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### State v. Rockstahl Clerk's Record Dckt. 42525

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# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 42525
Plaintiff/Appellant	)	DISTRICT COURT NO. CR 12-12841
	)	
vs.	)	
	)	
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant/Respondent,	)	

#### CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls

## HONORABLE JONATHAN BRODY District Judge

LAWRENCE WASDEN
Attorney General
Statehouse Mail Room
P.O. Box 83720
Boise, Idaho 83720-0010

Keith Roark
The Roark Law Firm
409 N. Main Street
Hailey, Idaho 83333

ATTORNEY FOR APPELLANT ATTORNEY FOR RESPONDENT

Page 1 of 7

#### Fifth Judicial District Court - Twin Falls County

**ROA Report** 

Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

#### Misdemeanor

Date		Judge
11/23/2012	New Case Filed-Misdemeanor	Court Clerks
	Change Assigned Judge	Roger Harris
	Prosecutor assigned Fritz A. Wonderlich	Roger Harris
	Criminal Complaint	Roger Harris
	Affidavit In Support Of Complaint Or Warrant For Arrest	Roger Harris
	Summons Issued	Roger Harris
11/26/2012	Notice Of Appearance	Roger Harris
	Request For Discovery/defendant	Roger Harris
	Defendant: Rockstahl, Joseph R Appearance Joseph R Rockstahl	Roger Harris
	Sheriff's Return, Joe Rockstahl, 11/26/2012	Roger Harris
	Summons Returned	Roger Harris
	Change Assigned Judge	Calvin H. Campbell
	Arraignment / First Appearance	Calvin H. Campbell
	A Plea is entered for charge: - NG (I18-3303 Weapon-Exhibition or Use of Deadly Weapon)	Calvin H. Campbell
	A Plea is entered for charge: - NG (I18-3304 Weapon-Aiming at Others)	Calvin H. Campbell
	A Plea is entered for charge: - NG (I18-6409 Disturbing the Peace)	Calvin H. Campbell
11/28/2012	Order of Disqualification	Calvin H. Campbell
	Order Of Assignment	Mick Hodges
	Change Assigned Judge	Mick Hodges
11/29/2012	Request For Discovery, Response To Request For Discovery, Response To Demand For Sworn Complaint	Mick Hodges
11/30/2012	Notice Of Substitution Of Counsel	Mick Hodges
	Defendant: Rockstahl, Joseph R Appearance Daniel Brown	Mick Hodges
	Hearing Scheduled (Pretrial Conference 01/10/2013 04:30 PM) BY PHONE IN CASSIA CO Court will initiate	Mick Hodges
	Notice Of Hearing	Mick Hodges
12/6/2012	Notice Of Service	Mick Hodges
	Supplemental Request for Discovery	Mick Hodges
1/10/2013	Hearing result for Pretrial Conference scheduled on 01/10/2013 04:30 PM: Hearing Held BY PHONE IN CASSIA CO Court will initiate	Mick Hodges
1/14/2013	Court Minutes	Mick Hodges
1/31/2013	Hearing Scheduled (Motion to Dismiss 02/22/2013 01:30 PM) 1 hour	Mick Hodges
	Motion To Dismiss	Mick Hodges
	Memorandum in Support of Motion to Dismiss	Mick Hodges
2/1/2013	Notice Of Hearing	Mick Hodges
2/19/2013	Continued (Motion to Dismiss 03/15/2013 03:30 PM) 1 hour	Mick Hodges
2/21/2013	Amended Notice Of Hearing	Mick Hodges

User: COOPE

#### Fifth Judicial District Court - Twin Falls County

**ROA Report** 

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Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

#### Misdemeanor

Date		Judge
3/15/2013	Court Minutes Hearing type: Motion to Dismiss Hearing date: 3/15/2013 Time: 3:30 pm Courtroom: Courtroom Court reporter: Minutes Clerk: Lorraine Robinson Tape Number: 3 Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich	Mick Hodges
	Hearing result for Motion to Dismiss scheduled on 03/15/2013 03:30 PM: Hearing Held 1 hour	Mick Hodges
3/18/2013	Hearing Scheduled (Pretrial Conference 05/17/2013 03:30 PM) Jury Trial May 30/31	Mick Hodges
	Hearing Scheduled (Jury Trial 05/30/2013 08:30 AM) 2 days	Mick Hodges
3/21/2013	Order Regarding Pretrial Conference and Setting Case for Trial	Mick Hodges
5/15/2013	Ex-parte Motion To Withdraw	Mick Hodges
	Affidavit Of Greg J. Fuller	Mick Hodges
5/17/2013	Court Minutes Hearing type: Pretrial Conference/ Motion to Withdraw Hearing date: 5/17/2013 Time: 3:22 pm Courtroom: Court reporter: Minutes Clerk: Lorraine Robinson Tape Number: Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich	Mick Hodges
	Witness List	Mick Hodges
	Hearing result for Pretrial Conference scheduled on 05/17/2013 03:30 PM: Hearing Held Jury Trial May 30/31	Mick Hodges
	Continued (Jury Trial 05/23/2013 08:30 AM) 2 days	Mick Hodges
5/20/2013	Motion in Limine	Mick Hodges
	Defendant's Request Jury Instructions	Mick Hodges
	Defendant's Witness and Exhibit List	Mick Hodges
5/21/2013	Amended Affidavit Of Service, Janie Jones for Officer Kevin Loosli, 05/20/2013	Mick Hodges
	Amended Affidavit Of Service, Janie Jones for SSG Terry Thueson, 05/20/2013	Mick Hodges
	Motion To Vacate And Continue Jury Trial	Mick Hodges
	Motion To Shorten Time For Hearing On Defendant's Motion To Vacate And Continue Jury Trial	Mick Hodges
5/22/2013	Objection To Motion To Continue Jury Trial	Mick Hodges

User: COOPE

#### Fifth Judicial District Court - Twin Falls County

User: COOPE

ROA Report

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Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

Date			Judge	
5/23/2013	Court Minutes Hearing type: Motion for Disqualification Hearing date: 5/23/2013 Time: 8:17 am Courtroom: Court reporter: Minutes Clerk: Lorraine Robinson Tape Number: 3 Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich		Mick Hodges	
	Court Minutes Hearing type: Jury Trial Hearing date: 5/23/2013 Time: 9:21 am Courtroom: Court reporter: Minutes Clerk: Lorraine Robinson Tape Number: 2 Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich		Mick Hodges	
	Motion Disqualify For Cause		Mick Hodges	
	Affidavit Of Daniel S. Brown In Support Of Motion	Mick Hodges		
	Motion For Reconsideration		Mick Hodges	
	Motion To Shorten Time		Mick Hodges	
	Order To Vacate And Continue Jury Trial ***DENIED***		Mick Hodges	
	Order To Shorten Time For Hearing On Defendant Continue Jury Trial ***DENIED***	t's Motion To Vacate And	Mick Hodges	
5/24/2013	Jury Roll Call Sheet		Mick Hodges	
		ocument sealed		
	Initial Jury Seating Chart		Mick Hodges	
		ocument sealed	Mink Hoden	
	Jury Panel Seating Chart	ocument sealed	Mick Hodges	
	Peremptory Challenges	ocament scaled	Mick Hodges	
		ocument sealed		
	Hearing result for Jury Trial scheduled on 05/23/20 Held 2 days	013 08:30 AM: Hearing	Mick Hodges	
	Jury Instructions		Mick Hodges	
	Verdict Form		Mick Hodges	
	Acquitted (after Trial) (I18-3304 Weapon-Aiming at	t Others)	Mick Hodges	
	Court Minutes		Keith M. Walker	
5/28/2013	Orders On Motions		Mick Hodges	
	Miscellaneous Payment: Copy Cd Paid by: Rockstr 1313727 Dated: 5/28/2013 Amount: \$6.00 (Cash)		Mick Hodges	4

#### Fifth Judicial District Court - Twin Falls County

User: COOPE

**ROA Report** 

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Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

Date		Judge
5/28/2013	Notice and Agreement RE: Purchase of audio recordings of district and magistrate court proceedings.	Mick Hodges
5/30/2013	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Rockstahl Law Receipt number: 1313919 Dated: 5/30/2013 Amount: \$2.00 (Cash)	Mick Hodges
	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Rockstahl Law Receipt number: 1313919 Dated: 5/30/2013 Amount: \$2.00 (Cash)	Mick Hodges
6/7/2013	Motion for New Trial	Mick Hodges
	Motion for Mistrial	Mick Hodges
	Motion for Judgment of Acquittal	Mick Hodges
	Motion to Renew Motion to Dismiss on Self-Defense	Mick Hodges
	Memorandum in Support of Motion for Mistrial, Acquittal and New Trial	Mick Hodges
	Affidavit of Defendant in Support of Motions	Mick Hodges
6/10/2013	Affidavit of Susan Parnell	Mick Hodges
	Substitution of Attorney	Mick Hodges
6/11/2013	Hearing Scheduled (Motion 07/12/2013 09:00 AM) 1 hr - New Trial	Mick Hodges
	Hearing Scheduled (Sentencing 08/09/2013 09:00 AM) 1/2 day	Mick Hodges
	Notice Of Hearing: Motion For New Trial	Mick Hodges
	Notice Of Hearing: Motion To Renew Motion To Dismiss On Self-Defense; Motion For Judgment Of AcQuittal And Motion For Mistrial	Mick Hodges
6/12/2013	Order For Alcohol Evaluation and Notice of Hearing	Mick Hodges
7/2/2013	Notice Of Substitution Of Counsel	Mick Hodges
	Defendant: Rockstahl, Joseph R Appearance R. Keith Roark	Mick Hodges
7/9/2013	Hearing result for Motion scheduled on 07/12/2013 09:00 AM: Hearing Vacated 1 hr - New Trial	Mick Hodges
	Hearing Cancellation Notice	Mick Hodges
	Hearing Scheduled (Motion 07/30/2013 09:00 AM) 1 hr - New Trial	Mick Hodges
	Amended Notice Of Hearing	Mick Hodges
7/15/2013	CD Transcription	Mick Hodges
	CD Transcription	Mick Hodges
	CD Transcription	Mick Hodges
	CD Transcription	Mick Hodges

#### Fifth Judicial District Court - Twin Falls County

User: COOPE

**ROA Report** 

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Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

Date		Judge	
7/30/2013	Court Minutes Hearing type: Motion For New Trial Hearing date: 7/30/2013 Time: 9:00 am Courtroom: Court reporter: Minutes Clerk: Lorraine Robinson Tape Number: 3 Defense Attorney: R. Roark Prosecutor: Fritz Wonderlich	Mick Hodges	
	Hearing result for Motion scheduled on 07/30/2013 09:00 AM: Hearing Held 1 hr - New Trial	Mick Hodges	
	Order Denying Motions For Acquittal, Dismissal, Mistrial, And New Trial	Mick Hodges	
7/31/2013	Dui Evaluation	Mick Hodges	
0/0/0040	Document sealed	B42-1-11-4	
8/2/2013	Motion for Disqualification Pursuant to ICR 25(b)	Mick Hodges	
0.15.10.0.4.0	Affidavit of R. Keith Roark in Support of ICR 25(b) Motion	Mick Hodges	
8/5/2013	Notice Of Hearing	Mick Hodges	
8/6/2013	Letter From Mr. Rockstahl (16 letters of reference)	Mick Hodges	
8/7/2013	Letter From Mr. Rockstahl (2 letters of reference)	Mick Hodges	
8/8/2013	Letter From Mr. Rockstahl (1 letter of reference)	Mick Hodges	
8/9/2013	Court Minutes Hearing type: Motion to Disqualify Hearing date: 8/9/2013 Time: 9:00 am Courtroom: Court reporter: Minutes Clerk: Lorraine Robinson Tape Number: 1 Defense Attorney: R. Roark Prosecutor: Fritz Wonderlich	Mick Hodges	
	Hearing result for Sentencing scheduled on 08/09/2013 09:00 AM: Hearing Held 1/2 day ADD Motion To DQ	Mick Hodges	
	Sentenced To Incarceration (I18-3303 Weapon-Exhibition or Use of Deadly Weapon) Confinement terms: Jail: 180 days. Suspended jail: 174 days.	Mick Hodges	
	Probation Ordered (I18-3303 Weapon-Exhibition or Use of Deadly Weapon) Probation term: 0 years 24 months 0 days. (Supervised)	Mick Hodges	
	Sentenced To Incarceration (I18-6409 Disturbing the Peace) Confinement terms: Jail: 180 days. Suspended jail: 176 days.	Mick Hodges	
	Probation Ordered (I18-6409 Disturbing the Peace) Probation term: 0 years 24 months 0 days. (Supervised)	Mick Hodges	
	Misdemeanor Deferred Payment Agreement	Mick Hodges	
	NOTICE OF APPEAL	Mick Hodges	
	Motion to Stay Execution of Sentence Pending Appeal	Mick Hodges	6

Fifth Judicial District Court - Twin Falls County

User: COOPE

**ROA Report** 

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Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

