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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	SUPREME COURT NO. 40507
	)	
Plaintiff-Appellant,	)	Nez Perce Co. Case No. CR-2012-82
	)	
v.	)	
	)	
KYLE ALAN RICHARDSON,	)	
	)	
Defendant-Respondent.	)	

RESPONDENT'S INITIAL BRIEF ON APPEAL

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

Honorable Carl B. Kerrick, District Judge, Presiding

Lawrence Wasden, Idaho Attorney General
Residing at Boise, Idaho, for Appellant

Danny J. Radakovich
Residing at Lewiston, Idaho, for Respondent

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Supreme Court Court of Appeals
Entered on ATS by

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	SUPREME COURT NO. 40507
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STATEMENT OF THE CASE

1. NATURE OF THE CASE.

This is a permissive appeal by the State of Idaho to the Idaho Supreme Court/Court of Appeals from the October 23, 2012, Opinion and Order by the Honorable Carl B. Kerrick denying the motion by the State of Idaho to use the preliminary hearing testimony of Robert Bauer at trial in lieu of his live testimony.

2. COURSE OF PRIOR PROCEEDINGS.

Before proceeding further with the Statement of the Case, a word on nomenclature might be in order, since this appellate record is, perhaps, a little different than usual. In this case, the ususal Clerk's record was prepared following the granting of the motion for permission to appeal and the filing of the notice of appeal itself. That clerk's record will be referred to with the usual appellation of the letter "R", followed by the page and line number. In this case, however, the only "testimony" which is included in the record was the transcript of the testimony at the preliminary hearing. To the extent that we need to refer to that transcript, we will use the appellation "P.H. Tr." and the page of that transcript, which was made an exhibit to the Clerk's Record on appeal. The exhibit in question is a bit confusing because not only are the transcript page numbers reflected on the face thereof but also the exhibit pages are numbered in the lower right corner. For clarity, we will always refer to the preliminary hearing transcript page numbers. We will likely make little reference to the body of that transcript, however, because the peculiar nature of this appeal has the effect of making the pleadings in the file a major source of the "facts" upon which the appeal will likely turn.

This matter commenced on January 4, 2012, with the filing of the complaint, charging the defendant with three (3) Counts of delivery of a controlled substance, all felonies. (R., pp. 24-25)

On January 10, 2012, the defendant filed a proper request for discovery. (R., pp. 29-31) The State responded to that request for discovery on January 12, 2012. (Unfortunately, for some reason, that response to discovery was not included in the clerk's record on appeal. Counsel for defendant is filing a motion to augment the record.) A supplemental response to the discovery request was filed on February 6, 2012. (R., pp. 40-41)

In the meantime, a preliminary hearing was originally set for February 1, 2012. (R., pp. 34) The preliminary hearing was continued to February 15, 2012. (R., p. 38-39) and then again to February 22, 2012, on which date it was actually held. (R., pp. 45-48) The defendant was bound over and an information was filed on February 22, 2012. (R., pp. 49-50, 52)

The defendant was arraigned in District Court on March 1, 2012, and the matter was set for trial commencing on June 4, 2012. (R., pp. 58-62) The trial was subsequently continued to August 20, 2012, at the request of the State due to alleged unavailability of a witness during the initial trial date. (R., pp. 66-69)

Then, at some point the State learned that Robert Bauer had died not long after the preliminary hearing and the State then filed a motion to use the preliminary hearing testimony of Bauer, in lieu of his live testimony, at trial. (R., pp. 73-97) The defendant objected to the motion, which objection went into some detail as to the reasons therefor. (R., pp. 100-133) A hearing was held on the motion to admit the preliminary hearing testimony of Bauer at trial and the judge, the Honorable Carl B. Kerrick, denied the State's motion via an order dated October 23, 2012. (R., pp. 148-153) The State then filed a motion for permission to appeal on November 5, 2012 (R., pp. 156-157) which motion was granted by the District Court on November 16, 2012. (R., pp. 159-160) The State's Notice of Appeal was filed on January 14, 2013.

3. STATEMENT OF THE FACTS.

Due to the very limited nature of this appeal, the Statement of the Facts will necessarily make reference to, and focus on, a number of pleadings and very little actual testimonial content.

