

8-15-2011

State v. Skunkcap Clerk's Supplement Dckt. 41394

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Supplemental

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO

Plaintiff-Respondent

LAW CLERK

vs.

JAMES LEROY SKUNKCAP

Defendant-Appellant

HON. ROBERT C. NAFTZ District Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for

Bannock County.

MOLLY HUSKEY

State Appellate Public Defender

Attorney X For Appellant X

LAWRENCE G. WARDEN

Idaho Attorney General

Attorney X For Respondent X

Filed this FILED - COPY day of

2008

FILED COPY
AUG 15 2011

Clerk
Deputy

Supreme Court Court of Appeals
Entered on A75 by

41394

34746 / 34747 / 38249

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
)
)
 vs.) Supreme Court No. 38249
)
 JAMES LEROY SKUNKCAP,)
)
 Defendant-Appellant,)
)
)
)
)
)

**SUPPLEMENTAL
CLERK'S RECORD**

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE Robert C. Naftz** District Judge.

For Appellant:

Molly Huskey
State Appellate Public Defender
P.O. Box 83720
Boise, Idaho 83720-0005

For Respondent:

Lawrence G. Wasden
Idaho Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

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State of Idaho vs. James Leroy Skunkcap

Date	Code	User		Judge
1/15/2006	LOCT	BRANDY	CR	Magistrate Court Clerk
11/15/2006	NCRF	BRANDY	New Case Filed-Felony	Magistrate Court Clerk
	PROS	BRANDY	Prosecutor Assigned Cleve Colson	Magistrate Court Clerk
	HRSC	BRANDY	Hearing Scheduled (Arraignment 11/15/2006 03:00 PM)	David L. Evans
	CRCO	BRANDY	Criminal Complaint; 1 Count Eluding a police officer, IC 49-1404(1) & (2)(b), 1 Count Malicious Injury to property, IC 18-7001, 1 Count Possession of Controlled Substance, Meth, IC 37-2732(C)(1) , 1 Count Grand Theft by Possession of Stolen Property, IC 18-2403(4) and 18-2407(1) and 1 Count Aggravated Assault Upon a Law Enforcement officer, IC 18-901(a) 18-905 and 18-915	David L. Evans
	AFPC	BRANDY	Affidavit Of Probable Cause; PPD incident report #06-P24548; request for \$75,000 bond	David L. Evans
	ORDR	BRANDY	Minute entry and order; probable cause determined; bond to be set at arrn; J Evans	David L. Evans
	ARRN	KIM	Hearing result for Arraignment held on 11/15/2006 03:00 PM: Arraignment / First Appearance	David L. Evans
	ORPD	KIM	Defendant: Skunkcap, James Leroy Order Appointing Public Defender Public defender Randall D Schulthies	David L. Evans
	BOND	KIM	Bond Set at 75000.00	David L. Evans
	HRSC	KIM	Hearing Scheduled (Preliminary Hearing 11/29/2006 09:30 AM)	David L. Evans
11/29/2006	PHWV	KIM	Hearing result for Preliminary Hearing held on 11/29/2006 09:30 AM: Preliminary Hearing Waived (bound Over)	David L. Evans
	BOND	KIM	Bond Set at 25000.00 /reduced from \$75,000.00/CRT SERV	David L. Evans
		KIM	Questionnaire in File	David L. Evans
11/30/2006	HRSC	BRANDY	Hearing Scheduled (Arraignment 12/04/2006 08:30 AM)	Peter D. McDermott
	INFO	BRANDY	Pros Atty Info (3) - Charge " 1 Count Eluding a police officer, IC 49-1404(1) & (2)(b), 1 Count Malicious Injury to property, IC 18-7001, 1 Count Possession of Controlled Substance, Meth, IC 37-2732(C)(1) , 1 Count Grand Theft by Possession of Stolen Property, IC 18-2403(4) and 18-2407(1) and 1 Count Aggravated Assault Upon a Law Enforcement officer, IC 18-901(a) 18-905 and 18-915;"	Peter D. McDermott
	BOND	BRANDY	Bond Set \$25,000	Peter D. McDermott

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
12/4/2006	ARRN	BRANDY	Hearing result for Arraignment held on 12/04/2006 08:30 AM: Arraignment / First Appearance
	APNG	BRANDY	Appear & Plead Not Guilty - NG (149-1404 {F} Officer-flee Or Attempt To Elude A Police Officer)
12/6/2006	ORDR	BRANDY	Minute entry and order; dfdt arrnd; NG plea entered; trial set; J McDermott 12-4-06
	HRSC	BRANDY	Hearing Scheduled (Jury Trial 02/06/2007 09:00 AM)
	HRSC	BRANDY	Hearing Scheduled (Further Proceedings 02/05/2007 08:30 AM)
	DISC	BRANDY	Request for Discovery; Cleve Colson aty for State
1/3/2007	DISC	BRANDY	Request for Discovery; Randall Schulthies aty for dfdt
1/26/2007	RESP	BRANDY	Response to request for discovery; Cleve Colson aty for State
1/31/2007		BRANDY	Pltfs requested jury instruction; Cleve Colson aty
2/5/2007	RESP	BRANDY	Supplemental response to request for discovery; Cleve Colson aty for State
	INHD	BRANDY	Hearing result for Further Proceedings held on 02/05/2007 08:30 AM: Interim Hearing Held
	KATHYS		Request to Obtain Broadcast approval - Id. St. Journal - granted
2/22/2007	MOTN	BRANDY	Motion to add information Part II; Cleve Colson aty for State
	HRSC	BRANDY	Hearing Scheduled (Further Proceedings 02/26/2007 08:30 AM)
	INFO	BRANDY	Pros Atty Info Part II; Charge "Persistent Violator, IC 19-2514"
		BRANDY	Amended pltfs requested jury instructions;
		BRANDY	Defendant's requested jury instructions; Randall Schulthies aty
2/23/2007		BRANDY	Supplemental to amended pltfs requested jury instructions; Cleve Colson aty for State
2/26/2007	HRHD	BRANDY	Hearing result for Further Proceedings held on 02/26/2007 08:30 AM: Hearing Held; Minute entry and order; motion to file part II; dfdt arrnd on part II; jury trial remains set; dfdt to wear civilian clothing at trial; J McDermott 2-27-07
2/27/2007	JTST	BRANDY	Jury Trial Started
2/28/2007	ORDR	KATHYS	Order State Order to Add Infomation Part II signed by Judge McDermott
	ACQU	CINDYBF	Acquitted (after Trial) (137-2732(C)(1) Controlled Substance-possession Of)

State of Idaho vs. James Leroy Skunkcap

Date	Code	User		Judge
2/28/2007	ACQU	CINDYBF	Acquitted (after Trial) (118-2403(4) {F} Theft By Receiving/possessing Stolen Property Etc)	Peter D. McDermott
	REDU	CINDYBF	Charge Reduced Or Amended (118-903 Battery)	Peter D. McDermott
3/1/2007		BRANDY	Verdit forms; Not Guilty to Grand Theft by Possession of Stolen Property Guilty to Eluding a Police Officer Guilty to Malicious Injury to Property Not Guilty to Possession of a Controlled Substance, Meth Not Guilty Aggravated Assault Upon a law enforcement officer Guilty of Assault	Peter D. McDermott
3/2/2007		BRANDY	Preemptory Challenges, Jury seating charts, Exhibits lists; jury instructions given	Peter D. McDermott
	ORDR	BRANDY	Minute entry and order on jury trial; dfdt found guilty and Not Guilty pursuant to verdict forms listed; dfdt pled guilty to Part II of Pros Info; Dfdt found guilty of Persistent Violator charge; PSI ordered; sentencing set; dfdt remanded; J McDermott 2-28-07	Peter D. McDermott
	HRSC	BRANDY	Notice of Hearing; PA - Cleve Colson; Motion to Continue Hearing Scheduled (Sentencing 04/09/2007 09:30 AM)	Peter D. McDermott
3/6/2007		KATHYS	Request to obtain Broadcast approval KPVI - Granted	Peter D. McDermott
4/5/2007		KATHYS	Request to Obtain Broadcast approval KIDK-3 Granted	Peter D. McDermott
4/9/2007	MEOR	KATHYS	Minute Entry and Order-- Sentencing reset	Peter D. McDermott
	CONT	KATHYS	Hearing result for Sentencing held on 04/09/2007 09:30 AM: Continued	Peter D. McDermott
4/30/2007		KATHYS	Defendant's Notice of Hearing -- 5/14/07 - on Mtn to Reduce Charge or for New Trial	Peter D. McDermott
		KATHYS	Def's Notice of Hrg - Def.'s Motion to Reduce Charge in alternative Motion for New Trial set 5/14/07	Peter D. McDermott
		KATHYS	Def's Motion to Reduce charge or in the Alternavit Motion For New Trial- by DA Schulthies.	Peter D. McDermott
	HRSC	KATHYS	Hearing Scheduled (Further Proceedings 05/14/2007 08:30 AM) Def.'s Motion	Peter D. McDermott
5/17/2007	MEOR	KATHYS	Minute Entry and Order -Dfdt appeared 5-14-07 Defendant's Motion to Reduce Charge or in the Alternative Motion for New Trial -- Taken Under Advisement	Peter D. McDermott
5/20/2007	ORDR	CINDYBF	Memorandum Decision & Order- Ordered that the charge on which the jury verdict was based must be reduced to a misd, and Court GRANTS Dfdts Motion to Reduce the Malicious Injury charge to a Misdemeanor. s/McDermott 6-20-07.	Peter D. McDermott

State of Idaho vs. James Leroy Skunkcap

Date	Code	User		Judge
6/20/2007	REDU	CINDYBF	Charge Reduced Or Amended (I18-7001 {M} Property-malicious Injury To Property)	Peter D. McDermott
8/2/2007	MOTN	CINDYCINDY	Motion to Withdraw- by DA Schulthies.	Peter D. McDermott
8/3/2007	HRSC	CINDYCINDY	Notice of Hearing- Scheduled (Motion 08/06/2007 08:30 AM) DA's Motion to Withdraw- by DA Schulthies.	Peter D. McDermott
8/6/2007	GRNT	SHAREE	Hearing result for Motion held on 08/06/2007 08:30 AM: Motion Granted PD's Motion to Withdraw	Peter D. McDermott
	ORPD	SHAREE	Defendant: Skunkcap, James Leroy Order Appointing Public Defender Public defender John Dewey	Peter D. McDermott
	ORPD	SHAREE	Defendant: Skunkcap, James Leroy Order Appointing Public Defender Public defender Randy W Smith	Peter D. McDermott
8/8/2007	MEOR	SHAREE	Minute Entry and Order - Randy Schulthies WITHDRAWN - APPOINT Co-Counsel John Dewey and Randy Smith of Public Defender's Office /s/J. McDermott 08/06/07	Peter D. McDermott
9/24/2007	CPGT	BRANDY	Found guilty by jury (I49-1404 {F} Officer-flee Or Attempt To Elude A Police Officer)	Peter D. McDermott
	CPGT	BRANDY	Found guilty by jury (I18-7001 {M} Property-malicious Injury To Property)	Peter D. McDermott
	CPGT	BRANDY	Found guilty by jury (I18-903 Battery)	Peter D. McDermott
	CSTS	BRANDY	Case Status Changed: closed pending clerk action	Peter D. McDermott
	SNIC	BRANDY	Sentenced To Incarceration (I49-1404 {F} Officer-flee Or Attempt To Elude A Police Officer) Confinement terms: Penitentiary determinate: 8 years. Penitentiary indeterminate: 10 years.	Peter D. McDermott
	SNIC	BRANDY	Sentenced To Incarceration (I18-7001 {M} Property-malicious Injury To Property) Confinement terms: Jail: 6 months. Credited time: 6 months.	Peter D. McDermott
	SNIC	BRANDY	Sentenced To Incarceration (I18-903 Battery) Confinement terms: Jail: 3 months. Credited time: 3 months.	Peter D. McDermott
	MISC	JOYLYNN	court services file closed - he was in jail	Peter D. McDermott

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge	
9/26/2007	ORDR	BRANDY	Minute entry and order and commitment order; sentencing held 9-24-07; dfdt found guilty by jury on 2-28-07 on felony Eluding, misd malicious injury to property, and misd assault; dfdt further pled guilty to persisten violator charge in part 2 of info; on eluding charge dfdt sentenced to 8 years fixed, ten years indeterminate, total 18 years, consecutive to CR-06-22110 FE; misd malicious injury sentenced to 6 months jail, credit 6 months, on misd assault sentenced to 3 months jail, credit 3 monthers served; driving priv suspended for 2 years upon release from prison; prior order for restitution is rescinded; a Civil Judgment is entered against dfdt for \$11,862.05; J McDermott 9-24-07	Peter D. McDermott
10/17/2007	ORDR	BRANDY	Order; clarification of sentence; J McDermott 10-17-07	Peter D. McDermott
10/31/2007	MISC	DCANO	Letter from Julie Nagashoah.	Peter D. McDermott
11/2/2007	APSC	DCANO	Appealed To The Supreme Court	Peter D. McDermott
	NOTC	DCANO	NOTICE OF APPEAL; John C. Dewey, PD	Peter D. McDermott
	MISC	DCANO	MOTION TO APPOINT S TTATE APPELLA6TE DIVISION; John C. Dewey, PD	Peter D. McDermott
11/6/2007	MISC	DCANO	ORDER RE: MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER; s/J. McDermott on 11-5-07.	Peter D. McDermott
	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL signed by Diane on 11-6-07. Mailed to Supreme Court and Counsel.	Peter D. McDermott
11/14/2007	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal, Dockete # 34746. Clerk's Record and Reporter's Transcript must be filed in this orffice before 2-8-08 (5 weeks prior 1-4-08)	Peter D. McDermott
	MISC	DCANO	IDAHO SUPREME COURT; Filing of Clerk's Certificate in SC on 11-9-07.	Peter D. McDermott
11/15/2007	ORDR	BRANDY	Amended order; this case, on Eluding charge dfdt sentence to 8 years fixed, 10 years indeterminate, total 18 years; Court enhanced due to persistent violator the maximum of 5 years as follows, 4 years to fixed portion and 9 years to indeterminate portion; J McDermott 11-14-07	Peter D. McDermott
12/18/2007	MISC	DCANO	AMENDED NOTICE OF APPEAL: Molly J. Huskey State PD.	Peter D. McDermott
2/28/2007	MISC	DCANO	AMENDED CLERK'S CERTIFICATE OF APPEAL, signed by Diane and Mailed to Counsel and Supreme Court on 12-28-07.	Peter D. McDermott
/9/2008	MISC	DCANO	IDAHO SUPREME COURT; Amended Clerk's Certificate Filed with Supreme Court on 1-4-08.	Peter D. McDermott

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
1/9/2008	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record and Reporters Transcript NEW due dates. Supreme Court 3-25-08 (5 weeks prior 2-19-08)
	MISC	DCANO	IDAHO SUPREME COURT; Amended Notice of Appeal Filed with SC on 1-4-08.
1/25/2008	MOTN	BRANDY	Rule 35 Motion; John Dewey aty for dfdt
2/5/2008	ORDR	KATHYS	Order-- Judge McDermott - Def's Rule 35 Motion set for oral argument 2/11/08 at 8:30
2/6/2008	HRSC	KATHYS	Hearing Scheduled (Oral Argument 02/11/2008 08:30 AM) Def.'s Rule 35 Motion
		DCANO	Clerk's Record received from Sandy on 2-6-08.
2/14/2008	HRHD	BRANDY	Hearing result for Oral Argument held on 02/11/2008 08:30 AM: Hearing Held Def.'s Rule 35 Motion; Minute entry and order; Dfdts Rule 35 Motion is DENIED: J McDermott 2-11-08
2/21/2008	MISC	DCANO	IDAHO SUPREME COURT; Transmittal of Document. Court Reporter's Motion for Extension of Time to Lodge Transcript. Granted, Transcript shall be lodged in District Court before 4-22-08. Due in Supreme Court before 5-27-08.
2/27/2008	MISC	DCANO	SECOND AMENDED NOTICE OF APPEAL; John C. Dewey, Public Defender.
		DCANO	SECOND AMENDED MOTION TO APPOINT STATE APPELLATE DIVISION
3/11/2008	MISC	DCANO	ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER'S OFFICE RE: RULE 35 APPEAL. s/J. McDermott on 3-10-08.
	MISC	DCANO	SECOND AMENDED CLERK'S CERTIFICATE OF APPEAL, signed and mailed to Supreme Court on 3-11-08.
3/24/2008	MISC	DCANO	IDAHO SUPREME COURT; Second Amended Notice of Appeal received in Supreme Court on 3-21-08.
	MISC	DCANO	IDAHO SUPREME COURT; Second Amended Clerk's Certificate Received in Supreme Court on 3-21-08.
	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record and Reporter's Transcript must be filed in this office by 5-5-08.
4/22/2008	MISC	DCANO	IDAHO SUPREME COURT; Document filed with SC. Court Reporter's Motn. for Extension of Time to Lodge/File Transcript.
4/28/2008	MISC	DCANO	IDAHO SUPREME COURT; Order Granting Court Reporter's Motion for Extension of Time. Granted the transcript shall be prepared and lodge with district court on or before (45) days of the date of this Order dated 4-25-08.

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
4/28/2008	MISC	DCANO	IDAHO SUPREME COURT; Transmittal of Document.
	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Record and Reporter's Transcript must be filed in SC on 7-11-08. (5 weeks prior 6-6-08).
6/6/2008	MISC	DCANO	REPORTER'S TRANSCRIPT received/filed in Court Records on 6-6-08. Further Proceedings held 2-5-07, Further Proceedings held 2-26-07, Jury Trial held 2-27-07, Jury Trial held 2-28-07. Semtemcomg je;d 4-9-07, Dfdts. Motn. to Reduce and Dfdts. Motn. for New Trial held 5-14-07, Public Dfdts. Motn. to Withdraw held 8-6-07, Sentencing held 9-24-07 and Dfdts. Rule 35 Motn. held 2-11-08.
6/18/2008	MISC	DCANO	CLERK'S RECORD AND REPORTER'S TRANSCRIPT MAILED TO COUNSEL ON 6-18-08; Molly Huskey and Lawrence Wasden.
7/15/2008	MISC	DCANO	CLERK'S RECORD AND REPORTER'S TRANSCRIPT MAILED TO SC. ON 7-16-08.
7/16/2008	MISC	DCANO	Provided a copy of Clerk's Record to Bannock County Prosecuting Atty's Office, Jeanne Hobson on 7-16-08.
7/22/2008	MISC	DCANO	IDAHO SUPREME COURT; Appeal Record received in SC on 7-18-08. Appellants Brief to be filed in SC by 8-22-08. Exhibits and Transcripts received. Any Additional Documents must be Augmented.
3/26/2008	MISC	DCANO	IDAHO SUPREME COURT; Document received on 8-21-08. Appellant's Motion to Consolidate Appeal Nos. 34746 and 34747
10/14/2008	MISC	DCANO	IDAHO SUPREME COURT; Transmittal of Document: Order Granting Motion to Consolidate Cr-2006-221100 will be consolidated into this case for Supreme Court Appeal only.
1/28/2009	MISC	DCANO	IDAHO SUPREME COURT; Motion to Augment - Due Dates Suspended. A Motion to Augment the record and to suspend the briefing schedule and statment in support was filed in SC on 1-20-09.
1/9/2009	MISC	DCANO	IDAHO SUPREME COURT; Briefing due Dates Suspended. Order Granting Motion to Augment and to Suspend the Breifeing Schedule. Dist. Court Reporter shall prepare the following Transcripts; Transcript of the jury voir dire by the DC. and Transcript of the jury voir dire. (28 days from 3-5-09)
1/3/2009	MISC	DCANO	IDAHO SUPREME COURT: Motion to Augment the Record and to Suspend the Briefing Schedule and Statement in Support was filed in Supreme court on 5-27-09. All due Dates are Suspended.

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
6/3/2009	MISC	DCANO	IDAHO SUPREME COURT: Appellant's Motion to Augment the Record and Statement in Support Thereof filed in SC on 5-29-09. Peter D. McDermott
6/8/2009	MISC	DCANO	IDAHO SUPREME COURT; Briefing Due Dates Suspended until further notice from SC. Peter D. McDermott
	MISC	DCANO	IDAHO SUPREME COURT; Order Granting Motion to Augment and to Suspend the Briefing Schedule. District Court Reporter shall prepare the following Transcript: Transcript of the Arraignment hearing conducted on 11-15-06. District Court Clerk shall submit at the same time a Copy of The Videotape of the traffic stop and collision in this case. admitted into evidence at trial as State's Exhibit P. Peter D. McDermott
7/7/2009	MISC	DCANO	REPORTER'S TRANSCRIPT LODGED in Court Records on 7-7-09 for Arraignment hearing held 11-15-06. Peter D. McDermott
7/8/2009	MISC	DCANO	COPY OF VIDEOTAPE OF THE TRAFFIC STOP AND COLLISION AND REPORTER'S TRANSCRIPT Mailed to Supreme Court and Counsel on 7-8-09. Peter D. McDermott
9/3/2009	MISC	DCANO	IDAHO SUPREME COURT; Motion to Suspend received in SC on 8-28-09. All Due Dates Suspended. Peter D. McDermott
9/23/2009	MISC	DCANO	IDAHO SUPREME COURT; Appellant's Second Motion to Suspend the Briefing Schedule and Statement in Support. - All Due Dates are Suspended. Peter D. McDermott
11/17/2009	MISC	DCANO	IDAHO SUPREME COURT; Briefing Due Dates Suspended until further notice from SC. Robert C Naftz
12/4/2009	MOTN	CINDYBF	Motion to Withdraw Guilty Plea and Set Hearing-by DA Dewey. Robert C Naftz
12/28/2009	HRSC	NICOLE	Hearing Scheduled (Motion 01/11/2010 09:00 AM) Motion to Withdraw Guilty Plea and Set Hearing Robert C Naftz
12/29/2009	NOTC	BRANDY	Notice of hearing; Motion to Withdraw guilty plea; John Dewey aty for dfdt Robert C Naftz
1/14/2010	DCHH	NICOLE	Hearing result for Motion held on 01/11/2010 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Withdraw Guilty Plea and Set Hearing Robert C Naftz
	MEOR	NICOLE	Minute Entry and Order; Def. not present in court; hearing on Defendant's Motion to Withdraw Guilty Plea and Set Hearing 1-11-10; case transferred to Judge Nye for reassignment to former sentencing judge for ruling on motion; s/ J. Naftz 1-14-10 Robert C Naftz
2/9/2010	ORDR	AMYW	Order of Assignment; matter assigned to J Naftz for resolution; /s/ J Nye, 2-9-10 David C Nye

State of Idaho vs. James Leroy Skunkcap

Date	Code	User		Judge
2/11/2010	HRSC	NICOLE	Hearing Scheduled (Motion 03/04/2010 09:30 AM) Motion to Withdraw Guilty Plea	Robert C Naftz
	ORDR	NICOLE	Order Setting Hearing on Motion to Withdraw Guilty Plea s /J. Naftz; set 3-4-10 9:30 am	Robert C Naftz
3/9/2010	HRVC	NICOLE	Hearing result for Motion held on 03/04/2010 09:30 AM: Hearing Vacated Motion to Withdraw Guilty Plea	Robert C Naftz
3/11/2010	MEOR	NICOLE	Minute Entry and Order; Def. not present in court 3-4-10 for Defendant's Motion to Withdraw Guilty Plea; matter vacated upon request of counsel; defense counsel will have to contact court to place back on calendar; s/ J. Naftz 3-11-10	Robert C Naftz
3/24/2010	HRSC	NICOLE	Notice of Hearing- Hearing Scheduled (Motion 04/08/2010 09:30 AM) Motion to Withdraw Guilty Plea- by DA Dewey.	Robert C Naftz
4/6/2010	MOTN	CINDYBF	Motion to Withdraw as Counsel- by DA Dewey.	Robert C Naftz
4/13/2010	DCHH	NICOLE	Hearing result for Motion held on 04/08/2010 09:30 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Withdraw as Counsel and Motion to Withdraw Guilty Plea	Robert C Naftz
4/14/2010	MEOR	NICOLE	Minute Entry and Order; Def. not present 4-8-10 for hearing on Defendant's Motion to Withdraw as Counsel and Motion to Withdraw Guilty Plea; Court denied motion to Withdraw as Counsel; Motion to Withdraw Guilty Plea continued until 4-19-10 9:00 am; transcripts of the Arraignment held 12-4-6 and Further Proceedings held 2-27-07 be forwarded to the Court and counsel; s/ J. Naftz 4-13-10	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Motion 04/19/2010 09:00 AM) Motion to Withdraw Guilty Plea	Robert C Naftz
4/26/2010	DCHH	NICOLE	Hearing result for Motion held on 04/19/2010 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Withdraw Guilty Plea	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Pretrial Conference 06/28/2010 04:00 PM)	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 07/13/2010 09:00 AM)	Robert C Naftz

