to state the fundamental proposition that the law impaired the exercise of their personal rights, *ibid. Lawrence vs. Texas*, 539 U.S. 558, 561, citing *Griswold*.

In *Lawrence, supra*, the court noted that *Rowe vs. Wade*, confirmed once more that the protection of liberty under the Due Process Clause, has a substantive dimension of fundamental significance in determining the rights of the person. *Lawrence*, at 562.

Following *Rowe vs. Wade*, 410 U.S. 113 (1973), the Supreme Court in *Carrie vs. Population Services Int'l*, 431 U.S. 678 (1977), confirmed that the reasoning of *Griswold* could not be confined to the protection of rights of married adults.

Then came *Bowers vs. Hardwick*, 478 U.S. 186 (1986). In this case, the United States Supreme Court upheld a Georgia law under which an individual was prosecuted for engaging in sexual conduct with another adult male. The statute in question made it a criminal offense to engage in sodomy. The petitioner, Mr. Hardwick, had brought an action to declare the state’s statute invalid; alleging that he was a practicing homosexual and that the criminal prohibition violated his rights under the Constitution to Due Process. The Court sustained the Georgia law. In *Bowers*, the Court stated as follows:

“The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence, violates the laws of the many states that still make such conduct illegal and have done so for a very long time.” *Bowers, supra*, 478 U.S. 186 at 190.

The Court upheld the statute as constitutional.

*Bowers* was overruled by the Supreme Court in the case of *Lawrence vs. Texas*, 539 U.S. 558 (2003). In that opinion, the Court stated:

“To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a

married couple were it to be said that marriage is simply about the right to have sexual intercourse. The laws involved in *Bowers* and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals." *Lawrence, supra*, 539 U.S. 558 at 564.

In *Lawrence*, the Court also stated:

"The long standing criminal prohibition of homosexual sodomy upon which the *Bowers* decision placed such reliance is as consistent with a general condemnation of non-procreative sex as it is within the established tradition of prosecuting acts because their homosexual character." *Id.* at 569, and ... "when sexuality find overt expression in intimate conduct with another person, the conduct can be but an element in a personal bond that is more enduring." *Lawrence*, 539 U.S. at 558.

Finally, at page 559, the Court stated:

"In all events, we think that our laws and traditions in the past half-century are of the most relevance here. These references show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex."

### CONCLUSION

Because the statute in question does more than it purports to do by prohibiting all sexual conduct by, with and between vulnerable adults, it places an extreme burden upon the specific class of persons defined in our law as "vulnerable adults." Further, by outlawing such conduct, the statute demeans and ultimately criminalizes the most intimate of personal relationships by and between the mildly mentally retarded. The fact of the matter is that both parties in the present case engaged in consensual sexual conduct and both are mildly retarded. They should stand on an equal footing before the law and it is constitutionally inappropriate to apply the statute to the facts of the present case.

/

/

/

DATED this 24<sup>th</sup> day of August, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 24<sup>th</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

AN  
ANDEE RODRIGUES  
Legal Assistant

96

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**  
2011 AUG 24 PM 4:06  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR-2010-4031
	)	
Plaintiff,	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF MOTION TO SUPPRESS</b>
-vs-	)	
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
	)	

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and submits the following Memorandum in Support of his Motion to Suppress incriminating statements made by the Defendant to law enforcement officials in this case.

**FACTUAL BACKGROUND**

On or about the 23<sup>rd</sup> day of August, 2010, Officer Larsen, of the Mountain Home Police Department, caused Mr. Hamlin to come to the police station to discuss his alleged contact with William McCormack. The officer read the Defendant his Miranda Rights and had him initial and sign a form (attached as Exhibit "A"). Mr. Hamlin thereafter made a number of incriminating statements concerning certain consensual sexual contacts by and between himself and William McCormack.

ORIGINAL

## ARGUMENT

Denvil Hamlin is mildly retarded, a "vulnerable adult," and has an IQ of approximately 62. (Please see Affidavit of Dr. David Sanford at pages 3 and 5). Further, in the same Affidavit, at page 4, the doctor opines that due to the Defendant's mental retardation and cognitive disfunction, he would not have understood the importance of warnings or the consequences of speaking to the police.

"When statements made by a defendant during the course of an in custody interrogation are offered at trial, the State 'must establish a voluntary, knowing and *intelligent*' waiver of the suspect's rights." *State vs. Mitchell*, 104 Idaho 493, 497, 660 P.2d 1336, 1340 (1983). (Emphasis added)

The fact that the Defendant received his Miranda Warnings does not automatically make any statements following those warnings admissible in evidence.

"The question is not one of form, but whether the Appellant, in light of the totality of the circumstances, knowing and intelligently waived her Miranda Rights. See *North Carolina vs. Butler*, 441 U.S. 369 (1979). *State vs. Mitchell*, supra at 498.

The rule that Miranda Warnings are one element in the totality of circumstances can be traced back to *State vs. Fisk*, 92 Idaho 675, 448 P.2d 768 (1968). The firmly established rule is that whether or not Miranda Warnings are given, the State still must bear the burden of proving that the waiver of any such rights was made knowingly, voluntarily, and *intelligently*. *State vs. Fisk*, supra; *State vs. Crowe*, 131 Idaho 109, 952 P.2d 1245 (1998); *State vs. Waggoner*, 124 Idaho 716, 864 P.2d 392 (Ct. App. 1993); *State vs. Brennan*, 123 Idaho 553, 859 P.2d 202 (Ct. App. 1993).

In the present case, the incriminating statements made by the Defendant were made knowingly. There is no evidence of coercion and therefore the conclusion is certainly appropriate that they were made voluntarily. The issue is whether they were made intelligently.

At page 2 of Dr. Sanford's Psychological Evaluation done on January 25, 2011, he notes that the Defendant reads at a third grade level. Further, at page 3 of the same evaluation, he notes the Defendant's IQ of 62 as previously indicated.

Finally, at page 4 of his Affidavit, Dr. Sanford states that due to the Defendant's retardation, he would not have understood or appreciated the choices available to him in the exercise or waiver of his 5<sup>th</sup> Amendment right.

The giving of Miranda Warnings in this particular case, under the totality of the circumstances, particularly the Defendant's mental retardation fails to show that the Defendant did or could intelligently waive his right to remain silent. The State has the burden to show that the Defendant's waiver of his constitutional right to remain silent and to be free of self incrimination was an intelligent waiver.

### CONCLUSION

The giving of Miranda Warnings to a mentally retarded person who can not understand the concepts involved or the potential consequences of the choice which he is asked to make can not be considered an intelligent decision to waive his constitutional rights. The evidence produced in this case to date on the Defendant's competency by all parties who have been involved in his evaluations demonstrates that the Defendant did not intelligently waive his right to remain silent and any incriminating statements made by him to law enforcement officials should be suppressed.

DATED this 24<sup>th</sup> day of August, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 24<sup>th</sup> day of August, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission



---

ANDEE RODRIGUES  
*Legal Assistant*

MOUNTAIN HOME POLICE DEPARTMENT  
2775 East 8<sup>th</sup> North  
Mountain Home, ID. 83647  
Ph. (208)587-2101 Fax (208) 587-0180

NOTIFICATION OF RIGHTS

(Place initial at the end of each statement below only after you completely understand what such statement means)

- 1. I have the absolute right to remain silent. PH
- 2. Anything I say, can and will be used against me in court. PH
- 3. I have the right to the advice of a lawyer before answering any questions. PH
- 4. I have the right to have a lawyer present during any questioning. PH
- 5. I have the right to a lawyer even if I cannot afford one, and if I cannot afford one, I may use the services of the Public Defender at any time and at public expense. PH
- 6. If I choose to answer any questions without the advice of a lawyer, or without a lawyer being present, I have the right to stop answering questions at any time and remain silent. PH

NAME: Dennis Hamlin  
Please Print

SIGNATURE: Dennis Hamlin

PLACE: MHPD.

[Signature]  
WITNESS

8/23/10 1410  
DATE & TIME

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DATE & TIME





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BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
DENVIL R. HAMLIN, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-2010-4031

**SECOND MOTION FOR  
DISMISSAL OF CHARGES**

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Order dismissing the present case on the grounds that trial of the action would violate the Defendant's Due Process and 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment rights under the Federal Constitution and Article 1, Section 13 of the Constitution of the State of Idaho.

This motion is based upon the Psychological Evaluation performed by Dr. Chad Sombke, on August 24, 2011. (Attached hereto as Exhibit "A") Although Dr. Sombke found Mr. Hamlin to be "marginally competent to proceed" (Evaluation, page 6, para. 1), the examiner noted the IQ score of 55 on the Wechsler Abbreviated Scale of Intelligence (WASI).

In the first and last paragraph of the Evaluation, Dr. Sombke quite emphatically states as follows:

"However, he does not appear to have the capacity to testify in his own defense...this examiner does not believe that Mr. Hamlin is capable of testifying in

ORIGINAL

his own defense. He will not be able to fully comprehend or understand a prosecutors (*sic*) questions and he would most likely provide answers to questions he did not fully understand.”

Essentially, the evaluator’s stating that due to his cognitive deficits and mild to *moderate* retardation, Mr. Hamlin can not “appear and defend in person and with counsel.” Mr. Hamlin’s incompetency on the point of providing testimony in his own defense reaches not only his 5<sup>th</sup> Amendment rights as well as the appearance and defense rights specified in the Idaho Constitution but also Mr. Hamlin’s 6<sup>th</sup> Amendment rights to counsel inasmuch as counsel cannot effectively prepare Mr. Hamlin for testimony should such an approach be strategically indicated. Further, counsel cannot be effective in rendering advice to the Defendant, particularly on the point of testimony and personal defense to the charge. *Strickland vs. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Counsel, not being trained in the area of psychology or communication with the mentally retarded, has no basis upon which to judge whether or not the choices made in the process of trial are made knowingly and intelligently by the Defendant or are simply the result of his desire to please based upon some inquiry made of him by counsel.

DATED this 8<sup>th</sup> day of September, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 8<sup>th</sup> day of September, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By: \_\_\_\_\_ Hand Delivery  
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\_\_\_\_\_  
ANDEE RODRIGUES  
*Legal Assistant*

**Chad Sombke, Ph.D.**

**Chad Sombke, Ph.D., PC**

*Forensic & Clinical - Assessment, Consultation, & Therapy*

RECEIVED  
AUG 29 2011  
BY:

**PSYCHOLOGICAL EVALUATION**

**Evaluation to Determine Defendant's Capacity to Understand Proceedings:**

**IDAHO CODE 18-211**

**At the request of the Honorable Judge George G. Hicks, Magistrate Judge**

**CASE NUMBER:** CR-2010-4031

**DEFENDANT:** Denvil Hamlin

**DOB/AGE:** June 29, 1959/52

**Date of Evaluation:** August 24, 2011

**AUTHOR:** Chad Sombke, Ph.D.  
Licensed Psychologist

**Description of the Nature of Examination:**

**Notification of Lack of Confidentiality:** Mr. Hamlin was referred for an evaluation pursuant to Idaho Code 18-211, ordered by the Honorable Judge George Hicks, Magistrate Judge. Mr. Hamlin was interviewed and evaluated in a private room at the Elmore County Courthouse. He was informed that this evaluation was being undertaken to help the court determine his current mental condition and whether he was competent to proceed and assist his counsel with the presentation of a defense. He was told that all of the information reported would be used to generate a report for the court. He was also told that I might have to testify in court about this evaluation. He stated an understanding of this. Mr. Hamlin appeared to be competent to understand what I was saying and make informed decisions about whether or not he was going to participate. He agreed to participate.



**Evaluation Procedures:**

- Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)
- Rapid Estimate of Adult Literacy in Medicine (REALM)
- Georgia Court Competency Test Revised (GCCT-R)
- Mini-Mental Status Examination (MMSE)

2498 N. Stokesberry Pl. Suite 160  
Meridian, ID 83646  
(208) 855-9922 Voice (208) 898-9922 Fax  
[www.chadsombkephd.com](http://www.chadsombkephd.com)



I.C. 18-211, Denvil Hamlin  
CR-2010-4031

**Wechsler Abbreviated Scale of Intelligence (WASI): Verbal portion  
Clinical Interview**

**Pertinent History:**

The history summarized here represents a synthesis of self-report information gathered from Mr. Hamlin during the evaluation.

**Identifying Information/Brief Social History:** Mr. Hamlin is a 52-year-old married male with the birthday of June [REDACTED]. He is currently out of custody and living in Mountain Home, Idaho with his wife of four (4) years and her 21-year-old son. Mr. Hamlin has been charged with Rape originating from an alleged incident that occurred over a year ago with a male friend. This examiner had conducted an evaluation pursuant to Idaho Code 18-211 on Mr. Hamlin in September 2010 and at that time it was determined that Mr. Hamlin was not competent to proceed. He was subsequently hospitalized at State Hospital South in Blackfoot, Idaho and he was reportedly restored to competency. It appears as though another question about Mr. Hamlin's competency to proceed has risen; therefore, another evaluation pursuant to Idaho Code 18-211 was ordered by the court.

Mr. Hamlin arrived to the interview at the courthouse on time and he was with his wife. She waited in the hall while Mr. Hamlin was evaluated in a private room. He was appropriate and cooperative throughout the evaluation and he reportedly remembered that I had evaluated him approximately one (1) year ago. The background information Mr. Hamlin reported during this evaluation was similar to the information he was able to report in the previous evaluation. Therefore, his background history will be summarized here.

Mr. Hamlin was born and raised in Ohio with his biological parents until his father died when Mr. Hamlin was 15 years old. His mother moved the family to Elko, Nevada when Mr. Hamlin was 16 years old and she reportedly remarried, but has since been divorced. Mr. Hamlin stated that he does not remember that much about his father, but he did say that his father was an alcoholic, "that's what killed him". His father was reportedly involved in a motor vehicle accident while he was driving drunk and died from the crash. His mother cleaned houses for a living but she is currently retired and living in Elko, Nevada. Mr. Hamlin grew up with an older sister and younger brother and his older sister died from cancer a few years ago. His brother lives in Nevada. Mr. Hamlin had a difficult time remembering when he moved to Idaho, but it appears as though he has lived in Idaho "off and on" for the last 15 or 20 years. He has moved back and forth between Elko, Nevada, Glens Ferry and Mountain Home since that time.

Mr. Hamlin reportedly graduated from high school in 1983 and he was involved in special education classes throughout his academic career. He has previously been diagnosed with Mild Mental Retardation and testing during this evaluation confirmed that Mr. Hamlin's IQ is in the range of someone with Moderate to Mild Mental Retardation. However, he is able to function adequately in the community and he gets his needs met fairly well. He has also been able to maintain a marital relationship for the last four (4) years.

Mr. Hamlin has worked in labor type jobs his entire life. He reportedly spent 10 years working as a rancher in Nevada and he is currently working doing some landscaping.

I.C. 18-211, Denvil Hamlin  
CR-2010-4031

Mr. Hamlin denied having a mental health history. He was hospitalized at State Hospital South in Blackfoot, Idaho last year in order for him to be restored to competency and he also lived in a group home in Boise, Idaho during that time at Aspen Ridge. He denies experiencing any significant psychiatric symptoms such as anxiety or depression but he did say that he gets nervous when he goes to court. He denies ever making a suicide attempt and he stated that he sometimes hears a voice telling him "don't do that, or do that" but he also stated that the voice was just his thoughts. He is currently not taking any psychotropic medications and he does not appear to be in need of any psychotropic medications.

Mr. Hamlin stated that he tried marijuana one (1) time in his life and he used to drink "a lot" when he was younger. He has reportedly not drunk any alcohol in the last 15 years. He denies ever experimenting with any other illegal drugs.

Mr. Hamlin denied ever being arrested or charged with a crime as a juvenile. He stated that he was accused of sexual abuse in 1983, but that case reportedly "never went to court". He has had a couple of other traffic citations in his life and he has never been incarcerated in jail or prison for any significant amount of time.

Mr. Hamlin stated that he married his wife "four years ago" and they reportedly met 22 years ago. They met when he was living in Glens Ferry, Idaho and she has two (2) children who are currently 21 and 29 years old. The 21-year-old son reportedly still lives with Mr. Hamlin and his wife. Mr. Hamlin stated that he does not have any children of his own. He reportedly has a positive relationship with his wife and she is supportive of him regarding his current court case.

### **Mental Status Examination:**

During this evaluation, Mr. Hamlin came to the evaluation on time with his wife. His attitude was very cooperative and agreeable and he made efforts to answer the questions asked of him. His speech was simplistic and slow and he was not able to elaborate on questions very well. He stated that he understood the purpose of the evaluation, since he has been evaluated for competency a number of times in the past. He had a basic understanding of his current situation. He knew the correct date and he knew he was at the Elmore County Courthouse. He has an adequate understanding of his intellectual deficits, but his overall insight appears to be rather limited. His judgment also appears to be somewhat simplistic and childish in nature. His affect was described as "good" and he rated his mood to be a 10 on a scale of 1 to 10 with one (1) being the worst he could feel and 10 the best. He denied having any current suicidal ideations. Mr. Hamlin was able to count backward from 20 to zero and recite the alphabet without any mistakes. He had a difficult time calculating serial threes forward and he was unable to calculate serial sevens backward. He was able to recall who the last three (3) Presidents of the United States were in order and he was able to repeat five (5) numbers forward and four (4) numbers backward from immediate memory. His abstract reasoning was extremely concrete and limited as evidenced by his answers to the meaning of simple proverbs and how two (2) items are similar. Mr. Hamlin was also administered the Mini-Mental Status Examination and he scored a 27 out of a possible 30, indicating that Mr. Hamlin did not evidence any significant cognitive impairment at the time of the evaluation.

I.C. 18-211, Denvil Hamlin  
CR-2010-4031

## Testing Results:

The testing for this evaluation focused on answering the court's competency related questions, because Mr. Hamlin's intellectual deficits prevented him from completing personality inventories or assessments that required the participant to have a reading level above the third grade. Mr. Hamlin's reading level was assessed to be at a third grade or below range by the Rapid Estimate of Adult Literacy in Medicine (REALM) test and he exhibited an IQ of 55 (0.1%ile) on the Verbal portion of the Wechsler Abbreviated Scale of Intelligence (WASI).

## Competency Issues:

### Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR):

The CAST-MR is a validated instrument designed to provide information on competence to stand trial in defendants with mental retardation. It is divided into three (3) sections that address the basic elements of the *Dusky* criteria: Basic Legal Concepts, Skills to Assist Defense, and Understanding Case Events. Mr. Hamlin's scores on the two separate administrations of the CAST-MR are as follows:

	September 2010	August 2011
Basic Legal Concepts	12/25 (48%)	20/25 (80%)
Skills to Assist Defense	8/15 (53%)	12/15 (80%)
Understanding Case Events	9/10 (90%)	8.5/10 (85%)
<b>Total Score</b>	<b>29/50 (58%)</b>	<b>40.5/50(81%)</b>

According to the CAST-MR manual, Mr. Hamlin scored higher than a normative group taking the CAST-MR who were mentally retarded but found competent to stand trial, 37 (74%). Mr. Hamlin's total score was 40.5 out of 50 (81%). He scored adequately on all three (3) sections of the CAST-MR and he stated that he remembered this test, because he had been taught the questions on it during his hospitalization. He appears to have gained some basic knowledge about court that he did not have a year ago. Scores of 70% or above are generally considered as representing someone who is competent to proceed in a court hearing. Mr. Hamlin's overall score of 81% appears to suggest that he is competent to proceed; however, the CAST-MR authors are careful to point out that the results from the CAST-MR are intended to be used as one part of an overall assessment for competence to stand trial. Therefore, further information was gathered.