Date		Judge
8/9/2013	Motion for Bond Pending Appeal	Mick Hodges
	Motion to Set Appeal Bond	Mick Hodges
	Appeal Filed In District Court	Mick Hodges
	Change Assigned Judge	John Butler
	Judgment	Keith M. Walker
3/12/2013	Change Assigned Judge	Jonathan Brody
	Ex-parte Motion To Set Appeal Bond	Jonathan Brody
	Order Setting Appeal Bond	Jonathan Brody
	Bond Posted - Cash (Receipt 1320418 Dated 8/12/2013 for 1000.00)	Jonathan Brody
	Procedural Order Governing Criminal Appeal From Magistrate Division To District Court	Jonathan Brody
/13/2013	Promise To Appear (Deft. appeared 8-14-13)	Jonathan Brody
9/9/2013	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: L.D Receipt number: 1322928 Dated: 9/9/2013 Amount: \$3.00 (Cash)	Jonathan Brody
/11/2013	Order Fixing Schedule for Submission of Briefs	Jonathan Brody
0/11/2013	Transcript Filed- Transcript on Appeal	Jonathan Brody
	Motion to Stay Briefing Schedule	Jonathan Brody
0/16/2013	Order Granting Motion to Stay Briefing Schedule	Jonathan Brody
2/9/2013	Hearing Scheduled (Status by Phone 12/30/2013 08:45 AM) The State to initiate the call to Court and Counsel at 436-9041	Jonathan Brody
	Notice Of Hearing	Jonathan Brody
2/30/2013	Hearing result for Status by Phone scheduled on 12/30/2013 08:45 AM: Hearing Held The State to initiate the call to Court and Counsel at 436-9041	Jonathan Brody
	Court Minutes	Jonathan Brody
2/31/2013	Hearing Scheduled (Status 01/13/2014 08:45 AM) IN MINIDOKA The State to initiate the call to Court and Counsel at 436-9041	Jonathan Brody
/13/2014	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Dehaan Law Receipt number: 1401060 Dated: 1/13/2014 Amount: \$2.00 (Check)	Jonathan Brody
/4/2014	Court Minutes(from Minidoka County hearing on 1-13-2014)	Jonathan Brody
	District Court Hearing Held on 2-4-14 Court Reporter: Maureen Newton Number of Transcript Pages for this hearing estimated:	Jonathan Brody
/6/2014	Hearing result for Status scheduled on 01/13/2014 08:45 AM: District Court Hearing Held Court Reporter: Maureen Newton Number of Transcript Pages for this hearing estimated: IN MINIDOKA The State to initiate the call to Court and Counsel at 436-9041	Jonathan Brody
/26/2014	Order Fixing Schedule for Submission of Briegs	Jonathan Brody

#### Fifth Judicial District Court - Twin Falls County

User: COOPE

ROA Report

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Case: CR-2012-0012841 Current Judge: Keith M. Walker

Defendant: Rockstahl, Joseph R

State of Idaho vs. Joseph R Rockstahl

Date		Judge
3/4/2014	Acknowledgment of Receiving "Copies" of the File Including, Exhibits, Jury Info and Transcripts	Jonathan Brody
4/4/2014	Appellant's Brief	Jonathan Brody
5/2/2014	Respondent's Brief	Jonathan Brody
5/21/2014	Appellant's Reply Brief	Jonathan Brody
6/23/2014	Hearing Scheduled (Oral Argument on Appeal 06/27/2014 10:00 AM)	Jonathan Brody
	Notice Of Hearing	Jonathan Brody
6/27/2014	Court Minutes Hearing type: Oral Arugment on Appeal Hearing date: 6/27/2014 Time: 10:09 am Courtroom: Court reporter: Sabrina Torres Minutes Clerk: Teresa Yocham Tape Number: Defense Attorney: R. Roark Prosecutor: Fritz Wonderlich Hearing result for Oral Argument on Appeal scheduled on 06/27/2014	Jonathan Brody  Jonathan Brody
	10:00 AM: District Court Hearing Held Court Reporter: Sabrina Vasquez Number of Transcript Pages for this hearing estimated:	
	Case Taken Under Advisement	Jonathan Brody
7/31/2014	Memorandum Decision on Appeal From Magistrates Division	Jonathan Brody
8/4/2014	Memorandum Decision on Appeal from Magistrates Division	Jonathan Brody
8/7/2014	Order of Disqualification	Mick Hodges
8/8/2014	Order Of Assignment	Keith M. Walker
8/27/2014	Remittitur	Jonathan Brody
	Remanded	Jonathan Brody
	Change Assigned Judge	Keith M. Walker
9/10/2014	NOTICE OF APPEAL	Keith M. Walker
	Appealed To The Supreme Court	Keith M. Walker
9/16/2014	Clerk's Certificate Of Appeal	Keith M. Walker
9/26/2014	Supreme Court Filed Notice of Appeal. Clerk's Record Due 11-24-14	Keith M. Walker





DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2012 NOV 23 AM 10: 18

BY

P.O. Box 1812 Twin Falls, ID 83303-1812 (208)352-0811 ISB#2591

FRITZ WONDERLICH

15D#2591 Prosecution File: 33083

> IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE DEPU STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

C	0	T 1	1
State of	ot.	Ida	no

Case No. (R-12-1284)

Plaintiff,

CRIMINAL COMPLAINT

vs.
Joseph Rockstahl

Defendant.

DOB:

SS# or OLN#:

2214 Nisqually

Twin Falls Idaho

The above named Defendant did commit the offenses as more fully set forth herein, to-wit:

#### Count 1.

That the above-named Defendant, on or about July 2, 2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Exhibition of Deadly Weapon, and while in the presence of two (2) or more persons, did exhibit a deadly weapon in a rude, angry or threatening manner, not in necessary self-defense, in violation of Idaho Code 18-3303.

#### Count 2

That the above-named Defendant, on or about July 2, 2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Aiming Firearm at others, and intentionally point or aim a firearm at or toward another, in violation of IC 18-3304.

#### Count 3.

That the above-named Defendant, on or about July 2, 2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Disorderly Conduct, and did maliciously and wilfully disturb the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, in violation of Idaho Code 18-6409.

Attorney for the State of Idaho

Dated, this 23day of Norms

. 201

Judge

### ORIGINAL

Prosecuting Attorney for Twin Falls County P.O. Box 126 Twin Falls, Idaho 83303 208-736-4020 DISTRICT COURT TWIN FALLS CO. IDAHO FILED 1203343 2012 NOV 23 AM 10: 18

BY\_

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

#### MAGISTRATE DIVISION

STATE OF IDAHO,	)	
Plaintiff,	)	
VS.	)	AFFIDAVIT IN SUPPORT OF COMPLAINT AND WARRANT
vs.	ý	OF ARREST
Rockstahl, Joseph R DOB:	)	
SSN:	)	
Defendant.	)	
	)	
	)	
STATE OF IDAHO,	)	
County of Twin Falls	) ss. )	

I, Justin David Cyr , being first duly sworn, state that I am an officer with the Twin Falls Police Department and that my answers to the questions asked by the Court with reference to said Complaint are as follows:

1. Please set forth the information which gives you reason to believe the above-named defendant committed the crime(s) alleged in the Complaint.

ANSWER: On July 2<sup>nd</sup>, 2012 at approximately 2205 hours, I was dispatched to 2794 Nisqually Street, located in the City and County of Twin Falls, State of Idaho, to a man with a gun call.

I arrived on scene to find the residence was actually 2214 Nisqually Street home to the suspect verbally identified as Joseph Rockstahl and his wife Patty Rockstahl. Mr. and Mrs. Rockstahl claim they were at home having a couple of drinks outside and were upset about the noise coming from the construction site down the road approximately two houses to the South of their residence. At about 2100 hours, Mrs. Rockstahl had walked two houses down to complain to the construction workers about it being too late for them to be working. Mrs. Rockstahl made contact with Steven Nielsen, Jeremy Merchant, and Randy Carpenter the three men working at the job site. Mrs. Rochstahl began to tell the workers it was very late. Nielsen, Merchant, and Carpenter told Mrs. Rochstahl they would be finishing up shortly and Mrs. Rochstahl returned to her home.

At about 2200 hours Mrs. Rockstahl left her residence for a second time due to the construction still going on at the job site and she was upset they were still not finished with work.

Nielsen, Merchant, and Carpenter claimed Mrs. Rockstahl was

yelling and screaming at them to stop work for the night. Mrs. Rochstahl said one of the workers had told her he was a "four time felon and knew his rights" and he was mad at her because they lived in a "rich neighborhood". Mrs. Rockstahl voluntarily walked back to the construction site and was free to leave any time. At no time did she claim she was not able to leave or was held against her will.

Mr. Rockstahl claims he was in his back yard and heard yelling from the construction site. He went into his house and grabbed his black 9mm pistol and tucked it under his left armpit and made his way to the construction site. He made contact with the three men working and claims they were yelling at his wife and that one man had actually pushed her. When asked if Mrs. Rockstahl could identify the person who pushed her she could not. Rockstahl said he then brandished the pistol from his armpit and pointed it at the ground telling the three men, "Let's get this

gun fight started." Mr. Rockstahl claims he was chest bumped by one of the individuals in a yellow shirt identified as Randy Carpenter Mr. Rockstahl said he tried to grab Carpenter by the throat. Mr. Rockstahl said he attempted to chamber a round in the gun, but was unable to due to recent surgery on his wrist.

Nielsen, Merchant, and Carpenter claim Mr. Rockstahl attempted to point the weapon in their direction which caused them to try and take the weapon away from him. Randy Carpenter called 911 and the parties separated on their own. The Rockstahls went back to 2214 Nisqually until police arrived. Nielsen, Merchant, and Carpenter stayed on scene at the construction site.

The neighbor at the residence of 2204 Nisqually Street in between Mr. Rockstahls residence and the construction site, identified as Eric Schindler, said he was at his car when the dispute happened. Schindler was unable to hear or see anything about the altercation. Schindler stated he saw a man and his wife walking to the house down the street from him complaining about the altercation. Schindler said he saw the firearm that Mr. Rockstahl had. Schindler said he does not like guns so he got in his car and left his house to avoid being involved any further. Schindler claims he did not think the construction workers were being too noisy. Schindler also admits he was making lots of noise in his backyard and was surprised the Rockstahls went over to the site and not his house first since it was closer.

Nielsen, Merchant, and Carpenter all had very similar stories and work for two different construction companies. Merchant and Carpenter work for a framing company while Nielsen was a roof contractor and they have never met each other until that afternoon.

2. List the name(s) of the individuals that the information was obtained from:

ANSWER: Joe Rockstahl, Patty Rockstahl, Steven R. Nielsen, Jeremy A. Merchant, Randy G. Carpenter, Eric L. Schindler.

Please set forth, for each of the individuals listed in 3. response to Questions 2 the reason(s) why you believe the information from these individuals, respectively, is credible and why you believe there is a factual basis for the information furnished.

ANSWER: I have no reason not to believe them.

Do you believe a warrant should be issued?

ANSWER: No.

Set out any information you have, and its source, as to why a warrant instead of a summons should be issued?

ANSWER: None.

See attached Warrant Information Page.

DATED this 8th day of November, 2012.

Subscribed to and sworn before me this 8th day of November, 2012.

NOTARY PUBLIC Residing at: Twn Falls, Idahs My commission expires: //-29-20/2

**RYAN HOWE NOTARY PUBLIC** STATE OF IDAHO

#### WARRANT INFORMATION

DEFENDANT(S) Joseph Raymond Rockstahl

Factors to be considered in setting bond on Warrant.

1. The residence of the Defendant.

2214 Nisqually St., Twin Falls, ID.

2. The employment of the Defendant.

Rockstahl Law Offices.

3. The family relationship of the Defendant in the Community.

He lives with his wife at the address above.

4. The past history of response of the Defendant to legal process.

N/A

5. The past criminal record of the Defendant.

No criminal record.

6. The nature of the offense charged.

Aggravated Assault 18-904.

7. Whether there is reasonable cause to believe that the Defendant will flee prosecution or will fail to respond to a Summons.

Joe has employment and family ties to the community.

8. Any other information justifying a Warrant.

None.

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	) CASE NO: CR-2012-0012841
Plaintiff, vs.	MISDEMEANOR SUMMONS
JOSEPH R ROCKSTAHL 2214 NISQUALLY TWIN FALLS, ID 83301 Defendant.	) ) ) )
THE STATE OF IDAHO TO THE ABOVE NAMED D	EFENDANT:
You are hereby summoned to appear before	ore the Magistrate Division of the
District Court of Twin Falls County, Idaho, on De	ecember 14, 2012, at 1:30 p.m., to
answer to the charges against you.	
	SyDeputy Clerk
I HEREBY acknowledge service of the above Sursaid Court on the date and time written to answer to the failure to appear as promised may result in the issuance of	e charge indicated above and I understand that
j	Defendant
, and instructing him/he	mplaint on the above named Defendant,
	SHERIFF



DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2012 NOV 26 PM 3: 10

CLERK

\_\_\_DEPUTY

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, Chtd. 440 Fairfield St. North Twin Falls, Idaho 83301 Telephone: (208) 734-8810 Facsimile: (208) 734-8820

ISBN 6576

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, Plaintiff,	)	CASE NO: CR-2012-12841
vs.	)	NOTICE OF APPEARANCE
JOSEPH R. ROCKSTAHL, Defendant.	)	

TO: THE CLERK OF THE COURT, TWIN FALLS COUNTY, and TWIN FALLS CITY PROSECUTING ATTORNEY, FRITZ WONDERLICH:

You are hereby notified that JOSEPH R. ROCKSTAHL, the defendant in the above-entitled action, has retained JOE ROCKSTAHL, of ROCKSTAHL LAW OFFICE, Chtd., to represent him in said cause, and that I hereby appear for said JOSEPH R. ROCKSTAHL. You are further notified that all papers in said action are to be served on me at 440 Fairfield St. North, Twin Falls, Idaho, 83301.