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge	
4/29/2010	MEOR	NICOLE	Minute Entry and Order; Def. not present for hearing on Defendant's Motion to Withdraw Guilty Plea set 4-19-10; Court noted that Def. was not apprised of penalties of being Persistent Violator on this case; Defendant's Motion to Withdraw Guilty Plea granted; Def. allowed to withdraw guilty plea to being a persistent violator; Pretrial Conference set 6-28-10 4:00 pm; Jury Trial set 7-13-10 9:00 am; BCSO to have Def. transported from IDOC to be present for said hearings; s/ J. Naftz 4-29-10	Robert C Naftz
6/30/2010	HRHD	NICOLE	Hearing result for Pretrial Conference held on 06/28/2010 04:00 PM: Hearing Held	Robert C Naftz
	CONT	NICOLE	Continued (Jury Trial 07/23/2010 09:00 AM)	Robert C Naftz
7/1/2010	ORDR	NICOLE	Pre-Trial Order s/ J. Naftz 7-1-10; Jury Trial set for 7-23-10 9:00 am as first setting; Jury instructions and pre-trial motions due one week prior to trial	Robert C Naftz
7/12/2010	HRSC	NICOLE	Hearing Scheduled (Motion 07/19/2010 02:30 PM) Motion in Limine	Robert C Naftz
7/15/2010	MOTN	NICOLE	First Motion in Limine filed by Cleve Colson	Robert C Naftz
	NOTC	NICOLE	Notice of Hearing filed by Cleve Colson	Robert C Naftz
	MOTN	NICOLE	Second Motion in Limine filed by Cleve Colson	Robert C Naftz
	NOTC	NICOLE	Notice of hearing filed by Cleve Colson	Robert C Naftz
	MOTN	NICOLE	Third Motion in Limine filed by Cleve Colson	Robert C Naftz
	NOTC	NICOLE	Notice of Hearing filed by Cleve Colson	Robert C Naftz
	MISC	NICOLE	Plaintiff's Requested Jury Instructions	Robert C Naftz
7/16/2010	MOTN	CINDYBF	Motion to Appear in Street Clothes- by DA Schulthies.	Robert C Naftz
7/20/2010		CINDYBF	Defendant's Requested Jury Instructions- by DA Dewey.	Robert C Naftz
7/22/2010	MISC	NICOLE	State's Exhibit List	Robert C Naftz
	MISC	NICOLE	State's Witness List	Robert C Naftz
	MISC	NICOLE	Second Supplemental Response to Request for Discovery filed by Cleve Colson	Robert C Naftz
	DCHH	NICOLE	Hearing result for Motion held on 07/19/2010 02:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: more than 100 pages Motion in Limine	Robert C Naftz
	ORDR	NICOLE	Order to Appear in Street Clothes s/ J. Naftz 7-19-10	Robert C Naftz

State of Idaho vs. James Leroy Skunkcap

Date	Code	User		Judge
7/22/2010	MEOR	NICOLE	Minute Entry and Order; Def. appeared 7-19-10 for hearing on Plaintiff's First Motion in Limine, Second Motion in Limine and Third Motion in Limine and Defendant's Motion to Appear in Street Clothes; Defendant's motion granted; State's First Motion in Limine granted; Second Motion in Limine denied; Court granted Third Motion in Limine in part; State allowed to put on testimony regarding Defendant's conviction in this matter for Eluding but will not be allowed to discuss facts and circumstances surrounding charge and/or conviction; defense counsel renewed motion allowing office of the Public Defender to withdraw as representation and to appoint conflict counsel; oral motion denied; s/ J. Naftz 7-22-10	Robert C Naftz
8/5/2010	AINF	NICOLE	Amended Prosecuting Attorney's Information Part II; clerical error on original Information Part II	Robert C Naftz
8/9/2010	DCHH	NICOLE	Hearing result for Jury Trial held on 07/23/2010 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: more than 100 pages	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Sentencing 09/13/2010 09:00 AM)	Robert C Naftz

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
8/9/2010	MEOR	NICOLE	Robert C Naftz
			Minute Entry and Order; Def. appeared 7-23-10 for Jury Trial on being charged with Persistent Violator enhancement; State moved to file Amended Prosecuting Attorney's Information Part II; no objection, parties executed and Amended Information Part II filed; defense counsel objected to introduction of NCIC report or other criminal history as exhibits; Court ruled that State would not be allowed to use such exhibits unless as rebuttal should Def. intend to testify; Defense raised concerns to the State introducing specific portions of transcripts as exhibits, which matter was previously ruled on in the Order filed 7-22-10 regarding Plaintiff's Motions in Limine; the Court further redacted portions of submitted transcript from CR-2006-22110-FE and amended transcript provided to counsel; upon conclusion of voir dire, 12 jurors selected; outside presence of jury, defense moved for mistrial based on juror's response to voir dire questioning; motion denied; witnesses, Scott Matson and Ian Nelson of PPD called to testify; State's Exhibits 1 and 2 admitted without objection; State's Exhibits 3 and 4 admitted after objections overruled; outside presence of jury, defense moved for dismissal of case; motion denied; after further argument, State was allowed to reopen case to present further testimony; State moved to allow transcript from this case be considered admissible in court; defense objected to state calling new witness not disclosed earlier and to using transcript from this case; court reiterated decision to allow State to reopen case and denied state's motion to release transcripts; defense allowed 30 minutes to prepare for cross examination of state's witnesses; after deliberation, jury reached unanimous verdict; Def. found guilty of being Persistent Violator defined in IC 19-2514; sentencing set 9-13-10 9:00 am; PSI ordered; court requests information from Defendant's last three years incarceration; s/ J. Naftz 8-9-10
	PSIO1	NICOLE	Robert C Naftz
8/13/2010	FINDG	NICOLE	Robert C Naftz
			Court Finding: Guilty- (I19-2514 Enhancement-Persistent Violator)
	CSTS	NICOLE	Robert C Naftz
			Case Status Changed: closed pending clerk action
	SNIC	NICOLE	Robert C Naftz
			Sentenced To Incarceration (I19-2514 Enhancement-Persistent Violator) Confinement terms: Penitentiary indeterminate: 7 years.

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
9/15/2010	DCHH	NICOLE	Hearing result for Sentencing held on 09/13/2010 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: more than 100 pages
9/16/2010	MEOR	NICOLE	Minute Entry and Order; Def. appeared 9-13-10 for sentencing after being found guilty by jury on 7-23-10 of being a Persistent Violator as defined in IC 19-2514; Def. sentenced to 7 years indeterminate and no fixed portion; Def. given credit for any time served; Def. remanded to BCJ to deliver to IDOC; s/ J. Naftz 9-16-10
10/20/2010	MOTN	BRANDY	Rule 35 Motion; John Dewey aty for dfdt
10/22/2010	HRSC	NICOLE	Hearing Scheduled (Motion to Reconsider 11/08/2010 09:00 AM) Rule 35 Motion
	NOTC	BRANDY	Notice of hearing; Rule 35 Motion; set 11-8-10 at 9am; dfdt aty Kent Reynolds
10/26/2010	APSC	DCANO	Appealed To The Supreme Court
	NOTC	DCANO	NOTICE OF APPEAL; Kent V. Reynolds, Atty for Dfdt.
	MOTN	DCANO	MOTION TO APPOINT STATE APPELLATE DIVISION;
11/1/2010	CONT	NICOLE	Continued (Motion to Reconsider 11/22/2010 09:00 AM) Rule 35 Motion; continued upon request of defense counsel
11/3/2010	NOTC	BRANDY	Amended Notice of hearing; 11-22-10 at 9am
	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to Counsel and SC on 11-3-10.
11/4/2010	MISC	DCANO	ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER'S OFFICE. (Sent copies to SC and Counsel on 11-5-10)
11/18/2010	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 11-8-10. Docket # 38249-2010. Clerk's Record and Reporter's Transcript due on 2-22-11 (1-18-11 5 weeks prior) The following transcripts to be lodged: Jury Trial 8-9-10 and Sentencing 9-13-10.
	MISC	DCANO	IDAHO SUPREME COURT; Documents filed: Minute Entry and Order and Transport Order from Dist. Court.
1/22/2010	MISC	DCANO	IDAHO SUPREME COURT; Transmittal of Document, Order Consolidating Appeals. Appeal Docket 34746 & 38249 shall be consolidated for all purposes under 34746. Dist. Clerk shall prepare a Clerk's Record for 38249 together with a copy of this Order. It is further ordered that appeal No. 34746 shall be suspended until Clerk's Record and Reporter's Transcript for 38249 are filed with SC.

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
11/24/2010	MISC	DCANO	IDAHO SUPREME COURT; Document filed with SC. Status Report on behalf of Appellant. Robert C Naftz
12/1/2010	DCHH	NICOLE	Hearing result for Motion to Reconsider held on 11/22/2010 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: more than 100 pages Rule 35 Motion Robert C Naftz
	MEOR	NICOLE	Minute Entry and Order; Def. was not present for hearing 11-22-10 on Rule 35 Motion; on 9-13-10, after having been found guilty by verdict from a jury to the enhancement charge of Persistent Violator, the Def. was sentenced to 7 years indeterminate with no fixed portion on this charge; Def. was given credit for all time served; Def.'s Rule 35 Motion is granted in part in that the Court has the ability and will reconsider the original sentence on the charge of Eluding in this matter along with the sentence on the charge of Persistent Violator; Court will further reconsider whether to run this case concurrent or consecutive to Def's other case, Case No. CR-2006-22110-FE; court finds that no new evidence presented and that sentences imposed by Judge McDermott and this court were appropriate; the length of the sentences on both Eluding and Persistent Violator will remain unchanged and will continue to run consecutive to case No. CR-2006-22110-FE; Def. will continue to serve his sentence as imposed by the court on 9-13-10; s/ J. Naftz 12-1-10 Robert C Naftz
12/8/2010	MISC	DCANO	CORRECTED CLERK'S CERTIFICATE OF APPEAL: Signed and Mailed to Counsel and SC on 12-08-10. Robert C Naftz
12/17/2010	MISC	DCANO	AMENDED NOTICE OF APPEAL ON RULE 35, John C. Dewey, Public Defender. Robert C Naftz
	MISC	DCANO	MOTION TO APPOINT STATE APPELLATE DIVISION RE: RULE 35 APPEAL. Robert C Naftz
2/21/2010	MISC	DCANO	AMENDED CLERK'S CERTIFICATE OF APPEAL; Signed and mailed to Counsel and SC on 12-21-10. Robert C Naftz
2/28/2010	ORDR	DCANO	ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER'S OFFICE RE: RULE 35 APPEAL. Sent copies to Counsel and SC on 12-29-10. Robert C Naftz
/5/2011	MISC	DCANO	IDAHO SUPREME COURT; Document filed in SC. Appellant's Motion for Preparation of Supplemental Record and Transcripts and to suspend the Briefing Schedule and Statement in Support. All Due Dates Are Suspended. Robert C Naftz

State of Idaho vs. James Leroy Skunkcap

Date	Code	User	Judge
1/24/2011	MISC	DCANO	IDAHO SUPREME COURT; Order Granting in Part and Denying in Part the Motion for Preparation of Supplemental Record and Transcripts and to Suspend the Briefing Schedule. Order for Appellants' Motn. for preparation of "SUPPLEMENTAL RECORD AND TRANSCRIPT" hereby Granted in part. Dist Court Clerk shall prepare a Supplemental Clerk's Record from 12-4-09 to present. Dist Court Reporter to prepare and lodge the following transcripts: Motn. to Withdraw Guilty Plea held 1-11-10, Transcript of the Motn. to Withdraw Guilty Plea held 4-8-10, Motn to Withdraw Guilty Plea held 4-19-10. Motn in Limine held 7-19-10, Jury Trial on Persistent Violator Allegation held 7-23-10, Sentencing hearing held 9-13-10 and Motn for Rule 35 hearing held 11-22-10.
2/3/2011	MISC	DCANO	IDAHO SUPREME COURT; Amended Notice of Appeal received in SC on 1-27-11.
	MISC	DCANO	IDAHO SUPREME COURT; Documents received in SC; Minute Entry and Order (Denies Rule 35).
3/29/2011	MISC	DCANO	SUPPLEMENTAL CLERK'S RECORD RECEIVED in Court Records on 3-29-11. (Still waiting for Transcripts before mailing out as of 3-29-11)
	MISC	DCANO	Provided a copy of Supplemental Clerk's Record to Bannock County Prosecuting Attorney's Office Jeanne Hobson on 3-29-11.

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2008 DEC 4 PM 4:19

BY CA
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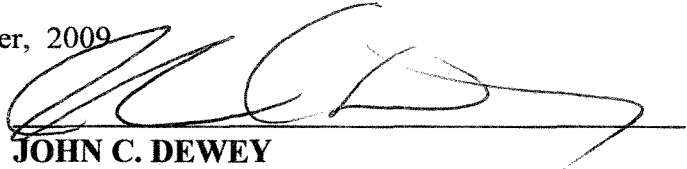
**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR-2006-20842-FE-C
vs.)	
	)	MOTION TO WITHDRAW
JAMES LEROY SKUNKCAP,	)	GUILTY PLEA AND SET
	)	HEARING
Defendant.)	
_____)	

COMES NOW James Leroy Skunkcap, the Defendant in the above-entitled matter, acting by and through his counsel of record, John C. Dewey, and hereby moves the Court for an Order allowing the Defendant to withdraw his previously entered guilty plea stated in the Minute Entry and Order dated, February 28, 2007, pursuant to Rule 11 of Idaho Criminal Rules. This motion is made at the direct request of Mr. Skunkcap, who was not properly notified of the consequences surrounding his guilty plea as to the Persistent Violator Enhancement as indicated on Page 5, Line 13-17 of the transcript dated November 15, 2006, a copy of which is attached hereto and by this reference made a part hereof.

The Defendant request that the Court conduct such hearing as the Court deem appropriate and allow the Defendant to withdraw his guilty plea.

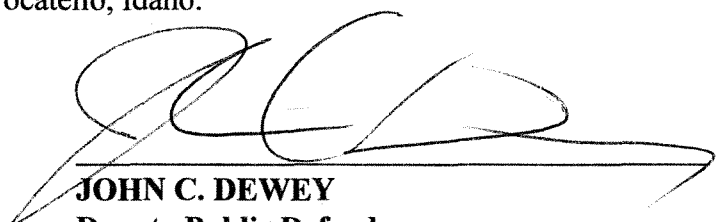
DATED this 4 day of December, 2009



JOHN C. DEWEY
Deputy Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of December, 2009, I served a true and correct copy of the foregoing **MOTION TO WITHDRAW GUILTY PLEA** was served upon the Bannock County Prosecuting Attorney, by depositing a copy of the same in the Prosecutor's in-box, Bannock County Courthouse, Pocatello, Idaho.



JOHN C. DEWEY
Deputy Public Defender

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATES DIVISION

STATE OF IDAHO,	)	<u>T R A N S C R I P T</u>
)	
Plaintiff,	)	<u>OF</u>
)	
vs.	)	<u>FIRST ARRAIGNMENT HEARING</u>
)	
JAMES LEROY SKUNKCAP,)	
	)	CASE NO. CR-2006-20842-FE
Defendant.)	

CITY OF POCA TELLO, COUNTY OF BANNOCK, IDAHO

Transcript of the First Arraignment Hearing held on the 15th day of November 2006, before the **HONORABLE DAVID L. EVANS**.

APPEARANCES:

Defendant appeared pro se via television from the Bannock County Jail.

WHEREUPON, the following proceedings were had and taken and entered as of record.

ORDERED BY IDAHO SUPREME COURT
SHERRILL GRIMMETT, TRANSCRIBER

TRANSCRIPT OF FIRST ARRAIGNMENT HEARING

CASE NUMBER CR-2006-20842-FE

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IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATES DIVISION

STATE OF IDAHO,) TRANSCRIPT
)
Plaintiff,) OF
)
vs.) FIRST ARRAIGNMENT HEARING
)
JAMES SKUNKCAP)
) CASE NO. CR-2006-20842-FE
)
Defendant.)

COURT: How are you, sir, is that your name James Leroy Skunkcap?

SKUNKCAP: Yes, it is.

COURT: Mr. Skunkcap, did you get a copy of the complaint in this case?

SKUNKCAP: I didn't get no copies. I don't know. I didn't know what I was charged with until just before I came in here.

COURT: All right.

SKUNKCAP: Or know if I had a bond.

COURT: All right. You're charged with Count I of Eluding a Police Officer, a felony; Count II, Malicious Injury to Property; Count III, Possession of a...

SKUNKCAP: Is that a felony, the malicious injury?

1 COURT: Right because the damage was over \$1000.
2 Possession of a Control Substance, Methamphetamine; Grand
3 Theft by Possession of Stolen Property and Aggravated
4 Assault on a Law Enforcement Officer.

5 SKUNKCAP: That's five charges?

6 COURT: Right. Would you like me to read it to you, the
7 charging portion of the complaint?

8 SKUNKCAP: Each one of them would be fine.

9 COURT: Okay. Count I is the Eluding a Police Officer
10 is: James LeRoy Skunkcap in Pocatello, County of Bannock,
11 State of Idaho on or about the 14th day of November 2006,
12 did flee in an attempt to elude a pursuing police vehicle
13 using emergency lights or sirens to signal the defendant to
14 stop their vehicle, a blue Toyota Camry bearing Idaho
15 license 1B F9120 on the Kraft Road and Main Street area.

16 SKUNKCAP: I can't really hear you. There's static
17 here. Is there any way we fix that? I could barely hear
18 you.

19 COURT: Is the officer there?

20 SKUNKCAP: He is.

21 COURT: Do you want to see if you can fix that? Is that
22 any better?

23 OFFICER: The only thing I can do is just turn it up.
24 Hopefully he can hear you a little better. It's still
25 staticy?

1 COURT: Can you hear me? We'll see if we can get
2 somebody here to address it.

3 OFFICER: Your Honor, go ahead and try it now and see
4 if he can hear any better?

5 COURT: Can you hear me now any better? Any better?

6 OFFICER: It's just the way it always is. I can hear
7 you but I guess Mr. Skunkcap can't.

8 COURT: Is it any different than what it normally is?

9 OFFICER: It's not any different than what it normally
10 is.

11 COURT: I'll read this to you. I'll get as close to the
12 mike as I can. Count I states that James LeRoy Skunkcap,
13 Pocatello, County of Bannock, State of Idaho, on or about
14 the 14th day of November 2006, did flee, attempt to elude a
15 pursuing police vehicle using emergency lights or sirens to
16 signal the defendant to stop their vehicle, a blue Toyota
17 Camry bearing Idaho license bearing Idaho License, 1B
18 F19120 on the Kraft Road and Main Street area while
19 defendant cause property damage. That's Count I. The
20 maximum is \$5000, five years in the State Penitentiary.

21 Malicious Injury to Property, Count II, states that
22 James LeRoy Skunkcap in Pocatello, County of Bannock, State
23 of Idaho on or about the 14th day of November 2006 did
24 maliciously destroy certain property of the Bannock County
25 Sheriff's Office and Pocatello Police Department by causing

1 damage in excess of \$1000 to the Bannock County Sheriff's
2 Police truck driven by Deputy Mike Dahlquist and a
3 Pocatello Police detective car driven by Detective Collins.
4 All these damages are in excess of \$1000. Maximum is \$5000
5 and five years in jail, in prison.

6 This next count is a Possession of a Controlled
7 Substance, Methamphetamine. It carries seven years in the
8 State Penitentiary and a \$15,000 fine. It says that James
9 LeRoy Skunkcap in Pocatello, County of Bannock, State of
10 Idaho on or about the 14th day of November 2006, did possess
11 Schedule II Controlled Substance, methamphetamine.

12 Count IV is Grand Theft by Possession of Stolen
13 Property. It states that James LeRoy Skunkcap in Pocatello,
14 County of Bannock, State of Idaho on or about the 14th day
15 of November 2006, did retain, obtain control over and
16 possess stolen property, a blue 1989 Toyota Camry, the
17 property of Grant Beck and having a value in excess of
18 \$1000 knowing that at the time said property to have been
19 stolen by another or under such circumstances as would
20 reasonably induce him to believe that said property was
21 stolen and knowing that retaining control over and
22 possession of said property would deprive the owner thereof
23 of that property. That carries a 14 years at State
24 Penitentiary and \$5000 fine.

25

1 Count V is Aggravated Assault on a Police Officer. It
2 states that James LeRoy Skunkcap, Pocatello, County of
3 Bannock, State of Idaho on or about the 14th day of November
4 2006, did threaten to do violence on a law enforcement
5 officer with an apparent ability using a deadly
6 weapon, a blue 1989 Toyota Camry *Should have* ate 1B
7 F9120 without the intent to kill. *been 5 years* forced
8 to likely to produce great bodi *to life* his car
9 into Detective Collins's car at ed
10 knowing or having reason to kno as a law
11 enforcement officer. That carries 15 years and \$50,000
12 fine.

13 They have also given you a notice that the State of
14 Idaho will seek a Persistent Violator Enhancement, which
15 under Idaho Code §19-2514 will add an additional five years
16 fixed to you sentence and that's based on previous felony
17 convictions. Do you understand okay?

18 SKUNKCAP: Does that carry a bond too?

19 COURT: Well, I'll set bond here in just a second.

20 Okay, now you've made application for the public defender.

21 You are unemployed, correct?

22 SKUNKCAP: Yes.

23 COURT: I'll go ahead and grant you the public
24 defender. You may be required to reimburse the county for
25 that. That will be up to the district judge. And inform you

1 that you do have the right to remain silent. Anything you
2 say today could be used against you. Anything you say in
3 subsequent proceedings could be used against you. You saw
4 the rights film? You understand that okay?

5 SKUNKCAP: Yes.

6 COURT: Okay. We're going to go ahead and schedule this
7 for a Preliminary Hearing. The purpose of that hearing is
8 the State has the burden to establish that there was a
9 crime committed and there's probable cause that you
10 committed the crime on each one of those five counts. We'll
11 set that hearing for November 29th at 9:30 a.m. and that
12 will be in my courtroom in the basement of the Bannock
13 County Courthouse in room 119. They have requested bail in
14 the amount of \$75,000. Do you have anything you want to say
15 about bail?

16 SKUNKCAP: You set the bail at what?

17 COURT: They have requested a bail of \$75,000. Do you
18 have anything you want to say about it?

19 SKUNKCAP: Is that for everything?

20 COURT: That's for everything.

21 SKUNKCAP: What could I say? Can you lower it?

22 COURT: Well, you've got an extensive record.

23 SKUNKCAP: Unemployed.

24 COURT: Your record is quite extensive.

25 SKUNKCAP: Any lower?

1 COURT: No. I'm going to set it at 75. That seems
2 reasonable under the circumstances of the charge and your
3 record. Any questions?

4 SKUNKCAP: Any lower?

5 COURT: No.

6 SKUNKCAP: No more questions.

7 COURT: Okay. It's set at 75. If you do bail out of
8 jail, you're to meet with the public defender on November
9 21st at 2:30 p.m. If you fail to keep that appointment, you
10 would be in violation of the Court's order and subject to
11 arrest and forfeiture of your bail. Okay. That's it. Thank
12 you.

13 END

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REPORTERS CERTIFICATE

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STATE OF IDAHO,)
) SS:
COUNTY OF BANNOCK,)

I, SHERRILL L. GRIMMETT, Do hereby certify:

That I am a Deputy Clerk of the Sixth Judicial District Court of Bannock County, State of Idaho: That I am the person designated to transcribe the First Arraignment Hearing as recorded on the mechanical recording device at the foregoing Hearing; That the above proceedings and evidence is a full, true and correct transcript of the Hearing as taken down by the mechanical recording device at said Hearing, as reported by me to the best of my ability.

DATED this 7th day of July, 2009.

LS/
SHERRILL L. GRIMMETT
DEPUTY CLERK

Reporter's Certificate

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IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATES DIVISION

STATE OF IDAHO,	)	<u>T R A N S C R I P T</u>
)	
Plaintiff,	)	<u>OF</u>
)	
vs.	)	<u>FIRST ARRAIGNMENT HEARING</u>
)	
JAMES SKUNKCAP)	
	)	CASE NO. CR-2006-20842-FE
Defendant.)	

COURT: How are you, sir, is that your name James Leroy Skunkcap?

SKUNKCAP: Yes, it is.