Georgia Court Competency Test-Revised (GCCT-R): Mr. Hamlin was administered the GCCT-R. The GCCT was developed as a quantitative measure that would be easily understood by defendants. It is administered orally, and is designed to sample a defendant's knowledge and skill in the understanding of courtroom procedures, knowledge of the charge, knowledge of possible penalties, and ability to communicate effectively with an attorney. Scores of 70 and above fall in the competent to stand trial range. Scores of 59 and below are in the incompetent range. Scores in the 60 to 69 range are in the borderline range. The standard score obtained in this administration of the GCCT was 72, indicating competency skills just within the Competent range.

I.C. 18-211, Denvil Hamlin  
CR-2010-4031

In addition, regarding the defendant's awareness of the nature of the proceedings, I have considered the following during my evaluation with him. Mr. Hamlin stated that he has been charged with "sexual abuse" and he had a difficult time describing what someone would have to do in order to be charged with sexual abuse. He did say that he was accused of "touching someone" and he knew who the alleged victim was. He had a basic understanding of his current legal situation and a basic understanding of what a guilty or a not guilty plea meant. He was able to describe the circumstances surrounding his alleged crime to this examiner adequately, but his ability to testify in his own defense continues to be rather limited because Mr. Hamlin is easily confused by questions and he tends to answer questions even though he does not know what he is being asked. Mr. Hamlin has, however, gained some basic and simplistic knowledge of the roles and purposes of a Judge, jury, prosecutor, defense attorney, and witnesses during a trial.

Regarding his ability to assist in his defense, I considered the following during the evaluation. Mr. Hamlin stated that he likes his attorney and he has a positive view of him. He is willing to work with his attorney in order to find a resolution to his case. He is able to describe his side of the event in question in somewhat understandable terms. Mr. Hamlin has a limited understanding of what is involved in a plea bargain, but he was able to retain some of the information regarding a plea bargain after it was explained to him. He had an understanding of the possible penalties he could receive if he were found guilty, saying that he could receive five (5) to 25 years in prison. He initially did not appear to appreciate the seriousness of the charges against him, but it was discovered that he did not know what the word "serious" meant. When asked if his alleged crime was serious, he would always say "no", but when he was asked if what he was accused of doing was bad, he stated "yes". Therefore, he does appear to understand that what he is accused of doing is a significant crime. Mr. Hamlin needs well explained alternatives from his attorney in order for him to make rational and logical decisions. He seemed to have the ability to know what is a good deal for him and what would be a bad deal for him in regards to a possible plea agreement. Overall, Mr. Hamlin appears to be marginally competent at this time with a definite limitation in his ability to testify in his own defense.

### **Summary and Conclusions:**

**Summary:** Mr. Hamlin is a 52 year-old married male charged with Rape. The alleged crime occurred over a year ago and Mr. Hamlin had previously been found not competent to proceed due to his mild mental retardation. He was reportedly restored to competency, yet another question has risen about his competency to proceed; therefore, another evaluation pursuant to Idaho Code 18-211 was ordered by the court.

Mr. Hamlin does appear to have gained some basic knowledge and understanding about court and the court process, since the previous time this evaluator had evaluated him in September 2010. He still has a difficult time making logical and rational decisions for himself and he still has a tendency to try to please the person who is asking him questions. He does appear to have the capacity to make decisions for himself that are in his best interest with the help of his attorney. He will be heavily dependent upon what his attorney has to say to him, but he appears to have the capacity to listen and understand what is being said to him. He was also able to describe to this evaluator some of the events of the alleged incident, who was involved in the alleged incident, and where the alleged incident took place. He appears to have the capacity to listen to the testimony of witnesses and inform his attorney of any distortions or misstatements. For



I.C. 18-211, Denvii Hamlin  
CR-2010-4031

example, when he was asked what he would do if a witness was telling lies about him, he stated "tell my lawyer". Furthermore, Mr. Hamlin scored in the competent range on the CAST-MR with a score of 81% and he also scored in the competent range on the GCCT-R with a score of 72%. Overall, Mr. Hamlin currently appears to be marginally competent to proceed. His IQ is in the mildly to moderately mentally retarded range, but he is able to function adequately in the community. He has been provided a lot of training on competency issues and he appears to have benefitted from that training. However, he does not appear to have the capacity to testify in his own defense. Therefore, the diagnostic impression is as follows:

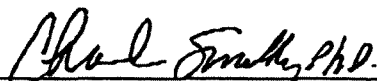
**Diagnostic and Statistical Manual IV-TR (DSM-IV-TR) Diagnoses:**

- AXIS I: 799.9 Diagnosis Deferred
- AXIS II: 317 Mild Mental Retardation
- AXIS III: High Blood Pressure (self-report)
- AXIS IV: Problems related to the social environment and problems related to interaction with the legal system: arrest
- AXIS V: GAF: 40: Major impairment in work, judgment, and thinking

**Conclusions:** As a result of the information and observations obtained during this evaluation, it is this examiner's opinion that Mr. Hamlin currently understands the risks and benefits of treatment and he has the capacity to make informed decisions about treatment. However, he has not been receiving any psychiatric treatment and he does not appear to be in need of any psychiatric treatment at this time.

Ability to Understand the Proceedings and Assist Counsel: As a result of the information and observations obtained during the current evaluation, it is this examiner's opinion that Mr. Hamlin currently appears to be marginally competent to proceed. He has gained a basic understanding and knowledge about court and the court process and he appears to have the capacity to make decisions that are in his best interest. His ability to assist in his defense will depend heavily on his attorney, since Mr. Hamlin will rely immensely on his attorney to help guide him in the best direction for his case. One major area of concern is Mr. Hamlin's ability to testify in his own defense if he is called to do so. This examiner does not believe that Mr. Hamlin is capable of testifying in his own defense. He will not be able to fully comprehend or understand a prosecutors questions and he would most likely provide answers to questions he did not fully understand. Mr. Hamlin's competency to proceed has been very difficult to ascertain due to his intellectual deficits. He is limited in a number of areas, but he also has some basic skills that leads this examiner to believe that he is marginally competent to proceed at this time.

Respectfully submitted,

  
Chad Sombke, Ph.D.  
Licensed Psychologist

8/29/11  
Date

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
 190 South 4th East  
 Mountain Home, Idaho 83647  
 Telephone: (208) 587-2144 ext. 503  
 Facsimile: (208) 587-2147  
 ISB No. 6090

**FILED**

2011 SEP 12 AM 10:52

BARBARA STEELE  
 CLERK OF THE COURT  
 DEPUTY *BS*

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

STATE OF IDAHO,	)	Case No.
	)	
Plaintiff,	)	<b>OBJECTION TO MOTION TO</b>
	)	<b>SUPPRESS</b>
VS.	)	
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
	)	

COMES NOW, The State of Idaho, by and through Kristina M. Schindele, Elmore County Prosecuting Attorney, and hereby objects to Defendant's Motion to Suppress as follows.

The Defendant filed a motion to suppress his statements to Detective Ty Larsen on the ground that he did not freely, knowingly and intelligently waive his *Miranda* rights because he was not able to understand those rights. The State respectfully submits that Defendant was not in custody at the time Detective Larsen interviewed Defendant, so the dictates of *Miranda* do not apply. To the extent that Detective Larsen in fact advised Defendant of his

ORIGINAL

rights in an exercise of caution, Defendant freely, knowingly and intelligently waived such rights.

1. Because Defendant was not in custody at the time Detective Larsen conducted the interview, Defendant's voluntary statements are admissible.

In Miranda v. Arizona, the United States Supreme Court held, pursuant to the Fifth Amendment right against self-incrimination, an individual subject to custodial interrogation is entitled to be informed of his or her constitutional rights to counsel and to remain silent. 384 U.S. 436, 445 (1966). In order for *Miranda* warnings to be required, the Defendant must first be subject to custodial interrogation by law enforcement officers. Id. at 467-468.

For application of the *Miranda* rule, a person is in custody when he has been arrested or when his freedom of action "is curtailed to a degree associated with formal arrest." Berkemer v. McCarty, 468 U.S. 420, 440 (1984). In determining whether a suspect is in custody, the test is an objective one and "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." Id. at 442. *See also State v. Myers*, 118 Idaho 608, 611, 798 P.2d 453, 456 (Ct. App. 1990). The totality of the circumstances must be examined, which may include the location of the interrogation, the conduct of the officers, the nature and manner of the questioning, the time of the interrogation, and other persons present. *State v. James*, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010); State v. Medrano, 123 Idaho 114, 117-18, 844 P.2d 1364, 1367-68 (Ct. App. 1992).

OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS - Page 2

The Defendant voluntarily appeared at the police department to meet with Detective Larsen. Detective Larsen, who was wearing plain clothes, escorted Defendant to an interview room. Detective Larsen then provided Defendant with *Miranda* warnings before asking Defendant questions. The officer never threatened or coerced Defendant. No other officers were present during the interview. *See State v. Tapp*, 136 Idaho 354, 33 P.3d 828 (Ct. App. 2001) (Tapp was not in custody where he voluntarily appeared at the LEB, was never told he could not leave or that he had to submit to questioning, and was not arrested during the interview).

Detective Larsen, who likely subjectively intended to arrest Defendant for sexual exploitation of a vulnerable adult, did not communicate such intent to Defendant. The United States Supreme Court has explained the impact of an officer's subjective intent in considering the totality of the circumstances:

An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned. Those beliefs are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her "freedom of action." Even a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest. The weight and pertinence of any communications regarding the officer's degree of suspicion will depend upon the facts and circumstances of the particular case. In sum, an officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment whether that individual was in custody, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation.

OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS - Page 3

and would have affected how a reasonable person in that position would perceive his or her freedom to leave.

Stansbury v. California, 511 U.S. 318, 325 (1994) (Internal citations omitted); *see also J.D.B. v. North Carolina*, U.S. Supreme Court Docket No. 09-11121 at p.5 (June 16, 2011) (In order to provide clear guidance to police interviewers, the test for custody involves no consideration of the subjective view of the officer of the "actual mindset" of the suspect but does include circumstances that would have affected how a reasonable person in the suspect's position would perceive his freedom to leave).

At the time Defendant made his inculpatory statements, he was not in custody. Detective Larsen, in an exercise of caution, provided Defendant with *Miranda* warnings. The Court should deny the motion to suppress.

2. Because Defendant freely, knowingly and intelligently waived his rights, Defendant's post-*Miranda* voluntary statements to Detective Larsen are admissible.

Detective Larsen, in an abundance of caution, advised Defendant of his rights under *Miranda*. Under the facts presented herein, Defendant clearly waived his rights and provided a voluntary statement to the detective. "The defendant may waive effectuation of these rights provided the waiver is made voluntarily, knowingly and intelligently." Miranda, 384 U.S. at 445. Whether a *Miranda* waiver is knowing, voluntary and intelligent is determined based upon the totality of the circumstances. Moran v. Burbine, 475 U.S. 412, 421 (1986).

Relevant factors to consider include the defendant's age, education, and intelligence, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973) (internal citations omitted). Importantly, the absence or presence of any one factor is not determinative. Id. Thus, for example, a defendant's claim of intoxication, sleep-deprivation, or pain does not automatically demonstrate an inability to waive his rights. See, e.g., Shackleford v. Hubbard, 234 F.3d 1072, 1080 (9<sup>th</sup> Cir. 2000) ("The fact that a suspect is under the influence of drugs or medication is irrelevant if the suspect's statement was the product of a rational intellect and a free will.") (citations and quotations omitted); U.S. v. Brooks, 125 F.3d 484, 491 (7<sup>th</sup> Cir. 1997) (concluding "that the district court did not clearly err in finding that Mr. Brooks' waiver of his *Miranda* rights was not hindered by cocaine, pain or lack of sleep"); Medelros v. Shimoda, 889 F.2d 819, 823 (9<sup>th</sup> Cir. 1989) (defendant's intoxication was not sufficient to overcome his free will because "although he was intoxicated, he was not incapacitated").

Further, a "written waiver in particular is strong evidence that the waiver was valid." Derrick v. Peterson, 924 F.2d 813, 824 (9<sup>th</sup> Cir. 1991) (citations omitted). In addition, "prior arrests and . . . previous explanations of the *Miranda* warnings" are also evidence that a particular defendant understood his rights. Id. (citations omitted).

Detective Larsen had previously interviewed Defendant regarding alleged unrelated inappropriate sexual contact with a minor – Defendant's niece. That

Interview also took place at the police department. Defendant agreed to talk to Detective Larsen and in fact participated in the interview during which Defendant denied any inappropriate sexual contact. At the conclusion of the first interview, Defendant was released and returned to his residence. He then agreed to meet with Detective Larsen the second time.

During the interview, Defendant makes a couple of references to the fact that he is "slow" yet distinguishes between his circumstances and the mental and cognitive condition of William McCormack. Defendant told Detective Larsen he understood his rights and agreed to talk to Detective Larsen. The only evidence in the record at this point concerning Defendant's inability to understand his rights is his self-serving testimony at the preliminary hearing and an affidavit in which Dr. Sanford opines Defendant could not have understood his rights and intelligently waived them under any circumstances. During the preliminary hearing Defendant first denied talking to Detective Larsen, then denied remembering the *Miranda* advisory before denying that he admitted the sexual acts he committed against William McCormack. Defendant later admitted he made the statements to Detective Larsen.

The Defendant understood his *Miranda* rights. Detective Larsen read them out loud to the Defendant. The Court will have the opportunity to review the video of the interview. Defendant did not appear confused. Detective Larsen was not overbearing. The Defendant agreed to discuss the matter with the detective. He may have been attempting to cooperate out of a need to please the interviewer. However, Defendant's prior experience with Detective Larsen demonstrated that Defendant would not be punished by refusing to cooperate - he denied contact with his niece and suffered no adverse consequences. The State respectfully submits that a psychologist's opinion

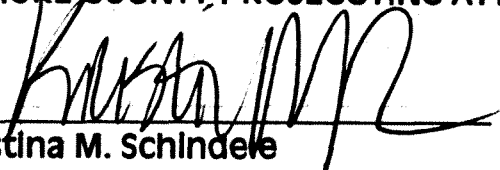
that Defendant, who tests within the mild mental retardation range, could never waive his *Miranda* rights is contrary to the facts and the law.<sup>1</sup>

**CONCLUSION**

The State respectfully requests the Court enter an order denying the Defendant's motion to suppress. Defendant was not in custody for purposes of *Miranda*. If the Court determines the prophylactic protections of *Miranda* apply, Defendant received a full warning and freely, knowingly and intelligently waived his rights.

DATED This 12<sup>th</sup> day of September.

**KRISTINA M. SCHINDELE  
ELMORE COUNTY PROSECUTING ATTORNEY**

BY:   
Kristina M. Schindele

---

<sup>1</sup> The State presumes Defendant may produce expert testimony on this issue, even though his motion for expert assistance was not addressed prior to the motion to suppress. In the event such evidence is adduced, the State further presumes the psychologist would advise the Court that Defendant is married, has a driver's license, has entered into a sales contract to purchase his mobile home, thereby engaging in a myriad of activities that require Defendant to weigh his options and make rational decisions.



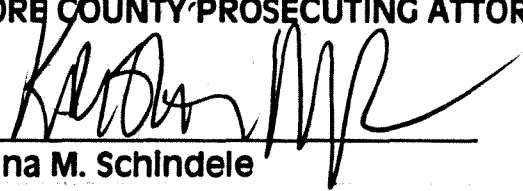
**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of September 2011, I served a copy of the attached document to the following parties:

E.R. Frachiseur  
Ratliff Law Office, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647

DATED this 12<sup>th</sup> day of September 2011.

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**

BY:   
\_\_\_\_\_  
Kristina M. Schindele

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
190 South 4th East  
Mountain Home, Idaho 83647  
Telephone: (208) 587-2144 ext. 503  
Facsimile: (208) 587-2147  
ISB No. 6090

**FILED**

2011 SEP 12 AM 10:52

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY



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

STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DENVIL HAMLIN, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-2010-2777

**OBJECTION TO MOTION IN LIMINE  
AND NOTICE RE: I.R.E. 404(b)  
EVIDENCE**

COMES NOW, The State of Idaho, by and through Kristina M. Schindele, Elmore County Prosecuting Attorney, pursuant to Rule 404 (b) of the Idaho Rules of Evidence and, does object to the Defendant's motion in limine and does hereby serve notice upon Defendant, Denvil Hamlina, by service of this Notice upon his attorney, E.R. Frachiseur, of the State's intention to offer the following evidence regarding other crimes, wrongs or bad acts of the Defendant during the Jury Trial of the above-entitled cause of action:

1. Stephanie Malan served as William McCormack's psychosocial rehabilitation worker at the time the disclosures in this case were made. Ms. Malan would testify that her agency applied to be William's representative payee for social security benefits due to William's inability to protect his property, namely his bank account. She would testify that she told Defendant she was serving as William's representative payee and requested he stop asking William for money. Shortly after starting her work as William's representative payee, Defendant took William to the bank where William attempted to

**ORIGINAL**

withdraw funds, but could not because Ms. Malan was required to assist the withdrawal.

2. During the interview with Detective Larsen, Defendant admitted he asked William to open a utility account in William's name for service at the residence Defendant shared with Defendant's wife. William in fact opened the account. Defendant never made a payment on the account, which remained in William's name.

Idaho Rule of Evidence 404(b) provides that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. However, there are some well delineated exceptions which the State alleges are present in this case. The State relies on the Idaho Supreme Court's recent enunciation of the standard for admission of 404(b) evidence set forth in State v. Grist, 147 Idaho 49, 205 P.3d 1185 (Idaho 2009). In Grist, the Supreme Court stated:

Admissibility of evidence of other crimes, wrongs, or acts when offered for a permitted purpose is subject to a two-tiered analysis. First, the trial court must determine whether there is sufficient evidence to establish the other crime or wrong as fact. The trial court must also determine whether the fact of another crime or wrong, if established, would be relevant. Evidence of uncharged misconduct must be relevant to a material and disputed issue concerning the crime charged, other than propensity. Such evidence is only relevant if the jury can reasonably conclude that the act occurred and that the defendant was the actor.

Second, the trial court must engage in a balancing under I.R.E. 403 and determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence.

Id. at \_\_\_, 205 P.3d at 1188.

The State submits it believes Defendant does not dispute the factual accuracy of either proffers of proof set forth in this objection and notice. This evidence has been disclosed in discovery. Furthermore, Detective Larsen provided testimony at the preliminary hearing regarding the second set of circumstances. In the event said factual accuracy is challenged, the State shall submit testimony to the Court outside the

presence of the jury prior to inquiring into such at trial. Ms. Malan has moved out of the jurisdiction and will not be available prior to trial.