As noted above, the defendant properly filed a request for discovery in this matter on January 10, 2012. (R., pp. 29-31) Among the various subsections of that request for discovery was subsection 5, which requested:

> "5. A list of names, addresses, and telephone numbers of all persons having knowledge of relevant facts who may be called by the state as witnesses at trial, any record of prior felony convictions of any of such persons, and any statements made by prosecution witnesses or prospective prosecution witnesses to the prosecuting attorney, his agents, or to any official involved in the investigatory process of the case."

There is no doubt that this was a proper discovery request and no substantive objection was made to it.

The State responded to that discovery request and attached to this brief as an appendix is the entirety of that initial response to the discovery request. (This is attached as an appendix because the initial discovery response was not made part of the Clerk's Record on appeal. We are moving to augment the record.) As can be seen from reviewing the discovery response, the witnesses listed on Exhibit A thereto included a reference to a confidential informant CI11-L02, who turned out to be Robert Bauer, who was ultimately called as a live witness at the preliminary hearing. (P.H. Tr., p. 56, l. 24 – p. 74, l. 15)

Prior to the preliminary hearing which, as noted above, was held on February 22, 2012, the State filed a First Supplemental Response to Request for Discovery on February 6, 2012. (R., pp. 40-43) As the court can see, this supplemental discovery response, which was filed about 16 days prior

to the preliminary hearing, still did not identify Robert Bauer by name.

At the preliminary hearing, counsel for defendant did, in fact, do his best to question Robert Bauer, with no advance notice and no preparation. That cross examination covered a grand total of eleven (11) pages. (P.H. Tr., pp. 63-74) The State has, of course, praised the undersigned to the High Heavens for the very fine and thorough job the undersigned did in cross examining Robert Bauer after the State's actions in concealing Bauer's identity denied the undersigned any opportunity to properly prepare for that examination. The simple fact, however, is that an examination of the main fact witness (Bauer) to three (3) alleged serious drug deliveries ought to go for more than eleven (11) pages, if defense counsel has properly prepared, especially when the witness in question clearly is, or has been, immersed in the drug culture and has a significant criminal record. As the court can see from reviewing the cross examination of Robert Bauer (P.H. Tr., pp. 63-74), he was very vague about a lot of salient points and answered with a lot of "don't knows" and "not sures".

ISSUE PRESENTED ON APPEAL

ISSUE NO. 1: THE DISTRICT COURT CORRECTLY DENIED THE MOTION TO ADMIT THE PRELIMINARY HEARING TRANSCRIPT TESTIMONY.

ARGUMENT

ISSUE NO. 1: THE DISTRICT COURT CORRECTLY DENIED THE MOTION TO ADMIT THE PRELIMINARY HEARING TRANSCRIPT TESTIMONY.

The issue at hand is governed, in the first instance, by a statute and a court rule, which are similar in net effect, although the statute is more extensive.

The rule, Rule 804(b)(1), I.R.E., states:

> "The following are not excluded by the hearsay rule of the declarent is unavailable as a witness:
>
> > (1) Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered . . . had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination."

In addition to Rule 804(b)(1), this issue is also governed by Idaho Code §9-336, which provides as follows:

> "Prior to admitting into evidence testimony from a preliminary hearing, the court must find that the testimony offered is:
>
> > 1. Offered as evidence of a material fact and that the testimony is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
> >
> > 2. That the witness is, after diligent and good faith attempts to locate, unavailable for the hearing; and
> >
> > 3, That at the preliminary hearing, the party against whom the admission of the testimony is sought ***had an adequate opportunity to prepare and cross-examine the proffered testimony***." (Emphasis ours)

So, although using a transcript of prior testimony would technically be the use of hearsay, Rule

804(b)(1), I.R.E., provides a way out of that as long as certain conditions are satisfied. Idaho Code §9-336, as is set forth, goes a step farther by outlining a somewhat more rigorous an d detailed set of standards which must be satisfied in order for the prior testimony to be used.

This issue of the admission of preliminary hearing testimony in the absence of a witness has been the subject of a number of case law decisions in Idaho but, unfortunately, the decisions to date have not resulted in any sort of bright line which would allow the lower courts and counsel to discern with some ease when such testimony would be admissible and when it would not. In fact, the case of **State v. Ricks**, 122 Idaho, 856, 863, 840 P.2d 400 (Ct. App., 1992) noted on page 863 of the Idaho Reports version the following:

> ". . . we conclude that a case-by-case approach is the better way to determine whether the district court was correct in ruling that the preliminary hearing testimony was admissible."