COURT: Mr. Skunkcap, did you get a copy of the complaint in this case?

SKUNKCAP: I didn't get no copies. I don't know. I didn't know what I was charged with until just before I came in here.

COURT: All right.

SKUNKCAP: Or know if I had a bond.

COURT: All right. You're charged with Count I of Eluding a Police Officer, a felony; Count II, Malicious Injury to Property; Count III, Possession of a....

SKUNKCAP: Is that a felony, the malicious injury?

1 COURT: Right because the damage was over \$1000.
2 Possession of a Control Substance, Methamphetamine; Grand
3 Theft by Possession of Stolen Property and Aggravated
4 Assault on a Law Enforcement Officer.

5 SKUNKCAP: That's five charges?

6 COURT: Right. Would you like me to read it to you, the
7 charging portion of the complaint?

8 SKUNKCAP: Each one of them would be fine.

9 COURT: Okay. Count I is the Eluding a Police Officer
10 is: James LeRoy Skunkcap in Pocatello, County of Bannock,
11 State of Idaho on or about the 14th day of November 2006,
12 did flee in an attempt to elude a pursuing police vehicle
13 using emergency lights or sirens to signal the defendant to
14 stop their vehicle, a blue Toyota Camry bearing Idaho
15 license 1B F9120 on the Kraft Road and Main Street area.

16 SKUNKCAP: I can't really hear you. There's static
17 here. Is there any way we fix that? I could barely hear
18 you.

19 COURT: Is the officer there?

20 SKUNKCAP: He is.

21 COURT: Do you want to see if you can fix that? Is that
22 any better?

23 OFFICER: The only thing I can do is just turn it up.
24 Hopefully he can hear you a little better. It's still
25 staticy?

1 COURT: Can you hear me? We'll see if we can get
2 somebody here to address it.

3 OFFICER: Your Honor, go ahead and try it now and see
4 if he can hear any better?

5 COURT: Can you hear me now any better? Any better?

6 OFFICER: It's just the way it always is. I can hear
7 you but I guess Mr. Skunkcap can't.

8 COURT: Is it any different than what it normally is?

9 OFFICER: It's not any different than what it normally
10 is.

11 COURT: I'll read this to you. I'll get as close to the
12 mike as I can. Count I states that James LeRoy Skunkcap,
13 Pocatello, County of Bannock, State of Idaho, on or about
14 the 14th day of November 2006, did flee, attempt to elude a
15 pursuing police vehicle using emergency lights or sirens to
16 signal the defendant to stop their vehicle, a blue Toyota
17 Camry bearing Idaho license bearing Idaho License, 1B
18 F19120 on the Kraft Road and Main Street area while
19 defendant cause property damage. That's Count I. The
20 maximum is \$5000, five years in the State Penitentiary.

21 Malicious Injury to Property, Count II, states that
22 James LeRoy Skunkcap in Pocatello, County of Bannock, State
23 of Idaho on or about the 14th day of November 2006 did
24 maliciously destroy certain property of the Bannock County
25 Sheriff's Office and Pocatello Police Department by causing

1 damage in excess of \$1000 to the Bannock County Sheriff's
2 Police truck driven by Deputy Mike Dahlquist and a
3 Pocatello Police detective car driven by Detective Collins.
4 All these damages are in excess of \$1000. Maximum is \$5000
5 and five years in jail, in prison.

6 This next count is a Possession of a Controlled
7 Substance, Methamphetamine. It carries seven years in the
8 State Penitentiary and a \$15,000 fine. It says that James
9 LeRoy Skunkcap in Pocatello, County of Bannock, State of
10 Idaho on or about the 14th day of November 2006, did possess
11 Schedule II Controlled Substance, methamphetamine.

12 Count IV is Grand Theft by Possession of Stolen
13 Property. It states that James LeRoy Skunkcap in Pocatello,
14 County of Bannock, State of Idaho on or about the 14th day
15 of November 2006, did retain, obtain control over and
16 possess stolen property, a blue 1989 Toyota Camry, the
17 property of Grant Beck and having a value in excess of
18 \$1000 knowing that at the time said property to have been
19 stolen by another or under such circumstances as would
20 reasonably induce him to believe that said property was
21 stolen and knowing that retaining control over and
22 possession of said property would deprive the owner thereof
23 of that property. That carries a 14 years at State
24 Penitentiary and \$5000 fine.

25

1 Count V is Aggravated Assault on a Police Officer. It
2 states that James LeRoy Skunkcap, Pocatello, County of
3 Bannock, State of Idaho on or about the 14th day of November
4 2006, did threaten to do violence on a law enforcement
5 officer with an apparent ability to do so by using a deadly
6 weapon, a blue 1989 Toyota Camry bearing license plate 1B
7 F9120 without the intent to kill or by any means or forced
8 to likely to produce great bodily harm by crashing his car
9 into Detective Collins's car at a high rate of speed
10 knowing or having reason to know that the victim was a law
11 enforcement officer. That carries 15 years and \$50,000
12 fine.

13 They have also given you a notice that the State of
14 Idaho will seek a Persistent Violator Enhancement, which
15 under Idaho Code §19-2514 will add an additional five years
16 fixed to you sentence and that's based on previous felony
17 convictions. Do you understand okay?

18 SKUNKCAP: Does that carry a bond too?

19 COURT: Well, I'll set bond here in just a second.
20 Okay, now you've made application for the public defender.
21 You are unemployed, correct?

22 SKUNKCAP: Yes.

23 COURT: I'll go ahead and grant you the public
24 defender. You may be required to reimburse the county for
25 that. That will be up to the district judge. And inform you

1 that you do have the right to remain silent. Anything you
2 say today could be used against you. Anything you say in
3 subsequent proceedings could be used against you. You saw
4 the rights film? You understand that okay?

5 SKUNKCAP: Yes.

6 COURT: Okay. We're going to go ahead and schedule this
7 for a Preliminary Hearing. The purpose of that hearing is
8 the State has the burden to establish that there was a
9 crime committed and there's probable cause that you
10 committed the crime on each one of those five counts. We'll
11 set that hearing for November 29th at 9:30 a.m. and that
12 will be in my courtroom in the basement of the Bannock
13 County Courthouse in room 119. They have requested bail in
14 the amount of \$75,000. Do you have anything you want to say
15 about bail?

16 SKUNKCAP: You set the bail at what?

17 COURT: They have requested a bail of \$75,000. Do you
18 have anything you want to say about it?

19 SKUNKCAP: Is that for everything?

20 COURT: That's for everything.

21 SKUNKCAP: What could I say? Can you lower it?

22 COURT: Well, you've got an extensive record.

23 SKUNKCAP: Unemployed.

24 COURT: Your record is quite extensive.

25 SKUNKCAP: Any lower?

1 COURT: No. I'm going to set it at 75. That seems
2 reasonable under the circumstances of the charge and your
3 record. Any questions?

4 SKUNKCAP: Any lower?

5 COURT: No.

6 SKUNKCAP: No more questions.

7 COURT: Okay. It's set at 75. If you do bail out of
8 jail, you're to meet with the public defender on November
9 21st at 2:30 p.m. If you fail to keep that appointment, you
10 would be in violation of the Court's order and subject to
11 arrest and forfeiture of your bail. Okay. That's it. Thank
12 you.

13 END

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REPORTERS CERTIFICATE

STATE OF IDAHO,)
) SS:
COUNTY OF BANNOCK,)

I, SHERRILL L. GRIMMETT, Do hereby certify:

That I am a Deputy Clerk of the Sixth Judicial District Court of Bannock County, State of Idaho: That I am the person designated to transcribe the First Arraignment Hearing as recorded on the mechanical recording device at the foregoing Hearing; That the above proceedings and evidence is a full, true and correct transcript of the Hearing as taken down by the mechanical recording device at said Hearing, as reported by me to the best of my ability.

DATED this 7th day of July, 2009.

LS
SHERRILL L. GRIMMETT
DEPUTY CLERK

Reporter's Certificate

BANNOCK COUNTY
FILED
CLERK
2010 JAN 14 PM 5:24
BY MD
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,
vs.
JAMES LEROY SKUNKCAP,
Defendant.

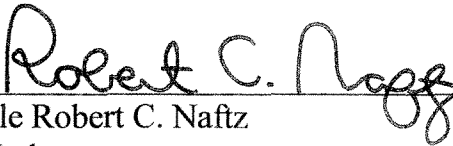
Case No: CR-2006-0020842-FE
MINUTE ENTRY & ORDER

The above-entitled matter came before the Honorable Robert C. Naftz on the 11th day of January, 2010, for hearing on Defendant's Motion to Withdraw Guilty Plea and Set Hearing. The Defendant was not present in court but represented by and through John Dewey. Ian Service, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.

The court notes that Defendant's motion to withdraw guilty plea pertains specifically to the enhancement portion of the charge for Persistent Violator, Idaho Code §19-2514. Since the Defendant was sentenced prior to Judge Naftz taking the bench, this Court feels it

appropriate to transfer this case to the Administrative District Judge, David C. Nye, for reassignment to the former sentencing judge for ruling on this motion.

DATED this 14 day of January, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of January, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Judge David C. Nye

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

WD
Deputy Clerk

BONNOCOUNTY
2010 MAR 11 PM 3:15
WAD
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,
vs.
JAMES LEROY SKUNKCAP,
Defendant.

Case No: CR-2006-0020842-FE
MINUTE ENTRY & ORDER

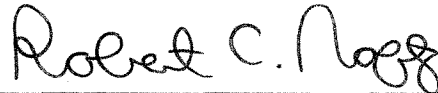
The above-entitled matter came before the Honorable Robert C. Naftz on the 4th day of March, 2010, for hearing on Defendant's Motion to Withdraw Guilty Plea. The Defendant was not present in court but represented by and through Kent Reynolds substituting in for John Dewey. Vic Pearson, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.

Pursuant to the request of defense counsel to continue these proceedings, and receiving no objection from the State,

IT IS HEREBY ORDERED that the hearing on Defendant's Motion to Withdraw

Guilty Plea be vacated. Defense counsel will be required to contact the Court to place this matter back on the calendar.

DATED this 11 day of March, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of March, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:



Deputy Clerk

RANDALL D. SCHULTHIES
Chief Public Defender
P.O. Box 4147
Pocatello, ID 83205-4147
(208) 236-7040
FAX (208) 236-7048

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2010 APR -6 PM 1:05
BY CA
DEPUTY CLERK

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO,)	
Plaintiff,	)	CASE NO. CR-2006-20842-FE-C
)	
v.)	
	)	MOTION TO WITHDRAW
JAMES LEROY SKUNKCAP,	)	AS COUNSEL
Defendant,)	
)	

COMES NOW John C. Dewey, Deputy Public Defender, and moves this Court for an Order allowing him to withdraw as attorney of record for Defendant, James Leroy Skunkcap. This motion is made pursuant to Rule 44.1 of the Idaho Criminal Rules. This Motion is made on and based upon the following grounds and reasons:

1. The Defendant has filed a Motion to Withdraw Guilty Plea with a hearing set. The basis behind the Motion to Withdraw Guilty Plea, is that he was not properly advised by the Court of the possible penalties for pleading guilty to being a persistent violator.
2. Without acknowledging any wrong doing on the part of Randall D. Schulthies, Defendant's Attorney at the time, it's theoretically possible

that the Defendant could allege that his attorney should have corrected the misstatement of the law made by the Court.

3. Mr. Dewey works for the previous Attorney, Randall D. Schulthies, who was assigned to this case. This is a direct conflict with the Attorneys and we would request the Court that Mr. Dewey be allowed to withdraw as counsel and a conflict Attorney be appointed as no one in the Public Defender's Office can appropriately be assigned.

DATED this 5 day of April, 2010.



John C. Dewey
Deputy Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5 day of April, 2010, I served a true and correct copy of the **MOTION TO WITHDRAW AS COUNSEL** to the Bannock County Prosecutor, by hand-delivery to the Prosecutors in-box in Room 220 of the Bannock County Courthouse, Pocatello, Idaho.



John C. Dewey
Deputy Public Defender

BANNOCK COUNTY
2010 APR 14 AM 10:52
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,
vs.
JAMES LEROY SKUNKCAP,
Defendant.

Case No: CR-2006-0020842-FE

MINUTE ENTRY & ORDER

The above-entitled matter came up for review before the Honorable Robert C. Naftz on the 8th day of April, 2010, for hearing on Defendant's Motion to Withdraw as Counsel and Motion to Withdraw Guilty Plea. Ryan Godfrey, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.


At the outset of these proceedings, the Court heard argument from counsel in regard to the Motion to Withdraw as Counsel. The Court, finding no conflict exists with the Defendant's current representation, DENIED the Motion to Withdraw as Counsel. The Court continued with other matters.

Upon determination that this Court retains jurisdiction in order to address these motions while the case is on appeal pursuant to I.A.R. 13(c) and after further discussion in this matter,

IT IS HEREBY ORDERED that Defendant's Motion to Withdraw as Counsel is DENIED. The office of the Public Defender will continue to represent the Defendant in this matter.

IT IS FURTHER ORDERED that Defendant's Motion to Withdraw Guilty Plea is continued until APRIL 19, 2010 AT THE HOUR OF 9:00 AM to allow the Court and counsel additional time to review transcripts. It is requested of the Court Reporter, Stephanie Davis, that copies of the transcripts of the Arraignment held December 4, 2006, and Further Proceedings on a change of plea for a Persistent Violator charge held February 27, 2007, be forwarded to the Court and counsel.

DATED this 13 day of April, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of April, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:



Deputy Clerk

BANNOCK COUNTY
CLERK
2010 APR 29 PM 2:25
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,
vs.
JAMES LEROY SKUNKCAP,
Defendant.

Case No: CR-2006-0020842-FE
**MINUTE ENTRY & ORDER
and TRANSPORT ORDER**

The above-entitled matter came up for review before the Honorable Robert C. Naftz on the 19th day of April, 2010, for hearing on Defendant's Motion to Withdraw Guilty Plea. The Defendant was not present in court but represented by and through John Dewey. Mark Hiedeman, Bannock County Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.

It was noted that the Court Reporter had provided copies of transcripts of proceedings of this case and a separate criminal case. It was further noted that the Defendant was not apprised of the penalties of being a persistent violator on this case although was notified of those same penalties on the other pending matter.

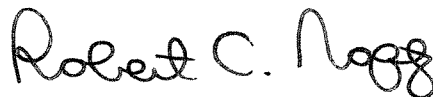
The Court, having heard argument from counsel and receiving no objection from the State and for good cause appearing,

IT IS HEREBY ORDERED that Defendant's Motion to Withdraw Guilty Plea is GRANTED. The Defendant is allowed to withdraw his guilty plea pertaining to the charge of being a Persistent Violator in this matter.

IT IS FURTHER ORDERED that this matter is set for a **PRETRIAL CONFERENCE on JUNE 28, 2010, AT THE HOUR OF 4:00 PM.** This matter is also scheduled for a **JURY TRIAL on JULY 13, 2010, AT THE HOUR OF 9:00 AM.**

IT IS FURTHER ORDERED that the Bannock County Sheriff's Office will have the Defendant transported back from the custody of the Idaho Department of Correction to allow his presence at said hearings.

DATED this 29 day of April, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29 day of April, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey


- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Central Records Administration

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 237-2624

Bannock County Sheriff

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:



Deputy Clerk

BANNOCK COUNTY
 2010 JUL -1 AM 10:35
 WND
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR-2006-20842-FE
)	
vs.)	
	)	PRE-TRIAL ORDER
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

The above-listed case is set for jury trial before the Honorable Robert C. Naftz, District Judge, beginning on **JULY 23, 2010, AT 9:00 O'CLOCK A.M.** in Courtroom 309. The order in which the case will be tried is as follows:

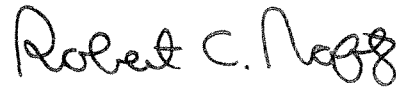
First Setting: State vs. James L. Skunkcap CR-2006-20842-FE

Counsel is advised that they shall have **jury instructions** and all **pre-trial motions** filed **one week prior to the set trial date (the Friday prior to trial)**. Any hearings on pre-trial motions will be heard on either Thursday or Friday of the week prior to trial. If counsel resolves a case prior to the trial date they need to contact the Court immediately so that the case can be set for further proceedings and other attorneys can be notified regarding the status of the remaining

cases still set for trial. Counsel is expected to comply with this order and be prepared to try their case on the above-listed date.

IT IS SO ORDERED.

DATED this 1 day of July, 2010.



ROBERT C. NAFTZ
District Judge

Copies to:
Cleve Colson
John Dewey

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
POCATELLO, ID 83205-0050
(208) 236-7280

BANNOCK COUNTY
2010 JUL 15 PM 3:37
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801020

CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney

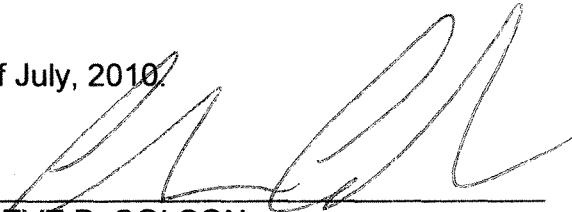
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE
Plaintiff,)	
)	
vs.	)	FIRST MOTION IN LIMINE
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

COMES NOW the State of Idaho, by and through CLEVE B. COLSON, Deputy Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the Court for an Order allowing the State by and through counsel to put on testimony with regard to transcripts of Bannock County Case No. CR-2006-22110-FE Jury Trial.

The State intends on moving for the admission of pages 465-479 wherein the Defendant pled guilty to the Persistent Violator charge on August 16, 2007. The State finds this evidence admissible as relevant to the Defendant's identity.

DATED this 15th day of July, 2010.



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That on this 15th day of July, 2010, a true and correct copy of the foregoing FIRST MOTION IN LIMINE was delivered to the following:

John Dewey
PUBLIC DEFENDERS
BANNOCK COUNTY COURTHOUSE
POCATELLO, ID 83205

- mail -
postage prepaid
- hand delivery
- facsimile
- courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
POCATELLO, ID 83205-0050
(208) 236-7280

BANNOCK COUNTY
CLERK
2010 JUL 15 PM 3:08
CLERK

CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney


IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE
Plaintiff,)	
)	
vs.	)	SECOND MOTION IN LIMINE
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

COMES NOW the State of Idaho, by and through CLEVE B. COLSON, Deputy Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the Court for an Order allowing the State by and through counsel to put on testimony with regard to transcripts of Bannock County Case No. CR-2006-~~20842~~-FE ~~0610~~ Jury Trial.

The State intends on moving for the admission of pages 533-540 wherein the Defendant pled guilty to the Persistent Violator charge on February 28, 2007. The State finds this evidence admissible as relevant to the Defendant's identity.

DATED this 15th day of July, 2010.



CLEVE B. COLSON

Assistant Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That on this 15th day of July, 2010, a true and correct copy of the foregoing SECOND MOTION IN LIMINE was delivered to the following:

John Dewey
PUBLIC DEFENDERS
BANNOCK COUNTY COURTHOUSE
POCATELLO, ID 83205

- mail - postage prepaid
- hand delivery
- facsimile
- courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
POCATELLO, ID 83205-0050
(208) 236-7280

2010 JUL 15 PM 3:38
CLERK

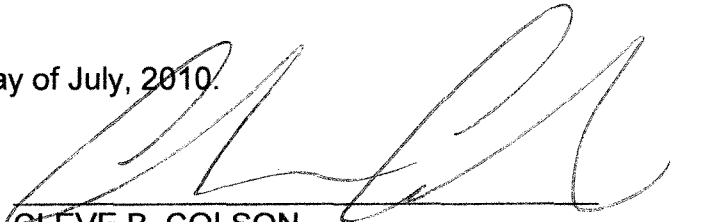
CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE
Plaintiff,)	
)	
vs.	)	THIRD MOTION IN LIMINE
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

COMES NOW the State of Idaho, by and through CLEVE B. COLSON, Deputy Prosecuting Attorney, in and for the County of Bannock, State of Idaho, and moves the Court for an Order allowing the State by and through counsel to put on testimony regarding the Defendant's conviction for Eluding a Police Officer, specifically for the reason that the jury is not confused or misled as to the reason why the jury trial is only in consideration of whether the Defendant is a persistent violator.

DATED this 15th day of July, 2010.



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That on this 15th day of July, 2010, a true and correct copy of the foregoing THIRD MOTION IN LIMINE was delivered to the following:

John Dewey
PUBLIC DEFENDERS
BANNOCK COUNTY COURTHOUSE
POCATELLO, ID 83205

mail -
postage prepaid
 hand delivery
 facsimile
 courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTING ATTORNEY
P. O. BOX P
Pocatello, Idaho 83205-0050
(208) 236-7280

2010 JUL 15 PM 3:36
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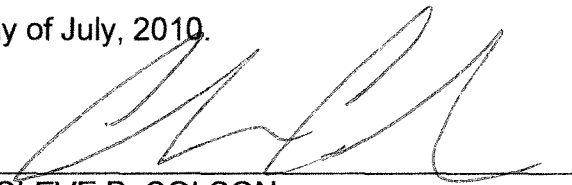
CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	CASE NO. CR-2006-20842-FE
)	
vs.)	
)	
JAMES LEROY SKUNKCAP,	)	PLAINTIFF'S REQUESTED
	)	JURY INSTRUCTIONS
Defendant.)	
_____)	

Plaintiff respectfully requests the Court to give the Jury the following Jury Instructions.

DATED this 15th day of July, 2010.



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney
Bannock County, Idaho

CERTIFICATE OF DELIVERY

I **HEREBY CERTIFY** That on this 15th day of July, 2010, a true and correct copy of the foregoing PLAINTIFF'S REQUESTED JURY INSTRUCTIONS was delivered to the following:

JOHN DEWEY
PUBLIC DEFENDERS
BANNOCK COUNTY COURTHOUSE
POCATELLO, IDAHO 83201

mail -
 postage prepaid
 hand delivery
 facsimile
 courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

PLAINTIFF REQUESTED JURY INSTRUCTIONS

✓ • 101 ✓

✓ • 102

✓ • 103(A)

✓ • 104

✓ • 105

✓ • 106

• 208 NO

✓ • 108

• 109 NO

✓ • 201

✓ • 202

✓ • 206

✓ • 207

• Jury Instruction No. 1 *Modified*

• Jury Instruction No. 2 (Please see enclosed Instruction), pursuant to ICJI 1601.

Modified

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 1

The Defendant, JAMES LEROY SKUNKCAP, was tried in Bannock County Case No. CR-2006-20842-FE on February 27, 2007. The Jury in the previous trial unanimously decided the Defendant was guilty of the following:

1. Defendant was convicted of Eluding a Police Officer, a felony, under Idaho Code §49-1404(1) & (2)(b); and
2. Defendant was convicted of Malicious Injury to Property, a misdemeanor, under Idaho Code §18-7001.

During the course of this trial your decision is solely based on whether the Defendant, JAMES LEROY SKUNKCAP, is guilty or not guilty of being a Persistent Violator, under Idaho Code §19-2514. It is your duty to determine whether the Defendant has been convicted of two (2) or more prior felonies prior to his felony conviction in Bannock County Case No. CR-2006-20842-FE.

Given _____
Refused _____
Covered _____
Modified _____

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 2

In this portion of the case you will return a verdict, consisting of a series of questions you should answer. Since the explanations on the form which you will have are part of my instructions to you, I will read the body of the verdict form to you.

"We, the Jury, duly empaneled and sworn to try the above entitled action, unanimously answer the questions submitted to us in this verdict as follows:

QUESTION NO. 1: Did the defendant plead guilty to or was the defendant found guilty of ACCESSORY TO GRAND THEFT, a violation of Idaho Code §18-205 and §18-206, in Bannock County, Idaho, Case No. CRFE-95-50370C?

ANSWER: YES _____ NO _____

QUESTION NO. 2: Did the defendant plead guilty to or was the defendant found guilty of three (3) counts THEFT, a violation of Title 18 U.S.C. §§1153 and 661, in the United States District Court, for the District of Montana, Great Falls Division, in Case No.s CR-88-0417-GF, CR-88-059-GF and CR-88-060-GF?

ANSWER: YES _____ NO _____

Once you have answered the questions, your presiding officer should date and sign the verdict form and advise the bailiff that you have reached a verdict.

Given _____
Refused _____
Covered _____
Modified _____

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE
Plaintiff,)	
)	
vs.	)	VERDICT FORM
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

We, the Jury, duly empaneled and sworn to try the above entitled action, unanimously answer the questions submitted to us in this verdict as follows:

QUESTION NO. 1: Did the defendant plead guilty to or was the defendant found guilty of ACCESSORY TO GRAND THEFT, a violation of Idaho Code §18-205 and §18-206, in Bannock County, Idaho, Case No. CRFE-95-50370C?