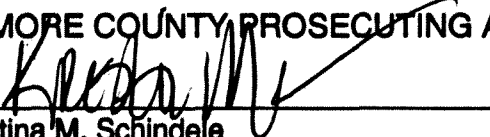
The State respectfully submits that this evidence is not improper propensity evidence. The State is not intending to introduce this testimony in the hope of convincing the jury to convict the Defendant because of his prior wrongdoing. Rather, this evidence is directly probative of the relationship between Defendant and William. It will help the jury understand the power of persuasion or control Defendant exercised over William. Persuasion cultivated by Defendant over 20 years of friendship with the Defendant. The persuasion that explains why William consented to the Defendant's sexual advances. This evidence is also relevant to prove Defendant's efforts to dominate William – his grooming behavior. This evidence is also extremely probative in demonstrating William's vulnerability – he was not able to protect his financial assets from Defendant's influence. Finally, in the event Defendant successfully proffers a defense that he is also a "vulnerable adult," this evidence will help the trier of fact weigh such evidence and determine if the sexual acts actually took place between two persons of like abilities or between a vulnerable adult and a predator.

The Court must also make a determination of whether the proposed evidence is unduly prejudicial in light of its probative value. ~~Clearly, this evidence is prejudicial.~~ However, it is not unduly prejudicial. This evidence is not likely to confuse the jury. It is not allegations of further sexual improprieties which are more likely to influence deliberations. Rather, the evidence explains the relationship between these two men.

DATED This 12<sup>th</sup> day of September 2011.

KRISTINA M. SCHINDELE

ELMORE COUNTY PROSECUTING ATTORNEY

BY:   
Kristina M. Schindele

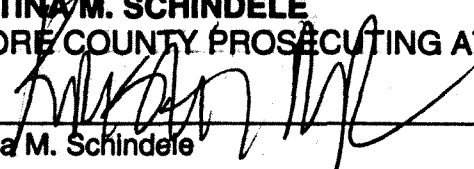
**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of September 2011, I served a copy of the attached document to the following parties:

E.R. Frachiseur  
Ratliff Law Office, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647

DATED this 12<sup>th</sup> day of September 2011.

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**

BY:   
Kristina M. Schindele

48

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**  
190 South 4th East  
Mountain Home, Idaho 83647  
Telephone: (208) 587-2144 ext. 503  
Facsimile: (208) 587-2147  
ISB No. 6090

**FILED**  
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BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY *BS*

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

STATE OF IDAHO,	)	Case No.
	)	
Plaintiff,	)	OBJECTION TO MOTION TO
	)	DISMISS ON EQUAL PROTECTION
vs.	)	AND DUE PROCESS GROUNDS
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
<hr/>		

COMES NOW, The State of Idaho, by and through Kristina M. Schindele, Elmore County Prosecuting Attorney, and hereby objects to Defendant's Motion to Dismiss as follows.

The Defendant has filed a motion to dismiss the Information on constitutional grounds. In his motion, Defendant contended Idaho Code § 18-1505B was vague and constitutionally infirm. In the memorandum in support of the motion to dismiss, Defendant asserted two other constitutional challenges to this continued prosecution – the statute violates the equal protection of the law and the Defendant's due process rights. Based on the memorandum, the State considers the void for vagueness challenge withdrawn. The State respectfully submits that Idaho's statutory scheme does not violate equal protection or due process rights.

ORIGINAL

**A. Because the Sexual Exploitation of a Vulnerable Adult Statute Protects a Class of Adults Warranting State Intervention, Defendant's Equal Protection Claim Fails.**

With respect to equal protection, Defendant claims Idaho's statutory scheme violates the Constitution because the state has prohibited consensual sexual activity for persons diagnosed with cognitive deficits, i.e. mental retardation. This argument fails. Idaho Code § 18-1505B specifically protects "vulnerable adults." The legislature has defined "vulnerable adult" as, "a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources." This definition does not include any or every person suffering a physical or mental impairment. Rather, the legislature limited the protection of state law to those who are unable to protect themselves from exploitation, abuse or sexual abuse.

Throughout his argument, Defendant asserts that he is a "vulnerable adult;" therefore, his sexual contact with William McCormack must be deemed consensual or otherwise protected by the United States Constitution. Defendant claims this prosecution is not fair as he is the only one charged. The State submits Defendant's proposition faces a serious factual hurdle – whether Defendant is actually vulnerable. The State has repeatedly conceded that Defendant is mildly mentally retarded. However, unlike William, Defendant does not have a brain injury which created auditory hallucinations. Defendant did not insist on living in a burned out trailer until a psychosocial rehabilitation worker

**OBJECTION TO DEFENDANT'S MOTION TO DISMISS - Page 2**

intervened. Defendant was not cajoled into bathing and personal hygiene by use of a child's reward system of treats. The State submits all of these facts have been set forth in Williams' medical and PSR service records that were presented to the magistrate court at the preliminary hearing and will be presented to the jury at trial. Rather, Defendant has a driver's license, is married and has entered into a contract to purchase a residence. The circumstances of Defendant's daily life activities raise serious concerns about whether he is vulnerable.

The State submits Defendant's argument incorrectly defines "vulnerable adults" as the class of people who suffer from mental or physical infirmities. Based on this error, Defendant claims the State is unconstitutionally prohibiting consensual contact between two adults. Frankly, on its own terms Sexual Exploitation of a Vulnerable Adult challenges the underpinnings of Defendant's theory – because the alleged victim is vulnerable, any consent given is questionable. The whole point of this statute is to protect adults who cannot protect themselves. However, the statute does appear to proscribe sexual contact between two vulnerable adults. The State clearly disputes that Defendant is vulnerable. However, the State reserves the right to address whether Defendant can pursue an affirmative defense at trial requiring a finding of not guilty in the event that the jury finds Defendant to be vulnerable. See Decker v. State, Docket No. 2008- CT-01621-SCT \*paragraphs 18 – 22 (Miss. Sup. Ct. August 4, 2011) (Mississippi Supreme Court, *en banc*, voiced concerns over interpretation of financial exploitation of vulnerable adult statute that would make any use of the adult's funds unlawful).

To the extent that Defendant contends that the statute must receive strict scrutiny, the Defendant did not cite and the State has not found legal authority requiring such. See **OBJECTION TO DEFENDANT'S MOTION TO DISMISS - Page 3**



Discovery House, Inc. v. Consolidated City of Indianapolis, 319 F.3d 277 (7th Cir. 2003) (*City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), the Supreme Court determined that the mentally retarded did not form a quasi-suspect classification for equal protection analysis; thus, the classification established by a statute must be rationally related to a legitimate state interest); *see also* Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 366-367 (2001) (Court reaffirmed that equal protection claims based on disability "cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose"). Idaho has implicitly recognized that disability does not implicate a suspect class or a fundamental right. *Cf. Osick v. Public Employee Retirement System of Idaho*, 122 Idaho 457, 462, 835 P.2d 1268, \_\_\_ (Idaho 1992).

The State has a rational basis for its statutory protection for vulnerable adults.<sup>1</sup> Defendant's equal protection challenge fails.

B. Because the Sexual Exploitation of a Vulnerable Adult Statute Does Not Implicate Due Process Concerns, Defendant's Motion Fails.

The United States Supreme Court has long recognized due process implications arising out of private sexual contact. The Court specifically recognized that the due process clause of the United States Constitution includes a liberty interest in protecting private, consensual homosexual contact. *See Lawrence v. Texas*, 539 U.S. 558, 578 (2003). Following Lawrence, the Idaho Supreme Court noted the Constitution "legalized

---

<sup>1</sup> In State v. Joslin, 175 P.3d 764 (2007), the Idaho Supreme Court rejected Defendant's equal protection challenge to statutory rape. The Court utilized intermediate scrutiny because the statute implicated discriminatory gender distinctions. *Id.* at 772-773. The Court then held that the State's interest in protecting teen aged girls and in preventing teen pregnancy was sufficient to support the statute. If those reasons are sufficient to withstand an equal protection challenge, then the State's interest in protecting vulnerable adults is

**OBJECTION TO DEFENDANT'S MOTION TO DISMISS - Page 4**

the practice of homosexuality and in essence made it a protected practice under the Due Process Clause of the United States Constitution." McGriff v. McGriff, 140 Idaho 642, 648, 99 P.3d 111, 117 (2004). However, the holding in Lawrence "does not affect a state's legitimate interest and indeed, duty, to interpose when consent is in doubt." Anderson v. Morrow, 371 F.3d 1027, 1033 (9th Cir.2004); *see also* Muth v. Frank, 412 F.3d 808 (7<sup>th</sup> Cir. 2005) (Lawrence did not establish a fundamental right to all private sexual contacts between adults; therefore, Defendant's incest conviction was not subject to vacation). Based on these concepts, in State v. Cook, the Idaho Court of Appeals determined that Idaho's infamous crime against nature statute, Idaho Code § 18-6605, does not violate due process under circumstances where Cook committed a sexual act against a "vulnerable adult" based on the victim's diagnosis of "Down's Syndrome." 146 Idaho 261, \_\_\_, 192 P.3d 1085, 1087-1088 (Ct. App. 2008).

Defendant contends Idaho Code § 18-1505B violates due process solely on the basis of Lawrence v. Texas. Sexual exploitation of a vulnerable adult requires the State to prove beyond a reasonable doubt that the victim is not able to protect him or herself from the influence of the alleged perpetrator. The Idaho Court of Appeals recognized this very distinction in Cook. So long as the State bears this burden, Idaho Code § 18-1505B, on its face, is constitutionally permissible. The State clearly has a rational basis for proscribing sexual exploitation of a vulnerable adult who is unable to protect him or herself.

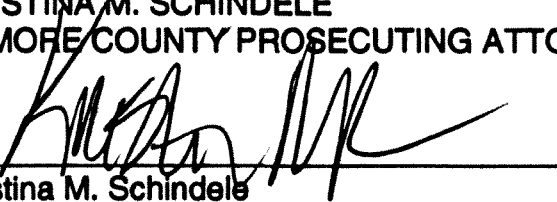
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just as worthy.

**OBJECTION TO DEFENDANT'S MOTION TO DISMISS - Page 5**

DATED This 12<sup>th</sup> day of September 2011.

KRISTINA M. SCHINDELE  
ELMORE COUNTY PROSECUTING ATTORNEY

BY:   
\_\_\_\_\_  
Kristina M. Schindele

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of September 2011, I served a copy of the attached document to the following parties:

E.R. Frachiseur  
Ratliff Law Office, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647

DATED this 12<sup>th</sup> day of September 2011.

**KRISTINA M. SCHINDELE**  
**ELMORE COUNTY PROSECUTING ATTORNEY**

BY:   
Kristina M. Schindele

**VANESSA DECKER a/k/a VANESSA FRANCIS DECKER a/k/a VANESSA FRANCES DECKER a/k/a FRAN**

**v.**

**STATE OF MISSISSIPPI  
No. 2008-CT-01621-SCT  
Supreme Court of Mississippi, En Banc  
August 4, 2011**

DATE OF JUDGMENT: 08/01/2008

CLAY COUNTY CIRCUIT COURT HON. LEE J. HOWARD

ATTORNEY FOR APPELLANT: JIM WAIDE

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL BY: STEPHANIE BRELAND WOOD

DISTRICT ATTORNEY: FORREST ALLGOOD

DICKINSON, PRESIDING JUSTICE,

¶1. The grand jury indicted Vanessa Decker under the Mississippi Vulnerable Adults Act of 1986<sup>[1]</sup> for using her mother's money "without her consent." But at trial, the evidence established that she had obtained her mother's consent to use the money, so the State requested - and the trial judge granted - a jury instruction that allowed the jury to find Decker guilty, even if her mother had given her permission to use the money. Decker was convicted by the Clay County Circuit Court and sentenced to serve a term of four years in the custody of the Mississippi Department of Corrections. She also was sentenced to pay restitution in the amount of \$4, 120 and a fine in the amount of \$250 and all court costs. This discrepancy between the indictment and the jury instructions was material, so we reverse.

**BACKGROUND FACTS AND PROCEEDINGS**

¶2. During the almost two years Nannie Mae Morris - who had short-term memory loss and could not provide for her own needs - lived with her daughter, Decker, Morris allowed Decker to write checks on Morris's checking account "for whatever she needed." Decker had an agreement with the bank that she could cash Morris's checks - consisting of Social Security disability payments - and draw on Morris's checking account. Decker wrote checks totaling \$10, 255.02.

¶3. The grand jury indicted Decker on four counts of exploitation of a vulnerable adult. The State voluntarily dismissed the first count, and the jury found Decker not guilty on two of the three remaining counts, but guilty on the fourth count, which charged her with writing checks totaling \$4, 120 during a four-month period of time when Morris was living with Decker's sister, and Decker was in Texas caring for her son, who had severely injured himself in a suicide attempt.

¶4. Decker appealed her conviction, raising both the the discrepancy between the indictment and the jury instructions and the constitutionality of the statute under which she was convicted. On appeal, her case was assigned to the Court of Appeals, which affirmed her conviction. We granted certiorari to review the decisions of the trial court and the Court of Appeals. Because the first issue is dispositive, we decline to address the second.

**ANALYSIS**

**I.**

¶5. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation."<sup>[2]</sup> The Mississippi Constitution also grants the accused in criminal prosecutions the right "to demand the nature and cause of the accusation."<sup>[3]</sup> An indictment's primary

purpose is "to provide the defendant with a concise statement of the crime so that he may have a reasonable opportunity to prepare and present a defense to those charges."<sup>(4)</sup>

¶6. This right to notice through an indictment requires more than a bare assertion of the name of the crime; that is to say, an indictment for shoplifting, for instance, must say more than "the accused committed the crime of shoplifting." The accused must also be reasonably informed of the material facts, details, and conduct the grand jury believes constituted the crime. And once the grand jury hands down a true bill that alleges an accused committed a particular crime by engaging in certain conduct – absent waiver or a request for a lesser included offense – the accused must be prosecuted for that crime, and no other.<sup>(5)</sup>

¶7. Count IV of the indictment charged that Decker willfully, feloniously, unlawfully, and knowingly had exploited Morris by writing checks or withdrawing cash from Morris's checking account to herself and her husband while Morris was not actively in Decker's care, without the consent of Morris, in violation of Mississippi Code Section 43-47-19(1), (2)(b).

¶8. The indictment charged exploitation, a term that, according to the statute, requires "illegal or improper use" of the money.<sup>(6)</sup> So the grand jury was required to believe that Decker had used the money for an improper purpose. In describing the improper use of the money, the grand jury charged that Decker had used the money without her mother's consent.

¶9. There is no indication that the grand jury believed Decker's use of her mother's money with her mother's consent was an improper use. In fact, the wording of the indictment suggests that the grand jury believed Decker's use of the money was improper only if the money was used without Morris's consent. This Court has held that "[i]f the grand jury did not know what crime they were charging against the defendant, how could the defendant know the nature of the crime with which he is charged?"<sup>(7)</sup>

¶10. At trial, the State produced no evidence that Decker had used her mother's money without her consent. And several witnesses testified that Decker, in fact, had obtained her mother's consent. So the State submitted a jury instruction that instructed the jury that it could find Decker guilty "[r]egardless of whether it was done with, or without [her] consent."<sup>(8)</sup> The trial judge gave the instruction over Decker's objection.

¶11. The State points out that – because the indictment cited the applicable statute, which clearly provides that one can exploit a vulnerable person with or without the victim's consent – Decker was on notice of what she had to defend. Stated another way, the State says absence of consent is not an element of the crime it had to prove. And at oral argument, the State informed us of its view that any expenditure of a vulnerable adult's money that benefits the spender is an improper use.

¶12. Decker argues that the wording of the indictment led her to believe that having her mother's permission – which the evidence produced at trial indicates she had – was a complete defense to the charges. She further argues that she relied on the indictment's wording in preparing to defend the charge at trial; and she points out that she did not learn until the trial that the jury would be instructed that she could be found guilty, even if she had permission to use her mother's money.

¶13. Also, as stated above, the statute's "improper purpose" language unquestionably is an essential element of the crime. Decker argues that the grand jury may very well have found her use of her mother's money to be an "improper use" only if expenditures were made without her permission. The indictment's limiting language supports this argument, as no other explanation is offered as to why the limiting language was included in the indictment.

¶14. We do not today hold any discrepancy between the language of an indictment and the proof at trial or the jury instructions requires reversal. It is only where, as here, the discrepancy is material and prejudices an accused's ability to defend; or where the jury instructions deviate in a material and substantive way from the conduct considered by the grand jury to constitute the crime, that reversal is required.

¶15. Although Decker's indictment sufficiently informed her of the crime and the conduct the grand jury believed constituted the crime, the trial judge erroneously issued a jury instruction that materially conflicted with the indictment's language. And because the error was not cleared up in other instructions, the jury instructions, when

taken as a whole, created injustice by expanding, beyond the charges in the indictment, the bases on which Decker could be convicted.

¶16. The State argues that Count IV of the indictment included a citation to the statute Decker is charged with violating, and the statute explicitly states "with or without consent." But, in light of the indictment's limiting language, the citation is insufficient to put Decker on notice of the charge she would be required to defend against at trial.

¶17. The State does not contest that Decker had permission to use her mother's money. Indeed, the State sought the jury instruction that expanded the charge against Decker precisely because the evidence at trial clearly established that she did have permission. We therefore decline to remand this case for a new trial.

## II.

¶18. Decker also claims that the portion of the Act under which she was prosecuted is unconstitutionally vague. The statute under which Decker was indicted states that "[I]t shall be unlawful for any person to . . . exploit any vulnerable adult."<sup>9</sup> The wording of the statute begs two questions: Who is a vulnerable adult, and what does it mean to exploit? Both questions are answered by statutory definitions. The term "vulnerable adult" means

a person . . . whose ability to perform the normal activities of daily living or to provide for his or her own care or protection . . . is impaired due to a mental, emotional, physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.<sup>10</sup>

¶19. It is important to note here that mental impairment is not required for one to qualify under this statute as a "vulnerable adult." Indeed, the statute's broad definition of a vulnerable adult includes a person with completely normal mental capacity, but whose ability to perform the normal activities of daily living is impaired because of a physical limitation, such as blindness or the inability to walk. Decker argues that the statute robs such persons of their right to decide what they wish to do with their own money by imposing someone else's view of what is an "improper use."

¶20. The statute's term "exploitation" is defined as "the illegal or improper use of a vulnerable person or his resources for another's profit or advantage, with or without the consent of the vulnerable adult . . ." The term "improper purpose" – which is not defined within the statutes – forms the basis for Decker's argument that the statute is unconstitutionally vague.

¶21. This case was prosecuted by – and the appeal has been presented by – the Attorney General's office. At oral argument, the assistant attorney general argued that *any* use of a vulnerable person's money for personal benefit would be an improper use, even with the vulnerable person's consent. So we must accept that interpretation as to how citizens are to be prosecuted under the statute.

¶22. Under Section 43-47-19 – as applied by the Attorney General, and as its terms are defined in Section 43-47-5 – a vulnerable adult cannot give a spouse permission to withdraw money from a checking account to buy herself a birthday present; or give one of her children or grandchildren permission to withdraw money to pay college tuition. According to the argument presented by the Attorney General's office, both these actions would constitute crimes.