Further, Defendant enters a "NOT GUILTY" plea and requests a jury trial in this matter.

DATED This

1

day of November, 2012

Attorney for Defendant

Joe Rockstahl

Notice of Appearance, Entry of Not Guilty, Request for Jury Trial

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on day of November, 2012, I served a true and correct copy of the within foregoing document upon the attorney named below in the manner noted:

Fritz Wonderlich

Twin Falls City Prosecuting Attorney

PO Box 1812

Twin Falls, ID 83301

Facsimile

Fax: 888-789-0935

Court Box

U.S. Mail

Facsimile

Hand Deliver

Joe Rockstahl or Legal Assistant

Notice of Appearance, Entry of Not Guilty, Request for Jury Trial

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE Chtd. 440 Fairfield Street North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*

STATE OF IDAHO,	) CASE NO.; CR 2012-12841	
Plaintiff,	)	
	) DEFENDANT'S	
vs.	) REQUEST FOR DISCOVERY	Y
JOSEPH R. ROCKSTAHL,	)	
Defendant	)	
	)	9

#### TO: ABOVE NAMED PLAINTIFF AND ITS COUNSEL OF RECORD

PLEASE TAKE NOTICE, that Defendant, by and through his counsel and pursuant to Rule 16, Idaho Criminal Rules, hereby requests discovery, inspection and copies of the following information, evidence and materials, to wit:

- STATEMENT OF DEFENDANT: any relevant written or recorded statements made by Defendant within the possession, custody or control of Plaintiff, the existence of which is known or is available to the Prosecuting Attorney by the exercise of due diligence; and also the substance of any relevant oral statement made by Defendant to any peace officer, Prosecuting Attorney or agents thereto (whether before or after arrest), and any recorded testimony of defendant before a grand jury which relates to the offense charged.
- DEFENDANT'S PRIOR RECORD: Defendant's prior criminal record, if any, as is now or may become available to the Prosecuting Attorney.
- DOCUMENTS AND TANGIBLE OBJECTS: books, papers, documents, photographs, recorded video, CD's or audio recordings or other tangible objects, buildings or places.

DEFENDANT'S REQUEST FOR DISCOVERY

or copies or portions thereof, which are in the possession, custody or control of the Prosecuting Attorney and which are material to the preparation of the defense, intended for use by the Prosecutor as evidence at trial or obtained from or belonging to Defendant. More specifically: copy of the recording of the 911 call related to the alleged incident; copies of the audio recordings of the responding officers and any other audio, video or telephonic recordings related to the alleged incident at issue in this matter.

- 4. REPORTS OF EXAMINATION AND TESTS: results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case within the possession, custody or control of the Prosecuting Attorney, the existence of which is known or available to the Prosecuting Attorney by the exercise of due diligence.
- 5. STATE WITNESSES: a list of the names and addresses of all persons having knowledge of relevant facts who may be called by Plaintiff as witnesses at the trial, together with any record of prior felony convictions of any such person, within the knowledge of the Prosecuting Attorney, together with all statements made by the prosecution witnesses or prospective prosecution witnesses to the Prosecuting Attorney, his agents or to any official involved in the investigatory process of the case unless a protective order is issued as provided in Rule 16(k), Idaho Rules of Criminal Procedure.
- 6. POLICE REPORTS: reports and memoranda in the Prosecuting Attorney's possession which were made by a police officer or investigator in connection with the investigation or prosecution of the case.

DATED this 26 day of November, 2012.

Jee Rockstahl

Attorney for Defendant

#### **CERTIFICATE OF MAILING**

I hereby certify that on the 2½ h day of November, 2012, I served a true and correct copy of the within and foregoing DEFENDANT'S REQUEST FOR DISCOVERY upon Plaintiff by delivering a copy thereof by the method indicated below and addresses to the following:

Plaintiff:

Fritz Wonderlich Twin Falls City Prosecuting Attorney PO Box 1812 Twin Falls, ID 83301

Fax: 888-789-0935

\_ Court Box U.S. Mail

\_\_\_ Facsimile

Joe Rockstahl or Legal Assistant

Hand Deliver

### SHERIFF OF TWIN FALLS COUNTY

RETURN OF SERVICE

SHERIFF# 20125184 COURD CASE#SCR12142841

			1 1.55	TARE .
County of Twin Falls	)	ss.	CRIMINAL 25000000	PM 3: 02
STATE OF IDAHO	)		201211	
			RY	
			01	CLERK
IDAHO, STATE OF			80	
PLAINTI	FF		-12	OEPUTY
ROCKSTAHL, JOSEPH				
DEFENDA	NT			

I, SHERIFF TOM CARTER, Sheriff of the County of Twin Falls, State of Idaho, hereby certify that I received the attached CRIMINAL SUMMONS on the 23 day of November, 2012, and I further certify that in accordance with I.R.C.P. 4 and 5, I served a copy of the CRIMINAL SUMMONS, on JOE ROCKSTAHL, he/she being the DEFENDANT named in said document(s) on Monday, the 26 day of November, 2012, at 12:18 p.m. at the following address: 440 FAIRFIELD ST. NORTH, TWIN FALLS, ID 83301; by delivering a copy of the above named document to him/her personally; to which was attached: ORIG CRIMINAL SUMMONS/CRIMINAL COMPLAINT

DATED this 26 day of November, 2012

KEN

SHERIFF TOW CARTER
Sheriff of Twin Falls County

Deputy

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2012 NOV 26 PM 3: 02

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT	1
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS	S

CLERK

OF THE STATE OF IDAHO, IN AND FOR THE	COONTI OF TWINT ALLO
	COUNTY OF ERLEF DEPUTY
STATE OF IDAHO,	) CASE NO: CR-2012-0012841
Plaintiff, vs.	) MISDEMEANOR SUMMONS
JOSEPH R ROCKSTAHL  2214 NISQUALLY  TWIN FALLS, ID 83301  Defendant.	) ) ) ) ) ) )
THE STATE OF IDAHO TO THE ABOVE NAMED DEFEN	NDANT:
You are hereby summoned to appear before the	he Magistrate Division of the
District Court of Twin Falls County, Idaho, on Decem	ber 14, 2012, at 1:30 p.m., to
answer to the charges against you.	
KRIS	Deputy Clerk
I HEREBY acknowledge service of the above Summon said Court on the date and time written to answer to the char failure to appear as promised may result in the issuance of a W.	ge indicated above and I understand that arrant for my arrest.
STATE OF IDAHO, COUNTY OF Jun Folls, ss.  I hereby certify that I received the within Summons on 2012 and served the said Summons and Complain and instructing him/her to 2012, at the hour of	nt on the above named Defendant, appear on the
SHER By	IFF



#### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

STATE OF IDAHO,	)
Plaintiff,	) Case No. CR-2012-0012841
vs.	ORDER OF DISQUALIFICATION
JOSEPH R ROCKSTAHL,	ý
Defendant.	)

Pursuant to ICR 25 (d) this Court disqualifies itself in the above entitled matter and requests the Trial Court Administrator to appoint another judge to sit in the above entitled matter.

Dated this 28th of November, 2012.

Calvin H. Campbell

Judge, Fifth Judicial District

Magistrate Division

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 28 day of 2012, I caused a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Fritz Wonderlich

(X) Courthouse Box

Joseph Rockstahl

(X) Courthouse Box

Deputy Clerk

Bv	MUÅ	28	2012	2:19 p. r	n
3		Clerk			
		- //	D	eputy Clerk	

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Plaintiff,	) ) ) Case No. CR-2012-12841
	Ś
JOSEPH R. ROCKSTAHL,	ORDER OF ASSIGNMENT )
Defendant.	)
	)

IT IS HEREBY ORDERED the above-entitled case be assigned to the Honorable Mick Hodges, Magistrate Judge, for all further proceedings.

DATED this 28<sup>th</sup> day of November, 2012.

Trial Court Administrator

Fifth Judicial District

C:

#### CERTIFICATE OF SERVICE

I, Lorraine Robinson, hereby certify that on the 28<sup>th</sup> day of November, 2012, I caused a true and correct copy of the foregoing **Order of Assignment** to be served upon the following persons in the following manner:

Fritz Wonderlich

[ XX ] Court Folder

Joseph Rockstahl

[XX] Court Folder

26



FRITZ WONDERLICH P.O. Box 1812 Twin Falls, ID 83303-1812 (208)352-0811 ISB#2591



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FA MAGISTRATE DIVISION

State of Idaho.

Case No. CR-2012-12841

Plaintiff.

VS.

Joseph Rockstahl

Defendant.

REQUEST FOR DISCOVERY, RESPONSE TO REQUEST FOR DISCOVERY, RESPONSE TO DEMAND FOR SWORN COMPLAINT

TO THE DEFENDANT: PLEASE TAKE NOTICE, That the undersigned, pursuant to I.C.R. 16, requests discovery and inspection of the documents, materials and information set forth in I.C.R. 16(c)(1) - (4), and Notice of Alibi, pursuant to Idaho Code 19-519, to be delivered to counsel for the Plaintiff within fourteen (14) days of this request. For purposes of alibi, the exact location of the subject offense or offenses is described in the documents provided.

Plaintiff has complied with the Defendant's Request for Discovery by providing copies of any statements, documents, reports of examinations and tests, summaries, and all relevant reports. Witnesses are named in the reports and documents. Photographs, tapes and tangible objects may be inspected.

Plaintiff objects to any part of the Request for Discovery or any Supplemental Discovery Request seeking information or documents not specifically described in I.C.R 16(b)(1)-(8). This is an ongoing objection to any supplemental requests. The basis for this objection is that the discovery requested may be obtained only by order of the Court pursuant to I.C.R 16(b)(9), or is not subject to disclosure pursuant to I.C.R 16(f).

If a sworn complaint has been demanded and the matter goes to trial, a sworn complaint will be filed pursuant to M.C.R. 3(d).

Dated, November 29, 2012

# Fritz Wonderlich Attorney for State

#### CERTIFICATE OF DELIVERY

I hereby certify by signing above that a true and correct copy of the foregoing was served on the date set forth above.

Greg Fuller P.O.Box L Twin Falls, Idaho 83303 JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576

2087341606 DISTRICT COURT TWIN FALLS CO. IDAHO

2012 NOV 30 AM 11: 37

CLERK

DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	) CASE NO: CR-2012-12841
Plaintiff,	)
	) NOTICE OF SUBSTITUTION
vs.	) OF COUNSEL
	)
JOSEPH R. ROCKSTAHL,	)
	)
Defendant.	)

#### TO: THE CLERK OF THE COURT OF THE ABOVE-ENTITLED COURT:

YOU ARE HEREBY NOTIFIED that the above-named defendant in the aboveentitled action has substituted Daniel S. Brown, of Fuller Law Offices, Twin Falls, Idaho as attorney of record in the above-entitled action and in the place and stead of attorney Joe Rockstahl.

DATED this 28 day of November 2012

Daniel S. Brown

Attorney at Law

APPROVED:

Joe Rockstahl

Attorney at Law

Substitution of Counsel -



#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on 30 day of November 2012, I served a true and correct copy of the within foregoing document upon the attorney named below in the manner noted:

Plaintiff:

Fritz Wonderlich

Twin Falls City Prosecuting Attorney

PO Box 1812

Twin Falls, ID 83301

Fax: 888-789-0935

**Court Box** 

U.S. Mail

Facsimile

Hand Deliver

Daniel S. Brown or

Legal Assistant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE TRICT COURT FILED IN AND FOR THE COUNTY OF TWIN FALLS CO. IDAHO 427 Shoshone Street North

	I WIN Falls	, Idano 83303-1	0126	2012 NOV 30 PM 3: 0
STATE OF IDAH P vs.	IO, laintiff.	)	CASE NO:	CR-2012-0012841
Joseph R Rocks 2214 Nisqually Twin Falls, ID 8		) ) )	NOTICE O	F HEARING
DOB: DL:		) ) )		
NOTICE IS HER	EBY GIVEN that the above	e-entitled case is	hereby set for:	
Judge:	Conference (by phone) Honorable Mick Hodo	ges	uary 10, 2013 04	:30 PM
*	**The Court will initiate t	he call to the pa	irties.	
I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Friday, November 30, 2012.				
intends to utilize multiple defended determination under following judge Borresen, Cam	es: Notice is hereby giver te the provisions of I.C.R. lants, any disqualification under I.C.R. 25(a)(3). The es who have otherwise no pbell, Cannon, Duff, Harri son, and Walker.	25 (a)(6). Notice to pursuant to I.Co panel of alterna to been disquali	ce is also given C.R. 25(a)(1) is s te judges consi fied in this actio	that if there are subject to a prior sts of the on: Judges Bollar,
Private Counsel: Daniel Brown PO Box L Twin Falls ID 8		Mailed	Court box_X_	_
Prosecutor:	Fritz A. Wonderlich	Mailed	Court box_X_	_
			November 30, 20 ockClerk of the Clerk	

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorneys at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

	* * * * *	
THE STATE OF IDAHO,	)	Case No. CR-2012-12841
Plaintiff,	)	
	)	NOTICE OF SERVICE
VS.	)	
JOSEPH ROCKSTAHL,	)	
	)	
Defendant.	)	
	****	

TO: The Clerk of the above-entitled Court and to Fritz Wonderlich, Twin Falls City Prosecuting Attorney:

NOTICE IS HEREBY Given that the Supplemental Request for Discovery was served upon the Plaintiff on the 6<sup>th</sup> day of December, 2012, by mailing a true and correct copy thereof to Fritz Wonderlich, Twin Falls City Prosecuting Attorney, P.O. Box 1812, Twin Falls, ID 83303.