ANSWER: YES _____ NO _____

QUESTION NO. 2: Did the defendant plead guilty to or was the defendant found guilty of three (3) counts THEFT, a violation of Title 18 U.S.C. §§1153 and 661, in the United States District Court, for the District of Montana, Great Falls Division, in Case No.s CR-88-0417-GF, CR-88-059-GF and CR-88-060-GF?

ANSWER: YES _____ NO _____

Once you have answered the questions, your presiding officer should date and sign the verdict form and advise the bailiff that you have reached a verdict.

DATED this ____ day of July, 2010.

Presiding Juror

RANDALL D. SCHULTHIES
Chief Public Defender
P.O. Box 4147
Pocatello, ID 83205-4147
(208) 236-7040

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2010 JUL 16 PM 1:11
BY CH
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**


STATE OF IDAHO)
)
PLAINTIFF)
)
v.)
)
JAMES LEROY SKUNKCAP,)
)
DEFENDANT)

Case No. CR-2006-20842-FE-C

**MOTION TO APPEAR IN
STREET CLOTHES**

COMES NOW James Leroy Skunkcap, by and through his attorney, John C. Dewey, of the Bannock County Public Defenders office, and hereby moves the Court for its Order to allow the Defendant to appear in street clothes at the Trial set for July 23, 2010 at 9:00 A.M..


DATED this 16 day of July, 2010.



JOHN C. DEWEY
Deputy Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of July, 2010, a true and correct copy of the foregoing **MOTION TO APPEAR IN STREET CLOTHES** was served upon the Bannock County Prosecuting Attorney, by depositing a copy of the same in the Prosecutor's in-box, Bannock County Courthouse, Pocatello, Idaho.


JOHN C. DEWEY
Deputy Public Defender

Received 7-20

105 C
July 19, 2010

Honorable Justice, Lefitz:

I was in your court room for a hearing on case No. 06-2006-20842-PE. 19th day of July, 2010. My reason for writing to you is to voice my concerns of my counsel Mr. John Dewey. Mr Dewey's ability to construct and maintain a fair defense on my behalf is in question. Mr. Dewey's conduct in court has put serious doubt and concern in my mind. Not being allowed to defend or object to prosecutions, motions of mine. Not having the ability to interpret the law as you put forth had Mr Dewey at a loss for words. Seeing and hearing this prompted my answer, to how I felt of my representation. This case has been held up for ten months awaiting this hearing. The copies I'm sending along with this letter are my correspondence to Mr. Dewey. The letters clearly show his failure to respond to my requests as I said in court. I don't have legal backband or any other advisors to guide me through this process. Also in my possession is a letter of response from Mr. Dewey dated June 6, 2010. It states that my chances of prevailing on the issue of being

a persistent violator are virtually
non-existent. According to my
counsel Attorney Greg S. Silvey
the ineffective assistance claim
are numerous on both cases. I strongly
believe now would be in order due to
this conflict of interest. I am
proceeding with lodging a formal
complaint with the Idaho State Bar.
Please consider my request in a timely
manner. I don't know that my
writing my concerns affects this
in a positive or negative way.
I do stand up for myself and what
I believe and am voicing my opinion
because it is my future at stake
I wish you well and look forward
to hearing from you on this matter

Sincerely
James L. Skunkcap

cc John Dousey

Attached
four letters

October 30th 2009

JAMES L. SKUNKCAP # 47563
I.C.C. I POD 211-A
Post Office Box 70010
Boise, Idaho 83707

COPY !!!

MR. JOHN C. DEWEY
Deputy Public Defender
Bannock Cty. Public Defender's Office
BANNOCK COUNTY COURTHOUSE
Post Office Box 4147
Pocatello, Idaho 83205

RE: State of Idaho v. James Skunkcap, CR-2006-22110FE;
Information Request.

Dear Mr. Dewey:

My appellate counsel advises me that my appeals have been suspended and I will be returning to settle the matter of my persistent violater charge. My own understanding is that you will be filing a motion in that regard.

Accordingly, I have one or two questions I'd appreciate your answering: First, is there any mileage to be gained by my pleading out to an advised charge, rather than having a jury assembled and a mini trial on the issue ? Second, do you have some idea of the time frames we're looking at before I'm brought back to the county?

Please take a moment and inform me of your thoughts on the foregoing questions at your earliest convenience. Pending your reply, I wish you well and look forward to hearing from you.

Sincerely,

James L. Skunkcap

c: file

February 19th 2010

JAMES L. SKUNKCAP # 47563
I.C.C. I POD 211-A
Post Office Box 70010
Boise, Idaho 83707

COPY !!!

MR. JOHN C. DEWEY
Deputy Public Defender
Bannock Cty. Public Defender's Office
BANNOCK COUNTY COURTHOUSE
Post Office Box 4147
Pocatello, Idaho 83205

RE: State of Idaho v. James Skunkcap, CR-2006-22110FE;
Response to Your Correspondence of January 26, 2010.

Dear Mr. Dewey:

It was good to hear from you and to learn the latest information on that portion of my case dealing with a hearing on our motion to withdraw a guilty plea. Thank you.

Some time ago, however, I wrote you and asked you to inform me of whether you believed that there was anything to be gained by pleading out to an advised charge of enhancement. **See: Included copy of that same October 30, 2009 correspondence in this regard.** Your latest letter fails to address that point.

Quite frankly, if there is nothing to be gained by such a pleading why would I wish to relieve the state of its burden? Accordingly, please be kind enough to inform me of your thoughts on the matter at your earliest convenience.

Pending our further contact, I wish you well and will await your response.

Sincerely,

James L. Skunkcap

Encls. (1)

c: file

May 10th 2010

JAMES L. SKUNKCAP # 47563
I.C.C. G POD
Post Office Box 70010
Boise, Idaho 83707

COPY !!!

MR. JOHN C. DEWEY
Deputy Public Defender
Bannock Cty. Public Defender's Office
BANNOCK COUNTY COURTHOUSE
Post Office Box 4147
Pocatello, Idaho 83205

RE: State of Idaho v. James Skunkcap, CR-2006-22110FE;
Third Request for Information Regarding the Above Entitled Cause.

Dear Mr. Dewey:

I very much appreciate your latest copy of the notice for my forthcoming hearing; however, I've heard nothing from you or your office regarding the two previous written requests for information and counsel on the question of what is to be gained by my pleading guilty to the enhancement.

With all due respect, my own sense is that your failure to respond to the questions posed in my October 30th 2009 and February 19th 2010 letters is both rude and violates your ethical obligations to discuss my case with me.

Accordingly, I would appreciate a response to my questions in that regard, or a simple acknowledgment of the fact that you do not intend to do so. I apologize for my insistence, however, it seems to me the problem or solution resides with you or your office and not any attitude on my own part.

Pending future contact, I wish you well and look forward to hearing from you.

Sincerely,

James L. Skunkcap

c: file

June 6th 2010

JAMES L. SKUNKCAP # 47563
I.C.C. G POD
Post Office Box 70010
Boise, Idaho 83707

COPY !!!

MR. JOHN C. DEWEY
Deputy Public Defender
Bannock Cty. Public Defender's Office
BANNOCK COUNTY COURTHOUSE
Post Office Box 4147
Pocatello, Idaho 83205

RE: State of Idaho v. James Skunkcap, CR-2006-22110FE;
Notice of Intent to Seek Alternative Counsel and to File a Bar Complaint.

Dear Mr. Dewey:

Your continuing failure to respond to my questions involving my case forces me to conclude that you do not feel accountable to your ethical oath or your client.

Accordingly, please be advised that unless I hear from you in response to my three previous requests for information on these proceedings prior to my June 28th hearing, you should anticipate I will lodge a formal complaint with the Idaho State Bar, and contemporaneously ask the Court for substitute counsel.

Quite frankly, I'm surprised that you have allowed our relationship to come to this point by not responding to your client's legitimate questions. But, be that as it may, I have now lost confidence in you and your sense of responsibility to the case and your client.

Despite the foregoing remarks, I wish you well and shall expect to hear from you in the near future.

Sincerely,

James Skunkcap

c: file

RANDALL D. SCHULTZ
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2010 JUL 20 PM 4:35
BY *JD*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
JAMES LEROY SKUNKCAP,)
)
Defendant.)
_____)

Case No. CR-2006-20842-FE-C

DEFENDANT'S REQUESTED
JURY INSTRUCTIONS

COMES NOW James Leroy Skunkcap, the Defendant in the above entitled matter, acting by and through, John C. Dewey, Deputy Public Defender for the Bannock County Public Defender's Office, and hereby submits the following Defendants Requested Jury Instructions numbers _____ through _____.

Defendant reserves the right to supplement prior to or during trial.

DATED this 20 day of July, 2010.

[Signature]

JOHN C. DEWEY
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of July, 2010, a true and correct copy of the foregoing **DEFENDANT'S REQUESTED JURY INSTRUCTIONS** was delivered to Judge Naftz, via Courthouse Mail, Room 220, Bannock County Courthouse, Pocatello, Idaho, and delivered to the Bannock County Prosecutors, via Courthouse Mail, Room 220, Bannock County Courthouse.



A handwritten signature in black ink, appearing to read 'John C. Dewey', is written over a horizontal line.

**JOHN C. DEWEY
DEPUTY PUBLIC DEFENDER**

INSTRUCTION NO. ___

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Comment

This is the standard "reasonable doubt" instruction that has been approved by the Supreme Court for use in Idaho. *See State v. Rhoades*, 121 Idaho 63, 82, 822 P.2d 960, 979 (1991); *State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). An alternative, proposed by the ICJI Committee but not approved as to form or content by case-law decision of the Supreme Court, appears as ICJI 103A.

ICJI 103

GIVEN _____

REFUSED _____

MODIFIED _____

COVERED X 103A

INSTRUCTION NO. ____

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

ICJI 301

GIVEN

 X

REFUSED

MODIFIED

COVERED

In this portion of the case you will return a verdict, consisting of a series of questions you should answer. Since the explanations on the form which you will have are part of my instructions to you. I will read the body of the verdict form for you.

"We the Jury, duly empaneled and sworn to try the above entitled action, unanimously answer the questions submitted to us in this verdict as follows:

QUESTION NO. 1: Do you find beyond a reasonable doubt that the Defendant plead guilty or was found guilty of Accessory to Grand Theft, a felony, a violation of Idaho Code §18-205 and §18-206, in Bannock County, Idaho, case no CR-FE-95-50370C, on or about October 2, 1995?

ANSWER YES _____ NO _____

QUESTION NO. 2: Do you find beyond a reasonable doubt that the Defendant plead guilty to or was found guilty of three (3) counts Theft, a violation of Title 18 U.S.C. §1153 and §661, in the United States District Court, for the District of Montana, Great Falls Division, in case no. CR-88-0417-GF, case no. CR-88-059-GF, and case no. CR-88-060-GF, on or about February 27, 1989?

ANSWER YES _____ NO _____"

Once you have answered the questions, your presiding officer should date and sign the verdict form and advise the bailiff that you have reached a verdict.

GIVEN X
 REFUSED _____
 MODIFIED _____
 COVERED _____

DEFENDANT'S REQUESTED
INSTRUCTION NO. _____

STATE OF IDAHO v. JAMES LEROY SKUNKCAP

Case No. CR-2006-20842-FE

We, the Jury, duly empaneled and sworn to try the above entitled action, for our verdict, unanimously answer the question(s) submitted to us as follows:

QUESTION NO. 1: Do you find beyond a reasonable doubt that the Defendant plead guilty or was found guilty of Accessory to Grand Theft, a felony, a violation of Idaho Code §18-205 and §18-206, in Bannock County, Idaho, case no CR-FE-95-50370C, on or about October 2, 1995?

ANSWER **YES** _____ **NO** _____

QUESTION NO. 2: Do you find beyond a reasonable doubt that the Defendant plead guilty to or was found guilty of three (3) counts Theft, a violation of Title 18 U.S.C. §1153 and §661, in the United States District Court, for the District of Montana, Great Falls Division, in case no. CR-88-0417-GF, CR-88-059-GF, and case no. CR-88-060-GF, on or about February 27, 1989?

ANSWER **YES** _____ **NO** _____

DATED this _____ day of _____, 2010.

Presiding Juror

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTING ATTORNEY
P.O. Box P
Pocatello, Idaho 83205-0050
(208) 236-7280

BANNOCK COUNTY
CLERK
2010 JUL 22 AM 10:52
DEPUTY CLERK

CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE
Plaintiff,)	
	)	2ND SUPPLEMENTAL
vs.	)	RESPONSE TO REQUEST
	)	FOR DISCOVERY
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

TO: RANDALL SCHULTHIES, Public Defenders Office, Pocatello, Idaho, Attorney for the Defendant.

COMES NOW, the State of Idaho, by and through CLEVE B. COLSON, Assistant Chief Criminal Deputy Prosecuting Attorney in and for the County of Bannock, Idaho, and hereby supplements its response to Defendant's Request for Discovery as follows:

RESPONSE NO. 5: The following is a list of items that may be used as evidence at the time trial:

- Certified Conviction – Accessory to Grand Theft for Bannock County Case

No. CRFE-1995-50370C;

- Certified Conviction – Three (3) Counts Theft from Federal District Court of Montana on Case No.'s CR-88-059-GF, CR-88-060-GF & CR-88-047-GF;
- Transcript from Case No. CR-2006-22110-FE;
- United States Code Title 18 Section 3559; and
- A NCIC on the Defendant, James Leroy Skunkcap.

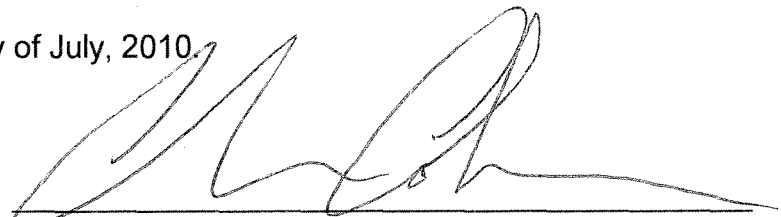
RESPONSE NO. 9: The following list of individuals may be called to testify at the time of trial:

- Detective Scott Matson – Pocatello Police; and
- Mike Fica – Federal Prosecuting Attorney.

At the present time, to the best knowledge of the plaintiff, the aforementioned individuals have no record of felony convictions.

The State reserves the right to supplement this response upon receipt of such evidence.

DATED this 22nd day of July, 2010




CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That on this 22nd day of July, 2010, a true and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY was delivered to the following:

JOHN DEWEY
PUBLIC DEFENDER
BANNOCK COUNTY COURTHOUSE
POCATELLO, IDAHO 83205

- mail -
- postage prepaid
- hand delivery
- facsimile
- courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTING ATTORNEY
P.O. Box P
Pocatello, Idaho 83205-0050
(208) 236-7280

BANNOCK COUNTY
CLERK
2010 JUL 22 AM 10:52
DEPUTY CLERK

CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney

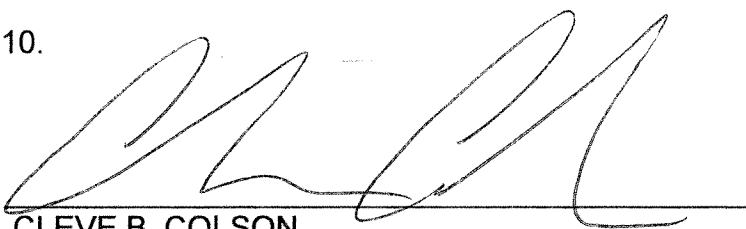
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,	)	CASE NO. CR-2006-20842-FE
)	
Plaintiff,	)	STATE'S WITNESS LIST
vs.)	
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

COMES NOW, the State of Idaho, by and through CLEVE B. COLSON, Assistant Chief Criminal Deputy Prosecuting Attorney in and for the County of Bannock, Idaho, and provides the following listing of possible witnesses for trial:

- Detective Scott Matson – Pocatello Police Department; and
- Mike Fica – Federal Prosecuting Attorney.

DATED this 22nd day of July, 2010.



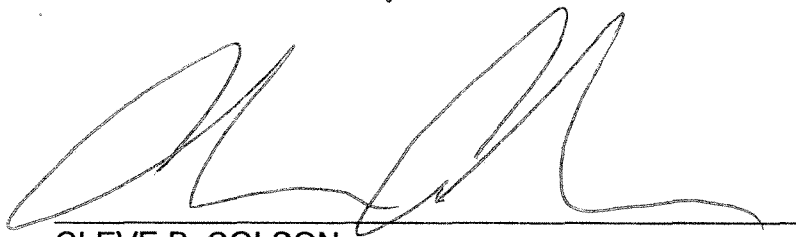
CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I **HEREBY CERTIFY** That on this 20th day of July, 2010, a true and correct copy of the foregoing WITNESS LIST was delivered to the following:

JOHN DEWEY
PUBLIC DEFENDER
BANNOCK COUNTY COURTHOUSE
POCATELLO, IDAHO 83205

- mail - postage prepaid
- hand delivery
- facsimile
- courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTING ECHOHAWK
P.O. Box P
Pocatello, Idaho 83205-0050
(208) 236-7280

BANNOCK COUNTY
CLERK
2010 JUL 22 AM 10:52
DEPUTY CLERK

CLEVE B. COLSON, ISB #7234
Assistant Chief Criminal Deputy Prosecuting Attorney

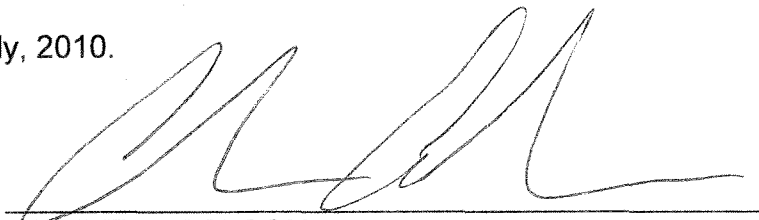
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE
Plaintiff,)	
	)	STATE'S EXHIBIT LIST
vs.)	
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
_____)	

COMES NOW, the State of Idaho, by and through CLEVE B. COLSON, Assistant Chief Criminal Deputy Prosecuting Attorney in and for the County of Bannock, Idaho, and provides the following listing of anticipated exhibits to be introduced at the time of trial in this case:

- Certified Conviction – Accessory to Grand Theft for Bannock County Case No. CRFE-1995-50370C;
- Certified Conviction – Three (3) Counts Theft from Federal District Court of Montana on Case No.'s CR-88-059-GF, CR-88-060-GF & CR-88-047-GF;
- Transcript from Case No. CR-2006-22110-FE;
- United States Code Title 18 Section 3559; and
- A NCIC on the Defendant, James Leroy Skunkcap.

DATED this 22nd day of July, 2010.



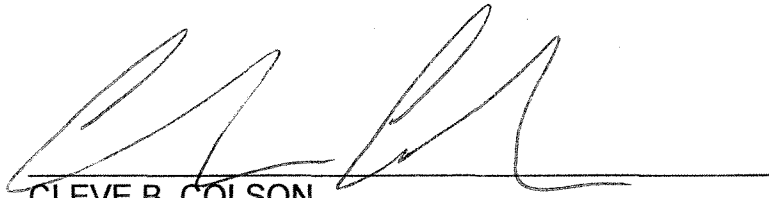
CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That on this 22nd day of July, 2010, a true and correct copy of the foregoing EXHIBIT LIST was delivered to the following:

JOHN DEWEY
PUBLIC DEFENDER
BANNOCK COUNTY COURTHOUSE
POCATELLO, IDAHO 83205

mail -
postage prepaid
 hand delivery
 facsimile
 courthouse mailbox



CLEVE B. COLSON
Assistant Chief Criminal Deputy Prosecuting Attorney

RANDALL D. SCHULTHIES
Chief Public Defender
P.O. Box 4147
Pocatello, ID 83205-4147
(208) 236-7040

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

BANNOCK COUNTY
CLERK
2010 JUL 22 PM 4:09
VAD
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO)	
	)	Case No. CR-2006-20842-FE-C
PLAINTIFF)	
)	
v.)	
	)	ORDER TO APPEAR IN
JAMES LEROY SKUNKCAP,	)	STREET CLOTHES
)	
DEFENDANT)	

BASED UPON the Defendant's Motion, and the Court having reviewed and considered the same; and for good cause appearing;

IT IS HEREBY ORDERED that the Defendant is allowed to appear at the Trial in street clothing.

IT IS SO ORDERED.

DATED this 19 day of July, 2010.



ROBERT C. NAFTZ
DISTRICT JUDGE

BANNOCK COUNTY CLERK
2010 JUL 22 PM 4:13
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,

vs.

JAMES LEROY SKUNKCAP,
Defendant.

Case No: CR-2006-0020842-FE

MINUTE ENTRY & ORDER

The above named Defendant appeared in Court on the 19th day of July, 2010, with his counsel, John Dewey, for hearing on Plaintiff's First Motion in Limine, Second Motion in Limine and Third Motion in Limine and Defendant's Motion to Appear in Street Clothes. Cleve Colson, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.

At the outset of this proceeding, the Court reviewed Defendant's Motion to Appear in Street Clothes. Receiving no objection from the State, Defendant's motion was granted.

The Court then heard argument from the State in regard to their First Motion in Limine and Second Motion in Limine. Upon hearing response from defense counsel and

after careful consideration in this matter, the Court granted Plaintiff's First Motion in Limine. Plaintiff's Second Motion in Limine was denied.

The Court heard further argument from the State in regard to their Third Motion in Limine. Defense counsel did not object to allowing the State to refer to a prior conviction of Eluding, but did discuss his concerns in using all jury instructions submitted by the State. The Court granted Plaintiff's Third Motion in Limine on a limited basis.

Counsel for Defendant brought up concerns about a previously filed motion requesting the Office of the Public Defender be allowed to withdraw as representation. The Defendant also expressed his desire to have the court appoint conflict counsel in this matter. Having heard comments from counsel and the Defendant, the Court denies Defendant's request for conflict counsel; therefore,

IT IS HEREBY ORDERED that Defendant's Motion to Appear in Street Clothes is GRANTED. Clothes for the Defendant will be brought into the Public Defender's Office, and the Defendant will change his clothing in holding prior to his court proceeding.

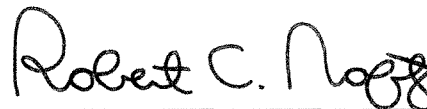
IT IS FURTHER ORDERED that Plaintiff's First Motion in Limine is GRANTED. In Case No. CR-2006-22110-FE, the State will be allowed to move for admission of pages 465-479 of the transcript wherein Defendant pled guilty to the Persistent Violator charge on August 16, 2007.

IT IS FURTHER ORDERED that Plaintiff's Second Motion in Limine is DENIED. The State will not be allowed to move for the admission of any portion of the transcript in this specific matter, Case No. CR-2006-20842-FE.

IT IS FURTHER ORDERED that Plaintiff's Third Motion in Limine is GRANTED on a limited basis. The State will be allowed to put on testimony regarding the Defendant's conviction in this matter for Eluding a Police Officer but will not be allowed to discuss the facts and circumstances surrounding the charge and/or conviction.

IT IS FURTHER ORDERED that Defendant's request to allow the Bannock County Public Defender's Office to withdraw as current representation and appoint new conflict counsel is DENIED. Mr. John Dewey will continue to represent the Defendant through the duration of any and all proceedings in this case.

DATED this 22 day of July, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of July, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Cleve Colson

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Deputy Clerk

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
Pocatello, Idaho 83205 0050
Telephone: 236-7280

2010 AUG -5 PM 3:22
DEPUTY CLERK

CLEVE B. COLSON, ISB #7234
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR-2006-20842-FE
)	
vs.	)	*******AMENDED*****
	)	PROSECUTING ATTORNEY'S
	)	INFORMATION
JAMES LEROY SKUNKCAP,	)	PART II
)	
Defendant.)	
_____)	

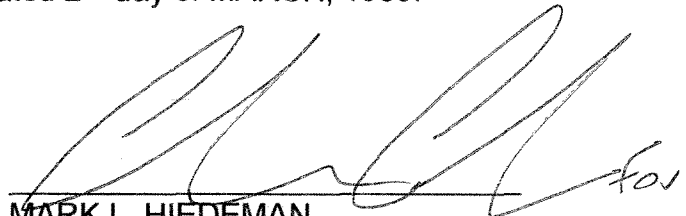
COMES NOW, MARK L. HIEDEMAN, Bannock County Prosecuting Attorney, who, in the name and by the authority of said State prosecutes in its behalf, in proper person, comes into said District Court in the County of Bannock, State of Idaho, on the 23rd day of July, 2010, and gives the Court to understand and be informed that JAMES LEROY SKUNKCAP, is accused by Part II of this INFORMATION with being a PERSISTENT VIOLATOR, as defined in Idaho Code §19-2514, in that the JAMES LEROY SKUNKCAP, was previously convicted of the following felonies:

I

That on the 2nd day of OCTOBER, 1995, said JAMES LEROY SKUNKCAP, was found guilty of the charge of ACCESSORY TO GRAND THEFT, Idaho Code §18-205 and §18-206, in the District Court of the Sixth Judicial District of the State of IDAHO, in and for the County of Bannock, in Case No. CRFE-95-50370C. Said offense constituting a felony under the laws of the State of Idaho. As evidenced by the Minute Entry and Order dated 13th day of NOVEMBER, 1995.