¶23. We are troubled by the statute's broad reach. But because we have decided this case based on the conflict between the language of the indictment and the jury instruction, we decline to address today the constitutionality of the statute.

## CONCLUSION

¶24. The trial judge gave a jury instruction that materially changed the charge made by the grand jury in the indictment. Accordingly, we must reverse and render the judgments of the Circuit Court of Clay County and the Court of Appeals.

¶25. REVERSED AND RENDERED.

WALLER, C.J., CARLSON, P.J., RANDOLPH, LAMAR, KITCHENS AND PIERCE, JJ., CONCUR. CHANDLER AND KING, JJ., NOT PARTICIPATING.

Notes:

[1] Miss. Code Ann. §§ 43-47-1 to 43-47-39 (Rev. 2009). In 2010, the Legislature changed the name of the act to the Mississippi Vulnerable Persons Act of 1986. See Miss Code Ann. § 43-47-1 to 43-47-39 (Supp. 2010).

[2] U.S. Const. amend. VI.

[3] Miss. Const. art. 3 § 26.

[4] *Burrows v. State*, 961 So.2d. 701, 705 (Miss. 2007).

[5] See e.g. *Wolfe v. State*, 743 So.2d 380, 384 (Miss. 1999) ("Courts may not amend an indictment as to a substantive matter without the agreement of the grand jury which issued the indictment, unless the indictment only regards mere formalities."); *Williams v. State*, 445 So.2d 798, 806 (Miss. 1984) (Jury instructions may not materially vary from an indictment).

[6] Miss. Code Ann. § 43-47-5(I) (Rev. 2009).

[7] *Quang Thanh Tran v. State*, 962 So.2d 1237, 1246 (Miss. 2007) (quoting *Brumfield v. State*, 40 So.2d 268 (Miss. 1949)).

[8] Emphasis added.

[9] Miss. Code Ann. § 43-47-19(1) (Rev. 2009) (emphasis added).

[10] Miss. Code. Ann. § 43-47-5(n) (Rev. 2009).



CR-2010-0004031

State of Idaho vs. Derril R Hamlin

Judge: Barry Wood

Hearing type: Motion

Hearing date: 9/12/2011

Time: 10:10 a.m.

Courtroom: Main

Court reporter: Mia Mortarski

Minutes Clerk: Heather Furst

Defense Attorney: Ed Frachiseur, Elmore Public Defender

Prosecutor: Kristina Schindela, Elmore Prosecuting Atty

*IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF ELMORE  
District Court Criminal Minute Entry*

Motion for Expert Witness  
Motion for Suppression of Evidence  
Motion in Limine  
Amended Motion to Dismiss

Court calls case at time noted above, confirms the true and correct name of defendant, who is also present personally. (OR) (On Bond)

Court advised that Counsel had met with him in chambers. October trial date would need to be reset after reviewing Dr. Sombka's report.

State's exhibit 100 offered to Court to review prior to hearing; no objection from the defense; Court ordered that State's Exhibit 100 be admitted.

December 7, 2011 for Jury Trial at 9:00 a.m.; Pre-trial conference on November 21, 2011 at 10:00 a.m.  
October 3, 2011 at 2:00 p.m. for Motion Hearing

Ms. Schindela provided objections to be filed. Asked that the Court consider the Preliminary Hearing transcript prior to next hearing. Mr. Frachiseur would oppose it but changed his mind and stated he is o.k. with it. Clerk to provide a copy of transcript to him for review.

Mr. Frachiseur would like the Court to consider Dr. Sombka's report (should be attached to second motion to dismiss). Court will read it. If Court is going to review all these reports, the State put everyone on notice that Dr. Sombka will be called as a witness.

10:18 a.m. End Minute Entry.

Attest:   
Heather Furst  
Deputy Clerk

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

100  
**FILED**

2011 SEP 21 PM 4: 24

BARBARA STIELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 2010-4031
	)	
Plaintiff,	)	<b>EX PARTE MOTION</b>
	)	<b>FOR EXPERT WITNESS</b>
-vs-	)	<b>AT COUNTY EXPENSE</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
_____		

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court for its Ex Parte Order permitting the Defendant to have the services of a qualified psychiatrist or psychologist; in the present case, Drs. Chad Sombke and David Sanford have assisted earlier in evaluating Defendant and an adequate presentation of Defendant's Motions for Dismissal, as well as his Motion for Suppression of Evidence requires their services and testimony. Said experts should be reimbursed at public expense because the Defendant is indigent; represented by the public defender; and would most assuredly hire such expert witness to establish his positions on the pretrial motions herewith filed if he had the financial resources to do so.

**ORIGINAL**

DATED this 21<sup>st</sup> day of September, 2011.

**RATLIFF LAW OFFICES, CHTD.**

By E. R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 21<sup>st</sup> day of September, 2011, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By: \_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Federal Express  
\_\_\_\_\_ Certified Mail  
\_\_\_\_\_ U.S. Mail  
 Facsimile Transmission



\_\_\_\_\_  
Andee Rodriguez  
Legal Assistant

FILED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO  
JUL 01 2011 PM 12:29

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE  
ELMORE A STEELE  
CLERK OF THE COURT  
DEPUTY

STATE OF IDAHO,  
Plaintiff,

Case No. CR-2010-4031

v.

SCHEDULING ORDER

DENVIL RONALD HAMLIN,  
Defendant.

This matter came before the court on September 12, 2011 at 10:10 a.m.  
for an Arraignment of the above named Defendant. The attorneys present were:

For the State: Kristina Schindele

For the Defendant: Ed Frachiseur

Counsel requested the matter be reset for trial.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys  
and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The three (3) day jury trial of this action shall commence before this court on **December 7, 2011 at 9:00 a.m.**
- 2) Notice is hereby given, that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Phillip M. Becker  
 Hon. G.D. Carey  
 Hon. Dennis Goff  
 Hon. George R. Reinhart, III  
 Hon. Nathan Higer  
 Hon. Daniel C. Hurlbutt, Jr.  
 Hon. Linda Copple-Trout

Hon. James Judd  
 Hon. Duff McKee  
 Hon. Daniel Meehl  
 Hon. Barry Wood  
 Hon. W. H. Woodland  
 Hon. Ronald Schilling  
 Hon. Kathryn A. Sticklen  
 Any Fourth District Judge

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later

than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **November 21, 2011 at 10:00 a.m.** for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h).

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 3 day of October, 2011.



\_\_\_\_\_  
BARRY WOOD  
Senior District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on this 3rd day of October, 2011 I mailed (served) a

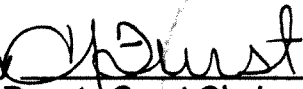
true and correct copy of the within instrument to:

**ELMORE COUNTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL**

**ELMORE COUNTY PUBLIC DEFENDER'S OFFICE  
INTERDEPARTMENTAL MAIL**

**ELMORE COUNTY JURY CLERK  
HAND DELIVERY**

**BARBARA STEELE  
Clerk of the District Court**

By   
Deputy Court Clerk

**EXHIBIT LIST**

Barry Wood, SENIOR DISTRICT JUDGE  
Heather Furst, DEPUTY CLERK  
\_\_\_\_\_, COURT REPORTER

CASE NO. CR-2010-4031

DATE: December 7, 2011

CASE: STATE OF IDAHO VS.  
State's List \_\_\_\_\_

Denvil Ronald Hamlin  
Defendant (s) List \_\_\_\_\_

<b>NO</b>	<b>DESCRIPTION</b>	<b>DATE</b>	<b>ID</b>	<b>OFFD</b>	<b>OBJ</b>	<b>ADMIT</b>

Exhibit 1

EXHIBIT LIST

CASE NO. CR-2010-4031

Motion Hearings  
~~TRIAL DATE~~ October 3, 2011

State of Idaho  
Plaintiff(s)

Kristina Schindele  
Counsel for Plaintiff(s)

vs.

Dervil R. Hamlin  
Defendant(s)

Ed Frachisew  
Counsel for defendant(s)

\*\*\*\*\*

Pltf.	Def.	Description	marked	offered	status
101		Notification of Rights <sup>8-23-10 Dated</sup> signed <sup>by</sup> Hamlin ✓	✓		ADMITTED
102		Notification of Rights dated 3-16-10 ✓	✓		ADMITTED



**CR-2010-0004031**  
**State of Idaho vs. Denvil R Hamlin**

**Judge: Barry Wood**  
**Hearing type: Motion**  
**Hearing date: 10/03/2011**  
**Time: 2:45 p.m.**  
**Courtroom: Main**  
**Court reporter: Penny Tardiff**  
**Minutes Clerk: Heather Furst**  
**Defense Attorney: Ed Frachiseur, Elmore Public Defender**  
**Prosecutor: Kristina Schindele, Elmore Prosecuting Atty**

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,**  
**IN AND FOR THE COUNTY OF ELMORE**  
**District Court Criminal Minute Entry - Motion**

Court calls case at time noted above, confirms the true and correct name of defendant, who is also present personally. (OR) (On Bond)

Motion for Expert Witness  
Motion to Suppress  
Motion in Limine  
Motion to Dismiss

EF to proceed with 2<sup>nd</sup> Motion for Dismissal based on Dr. Sombke's evaluation and then Motion to Suppress and thirdly on Motion to Dismiss.

Mr. Frachiseur has no objection to having Mr. Sombke appear by telephone.

Mr. Frachiseur calls Kathy Hamlin to the stand.

Kathy Hamlin (sworn)

2:48 p.m. Direct examination of Ms. Hamlin.

Ms. Schindele objects to relevance

Mr. Frachiseur responds. Vulnerable adults enter marriage and do engage in prohibited acts under the statute. Court asked if there was a claim of minority. No per Mr. Frachiseur. How does this fall under equal protection act? Not sure how this falls under act of vulnerable adult. Mr. Frachiseur responds that according to the statute Mr. and Mrs. Hamlin are committing acts in violation of statute with regards to vulnerable adults. Ms. Schindele responds. Defendant is starting with presumption that these individuals being a vulnerable adult. No evidence of this. It is not relevant to inquiry. Mr. Frachiseur responds that the State is incorrect - statute makes it illegal for any person to have sex with a vulnerable adult. Counsel wants to ignore the affidavit of Dr. Sombke. Dr. Sombke has evaluated twice and finds defendant vulnerable twice.

2:54 p.m. Direct examination of Ms. Hamlin continued by Mr. Frachiseur.

2:55 p.m. No other questions.

Cross examination of Ms. Hamlin by Ms. Schindele.

2:56 p.m. No other questions.

Re-direct examination of Ms. Hamlin by Mr. Frachiseur

2:56 p.m. Witness steps down.

Mr. Frachiseur has no other witnesses at this point.

Ms. Schindele asked that the clerk call Dr. Sombke to testify.

Mr. Frachiseur has no objection to Dr. Sombke appearing via telephone.

Dr. Sombke called and on the telephone.

Dr. Chad Sombke sworn.

3:01 p.m. Direct examination of Dr. Sombke by Ms. Schindele.

Counsel stipulated to his qualifications.

Direct examination of Dr. Sombke continued by Ms. Schindele.

3:12 p.m. No further questions.

Cross examination of Dr. Sombke by Mr. Frachiseur.

3:14 p.m. No further questions.

Re-direct examination of Dr. Sombke by Ms. Schindele.

3:16 p.m. No further questions.

Re-cross examination of Dr. Sombke by Mr. Frachiseur.

3:17 p.m. No further questions from Counsel.

Court inquires of Dr. Sombke.

3:22 p.m. Ms. Schindele asked Dr. Sombke some questions regarding what the Court asked him.

3:24 p.m. No further questions.

Dr. Sombke asked questions by Mr. Frachiseur.

3:26 p.m. No further questions.

Witness excused.

Ms. Schindele calls Ty Larsen.

Ty Larsen (sworn)

3:27 p.m. Direct examination of Mr. Larsen by Ms. Schindele.

3:28 p.m. Witness identifies defendant.

Direct examination of Mr. Larsen continued by Ms. Schindele.

Ms. Schindele provided State's Exhibit 101 to witness for identification.

3:30 p.m.

3:31 Moves for admission of State's Exhibit 101; no objection from Mr. Frachiseur; Court admits State's Exhibit 101.

Direct examination of Mr. Larsen continued by Ms. Schindele.

3:32 p.m. State's Exhibit 102 provided to witness for identification.

Direct examination of Mr. Larsen continued by Ms. Schindele.

3:34 p.m. Ms. Schindele moves for admission of State's Exhibit 102; no objection from Mr. Frachiseur; Court admits State's Exhibit 102.

Direct examination of Mr. Larsen continued by Ms. Schindele.

Objection by Mr. Frachiseur as to relevance. Ms. Schindele responds. Court will overrule the objection – but we do not need a lot there.

3:35 p.m. Direct examination of Mr. Larsen continued by Ms. Schindele.

March 2010 Police report provided to Mr. Larsen to refresh his memory.

3:36 p.m. Direct examination of Mr. Larsen continued by Ms. Schindele.

Objection by Mr. Frachiseur – outside his knowledge. Ms. Schindele responds. Ms. Schindele will rephrase the question.

3:38 p.m. Direct examination of Mr. Larsen continued by Ms. Schindele.

Ms. Schindele stated she had no further questions relevant to Motion to Suppress.

3:39 p.m. Cross examination of Mr. Larsen by Mr. Frachiseur.

No further questions.

3:40 p.m. Re-direct examination of Mr. Larsen by Ms. Schindele.

No further questions.

3:40 p.m. Re-cross examination of Mr. Larsen by Mr. Frachiseur.

No further questions.

3:42 p.m. Witness steps down.

The State has no further witnesses or evidence.

Mr. Frachiseur provided closing arguments  
2<sup>nd</sup> Motion to Dismiss based on Dr. Smoke's evaluation. Conversation with Dr. Sombke did not change anything in his report. If proceedings are slowed down and language used is simplistic the defendant might be able to follow along. He reaffirmed that the defendant has significant issues with ability to testify in his own behalf. Examiner expresses sincere doubt that defendant would even understand what he is giving up. Defendant is not competent to understand; would more than likely just agree. Even if he doesn't understand question would probably answer the question in a positive manner and agree.

Motion to Suppress Evidence: Mr. Frachiseur stated that Mr. Larsen was required to read the document to defendant due to slowness of reading. This proves that he did not in fact understand Miranda. The issue is a statement to law enforcement is knowingly and willingly given. IQ of 55 and 62.

Ms. Schindele objects to some of this evidence - not relevant to this.

Mr. Frachiseur responds - it is in the Court record.

Ms. Schindele responds - rules of evidence apply in a suppression hearing. There is no actual evidence unless the Court is going to take judicial notice of the evaluations.

Court stated that if they are not admitted into evidence, will not consider.

Mr. Frachiseur stated they were admitted into evidence in the Magistrate Court. Ms. Schindele responds - relevant to competency hearing, not this hearing.

Court will think about it.

Mr. Frachiseur continued. Intelligent and rationale is the basis of our motion. Defendant would not be able to appreciate the right to be silent is what he was giving up. The consequences of his discussion with the officer should make them inadmissible. Statements Must be intelligently made.

Motion to Dismiss - Mr. Frachiseur apologizes for misleading counsel. Original Motion to Dismiss stated statute was void due to vagueness. We do not press this void, the statute is very clear. Use of the word "any person" is very broad. If Court feels live testimony is necessary, request a continuance. Statute creates a classification to define vulnerable adult. Statute makes it that sexual relations between vulnerable adults are a felony without exception. No other group in Idaho has been deprived of their right to engage in sexual conduct with another

person. No other person is that a felony offense. Equal protection analysis the Court must decide the standard of review. Strict scrutiny analysis should be used. Fundamental rights are at risk. Limiting or narrowing construction by appellate court would be necessary to make it constitutional under strict scrutiny. It is a felony for any other person of equal or lesser cognitive ability or physical disability and a person of normal intelligence or attributes to have sexual contact with a vulnerable adult. Two possible interests here. The interest is to protect vulnerable adults. Discrimination is not against classification of vulnerable adults.

Issue of due process. Lawrence vs. Texas establishes due process – private homosexual conduct. Supreme Court has recognized private sexual contact is a liberty interest and the State's intrusion in this area is a violation of defendant's due process rights.

Motion in Limine – State has shown that the defendant entered into a financial arrangement with Mr. McCormick but also that he obtained money from Mr. McCormick. This evidence is designed to show that Mr. McCormick is vulnerable to wishes or desires of defendant. Financial transactions and sexual conduct are two different matters. Willingness of Mr. McCormick with defendant does not demonstrate anything in reference to charged offense (motive, anything relevant). Such different nature. Purpose of testimony is to show that defendant has propensity to ask Mr. McCormick for favors or that he be given a loan and help him out with gas bill. This is sought to be introduced that the defendant treated Mr. McCormick in shabby fashion. Did not pay money back. Evidence is highly unfairly prejudicial against defendant. Makes it look like defendant goes around asking for money and favors. Relevance is minimal. Damaging if introduced. Propensity to ask favors of Mr. McCormick or others.

Motion for Expert Witness Fees if going to trial.

Motion to Suppress – the State is using that the defendant was not in custody. Mr. Frachiseur stated it is not relevant. The "test" for whether or not there is a violation of Miranda or 5<sup>th</sup> Amendment in general is whether or not a reasonable man would understand the situation. We have a reasonable man suffering from mild to moderate retardation. Defendant is not a reasonable man. Defendant was furnished Miranda warnings. Defendant was incapacitated during the interview – did not understand what he was giving up when he made the statements.

4:19 p.m. Closing arguments by Ms. Schindele. State understood that defendant was proceeding solely on equal protection and/or fundamental right to sexual contact. Did not address vagueness – no evidence of that. With respect to equal protection – State could not find case where mental retardation was a suspect classification. Submit there is a rational basis. Due process – Lawrence vs. Texas was based on rational not strict scrutiny. State will advise the court of other cases that addressed the issue.

Motion in Limine – State responded. Submits that has met burdens set forth by the Supreme Court. Rest on objection.

Motion to Suppress – Court should review interview between Mr. Larsen and defendant. Submits that the evidence is clear, defendant was not subject to custodial interrogation. He came to the office willing. Miranda did apply. Mr. Larsen testified that he knew he was slow. Dr. Sombke testified that it would be difficult for defendant to understand prior to Dr. Sombke reviewing the interview tape. Defendant has had an opinion in competency

determination – defendant is in-competent and vulnerable. State submits that there is no evidence showing defendant is vulnerable. He is mentally retarded. State will rest on objection.

Motion to Dismiss based on Due Process – Dr. Sombke’s opinion that he did better on test in August; he is competent, will require assistance, needs simplicity. Did state he lacked competency to testify. Dr. Sombke thinks he will be easily led. Seems to be a first impression on the Court. Submits on the evidence before the Court defendant will have a difficult time – didn’t say he couldn’t testify but did understand his waiver with Dr. Sombke and could answer 8 of the 10 questions.

Motion for Expert Witness – Appoint an expert at trial. 18-207(4) addresses the issue. Evidence has to go towards an element of the offense. Not sufficient notice and potential vulnerability should be left for sentencing not at trial.