DATED this day of December, 2012.

**FULLER LAW OFFICES** 

GREGI. FULLER

Attorney for Defendant

#### CERTIFICATE OF MAILING AND FACSIMILE

I, the undersigned, do hereby certify that on the day of December, 2012, a true and correct copy of the foregoing document was mailed, United States Mail, postage prepaid, and transmitted, via facsimile, to:

J. Carly-Meyer

Fritz Wonderlich Twin Falls City Prosecuting Attorney P.O. Box 1812

Twin Falls, ID 83303

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorneys at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83303 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB # 1442 ISB #7538

Attorneys for Defendant



# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*\*

STATE OF IDAHO,

Plaintiff,

vs.

JOSEPH ROCKSTAHL,

Defendant.

)

Case No. CR-2012-12841

SUPPLEMENTAL REQUEST

FOR DISCOVERY

)

Defendant.

TO: The State of Idaho and to Fritz Wonderlich, Twin Falls City Prosecuting Attorney:

Please take notice that the undersigned, pursuant to Rule 16 of the Idaho Rules, requests supplemental discovery and inspection (including copying and photographing)

of the following information, evidence and materials. Further, this shall be a continuous request, pursuant to Idaho Criminal Rule 16(i).

- (1) Criminal Records of all witnesses.
- (2) Copy of the 911 call.

Request is made to receive, inspect, copy, and obtain the above information, evidence, materials and witnesses' names and addresses within fifteen days from the date hereof, at the office of the prosecutor, or in lieu thereof, mail same to Fuller Law Offices, Attorneys at Law, P. O. Box L, Twin Falls, Idaho 83303.

DATED This day of December, 2012.

**FULLER LAW OFFICES** 

CRECTETIES

Attorneys for Defendant

CASE # CR - 12 - 12841	TWIN FALLS CO. IDAHO
DATE 1-10-13	FILED
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STATE	7 Konkistahl
PLAINTIFF -VS-	PLAINTIFF'S ATTORNEY
Goseph Rockstade	O. Brown
DEFENDANT	DEFENDANT'S ATTORNEY
Proceedings: ( )Motion ( ) Trial ( ) Sent	
Public Defender Appointed ()Yes ()No	
Rights Charges & Penalties	( )Not Guilty ( )Guilty
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Heren b.

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

TWIN FALLS CO., IDAHO

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BY CLERK

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\* \* \* \* \*

THE STATE OF IDAHO,	)	
	)	Case No. CR-2012-00012841
Plaintiff,	)	
	)	
VS.	)	
	)	MOTION TO DISMISS
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	)	
	ale ale ale ale ale	

COMES NOW Defendant, Joseph R. Rockstahl, by and through his attorneys of record, Fuller Law Offices, and hereby moves this Court for an Order of Dismissal of all charges presently pending in the above-entitled matter. Said Motion is based upon Idaho Code Section 19-202A and Rule 6.2(a) of the Idaho Criminal Rules, other statutes and rules referenced herein, and upon the fact that the actions of the Defendant in this matter were justified and amounted to the defense of himself and his wife against viable threats of bodily harm from the so-called and alleged victims in this matter. Defendant hereby requests a hearing in this matter and the right to present testimony and oral argument.

This Motion is made and based upon the papers and pleadings on file herein, as well as the Memorandum in Support of Motion to Dismiss filed contemporaneously herewith.

DATED This 2 day of January, 2013.

#### **FULLER LAW OFFICES**

GREG F. FULLER
Attorney for Defendant

Lancifor Marxix

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the day of January, 2013, a true and correct copy of the foregoing Appearance was mailed, United States Mail, postage prepaid, to the following:

Fritz Wonerlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812 History.

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MAGISTRATE DIVISION

\* \* \* \* \*

THE STATE OF IDAHO,

Plaintiff,

vs.

Defendant.

)

Case No. CR-2012-00012841

MEMORANDUM IN

SUPPORT OF

MOTION TO DISMISS

)

Defendant.

COMES NOW Defendant, Joseph R. Rockstahl, by and through his attorneys of record, Fuller Law Offices, and hereby submits the following Memorandum in Support of Defendant's Motion to Dismiss as follows:

The rights of an individual to resist the commission of a public offense, and, in particular, to use resistance sufficient to prevent an offense against his person are settled MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 1

by basically permanent fixtures of the law of the State of Idaho. These rights are codified in a series of statutes in Tile 19, Chapter 2.

The first of these, Idaho Code Section 19-201, is noteworthy not only for its content, but also for the fact that its very title, i.e., "Lawful resistance" gives meaning and context to the workings of this defense. While indeed it may be tautological, it is nonetheless important to observe that what the legislature has expressly defined as "lawful", cannot be the basis on which criminal liability can be premised. Otherwise stated, if an individual's resistance is lawful, it is not criminal. That enactment has, with the exception of the short lived "Model Penal Code" era, survived intact from the original 1864 statutes of the Idaho territory. It reads, in pertinent part: "Lawful resistance to the commission of a public offense may be made: 1. By the party about to be injured."

This expression of one of the core and abiding principles of the criminal law is further elaborated on in the following section, entitled "Resistance by threatened party.", which bestows on a party about to be injured the right to make "Resistance sufficient to prevent the offense...." This section, too, is a verbatim 1972 reinactment of the original territorial law.

It is clear that these two statutes taken together establish a defense, generally referred to as "self defense", which may properly be presented to a jury.

Guidance as to how the jury in the course of a criminal trial must evaluate a claim of self defense is entrusted to a series of jury instructions, the first of which, ICJI 1517, is definitional. A copy of this instruction is attached as Exhibit "A" to this Memorandum.

ICJI 1517 observes in pertinent part that "The burden is on the prosecution to prove beyond a reasonable doubt that the battery was not justifiable. If there is a

reasonable doubt whether the battery was justifiable, you must find the defendant not guilty."

ICJI 1519 speaks more closely to the issue of "justification" and the actual implementation of the right of lawful resistance. It states:

In the exercise of the right to self-defense, one need not retreat. One may stand one's ground and defend oneself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and a person may pursue the attacker until the person has been secured from danger if that course likewise appears reasonably necessary. This law applies even though the person being attacked might more easily have gained safety by flight or by withdrawing from the scene.

The Idaho Appellate Courts have never shied away from giving real meaning to this enshrined right. As early as 1937, in *State v. Woodward*, 58 Idaho 385, our Supreme Court confronted the scope of the right to self defense. After he was convicted of assault with a deadly weapon, Woodward appealed and challenged certain instructions given to the jury. The Court, in reversing Woodward's conviction set out broad parameters for the doctrine of self-defense that remain largely unchanged to this date:

It is true as stated in this instruction that one, assailed or threatened with imminent danger to life or of great bodily injury, has the right to defend himself, and if the danger or peril is of such apparent imminence, may use a deadly weapon in his defense; but this does not include the entire scope of the right of self-defense. The right of self-defense arises the moment an attack is made, even though the party assailed may not have reason to believe that his assailant intends to inflict upon him "great bodily injury." It may be, as it perhaps was here, that the assailant intends to chastise or whip his victim without any real or apparent intention of inflicting serious bodily injury, but the moment he makes the attack, or it becomes reasonably apparent that he intends to execute such purpose and has the present ability to do so, the right of defense arises and clothes the intended victim with legal authority to resist, and, if possible, prevent the execution of such unlawful purpose. No man has a right to lay hostile, threatening hands on another, except when he is armed with legal authority to do so;

and the man who does so acts at the risk of being met with sufficient superior force and violence to overcome such assault.

This fundamental right to defend oneself from any kind of attack is recognized by a written law of this state. Sec. 19-201, I.C.A., reads:

Lawful resistance to the commission of a public offense may be made:

- 1. By the party about to be injured.
- 2. By other parties.

While Sec. 19-202 provides that:

Resistance sufficient to prevent the offense may be made by the party about to be injured:

- 1. To prevent an offense against his person, or his family, or some member thereof; or
- 2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

The law does not require anyone to submit meekly to indignities or violence to his person, – he may lawfully repel them or it with as much of such character of necessary resistance as is at the time available to him. This same principle was stated in *State v*.

McGreevey, 17 Idaho 453, at 467, 105 P. 1047, and it is as sound now as it was then.

In the case at bar, there is absolutely no dispute that Defendant, who, at all times material to the charges, believed that his wife's life and his were imperilled by a dangerous and violent man who had just laid hands on his wife and continued to yell threats of: "I am a four time felon, I know where you live, I am going to get you!". This belief was based upon a very specific act and threats Defendant witnessed and which were ongoing. Additionally, the evidence is clear and undisputed that, at the very MEMORANDUM IN SUPPORT OF MOTION TO DISMISS - 4

moment that Defendant acted in what he reasonably believed was the defense of his wife and his life, one or more of the assailants was on the phone with a 911 dispatcher. There neither is, nor can there be evidence which would dispute or tend to dispute these key allegations, which, standing alone, should be sufficient as a matter of law to establish that what Defendant was doing was nothing more than *lawfully* resisting what he perceived to be an attack on his wife and himself.

If the only statutes which were possibly germane to the establishment of the defense of lawful resistance were Idaho Code Sections 19-201 and 19-202, Defendant would accept that the proper method of presenting this defense would be via argument to a properly instructed jury (or, in the alternative, making a motion pursuant to IC.R. 29 at the close of the evidence). However, the very fact that there is a jury panel, which has been impaneled and heard evidence, means that the Defendant has already been placed in jeopardy of conviction, for as the Idaho Supreme Court has observed "Jeopardy attaches when a jury is sworn." (Citations omitted) *State v. Sharp*, 104 Idaho 691, 693 (1983); See also *State v. Nab*, 113 Idaho 168, 170 (Ct. App. 1987).

The fact that the Defendant would by definition necessarily already be in jeopardy when making the self-defense argument to the jury (or, for that matter, presenting evidence on his behalf that he acted in self defense, a condition precedent to obtaining a self defense instruction and being able to argue self-defense to a jury) would not pose a problem, were there not another factor comprising the doctrine of lawful resistance, namely 19-202A, which creates an entirely different right, and compels an entirely different procedure.

Despite the fact that the right of lawful resistance, as codified in I.C. Section 19-

201 and 19-202, had formed a cornerstone of Idaho law since territorial days, and despite the fact that the Idaho Supreme Court, in *Woodward*, *supra*, and its abundant progeny, had given real meaning to the right of lawful resistance, the legislature nonetheless concluded in 1974 that something additional needed to be added to further buttress the citizen's right to protect himself and his family against certain especially grave and "heinous" crimes. To that end, that year's legislature enacted a new section, namely Idaho Code 19-202A, a somewhat unusual, if not unique law which reads, in pertinent part:

No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting himself or his family by reasonable means necessary....

In order to fully appreciate the significance of this new law, it is important to consider first certain generally applicable principles of statutory construction:

- 1. When they passed this measure into law, the legislature was presumed to be aware of the hitherto existing law of lawful resistance, and how it had been interpreted by the Idaho Appellate Courts.
- 2. When they passed this measure into law, the legislature was presumed to be aware of the construction the Idaho Appellate Courts had given to the concept of *when* jeopardy attached.
- 3. As a corollary to the preceding notion, the legislature was presumed to be aware that any time a criminal defendant or his/her counsel was arguing to a jury that his/her client had acted in self-defense (i.e. that the client's actions constituted lawful resistance) that that client was already "in jeopardy".

- 4. When they passed this measure into law, the legislature cannot be presumed to have been wasting their time, engaging in idle games, or creating laws which are mere surplusage and add nothing. Rather, it must be presumed that they intended this new enactment, as all others they pass, to add something to, or change existing law. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. It is incumbent upon a court to give a statute an interpretation which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001).
- 5. Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67.

Next, it is important to examine the wording chosen by the legislature, and consider it in the context of the above-cited basic principles of statutory construction.

The first thing that impacts the viewer is the use of language of uncommon strength and certainty. By opting for the unambiguous phrasing (not in the language of 1864, much of which is now considered archaic or "quaint" but, in the much more modern tongue of

1974), "No person in this state shall be placed in legal jeopardy of any kind whatsoever...", the legislature was clearly not reiterating an existing right of land-standing, but was instead seeking to impose a categorical and absolute limitation on the ability of the courts to try certain persons. It is for this reason that Judge Schwartzman referred to this statute as "the self-defense and defense of others **immunity** statute" *State of Idaho v. McNeil*, 141 Idaho 383, 385; 109 P.3d 1125, 1127 (Ct. App. 1999) [emphasis added]. This characterization is especially apt, given that the inescapable meaning of its plain wording is that this law affords a person who has employed reasonable means to protect himself or his family, immunity from being placed in "legal jeopardy of any kind whatsoever."

The question then becomes, what procedures does a court utilize in order to give meaning to this strongly-worded statute. The best answer may well be that this enactment appears to create a sort of "gatekeeper" function for judges: When a particular Defendant is able to show, by some combination of Affidavits, testimony and/or evidence that he or she undertook the acts or actions comprising the *actus reus* of the charged offence in order to protect himself or herself or his or her family, and that such actions appeared reasonable under the facts then known, the Court must, in exercise of this function, dismiss the action prior to the time that the Defendant is placed in legal jeopardy. Should the Court fail to exercise this function after Defendant has made a sufficient preliminary showing, then Idaho Code Section 19-202A is rendered worthless.