II

That on the 27th day of FEBRUARY, 1989, said JAMES LEROY SKUNKCAP, was found guilty of the charge of three (3) counts THEFT, Title 18 U.S.C. §§1153 and 661, in the United States District Court, for the District of Montana, Great Falls Division, in Case No.s CR-88-047-GF, CR-88-059-GF and CR-88-060-GF. Said offense constituting as felonies under the laws of the United States District Court. As evidenced by the Minute Entry and Order dated 2nd day of MARCH, 1989.


MARK L. HIEDEMAN
Prosecuting Attorney
Bannock County, Idaho

STATE OF IDAHO)
) ss.
COUNTY OF BANNOCK)

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, in and for the County of Bannock, State of Idaho, do hereby certify that the foregoing is a true and correct copy of the original information filed in my office on the ____ day of _____, 2010.

Clerk

Deputy

JURY SEATING CHART

CASE NO. CR-2006-20842-FE

#1 Simmons, Emily	#2 Hernandez, Margarita	#3 Call, Chelsey	#4 Kowalski, Jamie	#5 Crump, Joshua	#6 Oblea, Sergio
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#7 Chambers, Katie	#8 Knieval, Timothy	#9 Anestos, Peter	#10 Garcia, Kari	#11 Luna, Christopher	#12 Wyke, Tiffany
-----------------------------------	------------------------------------	----------------------------------	---------------------------------	--------------------------------------	----------------------------------

#13 Bybee, Dylan	#14 Battson, Lyndee	#15 Hodgkinson, Raquel	#16 Hyndman, O'Leah	#17 Smith, Jeffrey	#18 Proctor, Michael
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#19 Lee, Launa	#20 Bullock, Michael	#21 Saiz, Rudy
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#22 Reams, Joseph	#23 Turman, Carla	#24 Smith, Velda
----------------------------------	----------------------------------	---------------------------------

PEREMPTORY CHALLENGES

- | | |
|----------|----------|
| 1. _____ | 1. _____ |
| 2. _____ | 2. _____ |
| 3. _____ | 3. _____ |
| 4. _____ | 4. _____ |
| 5. _____ | 5. _____ |
| 6. _____ | 6. _____ |

JURY SEATING CHART
CASE NO. CR-2006-20842-FE

#1 Simmons, Emily	#2 Hernandez, Margarita	#3 Call, Chelsey	#4 Kowalski, Jamie	#5 Crump, Joshua	#6 Oblea, Sergio
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#7 Chambers, Katie	#8 Knievel, Timothy	#9 Anestos, Peter	#10 Garcia, Kari	#11 Luna, Christopher	#12 Wyke, Tiffany
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#13 Bybee, Dylan	#14 Battson, Lyndee	#15 Hodgkinson, Raquel	#16 Hyndman, O'Leah	#17 Smith, Jeffrey	#18 Proctor, Michael
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#19 Lee, Launa	#20 Bullock, Michael	#21 Saiz, Rudy
---------------------------	-------------------------------------	---------------------------

#22 Reams, Joseph	#23 Turman, Carla	#24 Smith, Velda
----------------------------------	----------------------------------	---------------------------------

PEREMPTORY CHALLENGES

- | | |
|------------------------------------|---------------------------------|
| 1. <u>#20 - Michael Bullock</u> | 1. <u>#17 Jeffrey Smith</u> |
| 2. <u>#14 - Lyndee Battson</u> | 2. <u>#1 Emily Simmons</u> |
| 3. <u>#6 - Sergio Oblea</u> | 3. <u>#3 Chelsey Call</u> |
| 4. <u>#2 - Margarita Hernandez</u> | 4. <u>#23 Carla Dee Turman</u> |
| 5. <u>#4 - Jamie Kowalski</u> | 5. <u>#20 Launa Lee</u> |
| 6. <u>#11 - Christopher Luna</u> | 6. <u>#15 Raquel Hodgkinson</u> |

JURY SEATING CHART

CASE NO. CR-2006-20842-FE

#1 Crump, Joshua	#2 Wyke, Tiffany	#3 Garcia, Kari	#4 Anestos, Peter	#5 Knievel, Timothy	#6 Chambers, Katie
---------------------------------	---------------------------------	--------------------------------	----------------------------------	------------------------------------	-----------------------------------

#7 Bybee, Dylan	#8 Hyndman, O'Leah	#9 Saiz, Rudy	#10 Reams, Joseph	#11 Smith, Velda	#12 Proctor, Michael
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INSTRUCTION NO. 1

ORIGINAL

This is the case of State of Idaho v. James Leroy Skunkcap. Are the parties ready to proceed?

In a moment the Clerk will call the roll of the jury. please acknowledge your presence by saying "here." The Clerk will now call the roll of the jury.

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

I am Rob Naftz, the judge in charge of the courtroom and this trial. The deputy clerk of court, Nicole DeLoach, marks the trial exhibits and administers oaths to you jurors and to the witnesses. The Court Marshall, Patrick O'Brien, will assist me in maintaining courtroom order and working with the jury. The Court reporter, Stephanie Davis, will keep a verbatim account of all matters of record during the trial. The Law Clerk, Angie Williams, will assist me during the trial.

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

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the highest duties of citizenship,

that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

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

The state of Idaho is the plaintiff in this action. The lawyer representing the state is Cleve Colson, a member of the county prosecuting attorney's staff. The defendant in this action is James Leroy Skunkcap. The lawyer representing Mr. Skunkcap is John Dewey

I will now read you the pertinent portion of the information which sets forth the charge against the defendant. The information is not to be considered as evidence but is a mere formal charge against the defendant. You must not consider it as evidence of guilt and you must not be influenced by the fact that a charge has been filed.

With regard to James Leroy Skunkcap, the information alleges that James Leroy Skunkcap, having been previously been convicted of Eluding a Police officer, a felony, in Bannock County Idaho on February 27, 2007, had previously been convicted of two prior felonies. The prior two convictions consisted of Accessory to Grand Theft, a felony, in Bannock County, Idaho, on October 2, 1995, and three counts of theft, a felony in the United States District Court , the Great Falls, Montana Division on March 2, 1989.

To the allegations Mr. Skunkcap has denied.

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

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

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

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

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

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

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

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

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

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

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

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

The clerk will now swear the entire jury panel for the voir dire examination.

INSTRUCTION NO. 2

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

INSTRUCTION NO. 3

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 4

The defendant is charged by the state of Idaho with violation of law. The charge against the defendant is contained in the Information. The clerk shall now read the Information.

To which the defendant has denied the allegations.

The Information is simply a description of the charge; it is not evidence.

INSTRUCTION NO. 5

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should

apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms “circumstantial evidence,” “direct evidence” and “hearsay evidence.” Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 6

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 7

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 8

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave for lunch please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 9

It is important that as jurors and officers of this court you obey the following instructions any time you leave the jury box.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

INSTRUCTION NO. 10

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It is the kind of doubt which would make an ordinary person hesitant to act in the most important affairs of his or her own life. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 11

The Defendant, James Leroy Skunkcap, was tried in Bannock County Case No. CR-2006-20842-FE on February 27, 2007. The Jury in the previous trial unanimously decided the Defendant was guilty of the following:

1. The Defendant, James Leroy Skunkcap, was convicted of Eluding a Police Officer, a felony, under Idaho Code §49-1404(1) and (2)(b).

During the course of *this trial* your decision is solely based on whether the defendant, James Leroy Skunkcap, is a Persistent Violator under Idaho Code §19-2514. Your duty is to determine whether the Defendant, James Leroy Skunkcap, has been convicted of two (2) or more prior felonies before his felony conviction in Bannock County Case No. CR-2006-20842-FE.

INSTRUCTION NO. 12

The parties agree that the prior convictions at issue in this trial are felonies.

INSTRUCTION NO. 13

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way. You will be provided additional copies to share and make notes on. The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 14

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 15

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 16

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 17

The Defendant, James Leroy Skunkcap, was previously found guilty of Eluding a Police Officer, a felony, Bannock County Case No. CR-2006-20842-FE, on February 27, 2007. You must consider whether the defendant has been convicted on two prior occasions of felony offenses before the conviction for Eluding a Police Officer on February 27, 2007.

The state alleges the defendant has prior convictions as follows:

1. On October 2, 1995, the defendant was convicted of ACCESSORY TO GRAND THEFT, a felony, in Bannock County, Idaho, case number CRFE-95-50370-OC, and
2. On March 2, 1989, the defendant was convicted of three counts of THEFT, a felony, in the United States District Court of Montana, Great Falls Division, case numbers CR-88-047-GF, CR-88-059-GF and CR-88-060-GF.

The existence of prior convictions must be proven beyond a reasonable doubt and your decision must be unanimous.

INSTRUCTION NO. 18

In this case you will return a verdict consisting of two questions. Although the explanations on the verdict form are self explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

“We, the Jury, for our verdict, unanimously answer the question submitted to us as follows:

QUESTION NO. 1: Did the defendant, James Leroy Skunkcap plead guilty to or was found guilty of ACCESSORY TO GRAND THEFT, a felony, in violation of Idaho Code §18-205 and §18-206, on October 2, 1995, in Bannock County, Idaho, in case number CRFE-95-50370-OC?

Yes _____ No _____

After answering question number one (1) you must then proceed to question number two (2) and answer it. It states:

“We the Jury, for our verdict, unanimously answer the question submitted to us as follows:

QUESTION NO. 2: Did the defendant, James Leroy Skunkcap, plead guilty to or was found guilty of three (3) counts of THEFT, a felony, in violation of Title 18 U.S.C. §1153 and §661, in the United States District Court, for the District of Montana, Great Falls Division on March 2, 1989, in case numbers CR-88-047-GF, CR-88-059-GF and CR-88-060-GF?

Yes _____ No _____

The verdict form then has a place for it to be dated and signed. You should sign the

verdict form as explained in another instruction.

INSTRUCTION NO. 19

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during

the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 20

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 21

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

INSTRUCTION NO. 22

You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the Court instructs you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you wish to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to, you may tell them as much or as little as you like, but you should be careful to respect the privacy and feelings of your fellow jurors. Remember that they understood their deliberations to be confidential. Therefore, you should limit your comments to your own perceptions and feelings. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, please report it to me.

BANNOCK COUNTY
 2010 AUG -9 PM 4:34
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES LEROY SKUNKCAP,)
)
 Defendant.)
 _____)

CASE NO. CR-2006-20842-FE
MINUTE ENTRY AND ORDER

The above-entitled matter came before the Honorable Robert C. Naftz on the 23rd day of July, 2010, for the purpose of a Jury Trial on the Persistent Violator enhancement charge. Plaintiff was represented by Cleve Colson, Deputy Prosecuting Attorney for the County of Bannock. The Defendant was present in court and represented by John Dewey, Deputy Public Defender for the County of Bannock.

At the outset of this proceeding, the State moved to file their Amended Prosecuting Attorney's Information Part II to correct a typographical error found in the original form. Receiving no objection from defense counsel, the State and the Court executed the Amended Information Part II. The Defendant waived the reading of the Amended Information Part II and maintained denials to being convicted of two additional felonies which resulted in him being charged as a Persistent Violator.

Defense counsel raised his objection to the State introducing a NCIC report or any other criminal history report involving the Defendant as an exhibit. Pursuant to the State's response, the Court ruled that the State would not be allowed to use such exhibits unless as rebuttal should the

MINUTE ENTRY AND ORDER - 1

Defendant intend to testify on his own behalf. Defense counsel further raised concerns as to the State introducing specific portions of transcripts as exhibits, which matter was previously ruled on by the Court in the Minute Entry and Order filed the 22nd day of July, 2010, regarding Plaintiff's Motions in Limine. Upon hearing argument from counsel and after further consideration in this matter, the Court further redacted portions of the submitted transcript from Case No. CR-2006-22110-FE, and an amended transcript was provided to counsel.

Trial proceeded before the Court. All prospective jurors were sworn in voir dire by the Deputy Court Clerk. Upon the conclusion of voir dire, the following persons were then sworn in to try the cause:

Joshua Crump
Peter Anestos
Dylan Bybee
Joseph Reams

Tiffany Wyke
Timothy Knievel
O'Leah Hyndman
Velda Smith

Kari Garcia
Katie Chambers
Rudy Saiz
Michael Proctor

The remaining potential jurors were excused at this time and the Court recessed.

Outside the presence of the jury, defense counsel moved for a mistrial based on a juror's response during voir dire questioning. The Court, having heard argument from counsel, DENIED Defendant's motion for a mistrial stating both attorneys had their chance to further question and use peremptory challenge to excuse jurors. Defense counsel again raised the same motion with the Court noting and denying said motion.

During the Course of the Jury Trial, the following witnesses for the State were called to testify: Detective Scott Matson and Sergeant Ian Nelson of the Pocatello Police Department. The following Exhibits for the State were marked, identified, offered and admitted into evidence without objection: State's Exhibits 1 and 2. State's Exhibit 3 and 4 were marked, identified, offered and admitted into evidence after the Court heard argument on Defendant's objections and overruled said objections.

MINUTE ENTRY AND ORDER - 2

After the State rested, the jury was excused and the Court heard argument on Defendant's oral motion for dismissal of the case based on the State not meeting their burden. Hearing argument from counsel and receiving objection from the State, the Court DENIED Defendant's motion to dismiss. Defense counsel presented further argument on his motion, and the Court allowed the State to reopen their case in chief to present further testimony. The State moved to allow the transcript from this case be considered admissible in court for identification purposes. Defense counsel objected to allowing the State to call a witness not disclosed prior to trial and to using any portion of the transcript in this matter as evidence. The Court again reiterated the decision to allow the State to reopen their case and DENIED the State's motion to release transcripts from earlier proceedings in this case. The Court allowed defense a 30-minute recess to prepare for cross examination of the State's witnesses.

After defense rested, the Jury was excused to allow for preparation of final jury instructions. Defense counsel renewed all standing objections and his motion to dismiss. The Jury later returned to the courtroom for the Court to read instructions and to hear closing argument from counsel. The jury then retired to the jury room to deliberate on a verdict.

Upon notification that the Jury had reached a verdict, the Court reconvened and the Jury returned into the courtroom. Upon being asked if they had agreed upon a unanimous verdict, the Jury, through their foreman presented their verdict to the Court. The verdict was read in open court. Defense counsel requested the jury be pooled. Upon confirming each juror's decision, the Court ordered the verdict entered and recorded.

SEE ATTACHED VERDICT.

The Defendant having been found **GUILTY** of being a **PERSISTENT VIOLATOR** as defined in Idaho Code §19-2514,

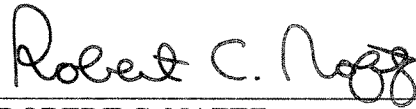
IT IS HEREBY ORDERED that **SENTENCING** in this matter be and the same is hereby scheduled for the **13th DAY OF SEPTEMBER, 2010, AT THE HOUR OF 9:00 AM** at the Bannock County Courthouse, Pocatello, Idaho before the undersigned Judge.

MINUTE ENTRY AND ORDER - 3

IT IS FURTHER ORDERED that the DUE DATE for the presentence investigation report shall be September 6, 2010, BY NO LATER THAN 5:00 P.M. WITH COPIES DELIVERED TO THE COURT AND COUNSEL BY SAID DATE. The Court would also request that information from Defendant's last three years of incarceration be included in the report.

IT IS SO ORDERED.

DATED this 9th day of August, 2010.



ROBERT C. NAFTZ
Sixth District Judge

Copies to: Cleve Colson
John Dewey
Probation & Parole
DALE HATCH, Clerk of the District Court
By Nicole P. DeLoach
Deputy Clerk

MINUTE ENTRY AND ORDER - 4

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

ORIGINAL

<p>STATE OF IDAHO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>JAMES LEROY SKUNKCAP,</p> <p style="text-align: center;">Defendant.</p> <hr style="border: 1px solid black;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. CR-2006-20842-FE</p> <p>VERDICT</p>
---	---	---

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

QUESTION NO. 1: Did the defendant, James Leroy Skunkcap plead guilty to or was found guilty of ACCESSORY TO GRAND THEFT, a felony, in violation of Idaho Code §18-205 and §18-206, on October 2, 1995, in Bannock County, Idaho, in case number CRFE-95-50370-OC?

Yes X No

QUESTION NO. 2: Did the defendant, James Leroy Skunkcap, plead guilty to or was found guilty of three (3) counts of THEFT, a felony, in violation of Title 18 U.S.C. §1153 and §661, in the United States District Court, for the District of Montana, Great Falls Division on March 2, 1989, in case numbers CR-88-047-GF, CR-88-059-GF and CR-88-060-GF?

Yes X No

DATED this 23 day of July, 2010.



Presiding Juror

RESET (Clerk, check if applicable)

ORIGINAL THIS DOCUMENT TO IDOC

Assigned to:
Assigned:

Sixth Judicial District Court, State of Idaho
In and For the County of Bannock
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

Case No: CR-2006-0020842-FE

STATE OF IDAHO
Plaintiff,
vs.

James Leroy Skunkcap
8575 Kraft Rd #32
Pocatello, ID 83201
Defendant.

CHARGE(s):
119-2514 Persistent Violator
REQUIRED ROA CODES: (Enter the appropriate code)
PSIO1- Order for Presentence Investigation Report (only)
PSMH1- Order for Presentence Investigation Report and Mental Health Assessment
PSSA1- Order for Presentence Investigation Report and Substance Abuse Assessment

On this Friday, July 23, 2010, a Pre-sentence Investigation Report was ordered by the Honorable Robert C Naftz to be completed for Court appearance on Monday, September 13, 2010 at: 09:00 AM at the above stated courthouse.

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI
Under IC 19-2524 assessment(s) is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to (IC 19-2524(4)):
Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment (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 Other
No evaluations are ordered. (PSIO1 ROA code) Please include information from Defendant's last 3 years of incarceration.

DEFENSE COUNSEL: John Dewey

PROSECUTOR: Cleve Colson

THE DEFENDANT IS IN CUSTODY: YES NO If yes where: Bannock County Jail

PLEA AGREEMENT: State recommendation

WHJ/JOC Probation PD Reimb Fine ACJ Restitution Other

Date: 8-6-10 Signature: Robert C. Naftz Judge ****

DEFENDANT'S INFORMATION: PLEASE PRINT DO YOU NEED AN INTERPRETER? NO YES

Name: Male Female RACE: Caucasian Hispanic Other

Address: City: State: ZIP:

Telephone: Message Phone: Work Phone:

Employer: Work Address:

Date of Birth: Social Security Number:

Name & Phone Number of nearest relative:

Date of Arrest: Arresting Agency:

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

BANNOCK COUNTY
2010 SEP 15 11:56
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,

vs.

JAMES LEROY SKUNKCAP,
516-86-3704
09/24/1966

Defendant.

Case No: CR-2006-0020842-FE

MINUTE ENTRY & ORDER

The above named Defendant appeared in Court on the 13th day of September, 2010, with his counsel, John Dewey, for sentencing. Cleve Colson, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.

The Defendant having heretofore on the 23rd day of July, 2010, been found **GUILTY** by verdict from a jury to the enhancement charge of **PERSISTENT VIOLATOR**, as defined in Idaho Code §19-2514; a pre-sentence investigation report having been ordered and received; the Court having heard comments and recommendations from respective counsel and witnesses called by defense and being fully advised in the premises,

Case No. CR-2006-0020842-FE
MINUTE ENTRY & ORDER
Page 1 of 5

NOW, THEREFORE, IT IS HEREBY ORDERED that the Defendant be and he is herewith sentenced to the custody of the Idaho Department of Corrections, pursuant to Idaho Code §19-2513, to a **SUBSEQUENT INDETERMINATE TERM OF SEVEN (7) YEARS. The Defendant is not sentenced to any fixed portion on this charge.** Said defendant may be considered for parole or discharge at any time during the indeterminate period of said sentence.

IT IS FURTHER ORDERED that the Defendant shall be given credit for time served in the Bannock County Jail on this charge (that includes the retained jurisdiction program).

IT IS FURTHER ORDERED that said Defendant be and he is hereby **REMANDED** to the custody of the Bannock County Sheriff to be by him delivered to the proper officer or officers and to be by said officer or officers conveyed to said site.

Defendant is herewith advised that in the event said Defendant desires to appeal the foregoing sentence, said appeal must be filed with the Idaho Supreme Court no later than forty-two (42) days from the date said sentence is imposed.

COMMITMENT ORDER

Now, on this 13th day of September, 2010, the Prosecuting Attorney with the Defendant and his counsel, John Dewey, came into Court. The Defendant was duly informed by the Court of the nature of the charge filed against him for the crime of **PERSISTENT VIOLATOR, as defined in Idaho Code §19-2514**, of his arraignment and

GUILTY verdict as charged in the Amended Prosecuting Attorney's Information Part II on the 23rd day of July, 2010.

The Court then asked the Defendant if he had any legal cause to show why judgment should not be pronounced against him to which he replied that he had none. And no sufficient cause being shown or appearing to the Court;

NOW, THEREFORE, the said Defendant having been convicted of the crime of **PERSISTENT VIOLATOR, as defined in Idaho Code §19-2514**, it is hereby ordered, considered and adjudged that the said Defendant, **JAMES LEROY SKUNKCAP**, be imprisoned and kept at a site designated by the Idaho State Board of Corrections for an **INDETERMINATE TERM OF SEVEN (7) YEARS**, commencing from the date of his sentence. **The Defendant is not sentenced to any fixed portion on this charge.**

IT IS FURTHER RECOMMENDED that the Defendant be placed into and **complete the RSAT PROGRAM OR THERAPUTIC COMMUNITY COMPLETION** while he is incarcerated.

DATED this 16 day of September, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of September 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Probation & Parole

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 237-2624

Bannock County Sheriff

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Records Administrator

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Fax:

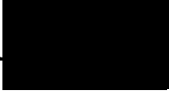
State Appellate Public Defender
(upon request)

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Fax: 334-2985

MMD

Deputy Clerk

NAME: James Leroy Skunkcap - DOB:



- SS#:



STATE OF IDAHO)
)
COUNTY OF BANNOCK)


I, Dale Hatch, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, do hereby certify the foregoing to be a full, true and correct copy of the Judgment duly made and entered on the Minutes of the said District Court in the above entitled action, and that I have compared the same with the original and the same is a correct transcript therefrom and/or the whole thereof.

ATTEST my hand and the seal of said District Court on the 16 day of September, 2010.

DALE HATCH, Clerk

By WPH
Deputy Clerk

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

FILED
 BANNOCK COUNTY
 DISTRICT COURT
 2010 OCT 18 PM 4:22
 BY 
 DEPUTY CLERK

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR-2006-20842-FE-C
vs.)	
)	
JAMES LEROY SKUNKCAP,	)	RULE 35 MOTION
)	
Defendant.)	
_____)	

COMES NOW James Leroy Skunkcap, the Defendant in the above entitled matter, acting by and through his counsel of record, John C. Dewey, Deputy Public Defender of the Bannock County Public Defender's Office, and pursuant to Rule 35 of the Idaho Criminal Rules, hereby moves the Court for consideration of a reduction in the sentence imposed against the Defendant, based upon leniency and illegal sentence as indicated as follows:

1. On September 24, 2007, Judge McDermott, in case number CR-2006-20842-FE, sentenced the Defendant to a fixed term of eight (8) years to be followed by an indeterminate term

of ten (10 years for the charge of Felony Eluding and Persistent Violator. In case number CR-2006-22110-FE, he made that sentence consecutive to the present case number CR-2006-20842-FE.

2. On October 12, 2007, Judge McDermott in case number CR-2006-20842-FE, provided a clarification in which he changed the sentence to five (5) years fixed on the Felony Eluding and three (3) years fixed on the Enhancement followed by an indeterminate sentence of ten (10) years. Again he made the case in CR-2006-22110-FE, consecutive to the present case number CR-2006-20842-FE.