Mr. Frachiseur stated that depending on Courts ruling on the various motions would decide how he would use expert.

Court needs to watch DVD with regard to suppression matter.

Court will deny the motion to dismiss on grounds of constitutional and equal protection matter. Find that the appropriate standard is a rational basis. Two distinct categories of people (protected and person alleged). State has right to protect vulnerable adults.

Motion in Limine –

Under Rule 404b Other Acts – intent and knowledge absence of mistake – transaction was blocked because McCormick was not able to monitor his own funds. This has to be knowledge that he is a vulnerable adult. Will allow based on intent and knowledge. Court can give a limiting instruction.

Under 401 (prejudicial) –

Finding that this was not a custodial interrogation. Under Due Process standard – no finding and intend no finding that a person of mild moderation could or could not make a confession. I limit it to what this defendant did. Dr. Sombke is very concerned if defendant could protect himself in self-incrimination. No idea of what self-incrimination is. Could accurately just impressions of fact but did not understand the consequences. Is that a violation of due process? Court will need to review. Non-custodial interrogation. What is the state’s standard under that circumstance.

4:41 p.m. End.

End Minute Entry.

Attest:   
Heather Furst  
Deputy Clerk

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

12  
**FILED**  
2011 OCT -5 AM 9:32  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 2010-4031
	)	
Plaintiff,	)	<b>EX PARTE ORDER</b>
	)	<b>FOR PAYMENT OF EXPERT</b>
-vs-	)	<b>FEES AT COUNTY EXPENSE</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	

THIS MATTER came before the Court upon the Defendant's Ex Parte Motion for Expert Witness at County Expense, for motions hearing, and good cause appearing therefore.

IT IS HEREBY ORDERED that the county pay for and be responsible for the expert witness fees of Dr. David Sanford in connection with the motions hearing currently scheduled for October 3, 2011.

*reasonable  
reason  
(RBW)*

**IT IS SO ORDERED.**

DATED this 3 day of October, 2011.



BARRY WOOD  
District Judge

**ORIGINAL**



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 5<sup>th</sup> day of October, 2011, served a copy of the within and foregoing document to:

Kristina Schindele  
Elmore County Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home, Idaho 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

Barbara Steele  
Clerk of the District Court  
Elmore County Courthouse  
Mountain Home, ID 83647

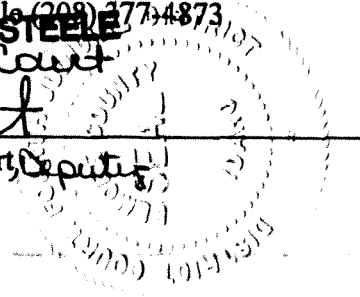
- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208) 587-6940

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile

Dr. Sanford  
6010 Overland Road  
Boise, ID 83709

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail
- Facsimile (208) 577-4873

**BARBARA STEELE**  
Clerk of Court  
*[Signature]*  
Clerk of the Court, Deputy  


FILED  
2011 NOV -3 PM 5: 00  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 ) Case No. CR-2010-4031  
 vs. )  
 )  
 DENVIL R. HAMLIN, )  
 )  
 Defendant. )

---

**ORDER ON MOTIONS**

---

**I.**

**The Charges.**

On August 24, 2010, a Complaint was filed in the Elmore County charging the defendant, Denvil Ronald Hamlin (hereinafter Hamlin), with the felony crime of Sexual Abuse of a Vulnerable Adult, three counts, Idaho Code §§18-1505 and 18-1505B(1)(a) or (c). On July 5, 2011, following a Preliminary Hearing, the Defendant was bound over to the District Court.

## **II.**

### **Motions Before the Court.**

The Motions presently before the Court are:

1. Motion to Suppress;
2. Motion in Limine re: 404(b);
3. Motion to Dismiss on Equal Protection and Due Process Grounds;
4. Defendant's Second Motion for Dismissal of Charges;
5. Defendant's renewed Motion for an I.C. § 18-211 Evaluation; and
6. Motion for Appointment of an expert.

## **III.**

### **Motions Deemed Fully Submitted for Decision.**

The Court heard the defendant's motions in open Court on October 3, 2011; including the testimony via telephone of Dr. Sombke and the in-court testimony of Detective Ty Larsen.

At the conclusion of the hearing on October 3, 2011, the Court offered counsel the opportunity to provide any additional authority on the legal question of whether Hamlin's diminished mental capacity could constitute a denial of due process, even though he had been found to be marginally competent to stand trial. Additionally, the Court was required to watch a DVD of the interviews between Detective Ty Larsen and Hamlin (State's Exhibit 100). The Court watched State's Exhibit 100 (DVD) on October 18, 2011.

As of this date, no additional briefing or authority has been provided to the Court by either counsel.

Therefore, this court considers the motions before it fully submitted for decision on the next business day following viewing of the DVD (State's Exhibit 100), or the date of October 19, 2011.

The Court also made certain rulings on the record relative to some of the Motions. See the Court minutes from October 3, 2011. The Court also incorporates by reference herein the remarks made on the record.

#### IV

#### **Defendant's Motion to Suppress**

Hamlin filed a Motion to Suppress statements made by Hamlin to law enforcement officers in this case; specifically Hamlin's admissions to acts of sexual touching of the alleged victim.

The Court heard the in-court testimony of Detective Ty Larsen on October 3, 2011.

At the request of the parties, the Court also watched a DVD of a police interview with Hamlin in which Hamlin told Detective Ty Larsen of certain sexual contact between the alleged victim William McCormick and Hamlin.

From this evidence, the Court finds by examination and consideration of the totality of all the circumstances and evidence, and based upon an objective standard, that Hamlin was not in custody at the time he made the statements to the Detective at the police station. Therefore, the dictates of *Miranda* do not apply.

More specifically:

1. Hamlin voluntarily appeared at the police station.

2. Even though not required, Detective Larsen read Miranda rights to Hamlin before any questioning began. Hamlin stated he understood. In watching the DVD, Hamlin seemed to clearly understand the questions and responded appropriately to the questions asked.
3. Detective Larsen was in plain clothes.
4. The DVD reveals and the Court finds the interview was not hostile or threatening or prolonged. Hamlin was not deprived of sleep, food, or water.
5. Detective Larsen did not restrain Hamlin or prevent him from leaving.
6. Detective Larsen did not communicate an intention to arrest Hamlin until the very end of the recorded interview.

The fact that the Detective also read to and provided Hamlin with a written statement of his Miranda warnings and asked Hamlin if he understood, does not change the analysis of whether this was a custodial interrogation.

The initial legal question is whether the defendant's statements were the product of a custodial interrogation. The prophylactic protection of Miranda does not apply because the Court has determined that this is not a custodial interrogation.

Secondly, the evidence is beyond dispute that Hamlin was properly advised of Miranda prior to any questioning.

The Motion to Suppress is DENIED.

V.

**I.R.E 404(b) Evidence**

**Motion in Limine**

The Court looks to the State's Objection to the Motion in Limine filed September 12, 2011, for an explanation of the State's intention to offer evidence of other wrongs or acts at trial. These two pieces of evidence are stated on pages 1 and 2 of that objection.

This Court is well aware of the standard for admission. See State v. Grist, 147 Idaho 49 (2009): I.R.E. 401, 403 and 404(b).

For purposes of this analysis, the Court finds there is sufficient foundational material to enable the Court to find that the claimed prior acts of Hamlin asking the alleged victim, William McCormick, for money, did in fact occur. This is based upon the DVD of the police interview and the testimony of Detective Larsen.

Secondly, this Court initially ruled (on October 3, 2011) that each of the offered pieces of evidence were relevant (I.R.E. 401) to the question of whether the alleged victim is a vulnerable adult. See ICJI 990. The Court's reasoning on October 3, 2011, was to the effect that because the State must prove beyond a reasonable doubt that William McCormick was a vulnerable adult, that the State could use this evidence; more specifically that Hamlin's attempted financial transactions with McCormick were relevant to show evidence of McCormick's vulnerability. This Court had also conducted the required I.R.E. 403 balancing test and determined that the probative value of the evidence substantially outweighed the danger of any unfair prejudice.

Lastly, this Court stated on the record on October 3, 2011, that the proffered evidence of the defendant's prior dealings with Mr. McCormick – specifically Hamlin's knowledge of Mr.

McCormick's vulnerability and absence of mistake, was admissible as a permissible purpose under I.R.E. 404(b).

However, after further reflection, additional legal research, re-reading the statute and re-reading the ICJI 990, the Court reverses its prior ruling. Specifically, this Court determines that there is no legal requirement that Hamlin (the Defendant) knew McCormick was a vulnerable adult at the time of the alleged sexual acts. The State must independently prove McCormick is a vulnerable adult. Hamlin's knowledge is not determinative. The Court has now determined the proffered 404(b) evidence is unduly prejudicial to Hamlin (403 balancing test). As such the attempted financial transaction evidence between the two is unfairly prejudicial and Hamlin's Motion in Limine is GRANTED.

## VI.

### **Motion to Dismiss on Equal Protection and Due Process Grounds**

The defendant first contended that I.C. § 18-1505B is unconstitutionally vague. It appears this challenge has been withdrawn and is no longer viable. The Court therefore does not address it further.

The defendant also asserts that I.C. § 18-1505B violates both the equal protection of the law and the defendant's due process rights. A vulnerable adult is defined in I.C. § 18-1505B, in a practical sense, as someone who lacks the capacity to legally consent. This statutory definition does not include each and every person who is affected by some physical or diminished mental capacity. More to the point, the State must prove beyond a reasonable doubt and the jury must find that beyond a reasonable doubt, that the alleged victim is in fact a vulnerable adult as that

term is statutorily defined. Under Hamlin's motion, the legal question becomes whether I.C. § 18-1505B improperly creates a protected class. Hamlin's argument is that I.C. § 18-1505B makes sexual relations between two vulnerable adults a felony. Hence, the argument goes that because Hamlin is claimed to be a vulnerable adult that he is being treated differently than the victim who is also a vulnerable adult and, therefore, there is a violation of the Equal Protection Clause of the Constitution. The Court rejects this argument.

Hamlin asserts that this Court must make the constitutional review under a strict scrutiny analysis, asserting the statute creates a suspect classification. The Court stated on the record on October 3, 2011, and re-affirms here, that the correct constitutional analysis is one based upon a rational basis, i.e., the classification (vulnerable adult) created by I.C. § 18-1505B must be rationally related to a legitimate State interest. This Court determines that protecting the narrowly defined class from harm by others does not implicate a suspect class or violate a fundamental right.

The defendant's motion on the equal protection challenge is DENIED.

As to the defendant's due process challenge, it too is DENIED. See State v. Cook, 146 Idaho 261 (Ct. App. 2008).

It seems clear to this Court that the statutory scheme is designed to prohibit abuse, including sexual contact, with a "vulnerable adult" as that term is defined. The statutory scheme is NOT designed to prohibit sexual contact or property transactions, etc., between the defendant and other consenting adults, in general.

The defendant's Motion to Dismiss on Constitutional Grounds is DENIED.



**VII.**

**Defendant's Second Motion for Dismissal of Charges**

On September 8, 2011, the defendant filed a "Second Motion for Dismissal of Charges."

This Court would first note that the Defendant was found to be competent by Judge Hicks in a prior hearing. See Court minutes of April 7, 2011.

This second Motion to Dismiss is apparently premised upon Dr. Sombke's opinion that he believes Mr. Hamlin should not try to testify in his own defense because of concerns about Hamlin's ability to fully comprehend or understand the prosecutor's questions and Hamlin's eagerness or willingness to provide answers thereto.

As stated above, it is the Courts understanding that following an earlier evidentiary hearing, the defendant was found by Judge Hicks, to be competent to stand trial. I.C. § 18-210 and 18-211. Whether the Defendant would be as sophisticated a witness as some may wish is not determinative.

As such, this Second Motion is DENIED.

**VIII.**

**Subsequent Motion for 18-211 Evaluation  
August 4, 2011**

On August 4, 2011, the Defendant filed a subsequent motion for an I.C. § 18-211 evaluation.

It is this Court's understanding from the hearing held on October 3, 2011 that Dr. Sombke found Hamlin to be marginally competent to stand trial and assist in his defense

(although Dr. Sombke had reservations about the Defendant's ability to testify in his own defense).

If defense counsel now believes Hamlin's competency has deteriorated, the Court will leave this to counsel to file the appropriate motion.

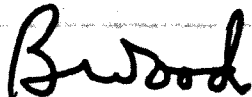
**IX.**

**Defendant's Motion to Hire an Expert at Trial**

This Court ruled on the record on October 3, 2011, that in order for this Court to appoint an expert for Mr. Hamlin for use at trial, that the proffered evidence would need to be relevant to an element of the charged offense. I.C. § 18-207 governs this request. See also I.C. § 19-2522 and 19-2923 should there be a conviction. This motion is DENIED.

IT IS SO ORDERED.

Dated: November 3, 2011



---

Barry Wood,  
Senior District Judge

**CLERK'S CERTIFICATE OF MAILING**

I certify that a true and correct copy of the foregoing document was sent to the following:

Elmore County Prosecutor's Office  
Mountain Home, Idaho 83647  
INTERDEPARTMENTAL MAIL

Elmore County Public Defender's Office  
Ed Frachiseur  
Mountain Home, Idaho 83647  
INTERDEPARTMENTAL MAIL

Dated this 4<sup>th</sup> day of November, 2011.

BARBARA STEELE  
Clerk of the District Court

By: *D. J.urst*  
Deputy Clerk

**CR-2010-0004031**

**State of Idaho vs. Denvil R Hamlin**

**Hearing type: Pretrial Conference**

**Hearing date: 11/21/2011**

**Time: 12:20 p.m.**

**Judge: Barry Wood**

**Courtroom: Main**

**Court reporter: Penny Tardiff**

**Minutes Clerk: Heather Furst**

**Defense Attorney: Ed Frachisseur, Elmore Public Defender**

**Prosecutor: Kristina Schindele, Elmore Prosecuting Atty**

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF ELMORE  
District Court Criminal Minute Entry - Pretrial Conference**

Court calls case at time noted above. Confirms the true and correct name of the defendant, who is also present personally (On Bond) (OR)

Mr. Frachisseur stated a resolution has been reached. The defendant would like to do a conditional plea. Ms. Schindele requested that we set the matter for an Entry of Plea.

Ms. Schindele stated the agreement for the record:

- Defendant to plead guilty as charged;
- Underlying sentence of 2 years fixed and 8 years indeterminate for a total of 10 years; suspend in favor of 10 years probation;
- Order a Psychosexual evaluation
- Comply with Sex Offender registration requirement;
- No Contact Order issued;
- Comply with DNA requirement.

Court asked that defense go over the Rule 11 appendix.

**Court set December 6, 2011 at 9:30 a.m. for ENTRY OF PLEA.**

12:23 End Minute Entry.

Attest:   
Heather Furst

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

FILED

STATE OF IDAHO,

Plaintiff,

Letter of Instruction

Case No. CR-2010-4031 DEC 6 PM 1:05

BARBARA STEELE CLERK OF THE COURT DEPUTY

(Criminal)

v. Derril R. Hamlin Defendant

Case No. 2010-4031

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

IT IS HEREBY ORDERED that the above-named Defendant shall not contact, or attempt to contact, harass, follow, communicate with or knowingly remain within one hundred (100) feet of: William Mc Cormack. "Contact" means, but is not limited to contact in person, through third persons, by telephone or facsimile, in writing, by email or other electronic means, or knowingly remaining within the distance limit set forth above.

Exceptions - the Defendant may have contact for the following reasons under the following conditions:

- None. to contact by telephone between ... m. and ... m. on ... for the following purpose:
[ ] to participate in counseling or mediation;
[ ] to meet with or through attorneys and / or during legal proceedings;
[ ] to respond to emergencies involving the natural or adopted children of both parties;
[ ] Other: No staring or glaring at William Mc Cormack

IT IS FURTHER ORDERED that the above-named Defendant shall not go within three hundred (300) yards of the above-named person's residence or workplace as follows: 275 feet

Residence address 340 E. 8th N. Trailers #14 Mountain Home, ID 83647

Workplace Address

IT IS FURTHER ORDERED that this Order can be modified only by a judge and will remain in effect until further order of the Court or upon dismissal of this case or at 11:59 p.m. on Feb. 15, 2012, whichever occurs first.

NOTICES

- 1. 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, and is punishable by a fine of up to \$1,000.00, or by imprisonment up to one (1) year, or both. Any such violation may also result in the modification of the above terms or the increase or revocation of the bond set on the underlying charge in this matter.
2. When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order.
3. This Order controls and supercedes any previous No Contact Order entered in the above-entitled matter.
4. This Order may subject you to federal prosecution under the United States Code, Title 18, section 922 if you possess, receive or transport a firearm.

Dated this 6th day of December, 2011

Bowood Magistrate Judge District

Acknowledged and Received on the above date: Derril R Hamlin Defendant

104

**STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS  
BY PLEA OF GUILTY**

**FILED**

2011 DEC -6 PM 1:09

**(PLEASE INITIAL EACH RESPONSE)**

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

*[Handwritten initials]*

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elected to have a trial, the state could not call you as a witness or ask you any questions. However, anything you do say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent before and during trial.    DH   

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case. Even after pleading guilty, you will still have the right to refuse to answer any question or provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence.    DH   

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county.

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am waiving my right to be presumed innocent.    DH   

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilty beyond a reasonable doubt.

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial.    DH   

6. You have the right to confront the witnesses against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilty or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court.

I understand that by pleading guilty I am waiving my right to confront the witnesses against me, and present witnesses and evidence in my defense.

PH

**QUESTIONS REGARDING PLEA**

**(Please answer every question. If you do not understand a question consult your attorney before answering.)**

**PLEASE CIRCLE ONE**

1. Do you read and write the English language?  
▪ If not, have you been provided with an interpreter to help you fill out this form?  
 Yes  No  
 Yes  No
2. What is your age? 52
3. What is your true legal name? Jennil Ronald Hamilton
4. What is the highest grade you completed? 12  
▪ If you did not complete high school, have you received either a general education diploma or high school equivalency diploma?  
 Yes  No
5. Are you currently under the care of a mental health professional?  
 Yes  No
6. Have you ever been diagnosed with a mental health disorder?  
▪ If so, what was the diagnosis and when was it made?  
Mild Retardation  
 Yes  No
7. Are you currently prescribed any medication?  
▪ If so, have you taken your prescription medication during the past 24 hours?  
 Yes  No  
 Yes  No
8. In the last 24 hours, have you taken any medications or drugs, or drank any alcoholic beverages which you believe affect your ability to make a reasoned and informed decision in this case?  
 Yes  No
9. Is there any other reason that you would be unable to make a reasoned and informed decision in this case?  
Please see 6 above.  
 Yes  No
10. Is your guilty plea the result of a plea agreement?  
▪ If so, what are the terms of that plea agreement? (If available, a written plea agreement should be attached hereto as "Addendum A")  
Please see "Addendum A"  
 Yes  No

11. There are two types of plea agreements. Please initial the one paragraph below which describes the type of plea you are entering:

a. I understand that my plea agreement is a binding plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty and proceed to a jury trial. \_\_\_\_\_

b. I understand that my plea agreement is a non-binding plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. \_\_\_\_\_

12. As a term of your plea agreement, are you pleading guilty to more than one crime?

Yes  No

- If so, do you understand that your sentences for each crime could be ordered to be served concurrently (at the same time) or consecutively (one after the other)?