Certainly the records in this case, i.e, the probable cause statement and statements of witnesses, make a sufficient threshold showing that the Defendant should be entitled to

the protections of the legislature's immunity statute. He should not be required to hazard his fate in a jury trial before the Court first granting him a full hearing on his Motion to Dismiss and, if it finds that Idaho Code Section 19-202A applies, it should dismiss this case without the Defendant being placed in jeopardy in contravention of that clearly-worded law.

The circumstances of the case at bar present especially compelling circumstances suggesting that the Court should exercise the gatekeeper functions contemplated by Idaho Code Section 19-202A in this instance.

This Court should be guided by the following comments of the Court of Appeals in *Arrasmith*.

We examine Arrasmith's contentions in light of well-established rules of statutory construction. The plain, obvious and rational meaning is always preferred to any hidden, narrow or irrational meaning. *Higginson v. Westergard*, 100 Idaho 687, 691, 604 P.2d 51, 55 (1979). Presumably, "words and phrases are construed according to the context and the approved usage of the language..." I.C. Section 73-113. In construing a statute, the focus of a court is to determine and give effect to the intent of the legislature, *George W. Watkins Family v. Messenger*, 118 Idao 537, 540, 797 P.2d 1385, 1388 (1990), examining the literal wording of the statute and considering such extrinsic matters as context, objects in view, evils to be remedied, public policy and contemporaneous construction. *Chinchurreta v. Evergreen Management, Inc.*, 117 Idaho 588, 790 P.2d 369 (Ct. App. 1989).

The statute in question is one which employees unusually comprehensive and unambiguous terminology. "No person in this state shall be placed in legal jeopardy of any kind whatsoever..." is not a phrase wrapped in temporizing qualifiers, but a statement of uncommon breadth. The "plain, obvious and rational meaning" of words of this strength admits of little dispute. The literal meaning of the words employed in this statute

alone militate strongly in favor of dismissing this action for the simple reason that not taking such an action has a direct consequence of placing Defendant in legal jeopardy.

Factoring in the remaining elements cited by the *Arrasmith* Court, namely contextual matters, only buttresses the conclusion that this statue compels dismissal of this prosecution. Key contextual elements include:

- 1. The longstanding deference paid to the doctrine of self defense, as evidenced by the fact that Idaho Code Section 19-201 and 19-202 persist verbatim from their original 1864 phrasing up to the time the Model Penal Code was enacted.
- 2. The fact that when the Model Penal Code was repealed in 1972, these statutes were reinstated intact.
- 3. The fact that the 1937 Supreme Court Opinion in *State v. Woodward*, 58 Idaho 385, represents the clearest and most definitive formulation of the law of self defense in Idaho both in 1972, and in 1974, when Idaho Code Section 29-202A made its appearance; and
- 4. The fact that Idaho Code Section 19-202A can be read as being harmonious with the holding in *Woodward*.

Thus, both the literal wording of a very broad statute, and all of the applicable extrinsic factors compel the conclusion that Idaho Code Section 19-202A, when applied to the facts of this case, require immediate dismissal of this action.

To summarize, Defendant moves this Court for dismissal pursuant to Idaho Criminal Rules 12 and 6.2, Idaho Code Sections 19-201, 19-202, and 19-202A on the following grounds:

A. The three cited sections of Idaho Code taken together comprise the statutory basis for the defense of "self defense", or, as it is designated in the title of Idaho Code section 19-201, "lawful resistance".

B. Idaho Code Section 19-202A which has been described by our Court of Appeals as an "immunity" statute, State of Idaho v. McNeil, supra, confers a right and/or a defense which, by its very definition, must be raised before trial. To hold otherwise would render this statute nugatory, given that it is "black letter of law" that jeopardy attaches once a jury has been impaneled and sworn and some evidence has been presented. Thus, if the right created by this statute not to be placed in "legal jeopardy of any kind whatsoever for protecting himself or his family by reasonable means necessary" is not asserted and resolved in a pre-trial setting, i.e., before jeopardy attaches, it has per se been violated as soon as the jury has been sworn and evidence given.

C. In this matter, there is exceedingly strong evidence that the Defendant was at all times, under the reasonable belief that his life and the life of his wife were at risk, and that he was acting to protect himself and his wife. Indeed the evidence will show that, at the very moment the Defendant allegedly committed the act comprising the *actus reus* of the offense, his wife had been shoved (battered) by a man professing to be a four time felon, and, said four time felon continued to yell: "I am a four time felon, I know where you live, I am going to get you!".

Wherefore, Defendant requests that a hearing be held on this Motion where

Defendant shall have the right to present testimony of witnesses and other evidence.

Further, Defendant requests that, at the close of the hearing, he be allowed to present oral

closing argument, and that he also be granted a reasonable time in which to file a post-

hearing Memorandum, if necessary.

RESPECTFULLY Submitted this 31 day of January, 2013.

**FULLER LAW OFFICES** 

GREG J. FULLER

Attorney for Defendant

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 315 day of January, 2013, a true and correct copy of the foregoing Memorandum was mailed, United States Mail, postage prepaid, to the following:

Laneith Marxin

Fritz Wonerlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812

#### ICJI 1519 SELF-DEFENSE -- DUTY TO RETREAT

In the exercise of the right of [self-defense] [defense of another], one need not retreat. One may stand one's ground and defend [oneself] [the other person] by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge[; and a person may pursue the attacker until [the person] [the other person] has been secured from danger if that course likewise appears reasonably necessary]. This law applies even though the person being [attacked] [defended] might more easily have gained safety by flight or by withdrawing from the scene.

#### Comment

State v. McGreevey, 17 Idaho 453, 466, 105 Pac. 1047 (1909); State v. Dunlap, 40 Idaho 630, 637, 235 Pac. 432 (1925).

This instruction may be used with homicide or with battery. The committee suggests that the bracketed language at the end of the second sentence only be used where the facts indicate that the defendant pursued his attacker.

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Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorneys at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83303 Telephone: (208) 734-1602

Facsimile: (208) 734-1606 ISB #1442 ISB #7538

Attorneys for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\* \* \* \* \*

THE STATE OF IDAHO,	)	Case No. CR-2012-0012841
Plaintiff,	)	
	)	NOTICE OF HEARING
VS.	)	
JOSEPH R. ROCKSTAHL,	ý	
Defendant.	)	

TO: The Clerk of the above-entitled Court and to Fritz Wonderlich, Twin Falls City Prosecutor:

YOU WILL PLEASE TAKE NOTICE That on the 22<sup>nd</sup> day of February, 2013, at 1:30 o'clock p.m., of said day or as soon thereafter as counsel can be heard, at the Twin Falls

NOTICE OF HEARING - 1

County Courthouse, County of Twin Falls, City of Twin Falls, State of Idaho, the abovenamed attorney for the Defendant will call up for disposition by the Court his Motion to Dismiss.

Counsel requests oral argument at this hearing. Counsel hereby advises the Court, opposing counsel and the parties of their intention to produce testimony and evidence at the hearing, and further advises the Court, opposing counsel and the parties of their intention to cross-examine any witnesses.

DATED This \_\_\_\_\_day of February, 2013.

**FULLER LAW OFFICES** 

GREG J. FULLER

Attorneys for Defendant

#### CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 1st day of January, 2013, I caused a true and correct copy of the foregoing Notice of Hearing to be mailed, United States Mail, postage prepaid, to the following:

Lanehharring

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-01812 . Sister

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorneys at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83303 Telephone: (208) 734-1602

Facsimile: (208) 734-1606 ISB #1442 ISB #7538

Attorneys for Defendant

DISTRICT COURT TWIN FALLS CO., IDAHO FILED					
2013 FEB 21	PM 3: 17				
BY	CLERK				
SI	DEPUTY				

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

THE STATE OF IDAHO,	)	Case No. CR-2012-0012841
Plaintiff,	)	
	)	AMENDED
	)	NOTICE OF HEARING
vs.	)	
	)	
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	)	
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TO: The Clerk of the above-entitled Court and to Fritz Wonderlich, Twin Falls City Prosecutor:

YOU WILL PLEASE TAKE NOTICE That on the 15<sup>th</sup> day of March, 2013, at 3:30 o'clock p.m., of said day or as soon thereafter as counsel can be heard, at the Twin Falls

NOTICE OF HEARING - 1

County Courthouse, County of Twin Falls, City of Twin Falls, State of Idaho, the abovenamed attorney for the Defendant will call up for disposition by the Court his Motion to Dismiss.

Counsel requests oral argument at this hearing. Counsel hereby advises the Court, opposing counsel and the parties of their intention to produce testimony and evidence at the hearing, and further advises the Court, opposing counsel and the parties of their intention to cross-examine any witnesses.

DATED This 21 day of February, 2013.

**FULLER LAW OFFICES** 

Ву\_\_

GREG/J. FULLER

Attorneys for Defendant

#### CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the day of January, 2013, I caused a true and correct copy of the foregoing Notice of Hearing to be mailed, United States Mail, postage prepaid, to the following:

anch harsin

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-01812

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 MAR 15 PM 3: 47

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF THE IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MAGISTRATE DIVISION

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Motion to Dismiss

Hearing date: 3/15/2013

Time: 3:30 pm

Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich

338 The Court called case and addressed the parties.

339 Mr. Brown made argument to the Court regarding his motion to dismiss.

342 Mr. Wonderlich gave argument to the Court.

344 The Court made comments to the parties.

345 The Court denied the motion to dismiss.

345 The Court is in recess.

DISTRICT COURT TWIN FALLS CO. IDAHO

2013 MAR 21 AM 11:50

#### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

CLERK

~MAGISTRATE DIVISION~

STATE OF IDAHO,	) Case No. CR 2012-12841
Plaintiff,	)
vs.  Joseph R. Rockstahl	) ) ) PRETRIAL AND TRIAL ORDER
Defendant.	) ) )

By order of this Court, the following case is set for jury trial on <u>May 30 and 31</u> commencing PROMPTLY at <u>9:00 a.m.</u>

This case is set for a pretrial conference on May 17, 2013 at 3:30 pm. Defendant shall be present at this pretrial conference unless the State has agreed to dismiss the case or unless the defendant has signed a written guilty plea which is tendered to the court at the time of pretrial conference. Except as stated, if the Defendant fails to appear at the pretrial conference, a bench warrant for the Defendant's arrest WILL be issued.

By the time of pretrial conference, all discovery **MUST** be completed. Proposed exhibits and written witness lists **MUST BE** exchanged between the parties before this pretrial conference. Proposed exhibits **SHALL** be brought to the pretrial conference and marked. The parties **SHALL** be prepared to advise the court whether such exhibits will be admitted by stipulation. Any pretrial motions allowed by law **MUST** be scheduled and heard **BEFORE** the pretrial conference.

At the pretrial conference:

(1) Counsel for the State shall certify to the Court that the State's case is prepared and ready for trial.

- Defendant's counsel shall certify to the Court that the State's plea offer, if any, has been communicated to the Defendant and fully discussed with the Defendant **PRIOR** to the pretrial.
- (3) Both counsel shall certify to the Court that the parties have in good faith negotiated settlement of the case.
- (4) Argue proposed jury instructions.

Both parties **SHALL** submit any requested jury instructions by the date and time scheduled for the pretrial conference. Those jury instructions shall be served on opposing counsel. Counsel shall submit an UNSTAPLED "clean, unnumbered copy" of the instructions to the Court.

Any plea agreements submitted pursuant to Rule 11 <u>I.R.C.P.</u> must be submitted at or before the second pretrial conference. The court will not consider any Rule 11 agreements submitted after that date.

If the State wishes to present evidence under Rule 404(b), Idaho Rules of Evidence, the notice required by that rule shall be given to opposing counsel at least five (5) days before the trial, unless good cause is shown why this deadline was not reasonable.

Should a jury be called to try this case, and should either the State dismiss this case on the morning of trial or the Defendant plead guilty on the morning of trial, then the parties are advised that the Court may assess the costs of that jury against the offending party.

Defendant's counsel shall send a copy of this Order to the Defendant.

DATED this 🚶 \ day March, 2013

Mick Hodges
Magistrate Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that on the <a>\infty</a> day of March, 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Fritz Wonderlich, Twin Falls City Prosecutor Dan Brown (X) Court Folder

(X) Court Folder

Deputy Clerk

Greg J. Fuller
Daniel S. Brown
FULLER LAW OFFICES
Attorney at Law
P. O. Box L

P. O. Box L 161 Main Avenue West Twin Falls, ID 83301

Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

TWIN FALLS CO. IDAHO

2013 MAY 15 AM 11: 57

DEPUTY

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*\*

COMES NOW, Greg J. Fuller and Fuller Law Offices, and moves the Court for an Ex-parte Order allowing said firm to withdraw as attorneys for the defendant, Joseph R. Rockstahl.

EX-PARTE MOTION TO WITHDRAW 1

This Motion is made and based upon the files, records, and pleadings in this case, and the Affidavit of Greg J. Fuller filed herewith.

DATED This 15 day of May, 2013.