3. On November 14, 2007, Judge McDermott issued an amended order in which he seems to have sentenced the Defendant, in case CR-2006-20842-FE, to five (5) years on the Felony Eluding with an enhancement of four (4) years fixed “for a total of eight (8) years fixed and enhanced the indeterminate portion by nine (9) years for a total of ten (10) years indeterminate”. Because of some apparent mistakes in math it is unclear what the precise sentence actually was. Again the court in case number CR-2006-22110-FE, he made the sentence consecutive to case number CR-2006-20842-FE.


4. The Defendant was allowed to withdraw his guilty plea to persistent violator, in case number CR-2006-20842-FE, and was subsequently found guilty in a new trial of being a persistent violator. At the sentencing this court expressed its opinion that it could not modify the Judge McDermott sentence on the Felony Eluding. However, Judge McDermott incorrect instructions regarding the penalties for persistent violator resulted in his sentence in case number CR-2006-20842-FE, being void as, State v. Lopez, 107 Idaho 826, 693 P.2d 472 (Id. Ct. App 1983), indicates that “sentencing provisions are clearly interdependent, if sentence on one provision is unlawful, the

entire sentence is unlawful and may be amended". We would argue that under that case, not only can this court reconsider Judge McDermott's sentence on Felony Eluding, it is required to do so.

5. With the withdrawal of the plea in case number, CR-2006-20842-FE, case number CR-2006-22110-FE, was no longer a "second or other subsequent conviction", so is to allow that case to run consecutive to case number CR-2006-20842-FE, pursuant to I.C. 18-308. It now rests with this court to determine whether the sentence in case number CR-2006-20842-FE should run concurrent or consecutive with this case.

Therefore the Defendant asks under Rule 35 for the court to reconsider it's sentence based both on arguments for leniency and illegality of sentence.

DATED this 18 day of October, 2010.



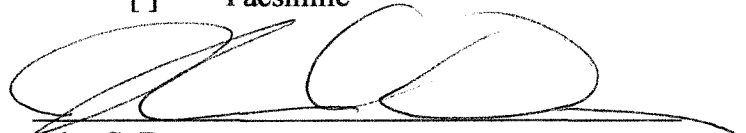
John C. Dewey
Deputy Public Defender

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 18 day of October, 2010, I served a true and correct copy of the foregoing **RULE 35 MOTION** upon the parties below, as follows:


Bannock County Prosecutor
Bannock County Courthouse
Prosecutor's in-box, Room 220
Pocatello, ID 83205

Hand Deliver
 First Class Mail
 Certified Mail
 Facsimile



John C. Dewey
Deputy Public Defender

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040


FILED
BANNOCK COUNTY
DISTRICT COURT
2010 OCT 26 PM 4: 26
BY 
DEPUTY CLERK

KENT V. REYNOLDS
Assistant Chief Public Defender
ISB 3739

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
vs.)
)
JAMES LEROY SKUNKCAP,)
)
Defendant/Appellant.)
_____)

Case No. CR-2006-20842-FE-C


NOTICE OF APPEAL

**TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO AND ITS ATTORNEY,
LAWRENCE G. WASDEN, ATTORNEY GENERAL FOR THE STATE OF IDAHO,
BANNOCK COUNTY PROSECUTING ATTORNEY, AND THE CLERK OF THE
ABOVE NAMED COURT; CLERK OF THE SUPREME COURT; STATE
APPELLATE PUBLIC DEFENDER; AND BANNOCK COUNTY COURT
REPORTER**

NOTICE IS HEREBY GIVEN:

1. The above named Defendant/Appellant, James Leroy Skunkcap, appeals against the above named Plaintiff/Respondent, to the Idaho Supreme Court from that certain Minute Entry and Order and Commitment Order, dated the 16th day of September, 2010, by the Honorable Robert C. Naftz, Sixth District Judge presiding.

Notice Of Appeal
Page 1

2. The Defendant/Appellant has the right to appeal to the Idaho Supreme Court the Judgments and Orders described in Paragraph 1 above. These appear to be appealable orders under and pursuant to Idaho Code §19-2801, et seq., and Rule 11 (c)(1)(6)(9), of the Idaho Appellate Rules.

3. The Defendant/Appellant requests that the preparation of the Clerk's record and standard reporter's transcript as defined in Rule 25, Idaho Appellate Rules, and further requests that a transcript of the following proceedings also be prepared:

1. Sentencing held on September 13, 2010.

4. I certify:

(a) That a copy of this Notice has been served on the Court Reporter.

(b) That Appellant is exempt from paying the estimated transcript fee because he has previously been determined to be indigent and has been represented at all stages of the proceedings by the Public Defender's Office for the Sixth Judicial District of the State of Idaho, County of Bannock.

(c) That Appellant is exempt from paying any estimated fee for the preparation of the record because he is indigent and has been represented by the Public Defender's Office at all stages of the proceedings.

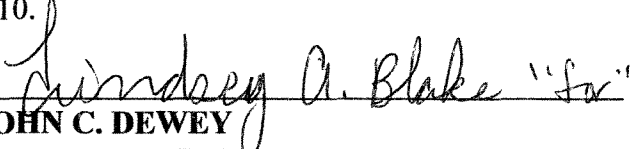
(d) That Appellant is exempt from paying the appellate filing fee because he is indigent and has been represented by the Public Defender's Office at all stages of the proceedings.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules, and Idaho Code §67-1410(1).

5. The issues to be presented upon appeal, are as follows:

- (a) Did the Court err in failing to grant Defendant's Motion for Directed Verdict.
- (b) Did the Court err in allowing the State to reopen it's case after Defendant moved for directed verdict.
- (c) Did the Court err in allowing the State to call witnesses not disclosed in discovery and not to rebut evidence presented by the Defendant.
- (d) Did the Court err in not granting a continuance to the Defendant to prepare for the testimony of witnesses not revealed in discovery.
- (e) Did the Court err in allowing into evidence the transcripts of the prior sentencing in this case.
- (f) Did the Court err in believing he lacked the power to change. The sentence for eluding upon re-sentencing Defendant after retrial of persistent violator charge.
- (g) Did the Court err in not disqualifying the entire jury panel after one prospective juror described earlier case in which another Defendant had retaliated against him for being a witness.
- (h) Did the sentences imposed in this case amount to an abuse of discretion.

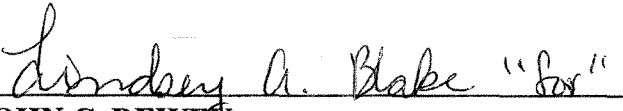
DATED this 26th day of October, 2010.



JOHN C. DEWEY
Deputy Public Defender

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 26th day of October, 2010, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** upon the Bannock County Prosecuting Attorney, and the Court Reporter, by depositing a copy of the same in the Prosecutor's in-box and the Court Reporter's in-box, Bannock County Courthouse, Pocatello, Idaho; and by depositing in the United States Mail, postage prepaid, to: Lawrence Wasden, Attorney General - State of Idaho, P. O. Box 83720, Boise, Idaho 83720-0010; Stephen W. Kenyon, Clerk of the Court, P. O. Box 83720, Boise, Idaho 83720; and State Appellate Public Defender, P. O. Box 83720, Boise, Idaho 83720.


Lindsey A. Blake "for"
JOHN C. DEWEY
Deputy Public Defender

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

FILED
BANNOCK COUNTY
DISTRICT COURT

2010 OCT 26 PM 4:27

BY 
DEPUTY CLERK

KENT V. REYNOLDS
Assistant Chief Deputy Public Defender
ISB 3739

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

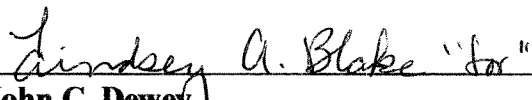
STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-2006-20842-FE-C
)	
vs.)	
)	
JAMES LEROY SKUNKCAP,	)	MOTION TO APPOINT STATE
	)	APPELLATE DIVISION
)	
Defendant/Appellant.)	
_____)	

COMES NOW James Leroy Skunkcap, the Defendant/Appellant in the above entitled matter, and hereby moves the Court for an Order, as follows:

The Defendant has filed a Notice Of Appeal for the Court's review of the Minute Entry and Order, dated September 13, 2010, by the Honorable Robert C. Naftz, District Judge.

The Defendant respectfully requests that the Court enter an Order, appointing the State Appellate Division to assist the Defendant with his Appeal in this matter, and that further, said appointment shall be relative to the appeal proceedings only.

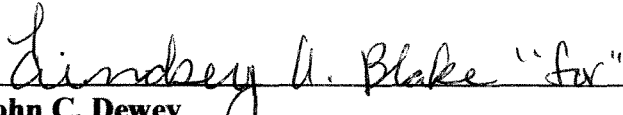
DATED this 26th day of October, 2010.



John C. Dewey
Deputy Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of October, 2010, I served a true and correct copy of the foregoing **MOTION TO APPOINT STATE APPELLATE DIVISION** upon the Bannock County Prosecuting Attorney, and the Court Reporter, by depositing a copy of the same in the Prosecutor's in-box and the Court Reporter's in-box, Bannock County Courthouse, Pocatello, Idaho; and by depositing in the United States Mail, postage prepaid, to: Lawrence G. Wasden, Attorney General - State of Idaho, P. O. Box 83720, Boise, Idaho 83720-0010; Stephen W. Kenyon, Clerk of the Court, P. O. Box 83720, Boise, Idaho 83720; and State Appellate Public Defender, P. O. Box 83720, Boise, Idaho 83720.


John C. Dewey
Deputy Public Defender

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

2010 NOV 4 PM 3:21
[Handwritten signature]

JOHN C. DEWEY
Deputy Public Defender
ISB

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
	)	Case No. CR-2006-20842-FE-C
vs.)	
)	
JAMES LEROY SKUNKCAP,	)	ORDER APPOINTING STATE
	)	APPELLATE PUBLIC DEFENDER'S
Defendant/Appellant	)	OFFICE
_____)	

BASED UPON THE MOTION heretofore filed by James Leroy Skunkcap, the Defendant in the above entitled matter, acting by and through his attorney of record, John C. Dewey, of the Bannock County Public Defender's Office, and the Court having reviewed the same, and for good cause appearing,

IT IS HEREBY ORDERED that the State Appellate Public Defender is hereby appointed to represent the Defendant with his appeal in this proceeding, said appeal of the Defendant's sentence, and said appointment will be relative to the appeal proceedings, only.

DATED this 4 day of ^{November}~~October~~, 2010.

Robert C. Naftz

HONORABLE ROBERT C. NAFTZ
DISTRICT JUDGE

cc: Lawrence G. Wasden, Attorney General
Stephen W. Kenyon, Clerk of the Court
State Appellate Public Defender's Office
Bannock County Public Defender
James L. Skunkcap, Defendant

FILED
BANNOCK COUNTY
2010 NOV 22 AM 11:16

In the Supreme Court of the State of Idaho

BY 
DEPUTY CLERK

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	ORDER CONSOLIDATING APPEALS
)	
v.	)	Supreme Court Docket No. 34746-2007
	)	Bannock County Docket No. 2006-20842
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant.)	
<hr/>		
STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Supreme Court Docket No. 38249-201-
	)	Bannock County Docket No. 2006-20842
v.)	
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant.)	

It appearing that these appeals should be consolidated for all purposes for reasons of judicial economy; therefore, good cause appearing,

IT HEREBY IS ORDERED that appeal No. 34746 and 38249 shall be CONSOLIDATED FOR ALL PURPOSES under No. 34746, but all documents filed shall bear both docket numbers.

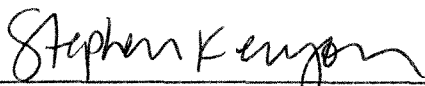
IT FURTHER IS ORDERED that the District Court Clerk shall prepare a CLERK'S RECORD, which shall include the documents requested in the Notices of Appeal, together with a copy of this Order.

IT FURTHER IS ORDERED that the District Court Reporter shall prepare a REPORTER'S TRANSCRIPT, which shall include the transcripts requested in the Notices of Appeal.

IT FURTHER IS ORDERED that appeal No. 34746 shall be suspended until the Clerk's Record and Reporter's Transcript in No. 38249 are filed with this Court.

DATED this 18 day of November 2010.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Supreme Court No. 38249 34746
)	
vs.	)	2 ND Amended
	)	CLERK'S CERTIFICATE
JAMES LEROY SKUNKCAP,	)	OF
	)	APPEAL
Defendant-Appellant,)	
)	
_____)	

RECEIVED
 IDAHO SUPREME COURT
 COURT OF APPEALS
 2010 NOV - 8 P 1:34

Appealed from: Sixth Judicial District, Bannock County

Honorable Judge Robert C. Naftz presiding

Bannock County Case No: CR-2006-20842-FE

Order of Judgment Appealed from: Minute Entry and Order filed the 16th day of September, 2010.

Attorney for Appellant: John C. Dewey, Motion to Appoint State Appellate Public Defender Pending.

Attorney for Respondent: Lawrence G. Wasden, Attorney General, Boise

Appealed by: James Leroy Skunkcap

Appealed against: State of Idaho

Notice of Appeal filed: November 2, 2007
 Amended Notice of Appeal filed: February 27, 2008
 2nd Amended Notice of Appeal filed: October 26, 2010

Notice of Cross-Appeal filed: No

Appellate fee paid: No, exempt

Request for additional records filed: No

Request for additional reporter's transcript filed: No

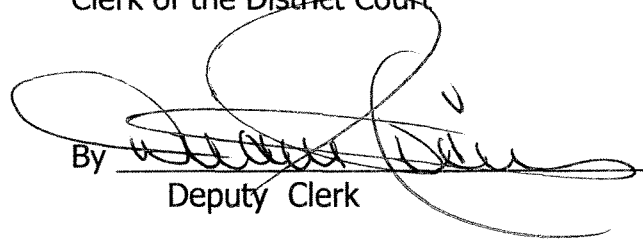
Name of Reporter: Stephanie Davis

Was District Court Reporter's transcript requested? Yes

Estimated Number of Pages: Less than 100

Dated November 4, 2010

DALE HATCH,
Clerk of the District Court

By 
Deputy Clerk



2010 DEC 11 PM 5:27
WJD

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,

Case No: CR-2006-20842-FE

vs.

MINUTE ENTRY & ORDER

JAMES LEROY SKUNKCAP,
Defendant.

The above-entitled matter came before the Honorable Robert C. Naftz on the 22nd day of November, 2010, for Defendant's Rule 35 Motion. The Defendant was not present in court but represented by and through John Dewey. Ryan Godfrey, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Davis was the Court Reporter.

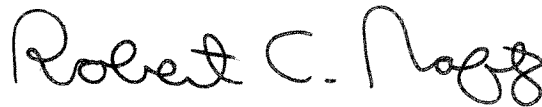
The Court notes that on the 13th day of September, 2010, after having been found guilty by verdict from a jury to the enhancement charge of Persistent Violator, the Defendant was sentenced to an indeterminate term of seven (7) years with no fixed portion on this charge. Further, the Defendant was given credit for all time previously served in this matter.

The Court having heard argument from counsel and objection from the State and being fully advised in the premises,

IT IS HEREBY ORDERED that Defendant's Rule 35 Motion is GRANTED in part in that the Court has the ability and will reconsider the original sentence on the charge of Eluding in this matter along with the sentence on the enhancement charge of Persistent Violator. The Court will further reconsider whether to run this case concurrent or consecutive to Defendant's other case, CR-2006-22110-FE.

IT IS FURTHER ORDERED, that upon review of this matter, the Court finds that no new evidence was presented and that the sentences imposed by both Judge McDermott and this court were appropriate. Therefore, the length of the sentences on both the Eluding charge and the enhancement charge for being a Persistent Violator will remain unchanged and will continue to run consecutive to Case No. CR-2006-22110-FE. The Defendant will continue to serve his sentence as imposed by the Court on September 13, 2010.

DATED this 1st day of December, 2010.



Honorable Robert C. Naftz
District Judge

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 1 day of ^{December} ~~November~~, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

John Dewey

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:



Deputy Clerk

RANDALL D. SCHULTHIES
Chief Public Defender
P.O. Box 4147
Pocatello, Idaho 83205-4147
(208) 236-7040
ISB #1784

2010 DEC 17 PM 4:19
[Signature]
DEPUTY CLERK

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	CASE NO. CR-2006-20842-FE-C
Plaintiff/ Respondent)	
)	
vs.	)	<i>Amended</i>
	)	NOTICE OF APPEAL ON RULE 35
JAMES LEROY SKUNKCAP,)	
)	
Defendant/Appellant.)	
)	

TO: THE ABOVE NAMED RESPONDENTS, STATE OF IDAHO AND ITS ATTORNEY, LAWRENCE G. WASDEN, ATTORNEY GENERAL FOR THE STATE OF IDAHO, BANNOCK COUNTY PROSECUTING ATTORNEY, STEPHEN W. KENYON, CLERK OF THE COURT, STATE APPELLATE PUBLIC DEFENDER'S OFFICE, CHIEF APPELLATE UNIT, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN:

1. The above named Appellant, James Leroy Skunkcap, appeals against the above named respondents to the Idaho Supreme Court from the decision from the Minute Entry And Order, filed, the 1st day of December, 2010, entered by Judge Robert C. Naftz, Sixth District Judge.
2. James Leroy Skunkcap, has the right to appeal to the Idaho Supreme Court the judgments and orders described in Paragraph 1 above under and pursuant to Idaho Appellate Rules.

NOTICE OF APPEAL ON RULE 35 - PAGE 1

3. The appellant requests that the preparation of the standard reporter's transcript and Clerk's record as defined in Rule 25, Idaho Appellate Rules. Additional documents requested are as follows: Transcript of the Rule 35 proceedings handled on November 22, 2010.

4. I certify:

(a) That a copy of this notice has been served on the reporter.

(b) That the appellant is exempt from paying the estimated transcript fee because she was previously determined to be indigent and has been represented at all stages of the proceedings by the Bannock County Public Defender's Office.

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record for the same reason listed in 5(b).


(d) That the appellant is exempt from paying the appellant filing fee for the same reason listed in 5(b).

(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.

5. The issues to be presented on appeal are as follows:

(a) Did the District Court Err in Denying the Motion for Reduction or Modification of Sentence Pursuant to Idaho Criminal Rule 35?

DATED this 17th day of December, 2010.


JOHN C. DEWEY
Deputy Pubic Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of December, 2010, I served a true and correct copy of the following document upon the following:


Bannock County Prosecutor
P.O. Box P
Pocatello, ID 83205

Lawrence G. Wasden
Attorney General for Idaho
Statehouse, Room 210
P.O. Box 83720
Boise, ID 83720-0010

Stephen W. Kenyon
Clerk of the Court
P.O. Box 83720
Boise, ID 83720-0010

State Appellate Public Defender's Office
Chief Appellate Unit
3380 Americana Terrace, Suite 360
Boise, ID 83707


By depositing a copy thereof in the United States Mail, postage prepaid, by first class mail to said attorney at the above address.



JOHN C. DEWEY
Deputy Public Defender

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

FILED
 COUNTY CLERK
 2010 DEC 17 PM 4:19
 BY 
 DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**


STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
	)	Case No. CR-2006-20842-FE-C
vs.)	
	)	MOTION TO APPOINT STATE
JAMES LEROY SKUNKCAP,	)	APPELLATE DIVISION
	)	RE: RULE 35 APPEAL
Defendant/Appellant.)	
_____)	

COMES NOW James Leroy Skunkcap, the Defendant/Appellant in the above entitled matter, and hereby moves the Court for an Order, as follows:

The Defendant has filed an Notice Of Appeal for the Court's review of the Court's Order RE: Rule 35 Motion, dated November 22, 2010, by the Honorable Robert C. Naftz, District Judge. A Notice Of Appeal has been filed, this date.


The Defendant respectfully requests that the Court enter an Order, appointing the State Appellate Division to assist the Defendant with his Rule 35 Appeal in this matter, and that further, said appointment shall be relative to the appeal proceedings only.

DATED this 17 day of December, 2010.


John C. Dewey
Deputy Public Defender

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 17 day of December, 2010, I served a true and correct copy of the foregoing **MOTION TO APPOINT STATE APPELLATE DIVISION** upon the Bannock County Prosecuting Attorney, and the Court Reporter, by depositing a copy of the same in the Prosecutor's in-box and the Court Reporter's in-box, Bannock County Courthouse, Pocatello, Idaho; and by depositing in the United States Mail, postage prepaid, to: Lawrence G. Wasden, Attorney General - State of Idaho, P. O. Box 83720, Boise, Idaho 83720-0010; Stephen W. Kenyon, Clerk of the Court, P. O. Box 83720, Boise, Idaho 83720; and State Appellate Public Defender, P. O. Box 83720, Boise, Idaho 83720.



John C. Dewey
Deputy Public Defender

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Supreme Court No. 38249-2010
)	
vs.	)	AMENDED
	)	CLERK'S CERTIFICATE
JAMES LEROY SKUNKCAP,	)	OF
	)	APPEAL
Defendant-Appellant,)	
)	
)	
_____)	

Appealed from: Sixth Judicial District, Bannock County

Honorable Judge Robert C. Naftz presiding

Bannock County Case No: CR-2006-20842-FE

Order of Judgment Appealed from: Minute Entry and Order filed the 16th day of September, 2010 and Minute Entry and **Order, filed the 1st day of December, 2010.**

Attorney for Appellant: Molly Huskey, State Appellate Public Defnender, Boise

Attorney for Respondent: Lawrence G. Wasden, Attorney General, Boise

Appealed by: James Leroy Skunkcap

Appealed against: Sate of Idaho Supreme Court

Notice of Appeal filed: October 26.2010

Amended Notice of Appeal filed: December 17, 2010

Notice of Cross-Appeal filed: No

Appellate fee paid: No, exempt

Request for additional records filed: No

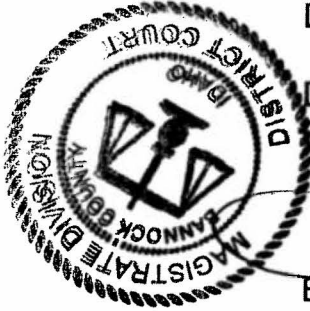
Request for additional reporter's transcript filed: No

Name of Reporter: Stephanie Davis

Was District Court Reporter's transcript requested? Yes

Estimated Number of Pages: Less than 100

Dated December 21, 2010



(Seal)

DALE HATCH,
Clerk of the District Court

By [Signature]
Deputy Clerk

RANDALL D. SCHULTHIES
Chief Public Defender
P. O. Box 4147
Pocatello, Idaho 83205
(208) 236-7040

Handwritten: RANDALL D. SCHULTHIES
2010 DECEMBER 11 10:12
Dated: 12/11/10

JOHN C. DEWEY
Deputy Public Defender
ISB 2328

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
	)	Case No. CR-2006-20842-FE-C
vs.)	
)	
JAMES LEROY SKUNKCAP,	)	ORDER APPOINTING STATE
	)	APPELLATE PUBLIC DEFENDER'S
Defendant/Appellant	)	OFFICE RE: RULE 35 APPEAL
_____)	

BASED UPON THE MOTION heretofore filed by James Leroy Skunkcap, the Defendant in the above entitled matter, acting by and through his attorney of record, John C. Dewey, Bannock County Deputy Public Defender, and the Court having reviewed the same, and for good cause appearing,

IT IS HEREBY ORDERED that the State Appellate Public Defender is hereby appointed to represent the Defendant with his Rule 35 Appeal in this proceeding, said appeal of the Defendant's Rule 35 Motion, and said appointment will be relative to the appeal proceedings, only.

DATED this 21 day of December, 2010.



HONORABLE ROBERT C. NAFTZ

cc: Lawrence G. Wasden, Attorney General
Stephen W. Kenyon, Clerk of the Court
State Appellate Public Defender's Office
Bannock County Prosecuting Attorney
Bannock County Public Defender
James Leroy Skunkcap, Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	Supreme Court No. 38249
Plaintiff-Respondent,)	
	)	SUPPLEMENTAL
vs.	)	CLERK'S CERTIFICATE
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant,)	
_____)	

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of said Court at Pocatello, Idaho, this 29 day of March, 2011.

(Seal)

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	Supreme Court No. 38249
Plaintiff-Respondent,)	
	)	SUPPLEMENTAL
vs.	)	CERTIFICATE OF EXHIBITS
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant,)	
_____)	

I, DALE HATCH, the duly elected, qualified and acting Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, do hereby certify that the following are the original exhibits marked for identification and introduced in evidence at trial of the above and foregoing cause, to wit:


STATE'S EXHIBIT 1	Minute Entry and Order.
STATE'S EXHIBIT 2	Judgment and Commitment from Denver Archives.
STATE'S EXHIBIT 3	Certified portion of Transcript from CR-2006-22110-FE.
STATE'S EXHIBIT 4	Certified portion of Transcripts from CR-2006-22110-FE,

I FURTHER CERTIFY that the above exhibits are attached to, and made a part of, the original transcript on appeal in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this the 29 day of March, 2011.