Yes  No

13. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues?

Yes  No

- If so, what issues are you reserving the right to appeal?

Due process and equal protection  
of the law; competence to  
assist counsel

14. Have you waived your right to appeal your judgment of conviction and sentence as part of your plea agreement?

Yes   No

15. Have any other promises been made to you which have influenced your decision to plead guilty?

Yes   No

- If so, what are those promises? \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

16. Do you feel you have had sufficient time to discuss your case with your attorney?

Yes  No

17. Have you told your attorney everything you know about the crime?

Yes  No

18. Is there anything you have requested your attorney do that has not been done?

Yes   No

- If yes, please explain: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_



19. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery?  Yes  No
20. Have you told your attorney about any witnesses who would show your innocence?  Yes  No
21. Do you understand that by pleading guilty you will waive any defenses, both factual and legal, that you believe you may have in this case?  Yes  No
22. Are there any motions or other requests for relief that you believe should still be filed in this case?  
 If so, what motions or requests? \_\_\_\_\_  
 \_\_\_\_\_
23. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including: (1) any searches or seizures that occurred in your case, (2) any issues concerning the method or manner of your arrest, and (3) any issues about any statements you may have made to law enforcement?  Yes  No
24. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you have plead guilty?  Yes  No
25. Are you currently on probation or parole?  
 If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole?  Yes  No
26. Are you aware that if you are not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship?  Yes  No
27. Do you know whether the crime to which you will plead guilty would require you to register as a sex offender? (I.C. §18-8304)  Yes  No
28. Are you aware that if you plead guilty you may be required to pay restitution to the victims in this case? (I.C. §19-5304)  Yes  No
29. Have you agreed to pay restitution to any other party as a condition of your plea agreement?  
 If so, to whom? \_\_\_\_\_

30. Is there a mandatory driver's license suspension as a result of a guilty plea in this case?  
 ▪ If so, for how long must your license be suspended?
- 
31. Are you pleading guilty to a crime for which a mandatory domestic violence, substance abuse, or psychosexual evaluation is required? (I.C. §18-918(7)(a), -8005(9), -8317)
32. Are you pleading guilty to a crime for which you may be required to pay the costs of prosecution and investigation? (I.C. §37-2732A(K))
33. Are you pleading guilty to a crime for which you will be required to submit a DNA sample to the state? (I.C. §19-5506)
34. Are you pleading guilty to a crime for which the court could impose a fine for a crime of violence of up to \$5,000, payable to the victim of the crime? (I.C. §19-5307)
35. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to vote in Idaho? (ID. CONST. art. 6, §3)
36. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to hold public office in Idaho? (ID. CONST. art. 6, §3)
37. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to perform jury service in Idaho? (ID. CONST. art. 6, §3)
38. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry firearms? (I.C. §18-310)
39. Do you understand that no one, including your attorney, can force you to plead guilty in this case?
40. Are you entering your plea freely and voluntarily?
41. Are you pleading guilty because you did commit the acts alleged in the information or indictment?
42. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? N/A
43. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue with your attorney?

Yes  No

Yes No

Yes  No

Yes No

Yes  No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes  No

Yes  No

I have answered the questions on pages 1-7 of this Guilty Plea Advisory form truthfully, understand all of the questions and answers herein, have discussed each question and answers herein, have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

DATED this 5<sup>th</sup> day of December, 2011.

DEUVIL R HAMLIN.  
Defendant

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.

E. R. Jensen  
Defendant's Attorney

- RESET
- RESET for 19-2524 request after initial order

ORIGINAL THIS DOCUMENT TO DOC

Assigned to: \_\_\_\_\_  
 Assigned: \_\_\_\_\_ Due Date: \_\_\_\_\_

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
 STATE OF IDAHO, COUNTY OF ELMORE  
**ORDER FOR PRESENTENCE REPORT AND EVALUATIONS**

THE STATE OF IDAHO, )  
 vs. ) Plaintiff,  
Denise R. Hamlin )  
 (First) (MI) (Last) )  
 Defendant. )

CASE NO. CB-2011-031403 )  
 CHARGE(S): Sexual Abuse of A )  
Vulnerable Adult - Three )  
Counts )

On this day of 16<sup>th</sup> December, 2011, a Pre-sentence Investigation Report was ordered by the Honorable Barry Wood for Judge Lynn Norton to be completed for Court appearance on the 14<sup>th</sup> day of Feb. at Mountain Home, Idaho, at 9:00 a.m.

**EVALUATIONS TO BE DONE:** Copy of each Evaluation to be sent to Presentence Investigation Office to be included with PSI  
 Under IC 19-2524 assessments(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to (IC 19-2524(4)):

- Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment (PSMH1 ROA code); and/or
- Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment (PSSA1 ROA code)

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

- Sex Offender  Domestic Violence  Drug & Alcohol  Mental Health Evaluator: \_\_\_\_\_
- No evaluations are ordered. (PSI01 ROA code)

DEFENSE COUNSEL: Ed Frachisew PROSECUTOR: Kristina Schindele

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

**PLEA AGREEMENT:** State recommendation:  
 WHJ / JOC \_\_\_\_\_ Probation \_\_\_\_\_ PD Reimb \_\_\_\_\_ Fine \_\_\_\_\_ ACJ \_\_\_\_\_ Restitution \_\_\_\_\_ Other: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

\*\*\*\*\*  
 DEFENDANT'S INFORMATION: \_\_\_\_\_ DO YOU NEED AN INTERPRETER?  YES  NO

Name: Denise R. Hamlin, Male  Female  RACE: Caucasian  Hispanic  Other   
 Address: [Redacted] #1 City: Mountain Home State: Id ZIP: 83647  
 Employer: N/A Work Address: N/A  
 Date of Birth: [Redacted] Social Security Number: [Redacted]

Name & Phone Number of nearest relative: Kathya A. Smith-Hamlin (wife)  
 Date of Arrest: Aug 23, 2010 Arresting Agency: 580-2335

You must check in at the PSI office at 2161 Old Penitentiary Road to sign preliminary release forms within 24 hours of court today. Remember to bring completed Pre-sentence Investigation Questionnaire to interview to be scheduled with PSI.

CR-2010-0004031

State of Idaho vs. Denvil R Hamlin

Hearing type: Entry of Plea

Hearing date: 12/06/2011

Time: 10:23 a.m.

Judge: Barry Wood

Courtroom: Main

Court reporter: Penny Tardiff

Minutes Clerk: Heather Furst

Defense Attorney: Ed Frachiseur, Elmore Public Defender

Prosecutor: Kristina Schindele, Elmore Prosecuting Atty

Time and date set for ENTRY OF PLEA, defendant present. (ROR)(Bond Posted)

Mr. Frachiseur provided Court with Written Plea of Guilty and Conditional Rule 11. Mr. Frachiseur stated that he has read documents to the defendant to ensure he understood. Ms. Schindele has reviewed and signed the documents.

Maximum Penalties:

25 years and/or \$25,000 per count

Court costs

Restitution

DNA Sample

Sex Offender Registration

Not a crime of violence

No Contact Order

Defendant (Denvil R. Hamlin) sworn and examined as a witness in own behalf and for information of the Court.

In answer to the Court, defendant entered a plea of "GUILTY" to:

Sexual Abuse of a Vulnerable Adult – Three Counts as charged in the Information filed July 7, 2011.

The Court found that the defendant understood the rights he would be giving up by his plea of guilty and that he understands that the Court is not bound by the negotiations of counsel at the time of sentencing in this matter.

The Court accepted the defendant's plea of "GUILTY"; and directed the clerk to enter said plea.

The Court ordered a presentence report, sex offender evaluation and mental health and

COURT MINUTES – December 6, 2011

Page - 1

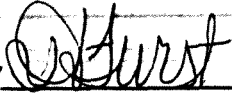
pursuant to 19-2524 and continued this matter to 2/6/12 at 9:00 a.m. with Judge Norton for SENTENCING.

Ms. Schindele stated the sex offender assessment could be done at county expense subject to reimbursement.

Court issued another No Contact Order to expire at 11:59 a.m. on Feb. 15, 2012 with the victim, William McCormack.

Bailiff will serve defendant with No Contact Order.

10:50 a.m. End Minute Entry

By   
Deputy Clerk

106

FILED

2011 DEC 15 AM 10:57

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY *AS*

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DENVIL HAMLIN, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-2010-4031

**ORDER FOR PSYCHOSEXUAL  
EVALUATION AT COUNTY**

THE COURT having heard in open court on December 6, 2011, the Defendant's oral Motion pursuant to Idaho Code §18-8304 and §18-8316 to order a psychosexual evaluation at county expense, and good cause appearing therefrom,

IT IS HEREBY ORDERED that a psychosexual evaluation be conducted of the Defendant and payment for the purpose of conducting said psychosexual evaluation shall be at County expense in that the Defendant is both indigent and in need of said evaluation as required by the aforesaid statutes.

Dated this 15 day of December, 2011.

*Barry Wood*  
\_\_\_\_\_  
BARRY WOOD  
District Judge

**ORIGINAL**

**ORDER FOR PSYCHOSEXUAL EVALUATION AT COUNTY EXPENSE- 1**

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 15<sup>th</sup> day of December, 2011, served a copy of the within and foregoing **ORDER FOR PSYCHOSEXUAL EVALUATION AT COUNTY EXPENSE** to:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
P.O. Box 607  
Mountain Home, Idaho 83647  
Fax No. (208)587-2147

By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

E.R. Frachiseur  
RATLIFF LAW OFFICES, CHTD.  
290 South 2<sup>nd</sup> East  
Mountain Home, ID 83647  
Fax No. (208)587-6940

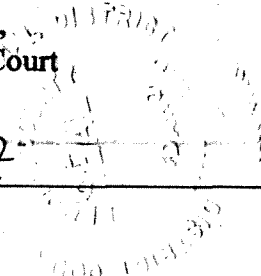
By:  Hand Delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile Transmission

Barbara Steele  
C/O Elmore County Courthouse  
Mountain Home, ID 83647  
Boise, ID 83702

By:  Hand delivery  
 Federal Express  
 Certified Mail  
 U.S. Mail  
 Facsimile

BARBARA STEELE,  
Clerk of the District Court

By:   
Deputy Clerk





**CR-2010-0004031**

**State of Idaho vs. Denvil R Hamlin**

**Hearing type: Sentencing**

**Hearing date: 2/06/2012**

**Time: 9:06 a.m.**

**Judge: Lynn G Norton**

**Courtroom: Main**

**Court reporter: None**

**Minutes Clerk: Heather Furst**

**Defense Attorney: Ed Frachiseur, Elmore Public Defender**

**Prosecutor: Nathan Henkes, Elmore Prosecuting Atty**

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF ELMORE  
District Court Criminal Minute Entry - Sentencing**

Court calls case at time noted above. Confirms the true and correct name of the defendant, who is also present personally (Released on Bond)

Plead guilty to 3 counts of Sexual Abuse of a Vulnerable Adult

PSI Investigator requested an additional 2 weeks to prepare PSI.

**Court set over to 3/5/12 at 10:15 a.m.**

9:09 a.m. End Minute Entry.

Attest: 

Heather Furst  
Deputy Clerk

10.

FILED

2012 MAR -2 PM 2: 34

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorneys for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR-2010-4031
Plaintiff,	)	
	)	
-vs-	)	<b>MOTION TO STRIKE</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the Defendant, DENVIL R. HAMLIN, by and through counsel of record, E.R. Frachiseur, of the firm Ratliff Law Offices, Chtd., and moves this Court to strike Paragraph 2 on Page 10 of the Presentence Report produced in this case.

This Motion is based upon Rule 32 of the I.C.R. the language in the paragraph that is objectionable is as follows:

“Based upon Mr. Hamlin’s own admission that he had sexual contact and intercourse with his niece in 1984, causes serious concern for the community. At that time, had the district attorney’s office chosen to prosecute the Defendant, we probably would not be here today.”

Rule 32(e)(1) of the Idaho Criminal Rule states as follows:

“However, while not all information in a Presentence Report need be in the form of sworn testimony and be admissible in trial, conjecture and speculation should not be included in the Presentence Report.”

**ARGUMENT**

There is no factual basis other than the Defendant's alleged admission, to establish that in fact he had sexual contact with a niece in 1984. The investigators "At that time had the district attorney's office chosen to prosecute the Defendant we would probably not here today" gives no factual background and reveals no source as to the basis or reasons for the prosecuting attorney's decision, if any, not to prosecute Mr. Hamlin on that occasion. The Presentence investigator, in the report, gives no basis for her belief that the prosecution of Mr. Hamlin would have been successful, or that there was adequate evidence to convict him of any criminal offense arising out of the incident in question. The indication that "we would not be here today" had some action been taken by a prosecuting attorney 26 years ago is pure conjecture and speculation on the part of the Presentence Investigator and should be stricken from the report.

DATED this 2<sup>nd</sup> day of March, 2012.

**RATLIFF LAW OFFICES, CHTD.**

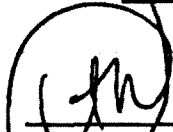
By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney at Law

**CERTIFICATE OF SERVICE**

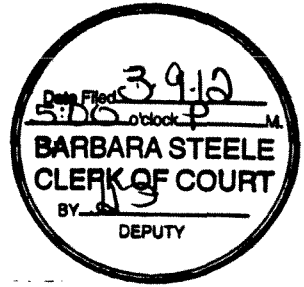
I HEREBY CERTIFY That I have on this 2<sup>nd</sup> day of March, 2012, served a copy of the within and foregoing document upon:

Kristina Schindele  
Elmore County  
Prosecuting Attorney  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647  
Fax No. (208)587-2147

By: \_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Federal Express  
\_\_\_\_\_ Certified Mail  
\_\_\_\_\_ U.S. Mail  
 Facsimile Transmission

  
\_\_\_\_\_  
ANDEE RODRIGUES  
*Legal Assistant*

10x



**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, Chtd.**  
290 South Second East Street  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Defendant

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

STATE OF IDAHO,	)	
	)	Case No. CR 2010-4031
Plaintiff,	)	
	)	
-vs-	)	<b>I.C.R. RULE 11 PLEA</b>
	)	<b>AGREEMENT AND ORDER</b>
DENVIL R. HAMLIN,	)	
	)	
Defendant.	)	
	)	

COMES NOW, Plaintiff, State of Idaho, and Defendant, DENVIL R. HAMLIN, by and through his attorney of record, E.R. FRACHISEUR of the firm Ratliff Law Offices, Chtd., and pursuant to I.C.R. 11 (a)(2), (d)(1)(A), (C) and (D), submit the following Plea Agreement to the Court for its acceptance or rejection:

- (1) That the Defendant plead guilty to **SEXUAL ABUSE OF A VOLUNERABLE ADULT**, 3 counts, felonies, counts 1, 2, and 3 of the Information on file in this action;
- (2) Defendant reserves the right to appeal the denial of his Pre-Trial Motions pursuant to I.C.R. 11(a)(2);
- (3) That the Defendant be sentenced to the custody of the State Board of Correction of the State of Idaho for a period of ten (10) years, with two (2) years determinate and eight

(8) years to be indeterminate. Defendant to receive credit for all time served up until the time of sentencing.

(4) The sentence hereinabove delineated to be suspended and the Defendant be placed on probation for a period of ten (10) years on terms and conditions.

(5) That the Defendant shall pay a fine of \$1,000.00, with \$1,000.00 suspended, together with appropriate Court costs, Public Defender reimbursement and Restitution as per a Restitution Report to be prepared.

(6) That prior to Sentencing, the Defendant shall undergo a psychosexual evaluation together with the usual Presentence Investigation.

(7) That the Defendant and the State of Idaho hereby agree to these joint recommendations to the Court for sentencing.

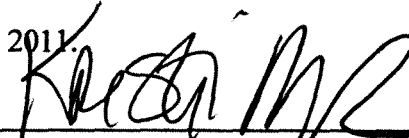
(8) Defendant understands that the Court is not bound to accept this Plea Agreement and that if the Court should reject said Agreement, Defendant shall be allowed an opportunity by the Court to withdraw his plea of guilty to the charges and proceed to trial pursuant to Rule 11(d)(4), Idaho Criminal Rules.

(9) Defendant further understands that he has an absolute right to plead "not guilty" and persist in that plea, that he has the right to be tried by jury, and that at that said jury trial he has the right to require the State to prove each and every element of the case against him beyond a reasonable doubt, that he has the right to not testify against himself, or not to be compelled to incriminate himself. Defendant further understands that at trial he would have the right to confront and cross-examine witnesses on his own behalf. Finally, the Defendant understands that by pleading guilty he waives the right to trial by jury and that no trial will in fact occur.

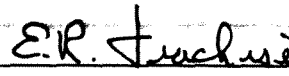
The parties hereto freely state that this Plea Agreement constitutes the entire agreement between Defendant, and the Plaintiff, State of Idaho, and that no other promises or inducements have been made, directly or indirectly, by any agent of the State of Idaho, including the Elmore County Prosecuting Attorney, concerning any plea to be entered in this case. In addition, the Defendant states that no person has directly or additionally, the Defendant states that no person has directly or indirectly threatened or coerced him to do or refrain from doing anything in connection with any aspect of this case, including entering guilty plea.

Counsel for Defendant states that he has read this Agreement and has fully explained said Agreement to his client and that the Defendant, DENVIL R. HAMLIN, understands this Agreement. Counsel for the Defendant further states that his client consents to the terms of this Agreement and that he concurs in the entry of a guilty plea under the conditions as set forth in this Agreement.


DATED this 6<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
KRISTINA SCHINDELE  
Elmore County Prosecutor

DATED this 6<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
E.R. FRACHISEUR  
Attorney for Defendant

DATED this 5<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
DENVIL R. HAMLIN  
Defendant

**ORDER**

**BASED UPON** the foregoing Rule 11 Plea Agreement, and for good cause appearing herein,

**IT IS HEREBY ORDERED AND THIS DOES ORDER** That said Rule 11 Plea Agreement is incorporated, adopted, ratified and merged into this Order, and that the Defendant and all parties hereto shall abide by the terms of the said Agreement.

**IT IS SO ORDERED** this 9<sup>th</sup> day of March 2012, ~~December, 2011~~.

  
\_\_\_\_\_  
Judge



**CR-2010-0004031**

**State of Idaho vs. Denvil R Hamlin**

**Hearing type: Sentencing**

**Hearing date: 3/05/2012**

**Time: 10:42 a.m.**

**Judge: Lynn G Norton**

**Courtroom: Main**

**Court reporter: Penny Tardiff**

**Minutes Clerk: Heather Furst**

**Defense Attorney: Ed Frachiseur, Elmore Public Defender**

**Prosecutor: Kristina Schindele, Elmore Prosecuting Atty**

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

**District Court Criminal Minute Entry - Sentencing**

Court calls case at time noted above. Confirms the true and correct name of the defendant, who is also present personally (OR)(Released on Bond)


Defense has filed a Motion to Strike portions of the PSI. Court will not consider those portions of the PSI - it is speculation.