This leaves us with a situation where, every single time, the trial court has the task of looking at the facts before it and determining whether, in fact, the request to use a transcript of the prior testimony of an unavailable witness will pass muster under Idaho Code §9-336 and Rule 804(b)(1). I.R.E. As the courts have noted, both in **Ricks**, supra, and **State v. Owen**, 129 Idaho 920, 935, 935 P.2d 183 (Ct. App., 1997):

> "Such an approach would allow the trial court to determine, ***as matters of fact***, whether the party opposing the use of such testimony 'had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination' " (emphasis ours)

Given that this exercise by the trial court is a ***factual*** matter, there will, as usual, be a certain deference on appeal to the trial court's decision, i.e.:

> "Where such findings [of the trial court] are challenged on appeal, we would apply the 'clear error' standard of review. If the factual predicates of I.R.E. 804 are

met, and if there are no other reasons shown under the rules for its exclusion, the court may admit the evidence at trial."

Fortunately, in the case now before the court, Judge Kerrick, who is an able jurist, produced a detailed and compelling set of factual findings which support his decision not to allow the use of the preliminary hearing testimony at trial. This is found on page 4 or his Opinion and Order, which is page 151 of the Clerk's Record and states as follows:

> "The case at hand is distinguishable from *Mantz* on the basis that the Defendant was not informed of the name of the confidential witness until he testified at the preliminary hearing. While the State suggests the Defendant may have known who the confidential informant was prior to the hearing, this suggestion is speculative in nature. Further, access to the recordings of the confidential buys does not identify the confidential informant, nor does it provide the Defendant enough information to investigate this witness for purposes of cross-examination. In the case at hand, the Defendant did not have an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination, as contemplated by I.R.E. 804(b)(1). In this case, the Defendant was placed in a position of using cross-exmination at the preliminary hearing as an investigatory tool. This is not the same opportunity or motive to develop testimony that counsel would employ at the trial on this matter. The Defendant did not have an adequate opportunity to impeach the witness because the Defendant was not provided the opportunity to investigate the witness prior to the hearing. This Court cannot find, in these circumstances, that the Defendant had an adequate opportunity for cross-examination pursuant to I.R.E. 804(b)(1), nor was there ad adequate opportunity for cross-examination in light of the Confrontation Clause analysis as set forth in *Crawford v. Washington*."

Even the most cursory review of the record before the court shows that Judge Kerrick's above set forth analysis is spot on, i.e.:

> 1. As is noted above, the State was served with the defendant's request for discovery on January 10, 2012. The State responded on January 12, 2012, and only identified Bauer with his confidential informant number. That was 41 days before the preliminary hearing, so the State had adequate opportunity to identify Bauer later in order to give defense counsel a fair chance to prepare;
>
> 2. As is also noted above, the State filed a supplemental discovery response on February 6, 2012, which was 16 days before the preliminary hearing. The State had the opportunity at that time to disclose Bauer's true name so defense counsel

could prepare but the State failed, once again, to do so. One would think that, by that time, the deputy prosecutor handling the matter would have known that she would need to use Bauer as a live witness and, knowing that, she absolutely should have disclosed his name so defense counsel could be properly prepared for the preliminary hearing;

3. As Judge Kerrick found, the very first time that defense counsel in the instant case was provided with Bauer's identity was when Bauer was called to the witness stand at the preliminary hearing. This situation in the instant case stands in contrast to the situation in **State v. Mantz**, 148 Idaho 303, 222 P.3d 471 (Ct. App., 2009), wherein, as the court noted at p. 311 of the decision, that defense counsel had ***two (2) months*** to prepare to cross-examine the witness who later died; the situation in **State v. Owen**, supra, wherein the missing witness in question was apparently known to the defendant prior to the filing of the criminal charges as a result of business dealings; and the situation in **Ricks**, supra, where the deceased witness whose testimony at preliminary hearing was sought to be admitted was the arresting officer whose identity was obviously known to the defendant basically from the inception of the case when the defendant was charged;

4. What makes the situation even more egregious in the instant case is that there was never any indication in the record, of which counsel is aware, that Bauer was part of ongoing drug investigations at the time of the preliminary hearing or that there was any other valid reason to hide his identity and handicap the defense.

As noted above, the appellate courts apply a "clear error" standard in reviewing a decision by the District Court as to whether or not to allow the use of preliminary hearing testimony in lieu of a live witness at trial. There is nothing in the record showing that Judge Kerrick committed "clear error" in coming to his decision. He employed logic and an accurate review of the facts to determine his result.