#### **FULLER LAW OFFICES**

GRIG J. FULLER
Approves for Defendant

#### CERTIFICATE OF MAILING AND FACSIMILE

I, the undersigned, hereby certify that on the but day of May, 2013, a true and correct copy of the foregoing Ex-parte Motion to Withdraw, Affidavit, and proposed Exparte Order was mailed, postage prepaid, and transmitted, via facsimile, to:

Laneth marson

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812 1-888-789-0935

Joseph R. Rockstahl 440 Fairfield Street North Twin Falls, ID 83301 (208) 734-8820

p.3

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 MAY 15 AM 11: 57

CLERK DEPUTY

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

	)		
	Ś		Case No. CR-2012-12841
	)	ĺ	
	)		AFFIDAVIT OF
	)		GREG J. FULLER
	)		
	)		
	)	)	
	)	1	
	* * * *	* *	*
		95.00	•
)			
: ss.			
)			
	) : ss.	**** ) : ss.	) ) ) ) ) ) ) ) *****

GREG J. FULLER, Being first duly sworn on oath, deposes and says:

AFFIDAVIT OF GREG J. FULLER - 1



- 1. That I am an attorney at Fuller Law Offices, attorneys of record for the Defendant in the above-entitled matter.
  - 2. That I am an attorney duly licensed to practice law in the State of Idaho.
- 3. That there has been a total breakdown in the attorney/client relationship in this matter. In fact, the client/defendant terminated the services of your Affiant's office by correspondence dated March 28, 2013 and informed your Affiant that he was hiring Keith Roark to represent him in the above-entitled matter.
- 4. That for the above reasons, your Affiant respectfully requests that this Court allow your Affiant to withdraw as attorney of record.

5 Further Your Affiant sayeth not.

DATED This 15—day of May, 2013.

**FULLER LAW OFFICES** 

GREG J. FULLER

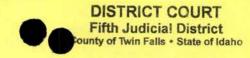
Attorney for Defendant

SUBSCRIBED AND SWORN To before me this 5th day of May, 2013.

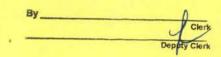
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Commission expires:04-09-15



MAY 17 2013



### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Pretrial Conference/ Motion to Withdraw

Hearing date: 5/17/2013

Time: 3:22 pm Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown / Keith Roark (phone)

Prosecutor: Fritz Wonderlich

#### (Court Room 3)

333 The Court called the case, reviewed the file and addressed the parties. The parties gave argument as to the motion to withdraw.

335 The Court inquired if a speedy trial waiver had been filed. Mr. Brown stated one had not but would be willing to provide one upon request.

335 Reschedule dates were discussed.

336 Mr. Wonderlich argued against pushing the trial dates out to August.

338 The Court denied the motion for Dan Brown to withdraw as attorney of record. The Court terminated the phone call with Mr. Roark.

339 The Court ordered the parties to have jury instructions within 1 week. Mr.

Wonderlich provided Jury instructions, witness list, and exhibits to the Court.

340 Mr. Brown addressed the Court regarding his conflict with another Court.

340 Mr. Brown made a motion to dismiss based on speedy trial violation.

341 Mr. Wonderlich objected to the motion.

344 The Court will take a short recess in order to listen to a prior hearing.

350 The Court is back on the record. The Court made comments regarding extending the speedy trial based on good cause.

351 Mr. Wonderlich offered to move up his trial date one week. The parties agreed.

351 POWER OUTAGE

352 Mr. Brown agreed to moving up the trial 1 week.

352 – 353 (off record discussion between all parties)



### (Court Room 4)

357 The Court is back on the record in Courtroom 4.

357 The Court discussed moving trial up 1 week to May 23 and 24. Those dates work for all parties.

358 The parties must provide jury instructions and a witness list by Monday at 5 pm. The Court will meet at 815 on Thursday May 23<sup>rd</sup> to go over jury instructions.

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 HAY 17 PH 4: 37

FRITZ WONDERLICH P.O. Box 1812 Twin Falls, ID 83303-1812 (208)352-0811 ISB#2591

CLERK

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

State of Idaho,

Case No. CR-2012-12841

Plaintiff,

VS.

WITNESS LIST

Joseph Rockstahl

Defendant.

COMES NOW The State, by and through the City Attorney, and submits the following list of potential witnesses in the above entitled matter:

Steven Neilsen

3779 N 2200 E Filer Idaho 83301

Jeremy Merchant

836 Walnut St Twin Falls Idaho 83301

Eric Schindler

2204 Nisqually St. Twin Falls Idaho 83301

Justin Cyr c/o TFPD

P.O. Box 3027 Twin Falls Idaho 83301

Randy Carpenter

746 Ash St. Twin Falls Idaho 83301

Kevin Loosli TFPD

P.O. Box 3027 Twin Falls Idaho 83301

Dated, May 17, 2013

### Fritz Wonderlich

Attorney for State

### **CERTIFICATE OF DELIVERY**

I hereby certify by signing above that a true and correct copy of the foregoing was served on the date set forth above.

Joe Rockstahl 440 Fairfield St. N. Twin Falls, Idaho 83301

ħ	<b>ISTR</b>	UCT	TON	NO	
11	1011	$\cdot$	· LCJI N	110	

In order to find the defendant guilty of Disorderly Conduct, you must find the following:

- 1. That on or about July 2, 2012
- 2. in the state of Idaho
- 3. the defendant, Joseph Rockstahl,
- 4. maliciously and wilfully disturbed the peace or quiet of Steven Neilsen, Randy Carpenter and/or Jeremy Merchant,
- 5. by tumultuous or offensive conduct, by threatening, traducing, quarreling, challenging to fight, or fighting.

If any of the above has not been proved beyond a reasonable doubt, you should find the defendant not guilty. If each of the above has been proved beyond a reasonable doubt, you must find the defendant guilty.

<b>INSTR</b>	UCTION	I NO.
--------------	--------	-------

In order to find the defendant guilty of Exhibition of a Deadly Weapon, you must find the following:

- 1. That on or about July 2, 2012
- 2. in the state of Idaho
- 3. the defendant, Joseph Rockstahl,
- 4. while in the presence of two (2) or more persons,
- 5. drew or exhibited a deadly weapon in a rude, angry and threatening manner

Or unlawfully used the same in a fight or quarrel

6. not in necessary self-defense.

If any of the above has not been proved beyond a reasonable doubt, you should find the defendant not guilty. If each of the above has been proved beyond a reasonable doubt, you must find the defendant guilty.

TN	2.0	T	<b>?T</b> I	CT	$\Omega$	N	NO	
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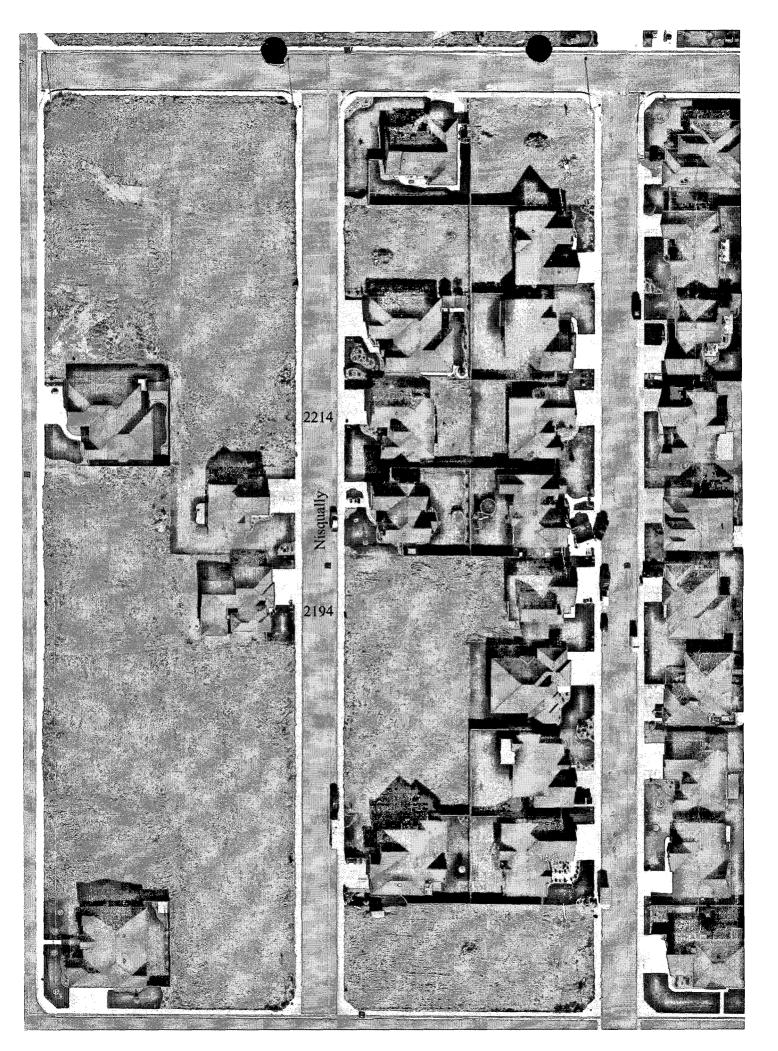
In order to find the defendant guilty of Aiming Firearms at Others, you must find the following:

- 1. That on or about July 2, 2012
- 2. in the state of Idaho
- 3. the defendant, Joseph Rockstahl,
- 4. intentionally, without malice,
- 5. pointed or aimed a firearm at or toward another person.

If any of the above has not been proved beyond a reasonable doubt, you should find the defendant not guilty. If each of the above has been proved beyond a reasonable doubt, you must find the defendant guilty.

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

		* * *
THE STATE OF IDA	.НО,	)
	Plaintiff,	) Case No. CR-2012-12841 )
vs.		)
JOSEPH ROCKSTAI	HL.	) VERDICT
	Defendant.	) ) ***
We, the Jury,	unanimously find th	e defendant Joseph Rockstahl:
(Count I, Ma	rk only one)	
	_ Guilty of Providia	ng Aiming Firearms at or Towards Others
	_ Not Guilty	
We, the Jury,	unanimously find th	e defendant Joseph Rockstahl:
(Count II, Ma	ark only one)	
	_ Guilty of Exhibit	ion of a Deadly Weapon
<del></del>	_ Not Guilty	
We, the Jury,	unanimously find th	e defendant Joseph Rockstahl:
(Count III, M	lark only one)	
	_ Guilty of Disorde	erly Conduct
	_ Not Guilty	
Dated this	day of	, 2013.
		Presiding Juror



Spane

Daniel Brown
Fuller Law Offices
P.O. Box L
Twin Falls, ID 83301
Fax: 734-1606

Attorney for Defendant



### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

Defendant.

CASE NO.: CR-2012-12841

MOTION IN LIMINE

Defendant.

Defendant.

COMES NOW, JOSEPH R. ROCKSTAHL, the defendant above-named, by and through counsel DANIEL BROWN, of Fuller Law Offices, and moves this Court for its ORDER precluding all parties including, but not limited to, the state of Idaho, court personnel, any and all witnesses, and any other person involved in the defendant's jury trial from referring to the complaining witness as a "victim" or "the victim" throughout the defendant's trial.

The word "victim" is defined as:

"The person who is the object of a crime or tort, as the victim of a robbery is the person robbed. Person who court determines has suffered pecuniary damages as result of defendant's criminal activities; that person may be individual, public or

**MOTION IN LIMINE -1** 

- private corporation, government, partnership, or unincorporated association." See Black's Law Dictionary, 6<sup>th</sup> Edition, 1990.
- "1: a living being sacrificed to a deity or in the performance of a religious rite 2: one that is acted on and usually adversely affected by a force or agent as a (1): one that is injured, destroyed, or sacrificed under any of various conditions (2): one that is subjected to oppression, hardship, or mistreatment b: one that is tricked or duped." See Merriam-Webster Online Dictionary, <a href="http://www.merriam-webster.com/dictionary/victim">http://www.merriam-webster.com/dictionary/victim</a>.

The State, and sometimes even court personnel, may be tempted to refer to the complaining witness as a "victim" or "the victim" at various times throughout the trial, within the hearing of the jury. Often times, the State forsakes the individual's name and refers to the complaining witness as a "victim" or "the victim."

The State's use of the word "victim" is prejudicial to the defendant for a number of reasons. It violates the defendant's presumption of innocence. In no other country is a defendant's presumption of innocence greater. A defendant's right to the presumption of innocence, while not grounded in the U.S. Constitution, has been recognized as a defendant's right since the inception of our judicial system. Coffin v. U.S., 156 U.S. 432 (1895); In Re Winship, 397 U.S. 358 (1970) ("Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the fact finder of his guilt.") (citation omitted); Idaho Code 19-2104 ("A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal."). By referring to a complaining witness as the "victim," the State, and the Court by its tacit approval, has told the jury that a crime was committed or that this person has been cheated, lied to, or injured. Thus, the State, and by inference the Court, through the use of the word

"victim," is advising the jury that the State has already proven an injury of some type and concluded that the person has been victimized, and directed, by inference, an essential element of the offense charged.

The State is essentially commenting on the credibility of the complaining witness when addressing her as a "victim." The U.S. Supreme Court has held that the State is prohibited from expressing their personal opinion during the trial about a witness's credibility or whether a witness is telling the truth or not. <u>United States v. Young</u>, 470 U.S. 1 (1985). When the State addresses any individual as the "victim," they are placing more weight on the individual's testimony and stating to the jury that he or she is telling the truth because he or she is the "victim." Additionally, the State's conclusion, interpretation, and opinion that a complaining witness is a "victim" allows the State to advise the jury that their belief is consistent with the complaining witness' story.