DALE HATCH, Clerk of the District Court
Bannock County, State of Idaho

(Seal)

By: 
Deputy Clerk

[Handwritten signature]

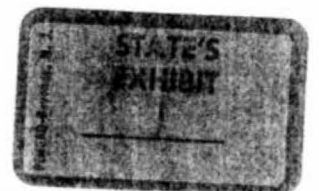
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,	)	CASE NO. CRFE-95-50370C
)	
Plaintiff,	)	MINUTE ENTRY AND ORDER
)	
vs.)	
)	
JAMES LEROY SKYNNOLAP,)	
)	
Defendant.)	

Defendant appeared before the Court this 13th day of November, 1995, with counsel, Jack Ross, Deputy Public Defender, for sentencing. Mark Murphy, Deputy Bannock County Prosecuting Attorney, appeared on behalf of the State of Idaho.

The defendant having heretofore on the 2nd day of October, 1995, entered a plea of GUILTY to the charge of ACCESSORY TO GRAND THEFT, Idaho Code §18-205 and §18-206 a Felony; a Pre-Sentence Investigation Report having been received; the Court having heard comments of Defendant and comments and recommendations from respective counsel; the State indicating it would concur with the presentence investigator's recommendation and further, that no more than local jail time would be requested; and being fully advised in the premises;

NOW, THEREFORE, IT IS THE JUDGMENT OF THIS COURT that defendant is sentenced to Idaho State Correctional Institution to a FIXED TERM OF THREE (3) YEARS and a subsequent INDETERMINATE TERM OF FOUR (4) YEARS for a total of SEVEN (7) YEARS. Said Sentence is herewith SUSPENDED and defendant is hereby placed on probation



to the Idaho Department of Corrections for a period of FIVE (5) years. In addition to those terms and conditions to be imposed by the Department of Corrections, this Court imposes the following terms and conditions of probation:

1. In lieu of a fine Defendant shall pay the sum of \$300.00, to the Pocatello Police Department for the training of officers.
2. Defendant shall make payment to the victim in this matter in the amount of \$400.00. (State to supply accurate amount). Victim: Trevor Fallis, 310 E. Center #12, Pocatello, ID 83201.
3. Defendant shall pay \$24.50 in court costs and \$50.00 to the Idaho Victims Compensation Fund.
4. Defendant shall pay restitution of \$300.00, to the District Court Fund for the maintenance of the courts.
5. Defendant shall pay the sum of \$300.00, for the services of the Public Defender. Line Item 1101-0000-37520.
6. Defendant shall make monthly payments of \$50.00, or more, commencing December 15, 1995, to the Bannock County Bonds and Fines Department.
7. Defendant shall not use or possess any controlled substances or alcohol.
8. Defendant shall not be present where controlled substances are used or possessed.
9. Defendant shall not associate with any known drug dealers or users or anyone his probation officer says not to associate with. Defendant will not come into Pocatello or Bannock County, nor associate with any of his former friends.
10. Defendant shall not go into any bars for any reason whatsoever.

11. Defendant shall submit to a blood, breath or urine test at the request of his probation officer.

12. Defendant's probation officer may search defendant's person, vehicle or residence without a search warrant.

13. Defendant shall comply all programs of rehabilitation recommended by his probation officer including, but not limited to substance abuse counseling.

14. Defendant shall maintain full time employment and shall maintain his current position. Defendant shall not be fired from his current position for fault of his own.

15. Defendant shall not commit any acts of theft, fraud, embezzlement, physical violence on another, vandalism, nor any act considered to be a felony under the laws of the State of Idaho.

16. Defendant shall not have any property in his possession he is not legally entitled to possess.

17. Defendant shall not enter any building, structure, or vehicle without express permission from the owner.

18. Defendant shall be honest and truthful with his probation officer at all times.

19. Defendant is herewith ordered to serve Ninety (90) Days in the Bannock County Jail at the discretion of his probation officer.

Defendant is herewith advised that in the event said defendant desires to appeal the foregoing sentence, said appeal must be filed with the Idaho Supreme Court no later than forty-two (42) days from the date said sentence is imposed.

IT IS FURTHER ORDERED that if the defendant lives up to all of the terms and conditions of his probation, he may apply at the end of the probationary period for a reduction to a misdemeanor of this matter, but in the event the defendant violates any of the terms and conditions of his probation, he shall be brought back into Court for further proceedings.

IT IS SO ORDERED.

DATED this 13th day of November, 1995.


PETER D. McDERMOTT
District Judge

Copies to:

Mark Hiedeman
Jack Ross
Probation and Parole
Pocatello Police Department
Trevor E. Fallis

STATE OF IDAHO }
 } ss.
County of Bannock

I hereby certify that the foregoing is a full, true and correct copy of an instrument as the same now remains on file and of record in my office.

WITNESS my hand and official seal hereto affixed

this 21 day of July, 2010

DALE HATCH, CLERK OF THE DISTRICT COURT,
EX OFFICIO AUDITOR AND RECORDER.

By Deputy Lanna Bell

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
by the seal of the National Archives and Records Administration, that the attached reproduction(s) is
a true and correct copy of documents in his custody.



SIGNATURE	
<i>Barbara Voss</i>	
NAME	DATE
BARBARA VOSS	2/20/07
TITLE	
REGIONAL ADMINISTRATOR	
NAME AND ADDRESS OF DEPOSITORY	
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	
ROCKY MOUNTAIN REGION	
BLDG #48, DENVER FEDERAL CENTER	
PO BOX 25307	
DENVER, CO 80225	

67
FILED, AND ENTERED
IN CRIMINAL DOCKET

03/02/89

LOU ALEKSICH, JR., CLERK

By

Carol A. Dahler

Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,	)	<u>NO. CR-88-047-GF</u>
Plaintiff,	)	<u>NO. CR-88-059-GF</u>
vs.	)	<u>NO. CR-88-060-GF</u>
JAMES SKUNKCAP,	)	<u>JUDGMENT AND COMMITMENT</u>
Defendant.)	

On the 27th day of February, 1989, came Carl E. Rostad, Assistant United States Attorney for the District of Montana, and the defendant, JAMES SKUNKCAP, appearing in his proper person and represented by his counsel, June Lord, Attorney at Law, 600 Central Plaza, Suite 400, Great Falls, Montana 59401 (406) 727-8534.

And the defendant having been convicted on his plea of guilty of the offenses charged in the superseding informations in the above-entitled causes, to-wit: That on or about the 8th day of December, 1987, at Browning,

Filed & Entered in Criminal
Docket Volume 10 Page 18

within the exterior boundaries of the Blackfeet Indian Reservation, and within the District of Montana, James Skunkcap, an Indian person, did knowingly take and carry away with intent to steal and purloin, personal property of Debra Matt and Monte Matt, Indian persons, said personal property having a value exceeding \$100, in violation of Title 18 U.S.C. §§ 1153 and 661.

And that on or about the 17th day of January, 1987, ten miles west of Browning, within the State and District of Montana, and within the exterior boundaries of the Blackfeet Indian Reservation, being Indian country, James Skunkcap, an Indian Person, did knowingly take and carry away with intent to steal and purloin, personal property from the residence of Mike Morgan, DDS, said personal property having a value exceeding \$100, in violation of Title 18 U.S.C. §§ 1153 and 661; and that on or about the 20th day of May, 1987, near Browning, in the State and District of Montana, and within the exterior boundaries of the Blackfeet Indian Reservation, being Indian country, James Skunkcap, an Indian Person, did knowingly take and carry away with intent to steal and purloin, personal property from the Ron Crossguns ranch, said personal property having a value exceeding \$100, in violation of Title 18 U.S.C. §§ 1153 and 661.

That on or about the 24th day of January, 1987, near Browning, in the District of Montana and within the

exterior boundaries of the Blackfeet Indian Reservation, being Indian country, James Skunkcap, an Indian Person, did knowingly take and carry away with intent to steal and purloin, personal property from the residence of Francis Horn, Jr., said personal property having a value exceeding \$100, in violation of Title 18 U.S.C. §§ 1153 and 661; and that on or about the 14th day of May, 1987, at Browning, within the exterior boundaries of the Blackfeet Indian Reservatin, and within the District of Montana, James Skunkcap, an Indian Person, did knowingly take and carry away with intent to steal and purloin, personal property from the Faith Tabernacle Church, said personal property having a value exceeding \$100, in violation of Title 18 U.S.C. §§ 1153 and 661.

And the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary appearing or being shown to the court,

Pursuant to the Sentencing Reform Act of 1984,

IT IS BY THE COURT ORDERED AND ADJUDGED that in cause No. CR-88-047, JAMES SKUNKCAP is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of THIRTY-SIX (36) MONTHS.

IT IS FURTHER ORDERED AND ADJUDGED that in cause No. CR-88-059, pursuant to prior law, JAMES SKUNKCAP is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of FIVE (5) YEARS on Count I and FIVE

(5) YEARS on Count II, to be served concurrently with the term imposed in CR-88-047.

IT IS FURTHER ORDERED AND ADJUDGED that in cause No. CR-88-060, pursuant to prior law, JAMES SKUNKCAP is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of FIVE (5) YEARS ON Count I and FIVE (5) YEARS ON Count II, to be served concurrently with the term imposed in CR-88-047.

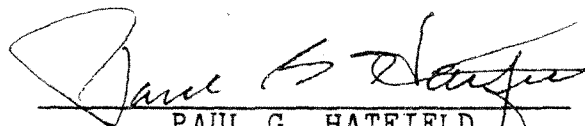
Upon release from imprisonment, the defendant shall be placed on supervised release for a term of TWO (2) YEARS. While on supervised release, the defendant shall not commit another federal, state or local crime, shall comply with the standard conditions that have been adopted by this court, and shall comply with the following additional conditions:

1. That defendant shall enter and complete a drug and alcohol treatment program;
2. That defendant submit to urinalysis testing upon request of the United States Probation Officer; and
3. That defendant make restitution in an amount to be determined at a hearing to be set by this court upon the release of the defendant from imprisonment.

IT IS THE RECOMMENDATION OF THIS COURT THAT JAMES SKUNKCAP BE CONFINED AT AN INSTITUTION SEPARATE AND APART FROM HIS CO-DEFENDANTS, PETER VANDENBURG and HARDEE SKUNKCAP.

IT IS FURTHER ORDERED that JAMES SKUNKCAP surrender himself to the United States Marshal for transport to the facility designated by the Bureau of Prisons for service of the sentence imposed herein, upon being advised by the United States Marshal of the date and facility so designated, and in no event shall it be later than April 1, 1989.

DATED this 2nd day of March, 1989.



PAUL G. HATFIELD
UNITED STATES DISTRICT JUDGE

CLERK'S CERTIFICATE OF MAILING

I do hereby certify that I mailed to all counsel appearing in the above-entitled case.

Dated this 2nd day of March, 1989.

LOU ALEKSICH, JR., CLERK

BY C. Dahley
Deputy

- (1) Kris McLean Cpy. & Cent. Cpy.
- (2) AUSA/SY
- (3) June Loud
- (4) USPO/2 cpy
- (5) USM/5 cent. cpy
- (6) _____
- (7) _____
- (8) _____
- (9) _____
- (10) _____
- (11) _____
- (12) _____

FILE 66

DEPT OF CORRECTIONS

LOCAL

BY *Marilyn Blades*

1 Karen S. McRae
2 HARTELIUS, FERGUSON & BAKER, P.C.
3 600 Central Plaza, Suite 408
4 P.O. Box 1629
5 Great Falls, MT 59403-1629
6 (406) 727-4020
7 Attorney for Defendant

8 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
9 MONTANA, GREAT FALLS DIVISION

8 UNITED STATES OF AMERICA,

9
10 Plaintiff,
11 vs.

11 HARDEE SKUNKCAP,

12
13 Defendant.

Cause No. CR 88-47-GF-PGH
CR 88-59-GF-PGH

14 DEFENDANT'S SENTENCING STATEMENT

15
16 COMES NOW, the Defendant, Hardee Skunkcap, and submits the
17 following sentencing statement.

18 1. Section 2 B1.1 is the Applicable Guideline.

19 As indicated in the Addendum to the Presentence Report,
20 Defendant contends the base offense level is 4, pursuant to
21 guideline §2B1.1(a). Guideline §2B1.1 is the offense guideline
22 section most applicable to the offense of conviction, theft.

23 Section 1B1.2 (a) provides:

24 The court shall apply the offense guideline section in
25 Chapter Two (Offense Conduct) most applicable to the
26 offense of conviction. Provided, however, in the case
of conviction by a plea of guilty or nolo contendere
containing a stipulation that specifically establishes
a more serious offense than the offense of conviction,

1 the court shall apply the guideline in such chapter
2 most applicable to the stipulated offense.

3 Defendant pled guilty to the elements of theft, 18 U.S.C. §661.

4 The Plea Agreement provides in part:

5 Hardee Skunkcap, an Indian Person, did knowingly take
6 and carry away with intent to steal and purloin,
7 personal property of Debra Matt and Monte Matt, Indian
8 Persons, said personal property having a value
9 exceeding \$100, in violation of Title 18 U.S.C. §1153
10 and §661. Plea Agreement, p.2.

11 The Plea Agreement does not specifically establish a more serious
12 offense than the offense of theft.

13 Moreover, the record reveals the United States lacks
14 evidence to prove the more serious offense of robbery. Debra and
15 Monte Matt cannot identify the persons who entered their
16 residence on December 8, 1987. See Interview Report Forms
17 regarding the interviews of Debra Matt and Monte Matt produced
18 with Disclosure of Evidence Receipt dated August 18, 1988. The
19 record reveals no fingerprint evidence tying Defendant to the
20 Matt residence. But for the statements of Co-Defendant Peter
21 Vandenberg, the United States would have no proof of the offense.

22 2. Section 2B1.1(b)(1)(B) is the Proper Specific
23 Offense Characteristic Regarding Property
24 Value.

25 The Addendum to the Presentence Report lists the Specific
26 Offense Characteristic regarding the value of the property taken
as \$5,001 to \$10,000. However, the value of the property taken
was approximately \$150. Presentence Report, p.2, paragraph 16.

Pursuant to guideline §2B1.1(b)(1)(B), if the value of the
property taken is \$101 - \$1,000, the increase in level is 1.

1 Therefore, the total offense level computation is as follows:

2	Base Offense Level 2B1.1	4
3	Specific Offense Characteristics:	
	2B1.1(b)(1)(B) \$101 - \$1,000	<u>1</u>
4	Subtotal:	5
5	Acceptance of Responsibility	<u>-2</u>
6	Total Offense Level	3

7 Guideline Range: 0 to 3 months

8 3. The Guidelines Authorize Probation.

9 Defendant respectfully requests that this Court impose a
10 term of probation, with a condition requiring Defendant to
11 participate in a substance abuse program. The Presentence Report
12 indicates Defendant could benefit from education regarding the
13 effect of substance abuse on his life. Presentence Report, p.5,
14 paragraph 44.

15 Specifically, Defendant is interested in participating in
16 the Indian Alcoholism Counseling and Recovery House Program in
17 Salt Lake City, Utah. This is a residential program focusing on
18 substance abuse treatment for young Native Americans.
19 Defendant's mother, Marlene Skunkcap, lives in Salt Lake City.
20 Mrs. Skunkcap works in the chemical dependency program of the
21 Salt Lake City Veterans Administration Center while she is
22 completing her masters degree in social work. Mrs. Skunkcap has
23 expressed a strong desire to make whatever arrangements are
24 necessary to ensure Defendant's participation in a substance
25 abuse program.

26 Attached hereto as Exhibit A is a letter dated February 6,
1989 from Marlene Skunkcap. Attached as Exhibit B is a letter

1 dated February 9, 1989 from Alberta Friday, Director of the
2 Tribal Education Department of the Shoshone-Bannock Tribes.

3 The three thefts to which Defendant has pled guilty all
4 occurred after Defendant had been drinking alcohol with other
5 young men on the Blackfeet Indian Reservation. Defendant has
6 never participated in any formal substance abuse program.
7 Defendant respectfully requests he be given the opportunity to
8 participate in such a program so he can learn to control his
9 substance abuse behavior which seems to precipitate criminal
10 conduct.

11 4. Probation Is An Appropriate Sentence For The
12 Two Separate Counts Of Theft Which Fall
Outside The Guidelines, CR 88-59-GF-PGH

13 Defendant respectfully requests that this Court impose a
14 term of probation for the two other counts of theft to run
15 concurrently with the probation requested for the theft count
16 described above. Defendant has no previous criminal convictions
17 apart from the two Tribal Court convictions and the traffic
18 citations noted in the Presentence Report, p. 4. Requiring
19 Defendant to participate in a substance abuse program as a
20 condition of his probation might well prevent Defendant from
21 engaging in further criminal conduct.

22 DATED this 24th day of February, 1989.

23 
24 _____
Karen S. McRae

25 CERTIFICATE OF HAND DELIVERY

26 I hereby certify that a copy of the foregoing was served

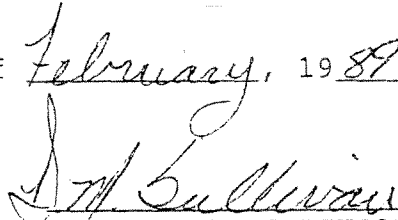
1 upon the following counsel by me by hand delivering a true and
2 correct copy thereof, addressed as follows:

3 Kris McClean
4 % Carl Rostad
5 U.S. Attorney
6 Federal Building
7 Great Falls, MT

8 E. June Lord
9 Attorney at Law
10 600 Central Plaza
11 Suite 400
12 Great Falls, MT

13 Bruce Watters
14 U.S. Probation Officer
15 Great Falls, MT

16 DATED this 24th day of February, 1989.

17 

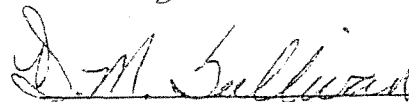
18 HARTELIUS, FERGUSON & BAKER, P. C.

19 CERTIFICATE OF SERVICE BY MAIL

20 I hereby certify that I served a true and correct copy of
21 the foregoing document on:

22 Jayne Mitchell
23 FRISBEE, MOORE, STUFFT & OLSON
24 P. O. Box 547
25 Cut Bank, MT 59427

26 by placing said copy in an envelope, securely sealed, with
postage thereon prepaid and addressed as shown above and
thereafter depositing in the United States Mails at Great Falls,
Montana this 24th day of February, 1989.

27 

28 HARTELIUS, FERGUSON & BAKER

February 6, 1989

Karen S. McRae
Hartelius, Ferguson & Baker, P.C.
P.O. Box 1629
Great Falls, MT 59403

Dear Ms. McRae,

Please accept this letter to be presented to the court on behalf of Hardee Skunkcap. I hope this will help us to understand what has happened to Hardee in the past several years.

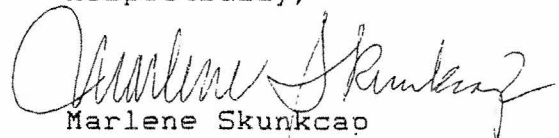
My son, Hardee Phillip Skunkcap, is the youngest of our six children. Hardee grew up in a relatively stable environment, we attempted to provide him with a good home and provide him the love and attention he needed. I stayed home with my children and did not begin to work until Hardee was in kindergarten. He had gone through his entire school years without any incidents which caused him or us and problems, until he was a senior in high school when he began to drink and use drugs. I believe that alcohol and drugs are more powerful and have more influence in the lives of most children than a parent's love and concern. I have spent a lot of time being sorrowful about what has happened to Hardee. I've tried to figure out where I went wrong because I have attempted to instill the values that I hold in my children. We are hardworking parents, my husband was employed all the while they were growing up but because of the bad economy on the reservation, during the past five years, he has had to work on a seasonal basis. I was employed also and when my husband relocated just to find employment, I decided to return to school and earned a B.A. in Social Work. So, one of the values we have is work. Hardee has been a help to his father in that he can do work around our ranch, however, we no longer have cattle but we do have horses which Hardee has remained home to take care of while I am pursuing a Master's in Social Work at the University of Utah. A value that I personally hold is that of education, I have stressed the importance of getting an education or training to all my children. Prior to Hardee's legal involvement, he was interested in joining the Navy but since that may no longer be an option, I have encouraged him to return to school and hoped that he would be able to come to Utah where there are a number of schools he could receive training. However, before he can think about school/training, he needs to quit using alcohol and drugs. My husband and I are non-drinkers and we don't smoke cigarettes and have forbidden our children to do so in our presence or in our home. The role models we have been for our children has been one of people to who work for what we get, and I, therefore, was surprised to say the least when Hardee was arrested on the charges against him. Since he was not working, the only means he had to support his habit was apparently to steal. Hardee has earned money during the summer by participating in Indian relay

aces, a culturally significant event, throughout Montana, Idaho and in Canada. Anyone who knows Hardee can attest that he is a friendly, well-mannered and intelligent person. This past summer Hardee finally had a chance to earn money by fire fighting for the U.S. Forest Service, as with many of the young men in Browning this is the only chance to earn money all year. I have spoken to Hardee about leaving the Blackfeet reservation so that he could get away from environment of alcohol and drugs and his friends who use. He says he will stay in Browning to take care of our house while we are in Utah, but this has always been a cause for concern for him even though he is over eighteen years of age. I am concern that he needs some type of structure in his life that I am not able to give at this time. This has been a cause of guilty feelings for me since his legal problems began. There are some other extenuating circumstances which I feel are significant in trying to understand what has happened. In November, 1985, we lost a 21 year old son in a car accident in which alcohol and drugs were a contributing factor. We are what could be called an enmeshed family. We are close-knit and were dependent upon each other emotionally. When I lost my son, I was completely devastated, as was our whole family. That was the year I received my B.A. and had just returned home to find a job so that we could get some stability back into our lives after having had to move. I had encouraged my son who got killed to leave the reservation to get a job and try to get into school in Idaho where he died. I felt a lot of guilt about that; I told myself that if I had not encouraged my son to leave, he might not be dead and it is for this reason that I have not tried hard to get Hardee or any of my sons to leave the Browning area as unrealistic as it may seem to you. It took me a whole year to resolve my grief to the point where I could resume my life. During that time, I know that I was not able to be a comfort to my husband and my children. They needed me, but I wasn't there, even with my social work skills. I couldn't help myself, therefore, I couldn't help them either. Because we are an enmeshed family, with the loss of one member I would say that we literally fell apart. I believe that it was then that Hardee became different, he began drinking and didn't seem to care. Other family members experienced problems, all my sons were drinking and my marital relations were strained. My husband and I could not console each other but we stayed by each other. My oldest son's marriage fell apart because he also could handle his grief only through drinking. I truly believe that it was only by the grace of God that we did not join them in turning to alcohol. I was blinded to what my children were going through because at that time I struggled to survive mentally, luckily. my daughters were not living in Browning to witness the turmoil we were going through. I am not trying to elicit sympathy through the death of my son, but I am trying to relate to you that his death had a profound effect upon our lives, especially for my sons who may not have resolved their brother's death even yet. You may wonder why I, as a social worker, have not been able to help them deal with this issue. This is a very touchy and emotional topic, and I feel that they would benefit more from outside counseling which

they have to pursue on their own as I have encouraged them to do. Hardee realizes that he has an alcohol and drug problem but hasn't the initiative to get treatment on his own, it will have to be court-ordered.

In conclusion, I would like to repeat that no matter how hard I have tried to influence my children about the dangers of alcohol and drugs and although they have seen what has happened in their own lives as a result of using alcohol and drugs and the problems it has caused, it remains to be a stronger and more powerful influence in Hardee's life right now and will remain so unless he can be released from its grips. I won't pretend that I'm not going to be as disappointed as Hardee will be when his whole future is decided by a judge just because he let alcohol and drugs be so important to him for such a minimal amount of his lifetime. When I go back to Browning for a visit, I am saddened by the grim sight of drunks on the streets, carloads of teenagers who are obviously drunk, hearing about deaths of more teenagers because of alcohol and drugs, and hearing that cocaine is now the popular drug on the reservation. I don't believe that it is my son (or other who commit similar crimes) who is perpetuating the crime on the reservation, it is the drug dealers who continue to trade drugs for stolen property. In a recent article in the Glacier Reporter, the BIA Law Enforcement stated that they don't have the manpower to handle the drug problem, yet all the drug dealers are known throughout the community. In large cities with a population of millions of people, crimes are solved; in Browning, Montana, crime is being committed daily against all people because the Blackfeet Indian reservation and other Indian reservations throughout the country have become a dumping ground for drugs. I definitely do not condone what my son, Hardee, has done and I place no blame on anyone else but himself, but I plead with the court not to let me lose another son to alcohol and drugs. Hardee is only nineteen years of age with a whole life time ahead and I believe that he can become a useful member of society if given the chance. I know that Hardee has realized that alcohol and drugs were a factor in his wrongdoing and I know that he would agree that he needs help. I recommend that Hardee be ordered to alcohol and drug treatment so that he can get the counseling that he needs to overcome his problem.