There is an additional point to be made. As is well known to the court, prosecutors carry a dual ethical duty under the Idaho Rules of Professional Conduct. They not only have their ethical duty to the people of the State of Idaho to diligently and properly prosecute criminal cases but also they have an ethical duty to the defendant to deal with him or her fairly. In short, although we have an adversarial legal system where the attorneys are the gladiators who go out and fight as hard as

possible for their respective sides, prosecutors do not have the totally unrestrained ability to do so if their conduct results in unfairness or injustice to the defendant. Rule 3.8 of the Idaho Rules of Professional Conduct deals with this special duty of the prosecutor. Although none of the specifically delineated subsection of that rule appear to exactly fit the instant case, part 1 of the Commentary which follows Rule 3.8 is cogent. That portion of the Commentary states, in part, as follows:

> "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded ***procedural*** justice, that guilty is decided upon the basis of sufficient evidence and that special precautions are taken to prevent and rectiy the conviction of innocent persons." (Emphasis ours)

That is pretty stirring language and what it boils down to at its lowest common denominator is that it isn't proper for a prosecutor to "game" a defendant and his attorney by refusing to provide identifying information about a confidential informant when she knows full well that his identity is going to be revealed anyway when she calls him to the witness stand as a live witness. That sort of "gaming" doesn't deserve to be rewarded by allowing the State to use preliminary hearing testimony which was unfairly obtained via "litigation by ambush".

We have one final comment. As is noted above in our argument, the Idaho courts have no "bright line" on this issue and the matter must be decided on a case-by-case basis. In the specific fact set of the instant case, however, we believe the court does, \in fact, have the ability to craft a narrowly-drawn "bright line". In light of the obligation under the Rules of Criminal Procedure for the State to fully disclose information requested by the defense, and in light of the ethical obligation of the prosecutor in the Idaho Rules of Professional Conduct to deal fairly with the defendant, the Court can craft a limited bright line which might be stated as follows:

> Where the State fails, without just legal cause to disclose the name of a witness to the defense prior to the preliminary hearing, then the preliminary hearing testimony of that witness will not be admissible at trial in lieu of the witnesses live testimony, if the witness later becomes unavailable.

CONCLUSION

The court has before it a case where the prosecutor failed to carry out her ethical duty to be fair with the defendant. She failed to carry out her legal duty under Rule 16 of the Idaho Criminal Rules to fully, properly, and promptly disclose information in response to a validly propounded request for discovery. She tried to "game" the defendant by withholding the identity of the confidential informant until the preliminary hearing for no apparently valid, legal reason and now that the whole tactic has backfired because the confidential informant died, she wants to be able to come before the court and say "Well, gee, defense counsel sure did a great job on cross examination of Bauer despite being handicapped by a lack of disclosure and so, no harm no foul." It should be clear that this argument is nothing but self-serving poppycock. As Rule 3.8 of the Idaho Rules of Professional Conduct makes quite clear, our criminal justice system is supposed to be based upon fairness and it is part of the prosecutor's job to keep things fair, not to just win at all costs. The ruling by the Honorable Carl B. Kerrick denying the State the ability to use the preliminary hearing testimony of Robert Bauer should be upheld.

DATED this 11 September, 2013.

Danny J. Radakovich
Attorney for Appellant

I hereby certify that two (2) true and correct copies of the foregoing instrument were mailed, first-class class, postage prepaid to:

Lawrence Wasden
P.O. Box 83720
Boise, ID 83720-0010

on this 20 day of September, 2013.

Danny J. Radakovich

APPENDIX

RAD

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

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

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

STATE OF IDAHO, Plaintiff, vs. KYLE A. RICHARDSON, Defendant.	CASE NO. CR2012-0000082 RESPONSE TO REQUEST FOR DISCOVERY

TO THE ABOVE-NAMED DEFENDANT AND COUNSEL:

COMES NOW, the State in the above-entitled matter, and submits the following Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney, or the prosecuting attorney's agent have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

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JAN 13 2012

2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

3. Defendant's prior criminal record, if any, has been disclosed, made available, or is attached hereto as set forth in Exhibit "B."

4. Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial is set forth in Exhibit "A." Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting

attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

7. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

8. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed, made available, or are attached hereto as set forth in Exhibit "B." In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and Brady v. Maryland, 373 U.S. 83 (1963).