Defendant has not had time to review evaluations. Court will grant a continuance to review with his client. Court set to Friday, March 9, 2012 at 3:30 p.m. for SENTENCING.

Ms. Schindele asked for clarification on Motion to Strike. He moved to strike actual admission. Court will not strike that. Only what is outlined in the first page (portion of speculation).

10:45 a.m. End Minute Entry.

Attest:

  
Heather Furst  
Deputy Clerk

CR-2010-0004031

State of Idaho vs. Denvil R Hamlin

Hearing type: Sentencing

Hearing date: 3/8/2012 3-9-12

Time: 4:23 p.m.

Judge: Lynn G Norton

Courtroom: Main

Court reporter: Kim Madsen

Minutes Clerk: Heather Furst

Defense Attorney: Ed Frachiseur, Elmore Public Defender

Prosecutor: Kristina Schindele, Elmore Prosecuting Atty

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF ELMORE  
District Court Criminal Minute Entry - Sentencing**

Court calls case at time noted above. Confirms the true and correct name of the defendant, who is also present personally (DR)(Released on Bond)

The Court reviews the file for the record. Pursuant to I.C. 19-2510, the defendant was previously informed by the Court as to the nature of the information that was filed in this matter and the maximum penalties as to each count. Further, pursuant to I.C. 19-2510 there is no legal cause claimed why judgment should not be pronounced in this matter.

The parties have received and reviewed the previously ordered PSI in this matter and any ordered evaluations. The Court inquires of either party as to any corrections or additions to either document at this time.

Corrections/challenges are noted as follows:

The State makes a sentencing recommendation:

- Entered into Rule II
- Follow recommendations
- Psycho-sexual rehabilitation
- Supervised Probation

The defendant, through his counsel, makes a sentencing recommendation:

- Follow Rule II based on defendant's limitations

The Defendant addresses the Court: Mr. Frachiseur has advised his defendant that he needs to remain silent.

The Court comments, having reviewed the contents of the file, considered the objectives of sentencing, the nature of the offense, the character of the defendant, the reasonableness of the sentence, discusses the sentencing options and imposes sentence as follows:

**SENTENCE IMPOSED:**

Court accepts the Rule II Agreement and will be bound by it.  
Judgment of conviction on the three counts  
Each count 2 + 8 = 10 years to run consecutively  
With those convictions run consecutively  
Place defendant on probation for 10 years subject to terms of probation which are attached; Probation expires March 8, 2022  
Report to Probation & Parole on Tuesday, March 13, 2012.  
Fine \$ 1000 with a \$1000 suspended  
\$75.00 for Public Defender Office reimbursement  
Court Cost totaling \$1315.50  
Payment agreement with Probation Officer  
Pay up to \$ 100.00 for PSI 19-2516  
180 days of discretionary jail time for the Probation Officer all options subject to eligibility  
Credit time served 117 days served;  
Complete programs as recommended by Probation Officer  
No Contact has been issued in the case with Mr. McCormack  
Register as a sex offender  
Enroll and complete specialized sex offender treatment program  
Submit DNA and right thumbprint 19-5506

Parties are instructed to return all outstanding copies of the PSI or APSI and/or evaluations to the Clerk to be destroyed or sealed within the file.

The Court reviews the Judgment of Convictions in open Court with the Defendant. The Clerk will file the judgment pursuant to the Rule when signed by the Court; copies will be made and given to the defendant and counsel of record.

The Defendant is advised of his right to appeal the judgment of the Court within forty two (42) days from today.

The Defendant indicates he/she understands all the terms as listed above and can comply with each and every term and condition.

The Court reviews the Judgment of Conviction in open Court with the Defendant. The Clerk will file the judgment pursuant to the Rule when signed by the Court; copies will be made and given to the defendant and counsel of record.

5:12 p.m. Minute Entry End

Attest:

  
Heather Furst  
Deputy Clerk

110

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2012 MAR 19 PM 4:12

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

CLERK OF THE COURT  
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THE STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
DENVIL RONALD HAMLIN,  
  
Defendant.  
  
SSN: [REDACTED]  
DOB: [REDACTED]

Case No. CR-2010-4031  
  
JUDGMENT OF CONVICTION  
AND  
ORDER OF PROBATION

The Prosecuting Attorney with the defendant, Denvil R. Hamlin, and his counsel, Ed Frachiseur, came into court this 9th day of March, 2012.

This being the time fixed by the Court to pronounce sentence upon the said defendant; said defendant was duly informed by the Court of the nature of the Information filed against him for the crimes of Sexual Abuse of a Vulnerable Adult, Count's I through III, FELONIES, I.C. §§18-1505; 18-1505B(1)(a) or (c); committed on or between the 1<sup>st</sup> day of May 2009 and the 13<sup>th</sup> day of July, 2010;

IT IS ADJUDGED that the defendant has been convicted upon a plea of guilty offenses of Sexual Abuse of a Vulnerable Adult, as charged in the Information, Count's I through III; and the Court having asked whether the defendant had any legal cause to

1 show why judgment should not be pronounced against him, and no sufficient cause to the  
2 contrary having been shown or appearing to the Court;

3  
4 IT IS FURTHER ADJUDGED that the defendant is guilty as charged and  
5 convicted.

6 IT IS FURTHER ADJUDGED that the defendant is sentenced pursuant to Idaho  
7 Code § 19-2513 to the custody of the Idaho State Board of Correction, to be held and  
8 incarcerated by said Board in a suitable place for a period of time as follows:  
9

10 For a minimum fixed and determinate period of confinement of two (2) years;  
11 followed by an indeterminate term not to exceed eight (8) years, for a total of not to  
12 exceed ten (10) years on each Count to run consecutively; provided, however, that this  
13 judgment shall be and is hereby suspended and defendant placed on probation for ten  
14 (10) years, to commence March 9, 2012, under the conditions listed in the attached  
15 Conditions of Probation Suspended Imposition of Sentence, Idaho Department of  
16 Correction Agreement of Supervision – Revised and Idaho Department of Correct Sexual  
17 Offender Agreement of Supervision read and accepted by the Defendant this day in open  
18 Court.  
19  
20  
21

22 Pursuant to Idaho Code §18-309, the defendant shall be given credit for the time  
23 already served in this case in the amount of one hundred and seventeen (117) days.  
24

25 The probation agreement is attached hereto and by reference made a part hereof.  
26 Defendant shall comply with the probation agreement.

27 IT IS FURTHER ORDERED that the probationer shall pay a fine of one thousand  
28 dollars (\$1,000.00) with one thousand dollars (\$1,000.00) suspended; and shall remit  
29

1 court costs totaling \$1,415.50. An additional court costs of a total of \$900.00 for the  
2 Victim's Compensation Fund for three counts of sex offenses are waived by the Court  
3 because of the indigency of the defendant. Total court costs not to exceed one hundred  
4 dollars and fifty cents (\$100.50) based upon the defendant being indigent. Court costs  
5 include: seventeen dollars fifty cents (\$17.50); Criminal Justice Fee of ten dollars (\$10.00);  
6 P.O.S.T. fees of ten dollars (\$10.00); ISTARs Fees of ten dollars (\$10.00); three dollars  
7 (\$3.00) Peace Officer Temporary Disability Fee; and shall pay the Victim's Compensation  
8 Fund in the amount of fifty dollars (\$50.00). Seventy-five dollars (\$75.00) for  
9 reimbursement of public defender fees pursuant to I.C. § 19-854(c). Defendant is to pay  
10 one hundred dollars (\$100.00) for the Pre-Sentence Investigation fee pursuant to Idaho  
11 Code § 19-2516;  
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15  
16 Defendant, Denvil Ronald Hamlin, having been convicted of one of the  
17 enumerated felony offenses stated in I.C. § 19-5506, namely the offense of Sexual Abuse  
18 of a Vulnerable Adult, and in accordance with I.C. § 19-5507(2), is hereby ordered to  
19 provide an adequate (I.C. § 19-5508) DNA sample and right thumbprint impression at a  
20 department of law enforcement designated location, which sample and impression shall  
21 be collected in accordance with the procedures established by the bureau of forensic  
22 services. If the defendant is not incarcerated at the time of sentencing, the defendant is  
23 hereby further ordered to report within ten (10) working days to the facility designated by  
24 the department of law enforcement for the collection of such specimens.  
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27 Defendant, Denvil Ronald Hamlin, having been convicted of one of the  
28 enumerated offenses set forth in I.C. § 18-8304, namely the offense of Sexual Abuse of a  
29

1 Vulnerable Adult, and in accordance with I.C. §§ 18-8306; 18-8307, is hereby ordered to  
2 register, within ten (10) days of coming into any county to establish residence or  
3 temporary domicile, as a sex offender with the sheriff of the that county. The defendant  
4 shall thereafter update the registration as required by law and otherwise comply with the  
5 Sex Offender Registration Notification and Community Right-to-Know Act.  
6

7 **IT IS FURTHER ORDERED** that the Clerk deliver a certified copy of this  
8 Judgment to the said Sheriff, which shall serve as a commitment of the defendant.  
9

10 Done in open court this 19<sup>th</sup> day of March, 2012.  
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13 \_\_\_\_\_  
14 LYNN G. NORTON  
15 District Judge  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

STATE OF IDAHO )

Plaintiff, )

vs. )

DENVIL RONALD HAMLIN, )

Defendant. )

Case No. CR 2010 -4031

CONDITIONS OF PROBATION

SUSPENDED IMPOSITION OF SENTENCE

**TERM OF PROBATION: 10 years beginning March 9, 2012. PROBATION EXPIRES AT MIDNIGHT ON MARCH 8, 2022, UNLESS OTHERWISE ORDERED BY THE COURT.**

Probation is granted to and accepted by the defendant, subject to all its terms and conditions, and with the understanding that the Court may, at any time, in case of the violation of the terms of probation, cause the probationer to be returned to the Court, for the imposition of sentence as prescribed by law, or any other punishment as the court may see fit to hand down. The Defendant shall be under the legal custody and control of the Director of Probation and Parole of the State of Idaho and the District Court, with supervised probation. The Defendant is to enter into a supervision agreement his probation officer and follow the rules of probation below.

The Defendant is to report to the Fourth Judicial District Probation and Parole Office, <sup>240 North 4<sup>th</sup> East, Jm</sup> ~~630 South Haskett,~~ Mt.Home, Idaho in person on Tuesday, March 6, 2012. <sub>B Jm</sub>

**Conditions of probation:**

a. Defendant agrees to waive his/her Fourth Amendment rights as provided by the United States Constitution and submit to search by his/her probation officer or any law enforcement or peace officer of his/her person, residence, vehicle or other property, at any time and at any place, upon request. Defendant shall not reside with any person who does not consent to such a search.

b. Defendant shall not violate any law or ordinance of the United States or any City, State, or County, where a fine or bond forfeiture of more than \$100.00 or a jail term could have been imposed as a penalty.

c. Defendant shall pay:

- a fine of \$1,000.00, with \$1,000.00 suspended, to be paid through the Clerk of the District Court;
- \$75.00 for reimbursement for public defender or appointed counsel pursuant to I.C. §19-854(c);
- court costs totaling \$ 1,315.50 with \$900.00 waived due to indigency of the defendant  
Includes \$17.50 pursuant to I.C. §31-3201(A)(b); County Administrative Surcharge Fee of \$10.00 pursuant to I.C. §31-4602; P.O.S.T. Academy fees of \$10.00 pursuant to I.C. §31-3201B; ISTARS technology fee of \$10.00 pursuant to I.C. §31-3201(5); \$75.00 (or \$375.00 SEX OFFENSES ONLY) reimbursement, per count, to the Victims Compensation Fund pursuant to I.C. §72-1025; drug hotline fee of \$10.00 pursuant to I.C. §37-2735A; domestic violence fee of \$30.00 pursuant to I.C. §32-1410; Peace Officer Disability Fee of \$3.00; Emergency Surcharge Fee of \$100.00 pursuant to I.C. §31-3201H.

Defendant must set up a payment agreement with his probation officer and comply with its terms.

up to \$100.00 for Presentence Investigation Report pursuant to I.C. §19-2516 arranged with probation officer.

d. Defendant shall serve an additional 180 days in the Elmore County Jail at the discretion of the probation officer, without prior approval of the Court. The probation officer has the discretion and authority to immediately deliver Defendant to the Sheriff for incarceration in the county jail for the purpose of having Defendant serve this discretionary time and the Sheriff shall commit the Defendant to serve this time on request of the probation officer without further order from the Court. The probation officer shall immediately file with the Court a written statement of the reasons Defendant has been placed in custody, for review by the Court. The probation officer, at his or her discretion, shall have all options available including work release, Sheriff Inmate Labor Detail, or electronic monitoring, subject to eligibility determined by the Sheriff, and pay any fees required for these options.



e. Defendant shall participate in any and all programs of rehabilitation treatment recommended by his/her probation officer, including but not limited to any inpatient or outpatient programs of mental health, substance abuse, criminal thinking errors, anger management, domestic violence treatment, or vocational rehabilitation.

     f. Defendant shall not purchase, carry or have in his/her possession any firearm(s) or other weapons. **POCKET KNIVES ARE WEAPONS UNDER THIS CONDITION.**

     g. Defendant shall not purchase, possess or consume any alcoholic beverages while on probation. He/she shall not frequent establishments where alcohol is the main source of income. Defendant also shall not purchase, possess or consume any drug or narcotic unless specifically prescribed to the Defendant by a medical doctor.

     h. Defendant agrees to tests of blood, breath, saliva or urine, other chemical tests, or transdermal monitoring, for the detection of alcohol and/or drugs at the request of his/her probation officer or any law enforcement officer, to be administered at Defendant's own expense.

     i. Upon request of his/her probation officer, Defendant agrees to submit to polygraph examinations administered by qualified examiners and limited in scope to those matters which are calculated to determine whether Defendant is complying with the lawful conditions of his/her probation.

     j. Defendant shall not associate with individuals specified by his/her probation officer.

Defendant shall have no contact with the victim of his/her offense.

A no contact order has been issued in this case. A no contact order means **NO CONTACT**. No contact directly, no contact indirectly, no contact through third persons, no contact by mail, no contact by phone, no contact over the internet – no contact – a violation of the no contact order by the Defendant if proven or admitted, will violate a fundamental condition of probation.

     k. Defendant shall waive his/her Fifth Amendment rights to the extent that he/she must answer truthfully all questions of a probation officer reasonably related to compliance or non-compliance with the conditions of probation.

     l. Defendant shall waive his/her Sixth Amendment rights of confrontation in so far as the State may use reliable hearsay evidence at any probation violation hearing.

     m. Defendant shall register as a sex offender in any county in which he/she shall reside.

At the probation officer's discretion, Defendant shall enroll in, meaningfully participate and complete a specialized sex offender treatment program as identified by his/her probation officer; such program will include the use of the penile plethysmograph and polygraphs in the course of treatment.

     n. The Defendant shall submit a DNA sample and right thumbprint impression to authorities pursuant to I.C. §19-5506.

     o. Defendant, if placed on probation to a destination outside the State of Idaho, or leaves the confines of the State of Idaho with or without permission from the Director of Probation and Parole, shall waive extradition to the State of Idaho and also agrees that he/she will not contest any effort by any State to return him/her to the State of Idaho.

I have read, or had read to me, this Probation Agreement. I fully understand and accept all the conditions, regulations, and restrictions under which I am being granted probation. I am responsible for complying with them strictly, and understand that my failure to do so may result in my probation being revoked, and my incarceration to serve the originally imposed sentence.

Date: 3 9 12

Daniel Hamler  
Probationer's Signature

**Idaho Department of Correction  
Agreement of Supervision - Revised**

1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Dept of Correction. \_\_\_\_\_
2. **Laws and Conduct:** The defendant shall obey all laws, municipal, county, state and federal. The defendant shall comply with all lawful requests of any agent of the Idaho Dept of Correction. The defendant shall be completely truthful at all times with any agent of the Idaho Dept of Correction. During any contact with law enforcement personnel the defendant shall provide their identity, notify the law enforcement officer(s) that they are under supervision and provide the name of their supervising officer. The defendant shall notify their supervising officer of the contact within 24 hrs. \_\_\_\_\_
3. **Residence:** The defendant shall not change residence without first obtaining permission from an authorized agent of the Idaho Dept of Correction. \_\_\_\_\_
4. **Reporting:** The defendant shall report to his/her supervising officer as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the Idaho Dept of Correction. \_\_\_\_\_
5. **Travel:** The defendant shall not leave the State of Idaho or the assigned district without first obtaining permission from his/her supervising officer. \_\_\_\_\_
6. **Extradition:** If the defendant does leave the State of Idaho, with or without permission, the defendant does hereby waive extradition to the State of Idaho and will not contest any effort to return the defendant to the State of Idaho. \_\_\_\_\_
7. **Employment/Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his/her supervising officer. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the offender's specific situation and as approved by his/her supervising officer. \_\_\_\_\_
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form and will not enter any establishment where alcohol is a primary source of income. \_\_\_\_\_
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him/her by a licensed physician or dentist. The defendant shall use medications only in the manner prescribed by their physician or dentist. \_\_\_\_\_
10. **Firearms/Weapons:** The defendant shall not purchase, carry, possess or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to: knives with blades over two and one half inches in length, switch-blade knives, brass knuckles, swords, throwing stars and other martial arts weapons. Any weapons or firearms seized will be forfeited to IDOC for disposal. The defendant shall not reside in any location that contains firearms unless the firearms are secured and this portion of the rule is exempted in writing by the District Manager. \_\_\_\_\_
11. **Search:** The defendant shall consent to the search of his/her person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority conducted by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant waives his/her Fourth Amendment Rights concerning searches. \_\_\_\_\_
12. **Cost of Supervision:** The defendant shall comply with Idaho Code 20-225, which authorizes the Idaho Dept of Correction to collect a cost of supervision fee. The defendant shall make payments as prescribed in his/her monthly cost of supervision bill. \_\_\_\_\_
13. **Associations:** The defendant shall not associate with any person(s) designated by any agent of the Idaho Dept of Correction. \_\_\_\_\_

14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant may be required to obtain tests at their own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. \_\_\_\_\_

15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the Court or any agent of the Idaho Dept of Correction. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the Court or any agent of the Idaho Dept of Correction. The defendant may be required to attend treatment, counseling or other programs at their own expense. \_\_\_\_\_

16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the probation officer. The defendant shall allow the probation officer to enter their residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alert them to the approach of his/her probation officer. The defendant shall not keep any vicious or dangerous dog or other animal on or in their property that the probation officer perceives as an impediment to accessing the defendant or their property. \_\_\_\_\_

17. **Absconding Supervision:** The defendant will not leave or attempt to leave the state or the assigned district in an effort to abscond or flee supervision. The defendant will make himself/herself available for supervision and program participation as instructed by the probation officer and will not actively avoid supervision. \_\_\_\_\_

18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner ordered by the Court. The defendant shall make payments as ordered by the Court or as designated in a Payment Agreement and Promissory Note to be completed with an agent of the Idaho Dept of Correction and signed by the defendant. \_\_\_\_\_

19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement except as allowed per Idaho Dept of Correction policy. \_\_\_\_\_

20. **Intrastate/Interstate Violations:** If allowed to transfer supervision to another district or state, the defendant agrees to accept any violation allegation documents purportedly submitted by the agency/officer supervising the defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents. \_\_\_\_\_

21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific field office that provides his/her supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific field office. All additional rules will be explained to the defendant and provided to him/her, in writing, by an agent of the Idaho Dept of Correction. \_\_\_\_\_

I have read, or have had read to me, the above agreement. I understand and accept these conditions of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing authority.