Respectfully,



Marlene Skunkcap
863 University Village
Salt Lake City, UT 84108
801-582-9435

The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
PHONE (208) 238-3872
(208) 238-3873



TRIBAL EDUCATION DEPARTMENT
P. O. BOX 306
FORT HALL, IDAHO 83203

February 09, 1989

Karen S. McRae, Hartelus, Furgusen, Baker, P.C.
P. O. Box 1629
Great Falls, MT 59403

Dear Ms. McRae and Associates:

I am writing this letter on behalf of Hardee Skunkcap. Hardee was a student at the Sho-Ban High School while I was employed as a Bilingual Education Director. The student enrollment included 7th-12th grades.

Hardee was active in sports, school activities, and leadership roles while he was a student at the school. He was always polite, never used vulgar language, and respected authority.

I was Hardee's advisor while he was a student at the Sho-Ban High School. I met and conferred with his parents throughout the year. The administration had all of the staff members serve as advisors for three or four students during the school year. Each advisor kept in contact with parents on the progress of their children. Mr. and Mrs. Skunkcap were cooperative, concerned and interested in their children's education.

Hardee participated in community activities and took an active part in Indian relay races as a jockey. He was in student government as an elected officer for both the Sho-Ban School and at the Highland High School in Pocatello. I still keep in touch with his parents since we became acquainted when I was his advisor.

Sincerely,

Alberta Friday

Alberta Friday, Director
Tribal Education Department

WDE/1s

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR COUNTY OF BANNOCK

--o0o--

STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.	)	Case No.
	)	CR2006-22110
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant.)	
)	

The above-entitled matter came on for hearing on the dates and times indicated herein at the Bannock County Courthouse, Pocatello, Idaho.

BEFORE: The Honorable PETER D. MCDERMOTT

EXCERPT

APPEARANCES:

For the Plaintiff:	CLEEVE COLSON Bannock County Deputy Prosecuting Attorney P.O. Box P Pocatello, Idaho 83205
--------------------	--

For the Defendant:	RANDALL D. SCHULTHIES Attorney at Law P.O. Box 4147 Pocatello, Idaho 83205
--------------------	---

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS



17 THE COURT: Mr. Skunkcap, sir,
 18 you previously entered a plea of not guilty
 19 to being a Persistent Violator of the Law,
 20 as alleged in Part Two of the Prosecuting Attorney's
 21 Information.
 22 Do you want to proceed to jury trial
 23 on this or do you want to change your plea?
 24 THE DEFENDANT: A plea would be fine.
 25 THE COURT: I'm sorry?

1 THE DEFENDANT: A plea.
 2 THE COURT: Okay. I'll withdraw your
 3 prior plea of not guilty. Would you like to enter a
 4 new plea today?
 5 THE DEFENDANT: Yeah, guilty.
 6 THE COURT: Guilty?
 7 THE DEFENDANT: Yes.
 8 THE COURT: Before I accept your plea,
 9 I'm going to ask you some questions, sir.
 10 On or about October 2nd, 1995, were
 11 you found guilty of the charge of Accessory to
 12 Grand Theft, as alleged in the Prosecuting Attorney's
 13 Information, in the Sixth Judicial District,
 14 State of Idaho, Bannock County, and that the
 15 offense was a felony under the laws of Idaho as
 16 alleged in the Prosecuting Attorney's Information
 17 in Count I -- Part One?
 18 THE DEFENDANT: Yes.
 19 THE COURT: In Part One?
 20 THE DEFENDANT: Yes.
 21 THE COURT: And with regard to Part Two,
 22 Number Two, on the 27th day of February, 1989, were
 23 you found guilty of the charge of three counts
 24 of Theft in the federal court in the United States
 25 District Court for the District of Montana,

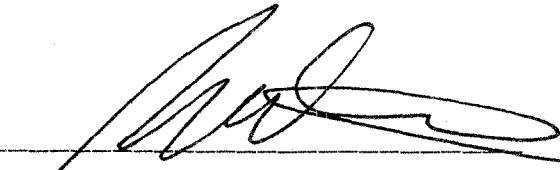
1 Great Falls Division, as alleged in the
 2 Prosecuting Attorney's Information -- said offense
 3 constituting felonies under the laws of the
 4 United States District Court, as evidenced by
 5 the Minute Entry and Order dated March 2nd,
 6 1989?
 7 THE DEFENDANT: Yes.

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COURT REPORTER'S CERTIFICATE

I, STEPHANIE D. DAVIS, CSR, Official Court Reporter, Sixth Judicial District, State of Idaho, do hereby certify that the foregoing transcript, consisting of Pages 469, line 17 to 471, line 7 inclusive, is a true and accurate record of the proceedings had on the dates and at the times indicated therein as stenographically reported by me to the best of my ability, and contains all of the material requested.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of July, 2010.


STEPHANIE D. DAVIS, CSR
No. 594

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR COUNTY OF BANNOCK

--o0o--

STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.	)	Case No.
)	
JAMES LEROY SKUNKCAP,	)	CR2006-22110
)	
Defendant.)	

The above-entitled matter came on for hearing on the dates and times indicated herein at the Bannock County Courthouse, Pocatello, Idaho.

BEFORE: The Honorable PETER D. MCDERMOTT

APPEARANCES:

For the Plaintiff: CLEAVE COLSON
Bannock County Deputy
Prosecuting Attorney
P.O. Box P
Pocatello, Idaho 83205

For the Defendant: JOHN DEWEY
Deputy Public Defender
RANDY SMITH
Deputy Public Defender
P.O. Box 4147
Pocatello, Idaho 83205

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

I N D E X

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THURSDAY, AUGUST 16, 2007		
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--o0o--

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420

1 POCATELLO, IDAHO; THURSDAY, AUGUST 16, 2007
2 9:00 A.M.
3 --o0o--
4
5 (THE FOLLOWING PROCEEDINGS HELD IN OPEN COURT
6 OUT OF THE PRESENCE OF THE JURY)
7
8 THE COURT: There is a proceeding
9 held outside the presence of the jury,
10 with counsel and defendant present.
11 Mr. Colson, you're going to call more
12 witnesses -- are you or not?
13 MR. COLSON: Your Honor, at this time,
14 yeah, the State is going to recall
15 Detective Nelson.
16 THE COURT: Okay. And is that going
17 to be it?
18 MR. COLSON: That will be it.
19 THE COURT: And then you're going to
20 rest?
21 MR. COLSON: Yes.
22 THE COURT: Okay.
23 And then, Defense, you fellas going
24 to call anybody -- any witnesses?
25 MR. DEWEY: No, Your Honor.

1 SEAT 5: In the District Court of the
2 Sixth Judicial District. State of Idaho -- in and
3 for the County of Bannock. State of Idaho,
4 plaintiff, versus James LeRoy Skunkcap, Defendant.
5 Case number CR06-22110FE. Special verdict.

6 We, the jury, duly impanelled and
7 sworn to try the above entitled action, for our
8 verdict unanimously answer the questions submitted
9 to us as follows.

10 Question number one, is the defendant,
11 James L. Skunkcap, not guilty or guilty of
12 Theft? Guilty of Theft.

13 Question number two, is the defendant
14 James L. Skunkcap, not guilty or guilty of
15 Grand Theft? Guilty of Grand Theft.

16 Dated 16th day of August, 2007 --
17 by myself.

18 THE COURT: All right, sir. Thank you
19 very much.

20 Paula, would you get the verdict,
21 please.

22 Thank you, Paula.

23 Mr. Colson, do you desire the jury
24 be polled?

25 MR. COLSON: No, Your Honor.

1 THE COURT: All right.

2 Mr. Smith, Mr. Dewey, do you desire
3 the jury be polled?

4 MR. DEWEY: Yes, Your Honor. We would
5 like to have the jury polled.

6 THE COURT: All right.

7 Well, we'll start with you, ma'am.

8 Miss Jordan, is this your verdict?

9 SEAT 6: Yes, sir.

10 THE COURT: Mr. Georgeson, is that
11 your verdict?

12 SEAT 5: Yes, sir.

13 THE COURT: Miss Spillet, is this
14 your verdict?

15 SEAT 4: Yes, sir.

16 THE COURT: Let's see, Mr. Gladwin,
17 is this your verdict?

18 SEAT 3: Yes, Your Honor.

19 THE COURT: Miss Frank, is this your
20 verdict?

21 SEAT 2: Yes, it is.

22 THE COURT: Miss Glass, is this
23 your verdict?

24 SEAT 1: Yes, Your Honor.

25 THE COURT: Mr. Higgins, is this

1 your verdict?

2 SEAT 7: Yes, sir.

3 THE COURT: Mr. Novosel, is this your
4 verdict?

5 SEAT 8: Yes, Your Honor.

6 THE COURT: Miss Hencley, is this
7 your verdict?

8 SEAT 9: Yes, Your Honor.

9 THE COURT: Mr. Wigington, is this
10 your verdict?

11 SEAT 10: Yes, it is.

12 THE COURT: Miss Kase, is this your
13 verdict?

14 SEAT 11: Yes, sir.

15 THE COURT: Miss Orgill, is this
16 your verdict?

17 SEAT 12: Yes, Your Honor.

18 THE COURT: All right. Ladies
19 and gentlemen of the jury, I want to just thank
20 you so much. You have been deliberating on
21 this case since about 10:30 this morning, and
22 I know this isn't what you normally would like
23 to do.

24 We bring you in and ask you to make
25 judgments, and it's an awesome responsibility

1 that you have. I know you have carefully
2 considered all of the evidence because you
3 certainly deliberated a long time, and I
4 really appreciate it.

5 What we're going to do now,
6 ladies and gentlemen, is take a short recess.
7 We might have one other little matter for you
8 to take up today, and I'll explain this to you
9 in a minute.

10 Why don't you retire to the jury room --
11 and it will only be for a short time; it won't be
12 more than five minutes, and we'll bring you back
13 in; okay?

14
15 (THE FOLLOWING PROCEEDINGS HELD IN OPEN COURT
16 OUT OF THE PRESENCE OF THE JURY)

17
18 THE COURT: Please be seated.

19 All right. Mr. Skunkcap, the jury
20 has found you guilty of Grand Theft, a felony, and
21 we'll proceed now to Part Two of the Prosecuting
22 Attorney's Information.

23 You've been charged by the Bannock County
24 Prosecuting Attorney's Office with being a
25 Persistent Violator of the Law.

1 Are you ready to proceed on that,
2 Mr. Colson?
3 MR. COLSON: I am, Your Honor. It
4 has been indicated to me that there may be a
5 motion by defendant, Your Honor.
6 THE COURT: Mr. Dewey?
7 MR. DEWEY: Your Honor, at this
8 time the defendant would indicate that we're
9 willing to admit or plead to Part Two of the
10 Information.
11 THE COURT: Okay. Why don't you
12 come up here with your client, please.
13 MR. DEWEY: Beg pardon, Your Honor?
14 THE COURT: I said come forward with
15 your client.
16 MR. DEWEY: Yes, Your Honor.
17 THE COURT: Mr. Skunkcap, sir,
18 you previously entered a plea of not guilty
19 to being a Persistent Violator of the Law,
20 as alleged in Part Two of the Prosecuting Attorney's
21 Information.
22 Do you want to proceed to jury trial
23 on this or do you want to change your plea?
24 THE DEFENDANT: A plea would be fine.
25 THE COURT: I'm sorry?

1 Great Falls Division, as alleged in the
2 Prosecuting Attorney's Information -- said offense
3 constituting felonies under the laws of the
4 United States District Court, as evidenced by
5 the Minute Entry and Order dated March 2nd,
6 1989?
7 THE DEFENDANT: Yes.
8 THE COURT: And, Mr. Skunkcap, at this
9 time you're not under the influence of any
10 alcohol, controlled substances, or medication or
11 anything you have taken that would foul you up so
12 you wouldn't know what you're doing, are you?
13 THE DEFENDANT: No.
14 THE COURT: And do you have any
15 complaints or problems with the way your attorney
16 has represented you?
17 THE DEFENDANT: I've had a problem all
18 the way through with this trial. There has
19 been -- my attorney, Randy Schulthies, has been
20 trying to get off my case so many times, not
21 showing up to court -- there has been a lot of
22 problems on this. It's been dismissed
23 twice.
24 That's just a lot of problems with
25 this and my fastest speedy trial rights were

1 THE DEFENDANT: A plea.
2 THE COURT: Okay. I'll withdraw your
3 prior plea of not guilty. Would you like to enter a
4 new plea today?
5 THE DEFENDANT: Yeah, guilty.
6 THE COURT: Guilty?
7 THE DEFENDANT: Yes.
8 THE COURT: Before I accept your plea,
9 I'm going to ask you some questions, sir.
10 On or about October 2nd, 1995, were
11 you found guilty of the charge of Accessory to
12 Grand Theft, as alleged in the Prosecuting Attorney's
13 Information, in the Sixth Judicial District,
14 State of Idaho, Bannock County, and that the
15 offense was a felony under the laws of Idaho as
16 alleged in the Prosecuting Attorney's Information
17 in Count I -- Part One?
18 THE DEFENDANT: Yes.
19 THE COURT: In Part One?
20 THE DEFENDANT: Yes.
21 THE COURT: And with regard to Part Two,
22 Number Two, on the 27th day of February, 1989, were
23 you found guilty of the charge of three counts
24 of Theft in the federal court in the United States
25 District Court for the District of Montana,

1 over-ran with it, and the amount of time that
2 I have with these attorneys -- I had two hours,
3 total, with them before this trial.
4 That's all I got to say, sir.
5 Thank you.
6 THE COURT: All right. Well, it
7 appears to me they did a good job, Mr. Dewey
8 did especially a good job -- so did Mr. Smith,
9 sir.
10 You realize you're pleading guilty to
11 this offense of this enhancement, the Grand Theft
12 charge the jury just convicted you of, carries a
13 maximum sentence of fourteen years in the state
14 correctional facility.
15 By pleading guilty to being a
16 Persistent Violator of law, that sentence could
17 be enhanced up to life in the state correctional
18 facility without parole or good time; do you
19 understand that?
20 THE DEFENDANT: Yes, I do.
21 THE COURT: And, knowing that, you
22 still want to plead guilty to it?
23 THE DEFENDANT: Yes.
24 THE COURT: Sir, by pleading guilty,
25 you waive your constitutional right to remain

1 silent.

2 You waive the right not to incriminate

3 yourselves.

4 You also waive your presumption of

5 innocence.

6 You waive your constitutional right to

7 have a trial by jury by pleading guilty.

8 You waive the right to present defenses

9 you might have to the Court or the jury.

10 You waive the right to cross-examine

11 witnesses the State would call -- cross-examine

12 through your attorney.

13 And you waive these rights and

14 others by pleading guilty; do you understand

15 that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: And any verdict by the jury

18 on this Part Two of the Information, whether

19 it's guilty or not guilty, would have to be

20 unanimous to bring your case to a conclusion.

21 Have you been explained by your attorneys

22 what facts the State would have to try to prove

23 beyond a reasonable doubt to the jury to try to

24 convict you of Part Two, being a Persistent Violator

25 of the Law?

1 THE DEFENDANT: Yes, they did.

2 THE COURT: And have they explained to

3 you possible defenses you could raise to the Court

4 or the jury?

5 THE DEFENDANT: Yes, they have.

6 THE COURT: And by pleading guilty,

7 you don't get to do that; do you understand

8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: With regard to your plea of

11 guilty, have you been threatened by anybody

12 to get you to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Have you been promised

15 anything by anybody to get you to plead

16 guilty?

17 THE DEFENDANT: No.

18 THE COURT: Is your plea of guilty

19 made entirely voluntarily and of your own free

20 will?

21 THE DEFENDANT: It is.

22 THE COURT: Anybody promise you or

23 tell you what sentence you're going to get if

24 you plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: And do you want me to

2 accept your plea of guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: And you don't want a

5 jury trial?

6 THE DEFENDANT: No.

7 THE COURT: All right.

8 Mr. Dewey, any reason why I should not

9 accept his plea of guilty?

10 MR. DEWEY: No, Your Honor.

11 THE COURT: Mr. Colson, any reason

12 why I should not accept the plea of guilty?

13 MR. COLSON: No, Your Honor.

14 THE COURT: All right.

15 Mr. Skunkcap, sir, I'll accept your

16 plea of guilty, and we'll let the jury go; is

17 that okay?

18 THE DEFENDANT: That's fine.

19 THE COURT: And we'll ask the

20 Department of Corrections to prepare an amended

21 or updated presentence report.

22 And we'll get that one charge in that

23 other case -- we should let them know this because

24 you wanted this in that letter you wrote -- the

25 felony Malicious Injury to Property was reduced

1 to a misdemeanor; right?

2 THE DEFENDANT: Yes.

3 THE COURT: So we want the presentence

4 investigator to know that, and we'll ask for

5 an amended presentence investigation report and

6 set your sentencing for Monday, September 24th,

7 around 9:30; all right?

8 THE DEFENDANT: That's fine.

9 THE COURT: Sir, do you have any

10 comments or questions?

11 THE DEFENDANT: No. Yeah, I have a

12 comment about the defense in my case. I just

13 feel like a lot of my rights were violated, a lot

14 of my rights. And at the time my defense counsel

15 would not bring them up because -- it incriminated

16 him, Randy Schulthies. And, of course, the

17 attorneys here wouldn't bring it up.

18 Also, the violation of rights --

19 because they told me that this was a conflict of

20 interest because that's their boss, and they

21 can't go ahead and slam their boss. So I feel

22 that I was not afforded the right counsel because

23 of Randy Schulthies' previous rights violations,

24 and by him having the employees under him not

25 being able to argue for me and defend my rights

1 in this case.

2 THE COURT: Now, you remember,
3 Mr. Skunkcap, Mr. Schulthies wanted to withdraw
4 as your attorney, and you didn't want him to; do
5 you remember that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: You said then he was doing
8 you a good job. You didn't want him to withdraw;
9 you wanted him to stay on your case. And he
10 wanted to withdraw because you said he was a
11 liar.

12 THE DEFENDANT: That he is.

13 THE COURT: Well, I figured a fellow
14 shouldn't have to accept that and let him
15 withdraw, and these two gentlemen have been
16 representing you since then.

17 THE DEFENDANT: Your Honor, when
18 you're indigent and you can't afford an
19 attorney, you have what is given to you.
20 I couldn't ever say, hey, give my a counsel,
21 because that's the number one defense attorney
22 here; he's the boss. And what is he going to --
23 like I said in my last argument with this, what
24 am I going to gets besides Mr. Randy --
25 Mr. Randy Schulthies -- one of his workers.

1 We could argue this but, in my mind,
2 I wasn't -- fairly defended. And, also, with
3 this two hours before trial of a defense coming
4 to -- you know, we didn't even review my case
5 with these guys at all. We didn't look at one
6 thing before we started. So, I am willing to
7 accept what happened here, but that's what I
8 got to say is I feel that I wasn't fairly
9 defended.

10 THE COURT: Well, I tell you something,
11 Mr. Skunkcap, the jury went out around 10:30,
12 quarter to 11:00. They just came back, and
13 these two fellas sure gave them something to
14 think about. They have been in there a long
15 time.

16 Personally, watching the trial, I think
17 they did an excellent job.

18 THE DEFENDANT: Yes, they did.

19 THE COURT: Why don't you go have a
20 seat then. I'll sure listen to anything you
21 have to say before you're sentenced, and we'll
22 sentence you on both cases the same day.
23 We'll set both cases for sentencing the
24 same day.

25 Okay. Mr. Colson, do you have anything

1 further?

2 MR. COLSON: Nothing further from the
3 State, Your Honor.

4 THE COURT: Mr. Dewey or Mr. Smith,
5 do you have anything further?

6 MR. DEWEY: Nothing from defense,
7 Your Honor.

8 THE COURT: All right. Thank you.

9 Court is in recess.

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15 (CONCLUSION OF PROCEEDINGS HELD 8/16/07.)

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CERTIFIED COURT REPORTER'S CERTIFICATE

I, STEPHANIE DAVIS, Certified Shorthand Reporter, Official Court Reporter in the Sixth Judicial District, State of Idaho, do hereby certify that the foregoing transcript, consisting of Pages 1 to 479, inclusive, is a true and accurate record of the proceedings had on the dates and at the times indicated herein as stenographically reported by me to the best of my ability and contains all evidence, objections of counsel and rulings of the Court, all testimony of witnesses, and all matters to which the same relate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of July, 2010.



STEPHANIE D. DAVIS, Official Reporter
Idaho CSR No. 594
Calif CSR No. 9767

FILED
BANNOCK COUNTY
DISTRICT COURT
JUL 8 AM 2:38
BY _____
DEPUTY

DOCKET NO. 2007-34736
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(STATE OF IDAHO
(
(
(vs.
(
(JAMES LEROY SKUNKCAP

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on 7/7/2011 I lodged a transcript including the following proceedings: (1/11/2010; 4/8/2010; 4/19/2010; 7/19/2010; 7/23/2010; 9/13/2010; 11/22/2010)

for the above-referenced appeal with the Sixth Judicial District, District Court Clerk indicated:

- | | |
|---|------------------------------------|
| <input checked="" type="checkbox"/> BANNOCK | <input type="checkbox"/> POWER |
| <input type="checkbox"/> ONEIDA | <input type="checkbox"/> BEAR LAKE |
| <input type="checkbox"/> FRANKLIN | <input type="checkbox"/> CARIBOU |

via:

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Electronic Copy to ISC/COA; AG; SAPD

(Signature of Reporter)

S. DAVIS

(Typed name of Reporter)

7/7/2011

(Date)

cc:

Diane Cano, dianec@bannockcounty.us
ISC/COA- kloertscher@idcourts.net
ISC/COA- klehrman@idcourts.net
IAGO - patricia.miller@ag.idaho.gov
SAPD - transcripts@sapd.id.us

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	Supreme Court No. 38249
Plaintiff-Respondent,)	
	)	SUPPLEMENTAL
vs.	)	CLERK'S CERTIFICATE
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant.)	
_____)	

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho appellate Rules.

I do further certify that there were no exhibits marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 29 day of March, 2011.

(Seal)

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By [Signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	Supreme Court No. 38249
Plaintiff-Respondent,)	
	)	SUPPLEMENTAL
vs.	)	CERTIFICATE OF EXHIBITS
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant.)	
<hr style="width: 100%;"/>)	

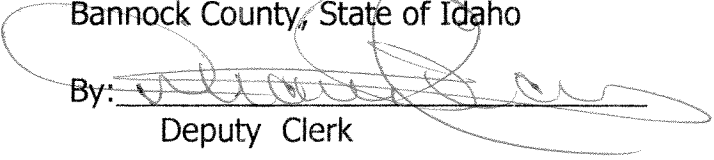
I, DALE HATCH, the duly elected, qualified and acting Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, do hereby certify that there were no exhibits marked for identification and introduced into evidence at trial. The following exhibit will be treated as a exhibit in the above and foregoing cause, to wit:

1. Presentence Report filed 9-9-10.
2. Letter to Judge Naftz from Marlene Skunkcap dated 9-1-10.
3. Letter to Judge Naftz from Debra L. Pfeifer dated 9-4-10.
4. Letter to Judge Naftz from Ronald V. Hancock dated 9-7-10.
5. Letter from Jackie Johnson filed 9-8-10.
6. Letter from Shantell Growson dated 9-7-10.
7. Letter from Peter Rusty Tatsey 9-7-10.
8. Letter from Lisa Summers (no date).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of said Court, this the 29 day of March, 2011.

(Seal)

DALE HATCH, Clerk of the District Court
Bannock County, State of Idaho

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,)	
	)	Supreme Court No. <u>38249</u>
Plaintiff-Respondent,)	
	)	SUPPLEMENTAL
vs.	)	CERTIFICATE OF SERVICE
)	
JAMES LEROY SKUNKCAP,)	
)	
Defendant-Appellant.)	
_____)	

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that I have personally served or mailed, by United States mail, one copy of the REPORTER'S TRANSCRIPT and CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

Molly Huskey
Appellate Public Defender
Post Office Box 83720
Boise, Idaho 83720-0005

Lawrence G. Wasden
Idaho Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 8 day of July, 2011.

(Seal)

DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By 
Deputy Clerk