9. Wherever this Response indicates that certain evidence or materials have been disclosed, made available, or are attached hereto as set forth in Exhibit "B," such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the defendant. Furthermore, any items which are listed in Exhibit "B" but are not specifically provided, or which are referred to in documents which are listed in Exhibit "B," are available for inspection upon appointment with the Prosecuting Attorney's Office.

10. The State reserves the right to supplement any and all sections of this response if and when more information becomes available.

11. The State objects to requests by the defendant for anything not addressed above on the grounds that such requests are outside the scope AND/OR are irrelevant under I.C.R. 16.

DATED this 11th day of January 2012.

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

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

(1) U hand delivered, or

(2) _____ hand delivered via court basket, or

(3) _____ sent via facsimile, or

(4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Danny Radakovich
Attorney at Law
1624 G Street
Lewiston Idaho 83501

DATED this 12th day of January 2012.

ERIN D. LEAVITT
Senior Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. KYLE A. RICHARDSON
NEZ PERCE COUNTY CASE NO. CR2012-0000082

1. NAME: BRYCE SCRIMSHER
ADDRESS: Idaho State Police Investigations
2700 N&S Highway
Lewiston, ID 83501
PHONE: 208-799-5020

2. NAME: BRETT J. DAMMON
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, ID 83501
PHONE: (208) 746-0171

3. NAME: RICH ADAMSON
ADDRESS: Idaho State Police Investigations
2700 N&S Highway
Lewiston, ID 83501
PHONE: (208) 799-5020

4. NAME: JONATHAN A. COE SGT.
ADDRESS: Clarkston Police Department
830 Fifth Street
Clarkston, WA 99403
PHONE: (509) 758-1680

5. NAME: DAVID C. SINCERBEAUX (EXPERT WITNESS)
ADDRESS: Idaho State Police Forensic Services
615 West Wilbur Suite B
Coeur D'Alene, ID 83815
PHONE: (208) 209-8700

ANTICIPATED TESTIMONY: David Sincerbeaux, is a Forensic Scientist with the Idaho State Police Forensic Services and will testify to his observations, findings and expert opinion as a result of performing the testing on the controlled substances in this case.

6. NAME: KENNETH YOUNT
ADDRESS: Idaho State Police Investigations
2700 N&S Highway
Lewiston, ID 83501
PHONE: (208) 799-5020

7. NAME: MIKE MOONEY
ADDRESS: Idaho State Police Investigations
2700 N&S Highway
Lewiston, ID 83501
PHONE: (208) 799-5020

8. NAME: TOM SPARKS
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, ID 83501
PHONE: (208) 746-0171

9. NAME: CI11-L02
ADDRESS: C/o Brett Dammon
Lewiston Police Department
1224 "F" Street
Lewiston, ID 83501
PHONE: (208) 746-0171

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. KYLE A. RICHARDSON
NEZ PERCE COUNTY CASE NO. CR2012-0000082

1. A copy of any audio and/or video tapes and/or compact discs and/or floppy discs are available by providing a blank audio/video tape or compact disc or floppy disc to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.

2. Lewiston Police Department Cap Sheet and Case Disposition Sheet consisting of three (3) pages. (1-3)

3. Lewiston Police Department LAW Incident Table consisting of one (1) page. (4)

4. Lewiston Police Department Narrative prepared by Brett Dammon consisting of three (3) pages. (5-7)

5. Lewiston Police Department Supplemental Narrative prepared by Brett Dammon dated September 13, 2011, consisting of two (2) pages. (8-9)

6. Lewiston Police Department Supplemental Narrative prepared by Brett Dammon dated September 16, 2011, consisting of three (3) pages. (10-12)

7. Lewiston Police Department Supplemental Narrative prepared by Tom Sparks dated September 23, 2011, consisting of two (2) pages. (13-14)

8. Idaho State Police Forensic Services Criminalistic Analysis Report dated September 13, 2011, consisting of three (3) pages. (15-17)

9. Idaho State Police Forensic Services Evidence Submission Receipt/Form dated September 12, 2011, consisting of one (1) page. (18)

10. Idaho State Police Forensic Services Criminalistic Analysis Report dated September 28, 2011, consisting of three (3) pages. (19-21)

11. Idaho State Police Forensic Services Evidence Submission Receipt/Form dated September 22, 2011, consisting of one (1) page. (22)

12. Lewiston Police Department Main Names Table consisting of four (4) pages. (23-26)

13. Criminal History consisting of eleven (11) pages. (27-37)