Dario Zambrano  
Defendant Signature

3/9/12  
Date

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name (printed)

**Idaho Department of Correction  
Sexual Offender Agreement of Supervision**

1. I will not purchase, produce, possess, or view any media material (pictures, magazines, books, videotapes, or movies) that acts as a stimulus for my sexual behavior, nor will I possess or view any materials containing male or female nudity. I will not be present where such material is available.
2. I will not subscribe to, use, nor have access to, Internet service, including e-mail or any other internet material without permission from my therapist and probation officer. I will not use any form of password-protected files, or other methods that might limit access to, or change the appearance of data images or other computer files without prior written approval from my supervising officer.
3. I will not engage in any illegal sexual activity as defined by Idaho state law including but not limited to: adultery, sodomy, or fornication.
4. I will not engage in any deviant behaviors including but not limited to: sado/masochism, bestiality, phone sex, cross dressing, clothing fetis voyeurism, exhibitionism, public masturbation, or frottage.
5. I will reside in a place approved by my supervising officer, and I will not move until my supervising officer has approved a new place of residence.
6. I will abide by all travel restrictions as imposed by my supervising officer, and I will not leave the district of my residence for a social or recreational reason without approval of my supervising officer. My district of residence is \_\_\_\_\_. Permission to leave either the district or the State of Idaho is required in writing from my supervising officer.
7. I will not initiate, maintain, or establish contact with any person, male, or female, under the age of 18 years, without the presence of an approved chaperone. The chaperone must be over the age of 21 and be approved by both my supervising officer and therapist.
8. I will not form or unite in a romantic interest or sexual relationship with a woman/man until my probation officer and/or therapist determine that the individual is able to give effective consent. I will introduce this person to my supervising officer and/or therapist for approval. Sexual activity is defined as sexually oriented verbal/nonverbal communication, and any form of romantic, erotic, exciting or sexually arousing touch including kissing, oral, manual, genital, or body contact of any kind.
9. I will not form an intimate relationship with a man/woman who has physical or shared custody of a child(ren) under the age of 18, nor will I reside or stay at a residence where minor children frequent or reside, except as approved by my supervising officer and therapist. Intimate relations are defined as a relationship with another person that involves some level of romantic, erotic, exciting, or sexually arousing feeling: on my or the other person's part.
10. I will observe curfew restrictions as directed by my supervising officer.
11. I will not have any direct or indirect contact with my past or present victim(s) without the approval of my supervising officer and therapist.
12. I will not live near, frequent, loiter, or go near places where minors or victims of choice congregate, e.g.: Parks, Playgrounds, Schools, Video arcades, Swimming pools, Special events, Or any other risky areas as identified by my supervising officer such as \_\_\_\_\_  
A request for exception must be submitted on an activity permission form, and approved in writing by my supervising officer.
13. I agree to obtain a specialized sexual offender evaluation. The evaluator and my treatment provider must be clinical members of the Association for the Treatment of Sexual Abusers (ATSA), and approved by my supervising officer. I will comply with all requirements of the treatment program and actively participate in treatment until discharge is recommended mutually by the therapist and my supervising officer.
14. I will provide complete and truthful information to any psychological and/or physiological assessment when requested by either my supervising officer or therapist.
15. I agree to sign any Release of Information form that allows my supervising officer to communicate with professionals involved in my treatment program.
16. I will not change treatment programs without prior approval of my supervising officer.
17. I agree to pay financial obligations incurred for my counseling and treatment.
18. I will remain gainfully employed and will obtain approval from my supervising officer to begin new employment or change existing employment.
19. I will inform my current or potential employer of my crime(s).
20. I will immediately notify my supervising officer if I am terminated or dismissed from work for any reason.
21. I will participate and comply with the electronic monitoring agreement or a daily schedule if requested by my supervising officer.
22. I will comply with all sex offender registration and DNA procedures as required by state law.
23. I understand that the Idaho Department of Correction may advise my neighbors, employers, and other concerned parties of my conviction and supervision status.
24. SPECIAL CONDITIONS: \_\_\_\_\_

I have read, or have had read to me, the above terms, and I agree to abide by them for the duration of my probation/parole supervision.

Offender Signature: \_\_\_\_\_  
Probation/Parole Officer: \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

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This is to certify that I have read or had read to me and fully understand and accept all the conditions, regulations and restrictions under which I am being granted probation. I will abide by and conform to them strictly and fully understand that my failure to do so may result in the revocation of my probation.

\_\_\_\_\_  
Probationer

\_\_\_\_\_  
Date of Acceptance

\_\_\_\_\_  
Probation Officer

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CERTIFICATE OF MAILING

I hereby certify that on this 19<sup>th</sup> day of March, 2012, I mailed (served) a true and correct copy of the within instrument to:

ELMORE COUNTY PROSECUTOR  
INTER DEPT MAIL

ELMORE COUNTY PUBLIC DEFENDER  
INTER DEPT MAIL

ELMORE COUNTY JAIL  
INTER DEPT MAIL

IDAHO DEPARTMENT OF CORRECTION  
VIA - EMAIL

PROBATION & PAROLE  
VIA - EMAIL

BARBARA STEELE  
Clerk of the District Court

By: [Signature]  
Deputy Court Clerk

FILED  
2012 MAR 22 PM 4:02  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East Street  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Appellant

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

STATE OF IDAHO,	)	
	)	Case Nos. CR-2010-4031
Respondent,	)	
	)	
vs.	)	<b>NOTICE OF APPEAL</b>
	)	
DENVIL R. HAMLIN,	)	
	)	
Appellant.	)	

**TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND ITS ATTORNEYS, LEE FISHER; LAWRENCE G. WASDEN ATTORNEY GENERAL, STATEHOUSE, BOISE, IDAHO; AND THE CLERK OF THE ABOVE-ENTITLED COURT:**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named Appellant, DENVIL R. HAMLIN, appeals against the above named Respondent to the Idaho Supreme Court from the oral Decision made April 7, 2011 and the Order on Motions, entered November 3, 2011, by the Honorable Barry Wood, District Judge.

2. That the party has a right to appeal to the Idaho Supreme Court, and the Decision described in paragraph 1 above is applicable for an Appeal order under and pursuant to Rule 11(c)(1), I.A.R. and Idaho Rule of Criminal Procedure 11(a)(2).

3. Issues on Appeal:

- a. **Whether the District Court erred in its Oral Decision on the Defendant's Competency, April 7, 2011; and,**
- b. **Whether the District Court erred in its Order denying Defendant's Motions dated November 3, 2011.**

4. The Pre-Sentence Investigation Report is routinely sealed by the Court, and **is requested herein.**

5. (a) Is reporter's standard transcript requested? **Yes.**

(b) The appellant requests the preparation of the following portions of the reporter's transcript as defined in Rule 25(b), I.A.R.:

- (1) **Motion for 18-211 hearing, held Sept. 3, 2010, (unknown Court Reporter, no estimate);**
- (2) **Status Hearings held on November 23, 2010; December 9, 2010; January 4, 2011 (unknown Court Reporter, no estimate);**
- (3) **Evidentiary Hearing held January 28, 2011 (unknown Court Reporter, no estimate);**
- (4) **Hearing on Oral Decision held April 7, 2011, (unknown Court Reporter, no estimate);**
- (5) **Motion for 18-211 Evaluation held August 22, 2011 (Court Reporter, M. Martorelli, estimated 33 pages);**
- (6) **Motions hearing held September 12, 2011 (Court Reporter M. Martorelli, estimated 8 pages);**
- (7) **Motions hearing held October 3, 2011 (Court Reporter, M. Martorelli, estimated 116 pages).**

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

- a. **Any and all evaluations, including but not limited to, competency evaluations, mental health evaluations and psychosexual evaluations; and,**
- b. **Any and all reports, evaluations or memoranda from the Department of Health and Welfare, including but not limited to, the Defendant's treatment, assessment, and counseling provided by them to the Defendant.**

7. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter.



- (b) (1)  That either the reporter of the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the transcript.
- (2)  That the appellant is exempt from paying the estimated transcript fee because this is a criminal appeal. The Appellant is also indigent.
- (c) (1)  That the estimated fee for preparation of the clerk's or agency's record has been paid.
- (2)  That the appellant is exempt from paying the estimated fee for the preparation of the record because this is a criminal appeal. The Defendant is also indigent.
- (d) (1)  That the appellate filing fee has been paid.
- (2)  That appellant is exempt from paying the appellate filing fee because this is a criminal appeal. The Appellant is also indigent.
- (e) That service has been made upon all parties required to be served pursuant to Rule 20. (And the Attorney General of Idaho pursuant to Section 67-1401(1), Idaho Code.)

DATED this 22<sup>nd</sup> day of March, 2012.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 22<sup>nd</sup> day of March, 2012, served a copy of the within and foregoing **NOTICE OF APPEAL** to:

Kristina Schindele  
Elmore County Prosecutor  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile (208) 587-2147

Lawrence Wasden  
Idaho Attorney General  
**Attention: Criminal Division**  
P.O. Box 83720  
Boise ID 83720-0010

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile

Sara Thomas  
State Appellate Public Defender  
3050 Lake Harbor Lane  
Boise ID 83703

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile

Steve Kenyon  
Idaho Supreme Court  
P.O. Box 83720  
Boise ID 83720-0101

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile

M. Martorelli  
Court Reporters

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile (208) 287-7529



ANDEE RODRIGUES  
*Legal Assistant*

FILED  
2012 MAR 22 PM 4:02  
BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

Attorney for Defendant/Appellant

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

STATE OF IDAHO

Plaintiff,

vs.

DENVIL HAMLIN,

Defendant.

) Case No. CR 2010-4031

) **MOTION FOR APPOINTMENT**  
) **OF STATE APPELLATE PUBLIC**  
) **DEFENDER**

COMES NOW DENVIL HAMLIN by and through his attorney, E.R. FRACHISEUR of Ratliff Law Offices, Chtd., and hereby moves this Court for its Order pursuant to Idaho Code §19-867, *et seq.*, and Rule 13 (b), (12) and (19) appointing the State Appellate Public Defender's Office to represent the above-named Defendant-Appellant in all further appellate proceedings and allowing trial counsel for Defendant to withdraw as counsel of record.

This motion is brought on the ground and for the reason that the Defendant-Appellant is currently being represented by this Counsel and Office, as Public Defender in and for the County of Elmore, and the State Appellate Public Defender is authorized by statute to represent the Defendant-Appellant in all felony appellate proceedings.

Further, it is in the interest of justice for that Office to represent the Defendant-Appellant in this case since the Defendant-Appellant is indigent, and any further proceedings in this case will be at the appellate level.

DATED this 22<sup>nd</sup> day of March, 2012.

**RATLIFF LAW OFFICES, CHTD.**

By E.R. Frachiseur  
E.R. FRACHISEUR  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That I have on this 22<sup>nd</sup> day of March, 2012, served a copy of the within and foregoing **MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER** to:

Kristina Schindele  
Elmore County Prosecutor  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647

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Sara Thomas  
State Appellate Public Defender  
3050 Lake Harbor Lane  
Boise ID 83703

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\_\_\_\_\_  
ANDEE RODRIGUES  
Legal Assistant

**E.R. FRACHISEUR, ISB No. 1388**  
**RATLIFF LAW OFFICES, CHTD.**  
290 South Second East Street  
Mountain Home, ID 83647  
Telephone: (208) 587-0900  
Facsimile: (208) 587-6940

**FILED**

2012 APR -5 AM 11:36

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY *BS*

Attorney for Appellant

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

STATE OF IDAHO, )  
 )  
 Respondent, )  
 )  
 vs. )  
 )  
 DENVIL HAMLIN, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

Case No. CR-2010-4031

**ORDER FOR APPOINTMENT**  
**OF STATE APPELLATE**  
**PUBLIC DEFENDER**

The Court having reviewed the Defendant's Motion for Appointment of State Appellate Public Defender and Defendant-Appellant being indigent, and good cause appearing;

IT IS HEREBY ORDERED That Sara Thomas of the State's Appellate Public Defender's Office is hereby appointed as Counsel for the Defendant and E.R. Frachiseur, of Ratliff Law Offices, Chtd. is hereby withdrawn as counsel of record.

DATED this 2<sup>nd</sup> day of April, 2012.

  
LYNN G. NORTON  
District Judge

**ORIGINAL**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 5<sup>th</sup> April day of ~~March~~, 2012, served a copy of the within and foregoing **ORDER** to:

Kristina Schindele  
Elmore County Prosecutor  
190 South 4<sup>th</sup> East  
Mountain Home ID 83647

- Hand Delivery
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- Facsimile (208) 587-2147

Lawrence Wasden  
Idaho Attorney General  
**Attention: Criminal Division**  
P.O. Box 83720  
Boise ID 83720-0010

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- Facsimile

Sara Thomas  
State Appellate Public Defender  
3050 Lake Harbor Lane  
Boise ID 83703

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile

E.R. Frachiseur  
Ratliff Law Offices, Chtd.  
290 South 2<sup>nd</sup> East  
Mountain Home ID 83647

- Hand Delivery
- Federal Express
- Certified Mail
- U.S. Mail, postage prepaid
- Facsimile (208) 587-6940

*Ofurst*  
CLERK OF THE COURT, **BARBARA STEELE**  
*Deputy Clerk*

FILED

2012 JUN 18 PM 1:46

BARBARA STEELE  
CLERK OF THE COURT  
DEPUTY

SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867

ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703  
(208) 334-2712

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

STATE OF IDAHO,  
  
Plaintiff-Respondent,  
  
v.  
  
DENVIL R. HAMLIN,  
  
Defendant-Appellant.

CASE NO. CR 2010-4031  
  
S.C. DOCKET NO. 40026  
  
AMENDED  
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, LEE FISHER, ELMORE COUNTY PROSECUTOR, P.O. BOX 607, 190 S. 4TH E., MOUNTAIN HOME, ID, 83647-0607, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Oral Decision made April 7, 2011, and Order on Motions, entered November 3, 2011, the Honorable Barry Wood, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

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

(a) Whether the district court erred in its Oral Decision on Defendant's Competency, April 7, 2011?

(b) Whether the district court erred in its Order denying Defendant's Motions dated November 3, 2011?

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

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

(a) Motion for 18-211 Hearing held on September 3, 2010 (Court Reporter: Heather Furst: no estimation of pages was listed on the Register of Actions);

(b) Status Hearing held on November 23, 2010 (Court Reporter: Heather Furst: no estimation of pages was listed on the Register of Actions);

(c) Status Hearing held on December 9, 2010 (Court Reporter: Heather Furst: no estimation of pages was listed on the Register of Actions);



- (d) Status Hearing held on January 4, 2011 (Court Reporter: Heather Furst: no estimation of pages was listed on the Register of Actions);
  - (e) Evidentiary Hearing held on January 28, 2011 (Court Reporter: Heather Furst: no estimation of pages was listed on the Register of Actions);
  - (f) Hearing on Oral Decision held on April 7, 2011 (Court Reporter: Heather Furst: no estimation of pages was listed on the Register of Actions);
  - (g) Motion for 18-211 Evaluation Hearing held on August 22, 2011 (Court Reporter: Mia Martorelli: estimation of 33 pages);
  - (h) Motion Hearing held on September 12, 2011 (Court Reporter: Mia Martorelli: estimation of 8 pages);
  - (i) Motion Hearing held on October 3, 2011 (Court Reporter: Mia Martorelli: estimation of 116 pages);
  - (j) Entry of Guilty Plea Hearing held on December 6, 2011 (Court Reporter: Penny Tardiff: estimation of 27 pages);
  - (k) Sentencing Hearing held on March 5, 2012 (Court Reporter: Penny Tardiff, estimation of 5 pages); and
  - (l) Sentencing Hearing held on March 9, 2012 (Court Reporter: Kim Madsen: estimation of 49 pages).
6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to

be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Affidavit of Probable Cause filed August 24, 2010;
- (b) Affidavit of Counsel in Support of Section 18-211 Evaluation filed September 1, 2010;
- (c) Dispositions filed December 7, 2010, January 3, 2011, and January 14, 2011;
- (d) Stipulation for Additional Time for Submission of Written Arguments filed February 11, 2011;
- (e) Written Argument on Competency Determination filed February 17, 2011;
- (f) State's Written Argument filed March 17, 2011;
- (g) Waiver of Speedy Preliminary Examination filed April 7, 2011;
- (h) Stipulation for Additional Time for Submission of Motions filed July 29, 2011;
- (i) Transcript filed August 11, 2011;
- (j) Affidavit filed August 23, 2011;
- (k) Memorandum in Support of Motion to Dismiss filed August 24, 2011;
- (l) Memorandum in Support of Motion to Suppress filed August 24, 2011;
- (m) Objection to Motion in Limine and Notice Re: I.R.E. 404(b) Evidence filed September 12, 2011;

(n) Objection to Motion to Dismiss on Equal Protection and Due Process Grounds filed September 12, 2011;

(o) I.C.R. Rule 11 Plea Agreement and Order filed March 9, 2012;

(p) Any and all evaluations, including but not limited to, competency evaluations, mental health evaluations and psychosexual evaluations;

(q) Any and all reports, evaluations or memoranda from the Department of Health and Welfare, including but not limited to, the Defendant's treatment, assessment, and counseling provided by them to the Defendant; and

(r) Any exhibits, including but not limited to letters or victim impact statements and other addendums to the PSI or other items offered at Sentencing Hearing.

7. I certify:

(a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Mia Martorelli Penny Tardiff, and Heather Furst;

(b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));

(c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

(d) That arrangements have been made with Elmore County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e);

(e) That service has been made upon all parties required to be served pursuant to I.A.R 20.

DATED this 18<sup>th</sup> day of June, 2012.



ERIK R. LEHTINEN  
Chief, Appellate Unit

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I have this 18<sup>th</sup> day of June, 2012, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

E R FRACHISEUR  
ELMORE COUNTY PD  
400 W 7TH SOUTH  
MOUNTAIN HOME ID 83647-3450

MIA MARTORELLI  
COURT REPORTER  
200 W FRONT ST  
BOISE ID 83702

HEATHER FURST  
COURT CLERK/REPORTER  
PO BOX 27  
GOODING ID 83330

PENNY TARDIFF  
COURT REPORTER  
ADA COUNTY DISTRICT COURT  
200 W FRONT STREET 3RD FLOOR  
BOISE ID 83702

LEE FISHER  
ELMORE COUNTY PROSECUTOR  
PO BOX 607  
190 S 4TH E  
MOUNTAIN HOME ID 83647-0607

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
Hand delivered to Attorney General's mailbox at Supreme Court

  
NANCY SANDOVAL  
Administrative Assistant

ERL/tmf