The use of the word "victim" should be prohibited pursuant to Idaho Rule of Evidence 403. The probative value of the use of the word "victim," although perhaps relevant, is far outweighed by its prejudicial effect. The State's conclusion, judgment, and assessment exhibited by the use of the word "victim" has no probative value. The jury alone determines whether the complaining witness is a "victim" or not, beyond a reasonable doubt. The word "victim" has significant prejudicial effects since the word alone means a wrongdoing, that some wrong has been committed, and that the State and the Court believe this fact to be true. Essentially, allowing the word "victim" to be used also eliminates the causation element of the events of this case. Also, the State takes the fact-finding job from the jury when they are allowed to refer to the complaining witness as the "victim"; thus, the prejudicial effect far outweighs any probative value it may have.

The jury's job is to determine the facts of this case and from the facts whether or not there is a "victim." Allowing the State to refer to the complaining witness as a "victim" removes this fact-finding job from the jury. There cannot be a victim in this case unless the jury determines that there was a crime or a wrong committed. Any reference to the complaining witness as the "victim" is paramount to stating that the individual was injured and thus a crime was committed. Telling the jury that a crime was committed before the jury makes that determination greatly usurps the jury's decision.

Finally, the use of "victim" by the State and any and all court personnel is argumentative, and should be prohibited. Counsel and the Court's statements should be limited. The use of the term "victim" should not be used in opening statements, direct/cross-examinations, during summations, or any other time during the trial.

WHEREFORE, upon the grounds and for the reasons contained herein, the defendant respectfully requests this Court preclude all parties from referring to the complaining witness as a "victim" or "the victim" throughout the trial.

RESPECTFULLY submitted this 20 day of May 2013.

Daniel Brown

Attorney for Defendant

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on day of May 2013 I served a true and correct copy of the within foregoing document upon the attorney named below in the manner noted:

Attorney for Plaintiff

Fritz Wonderlich

Twin Falls City Prosecuting Attorney

PO Box 1812

Twin Falls, ID 83301

Fax: 888-789-0935

U.S. Mail

1 Court Box

[ ] Facsimile

Daniel Brown

Or legal assistant

Seguiro

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

•	DISTRICT COURT TWIN FALLS CO., IDAHO FILED
	2013 MAY 20 PM 4: 37
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	DEPUTY

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

841

COMES NOW Defendant, Joseph R. Rockstahl, by and through his attorneys of record, Fuller Law Offices, and hereby respectfully requests the Court to instruct the jury at the trial of the above-entitled action in accordance with the jury instructions attached hereto..

DEFENDANT'S REQUESTED JURY INSTRUCTIONS - 1

The Defendant, Joseph R. Rockstahl, reserves the right to include supplemental jury instructions.

DATED This day of May, 2013.

**FULLER LAW OFFICES** 

DANIEL S. BROWN Attorney for Defendant

Lance th Maron

#### **CERTIFICATE OF MAILING**

I, the undersigned, do hereby certify that on the day of May, 2013, a true and correct copy of the foregoing was mailed, United States Mail, postage prepaid, to the following:

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812

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
testified in the (state's) (defense) case during the trial. You
will recall that it was brought out that before this trial this witness made statements which
were the same as, or similar to, what the witness said here in the courtroom. These earlier
statements were brought to your attention to help you decide whether you believe
''s testimony.

In order for the defendant to be guilty of Exhibition of a Deadly Weapon, in violation of Idaho Code 18-3303, the state must prove each of the following:

- 1. On or about July 2, 2012,
- 2. In the State of Idaho,
- 3. The defendant, Joseph Rockstahl,
- 4. No in necessary self-defense or the defense of another,
- 5. In the presence of two or more persons,
- 6. Draws or exhibits any deadly weapon in a rude, angry and threatening manner.

in order for the defendant to be guilty of Aiming a Firearm at others, in violation of Idaho Code 18-3304, the state must prove each of the following:

- 1. On or about July 2, 2012,
- 2. In the State of Idaho,
- 3. The defendant, Joseph Rockstahl,
- 4. Intentionally, without malice, pointed or aimed a firearm at or toward another.

In order for the defendant to be guilty of Disorderly Conduct, in violation of Idaho Code 18-6409, the state must prove each of the following:

- 1. On or about July 20, 2012,
- 2. In the State of Idaho,
- 3. The defendant, Joseph Rockstahl,
- 4. Maliciously and willfully disturbs the peace or quiet of any neighborhood, family or person,
  - 5. By loud or unusual noise,
  - 6. Or, by tumultuous or offensive conduct,
  - 7. Or, by threatening traducing, quarreling, challenging to fight or fighting.

INSTRUCTION NO.
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An act is "willful" or done "willfully" when done on purpose. One can act wilfully without intending to violate the law, to injure another, or to acquire any advantage.

INICTOI	ICTION :	NO	
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In every crime or public offense there must exist a union or joint operation of act and intent.

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It may be helpful	for you to see the pla	ce involved in this case.	I have appointed
Mr./Mrs./Ms.	to take you there.	While at that place, you	are not to make any
measurements, cond	uct any tests or make	any demonstrations.	

Your observations during this view of the place involved are not evidence in this case, and you are not to take such observations into consideration in arriving at your verdict.

This view is only for the purpose of assisting you in understanding the evidence presented in court.

You heard testimony that the defendant [name, if more than one defendant] made a statement to [e.g., the police] concerning [the] [a] crime charged in this case. You must decide what, if any, statements were made and give them the weight you believe is appropriate, just as you would any other evidence or statements in the case.

Evidence that a witness has been convicted of an offense may be considered by you only as it may affect the believability of the witness.

The kind and degree of force which a person may lawfully use in self-defense and defense of another are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense and defense of another, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

#### INSTRUCTION NO.

In the exercise of the right of self-defense and defense of another, one need not retreat.

One may stand one's ground and defend oneself and the other person by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and a person may pursue the attacker until the person and the other person has been secured from danger if that course likewise appears reasonably necessary. This law applies even though the person being attacked might more easily have gained safety by flight or by withdrawing from the scene.

Evidence has been admitted concerning the reputation of one or more of the complaining witnesses for being quarrelsome, violent and dangerous. You may consider this evidence only for the limited purpose of making your determination as to the reasonableness of the defendant's beliefs under the circumstances then apparent to the defendant, but only if the defendant was aware of such reputation and whether the victim was the aggressor.

#### INSTRUCTION NO.

Exhibition of a Deadly Weapon, Aiming a Firearm at others and Disorderly Conduct is justifiable if the defendant, Joe Rockstahl, was acting in self-defense and/or the defense of another.

In order to find that Joe Rockstahl acted in self-defense and/or defense of another, all of the following conditions must be found to have been in existence at the time of the alleged Exhibition of a Deadly Weapon, Aiming a Firearm at others and Disorderly Conduct:

- 1. The defendant must have believed that the defendant and/or Patricia Rockstahl were in imminent danger of death or great bodily harm.
- 2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant and Patricia Rockstahl from the danger presented.
- 3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant and another person was in imminent danger of death or great bodily injury and believed that the action taken was necessary.
- 4. The defendant must have acted only in response to that danger and not for some other motivation.
- 5. When there is no longer any reasonable appearance of danger, the right of self-defense and defense of another ends.

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and

circumstances which the evidence shows existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify the alleged Exhibition of a Deadly Weapon, Aiming a Firearm at others and Disorderly Conduct. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove beyond a reasonable doubt that the Exhibition of a Deadly Weapon, Aiming a Firearm at others and Disorderly Conduct was not justifiable. If there is a reasonable doubt whether the Exhibition of a Deadly Weapon, Aiming a Firearm at others and Disorderly Conduct was justifiable, you must find the defendant not guilty.

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Any other person, in aid or defense of the person about to bre injured, may make resistance sufficient to prevent the offense.

Resistance sufficient to prevent the offense may be made by the party about to be injured:

- 1. To prevent an offense against his person, or his family, or some member thereof
- 2. To prevent an illegal attempt by force or take or injure property in his lawful possession.

Lawful resistance to the commission of a public offense may be made:

- 1. By the party about to be injured.
- 2. By other parties.

Greg J. Fuller
Daniel S. Brown
FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602

Facsimile: (208) 734-1602

ISB #1442 ISB #7538

Attorneys for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

	* * * * *	
THE STATE OF IDAHO,	)	
Plaintiff,	)	Case No. CR-2012-00012841
vs.	)	<u>VERDICT FORM</u>
JOSEPH R. ROCKSTAHL,	)	
Defendant.	)	
	* * * * *	

We, the Jury, unanimously find the defendant Joseph Rockstahl,

COUNT 1: Exhibiton of a Deadly Weapon

\_\_\_\_NOT GUILTY
\_\_\_\_GUILTY

**VERDICT FORM - 1** 

Count 2: Aiming a Firearm at Others
NOT GUILTY
GUILTY
Count 3: Disorderly Conduct
NOT GUILTY
GUILTY
Dated this day of May, 2013.
Presiding Officer

p.1

Fuller Law Offices

DISTRICT COURT TWIN FALLS CO. IDAHO

2013	MAY	20	PM	4:5
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BY	
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9 DEPUTY

Greg J. Fuller Daniel S. Brown **FULLER LAW OFFICES** 

Attorney at Law P.O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

#### MAGISTRATE DIVISION

	****	
THE STATE OF IDAHO,	)	
	)	Case No. CR-2012-00012841
Plaintiff,	)	
	)	<b>DEFENDANT'S</b>
VS.	)	WITNESS AND
	)	EXHIBIT LIST
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	)	
	****	

COMES NOW Defendant, by and through his attorneys of record, Fuller Law

Offices, and hereby submits the following Witness and Exhibit List:

Patricia Rockstahl 2214 Nisqually Street N. Twin Falls, Idaho 83301 208-734-8810



Ms. Rockstahl was present the night of July 2, 2012.

Joseph Rockstahl c/o Fuller Law Offices P. O. Box L Twin Falls, ID 83301 (208) 734-1602

John Tolk Nisqually St. N. Twin Falls, Idaho 83301 208-734-9951

Loretta Mullens Nisqually St. N. Twin Falls, Idaho 83301 208-734-7485

Sherman Mullens Nisqually St. Twin Falls, Idaho 83301 208-734-7485

Joanne Wright 208-420-8154

Wayne Wright 208-308-2823

Donna Kyle 208-734-2418

Bill Kyle 208-734-2418

Susan Barry 208-308-5577

Andy Barry 208-308-4147

Tony Lopez 208-572-1526



Mark Guerry 208-308-1725

Tim Williams 208-736-0699

Officer Kevin Loosli
Officer Justin Hendrickson
S. Sgt. Terry Thueson
Officer Justin Cyr
Officer Ken Rivers
Twin Falls Police Department
Twin Falls, Idaho 83301

In addition, Defendant intends to introduce as evidence an x-ray of the injuries he sustained in the above-entitled matter, as well as any and all evidence produced in discovery in this matter.

Defendant reserves the right to supplement the above and foregoing witness and exhibit list and further reserves the right to call any and all witnesses as well as use any evidence utilized by the State.

DATED This 20 day of May, 2013.

**FULLER LAW OFFICES** 

DAMIEL S. BROWN
Automey for Defendant



Zoneih Maron

#### **CERTIFICATE OF MAILING**

I, the undersigned, do hereby certify that on the day of May, 2013, a true and correct copy of the foregoing was mailed, United States Mail, postage prepaid, to the following:

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812





Case No.: CR 2012-12841

STATE OF IDAHO	AMENDED AFFIDAVIT OF SERVICE		
Plaintiff	SUBPOENA BY CLERK (OFFICER KEVIN LOGSLI)		
JOSEPH R. ROCKSTAHL	(OFFICER REVIN LOGSEI) DEPUTY		
Defendant			

- I, Rhonda Aslett, being duly sworn upon oath, depose and says that:
  - 1. I am over the age of eighteen (18) and not a party to this action;
  - 2. On the 20<sup>th</sup> day of May, 2013 I served a true copy of the SUBPOENA upon OFFICER KEVIN LOOSLI by hand delivery to <u>Janie Jones</u> at the Twin Falls Police Department at 356 3<sup>rd</sup> Ave E., Twin Falls ID 83301.

Rhonda Aslett

SUBSCRIBED AND SWORN TO before me this 20th day of May 2013.

PATRICIA ROCKSTAHL NOTARY PUBLIC STATE OF IDAHO

Notary Public for IDAHO

Residing at: Twin Falls Idaho

My commission expires: 5 24 1

Daniel Brown
Fuller Law Offices
P.O. Box L
Twin Falls, ID 83301
Fax: 734-1606

Attorney for Defendant

#### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

SUBPOENA

VS

JOSEPH R. ROCKSTAHL

CASE NO.: CR-2012-12841

SUBPOENA

)

| Description of the content of the cont

THE STATE OF IDAHO SENDS GREETINGS TO:

Defendant.

Officer Kevin Loosli c/o Twin Falls Police Department 356 3<sup>rd</sup> Ave East Twin Falls, Id 83301

YOU ARE HEREBY COMMANDED TO APPEAR before Judge Mick Hodges of the above-entitled Court at the Judicial Annex in the County of Twin Falls, Twin Falls, Idaho, on Tuesday, May 23-24, 2013 at 9:00 a.m., as a witness in a criminal action prosecuted by the State of Idaho.

BY ORDER OF THIS COURT.

GIVEN UNDER my hand this 20 day of May, 2013.

Deputy Cle

Subpoena -





Case No.: CR 2012-12841

2013 MAY 2 AM 8: 08

STATE OF IDAHO

AMENDED AFFIDAVIT OF SERVICE

DEPUTY

V

**SUBPOENA** (SSG Terry Thueson) CLERK

JOSEPH R. ROCKSTAHL

Defendant

Plaintiff

- I, Rhonda Aslett, being duly sworn upon oath, depose and says that:
  - 1. I am over the age of eighteen (18) and not a party to this action;
  - On the 20th day of May, 2013 I served a true copy of the SUBPOENA upon 2. SSG Terry Thueson by hand delivery to Janie Jones at the Twin Falls Police Department at 356 3rd Ave E., Twin Falls ID 83301.

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of May 2013.

Notary Public for IDAHO

Residing at: Twin Falls Idaho

My commission expires: 5124]

PATRICIA ROCKSTAHL **NOTARY PUBLIC** STATE OF IDAHO

Daniel Brown
Fuller Law Offices
P.O. Box L
Twin Falls, ID 83301
Fax: 734-1606

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*

STATE OF IDAHO	).	CASE NO.: CR-2012-12841
Plaintiff,	)	SUBPOENA
VS	)	
JOSEPH R. ROCKSTAHL	)	
Defendant.	)	

THE STATE OF IDAHO SENDS GREETINGS TO:

SSG Terry Thueson c/o Twin Falls Police Department 356 3<sup>rd</sup> Ave East Twin Falls, Id 83301

YOU ARE HEREBY COMMANDED TO APPEAR before Judge Mick Hodges of the above-entitled Court at the Judicial Annex in the County of Twin Falls, Twin Falls, Idaho, on Tuesday, May 23-24, 2013 at 9:00 a.m., as a witness in a criminal action prosecuted by the State of Idaho.

BY ORDER OF THIS COURT.

GIVEN UNDER my hand this  $2 \frac{1}{\delta}$  day of May, 2013.

Deputy Clerk

JOE ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576

Co-Co on sel Attorney for Defendant TWIN FALLS CO. IDAHO
FILED

2013 MAY 21 PM 4: 27

BY\_

CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*\*

STATE OF IDAHO	) CASE NO.: CR-2012-12841
Plaintiff,	) MOTION TO VACATE AND
IOCEPH P. POCKETANI	) CONTINUE JURY TRIAL
JOSEPH R. ROCKSTAHL  Defendant.	
Defendant.	)

COMES NOW the Defendant, by and through his attorney of record, Daniel Brown, and pursuant to I.C.R. 12, hereby moves the Court for an Order vacating the jury trial scheduled for Thursday, May 23-24, 2013 at 8:30 a.m.

We request that this matter be reset to a date and time convenient to the Court and counsel. This request is based upon the fact that three or more of the Defendant's witnesses are out of town and unavailable.

Additionally, as the Court is already aware, the requested continuance will allow Defendant to obtain desired counsel and hopefully, an August trial date. Defendant notes the incident occurred July 2, 2012 and complaint was files November 26, 2012

THEREFORE, in the interest of justice and fairness, the Defendant requests that the jury trial be vacated and continued to a time convenient to the Court and counsel.

RESPECTFULLY submitted this 2/st day of May 2013.

Joe Rockstahl

Attorney for Defendant

## **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the day of May 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] U.S. Mail

[ ] Court Box

[ ] Hand Delivery

Facsimile Facsimile

Joe Rockstahl Or legal assistant JOE ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576 I WIN FALLS CO., IDAHO

2013 MAY 21 PM 4: 27

CLERK

Attorney for Defendant

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*

STATE OF IDAHO	) CASE NO.: CR-2012-12841
Plaintiff,	) MOTION TO SHORTEN TIME FOR
VS	) HEARING ON DEFENDANT'S
	) MOTION TO VACATE AND
JOSEPH R. ROCKSTAHL	) CONTINUE JURY TRIAL
	)
Defendant.	)

COMES NOW, the Defendant, JOSEPH R. ROCKSTAHL, by and through his attorney of record, Daniel Brown, and moves this Court for an Order to shorten the time on the **Defendant's Motion to Vacate and Continue Jury Trial.** This request is based upon the following:

- 1. There is not sufficient time to give fourteen (14) days' notice to the opposing parties.
- 2. Due to scheduling conflicts, there is not a convenient time for this to be heard prior to the scheduled jury trial.
- 3. No prejudice would result to either party if the motion to shorten time is granted.

4. Wherefore, based upon the foregoing and for such other reasons shall appear to this Honorable Court, the Defendant prays this Court grant his Motion to Shorten Time and allow this matter to be heard at the courts earliest convenience.

RESPECTFULLY submitted this 2 and day of May 2013.

Joe Rockstahl

Attorney for Defendant

## CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 21 day of May 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] U.S. Mail [ ] Court Box [ ] Hand Delivery [ → Facsimile

Joe Rockstahl
Or legal assistant

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

Fritz Wonderlich P.O. Box 1812 Twin Falls, ID 83303-1812 (208) 352-0811 ISB # 2591

2013 MAY 22 AM 8: 35

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS,

MAGISTRATE DIVISION

State of Idaho,	) Case No.: CR-2012-12841
Plaintiff,	)
VS.	) OBJECTION TO MOTION
Joseph Rockstahl,	) TO CONTINUE JURY TRIAL
Defendant	)

COMES NOW, the State of Idaho, and objects to the Defendant's Motion to Continue Jury trial, for the reasons set forth below:

- The jury trial was previously delayed, at the request of the Defendant, so that a Motion to Dismiss could be heard.
- 2. The Court served its "Pretrial and Trial Order" on March 21, 2013, requiring the parties to complete all discovery, and to exchange proposed witness and exhibit lists and provide requested jury instructions on or before the May 17, 2013 Pretrial Conference. Defendant failed to comply with the Pretrial Order.
- At the May 17, 2013, Pretrial Conference, Co-Counsel for the Defendant,
   Daniel Brown, stated that he had a conflicting trial on the scheduled May 30, 31, 2013
   trial date.
- At the May 17, 2013, Pretrial Conference, the Defendant asserted his right to speedy trial.
- The Court moved the trial date up in order to comply with the Defendant's demand for speedy trial.
- At the May 17, 2013, Pretrial Conference, both the Defendant and Co-Counsel stated that they were available for trial on May 23, 24, 2013, which time is within the time required for speedy trial.

OBJECTION TO MOTION TO CONTINUE JURY TRIAL

<ol><li>Justice delayed is justice denie</li></ol>	7.	Justice	delayed	is	iustice	denie
--	----	---------	---------	----	---------	-------

Therefore, in the interest of justice and fairness, the State requests that the Motion to Continue the Jury Trial be denied.

DATED, May 22, 2013.	Fritz Wonderlich
	Fritz Wonderlich
I hereby certify that on May	TIFICATE OF MAILING 22, 2013, I served the foregoing by depositing true copies ow, and addressed to the following:
U.S.Mail, Prepaid Courthouse Mail X Fax	Joe Rockstahl 440 Fairfield St. N. Twin Falls, ID 83301
U.S.Mail, PrepaidCourthouse Mail _X_Fax	Daniel Brown P.O. Box L Twin Falls, ID 83303  Fritz Wonderlich
	Fritz Wonderlich

OBJECTION TO MOTION TO CONTINUE JURY TRIAL



MAY 23 2013

Ву	
	Clerk
Deput	Clerk

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

## **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Motion for Disqualification / Preliminary Matters

Hearing date: 5/23/2013

Time: 8:17 am

Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich

821 The Court called the case and addressed the parties. Mr. Brown submitted to the Court the motion based on the affidavit. The Court commented.

822 Mr. Brown made comments regarding the ex-parte communication.

824 The Court made comments regarding the communication. There was ex-parte communication; the Court put that communication on the record. The Court discussed the denial of the motion to continue. **The Court denied the motion for disgualification.** 

826 Mr. Brown gave argument regarding his motion for reconsideration.

828 Mr. Wonderlich responded to Mr. Brown's argument.

831 Mr. Brown responded to Mr. Wonderlich's argument.

832 The Court denied the motion for reconsideration.

833 The Court will allow fact witnesses, but no character witnesses.

834 Mr. Brown gave more argument regarding character witnesses.

834 The Court again denied the motion for reconsideration.

834 Mr. Rockstahl gave argument regarding the denied motions.

836 The Court commented on Mr. Rockstahl's argument. The Court's ruling on the original motion to withdraw will stand.

837 The Court gave all parties copies of the jury instructions.

837 The Court will take a short recess for the parties to review the jury instructions.

CR 2012-12841 Page 2

843 The is back on the record. The Court discussed the motion in limine. **The Court granted the motion; the parties will not use the word victim**. Instruction 17 will be amended to the correct date. On the verdict form. The word "providing" will be stricken. The form will be changed to "pointing or aiming firearms at or towards others."

849 Mr. Brown made comments regarding the self-defense instruction.

856 The will take a short recess.

858 The Court is back on the record. The Court read the ICJI instruction regarding the self-defense instruction.

859 Mr. Brown addressed the Court regarding the ICJI instruction. And modifying instruction 28, according to State v. Hanson.

904 Mr. Wonderlich made comments regarding the change.

907 The Court reviewed the stated case and the requested footnotes.

909 The Court will make adjustments to instruction # 28.

917 The Court is in recess.

TWIN FALLS CO. IDAHO

2013 MAY 23 AM 7: 46

BY\_

CLERK

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301

Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

THE GEATE OF IDAMO		
THE STATE OF IDAHO,	)	
	) C:	ase No. CR-2012-00012841
Plaintiff,	)	
	) M	OTION TO DISQUALIFY
vs.	) <u>F</u> (	OR CAUSE
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	)	

COMES NOW Defendant, Joseph R. Rockstahl, by and through his attorneys of record, Fuller Law Offices, and hereby moves this Court for an Order of Disqualification, for cause, pursuant to Idaho Criminal Rule 25(b) and (c).

\*\*\*\*

MOTION TO DISQUALIFY FOR CAUSE - 1



This Motion is made and based upon the papers and pleadings on file herein, as well as the Affidavit of Daniel S. Brown filed contemporaneously herewith.

Counsel requests oral argument.

DATED This 22 day of May, 2013.

**FULLER LAW OFFICES** 

Attorney for Defendant

aned haroun

### CERTIFICATE OF FACSIMILE

I, the undersigned, do hereby certify that on the day of May, 2013, a true and correct copy of the foregoing document was mailed, United States Mail, postage prepaid, to the following:

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812 1-888-789-0935

MOTION TO DISQUALIFY FOR CAUSE - 2

2087341606

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

2013 MAY 23 AM 7: 47

DEPUTY

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

THE STATE OF IDAHO,

Plaintiff,

Plaintiff,

Defendant.

)

Case No. CR-2012-00012841

AFFIDAVIT OF DANIEL

S. BROWN IN SUPPORT

OF MOTION TO

DISQUALIFY FOR CAUSE

\*\*\*\*\*

STATE OF IDAHO

: ss.

County of Twin Falls )

DANIEL S. BROWN, Being first duly sworn upon oath deposes and states as

AFFIDAVIT OF DANIEL S. BROWN - 1

#### follows:

- 1. That I am an attorney duly licensed to practice law in the State of Idaho;
- 2. That I am the attorney of record for the Defendant in the above-entitled matter;
- 3. That I was retained by Defendant on or about the 30th day of November, 2012;
- 4. That on or about March 28, 2013, Fuller Law Offices received a letter from Defendant wherein it states, "I have contacted Keith Roark and asked him to substitute in as my counsel in this matter. Please stop any other work on my case and prepare the file for transfer to Mr. Roark.";
- 5. That based upon Defendant's instruction, I ceased working on his case with the expectation that I would receive a Substitution of Attorney from Mr. Roark;
- 6. That on or about Friday, May 10, 2013, I received documentation from Defendant which indicated that the Defendant desired a continuance due to a calendaring conflict of Mr. Roark;
- 7. That based upon that documentation, Fuller Law Offices filed an Ex-Parte Motion to Withdraw with the Court on or about Wednesday, May 15, 2013;
- 8. That on or about Wednesday, May 15, 2013, while your Affiant was in the Magistrate Courtroom of the Cassia County Courthouse, your Affiant was approached by the Honorable Mick Hodges. Much to your Affiant's surprise, the Honorable Mick Hodges questioned your Affiant about the documents that had just been filed in the instant case. That in the conversation with the Honorable Mick Hodges, he stated to your Affiant that he believed the Motion to Withdraw that had been filed was "sneaky" or "snaky" and that he would not grant the Motion without a hearing. Your Affiant is

AFFIDAVIT OF DANIEL S. BROWN - 2

unsure as to the "exact" term that was used by the Honorable Mick Hodges, in the presence of Court personnel and other counsel. Based upon the conversation, your Affiant could not determine if the comment was directed at your Affiant, or at your Affiant's client, the Defendant in the instant case:

- 9. That your Affiant believes that the contact that your Affiant had with the Court was exparte in nature as the prosecutor in the instant case, Fritz Wonderlich, was not present for said conversation;
- 10. That a pretrial conference was conducted on or about Friday, May 17, 2013. In that hearing, the Court denied your Affiant's Motion to Withdraw and ordered the Defendant to provide a witness and exhibit list, as well as proposed jury instructions, by Monday, May 20, 2013, at 5:00 o'clock p.m.;
- 11. That your Affiant abided by the Court's Order and filed a Witness List and Exhibit List as well as proposed Jury Instructions on or about May 20, 2013;
- 12. That on or about May 21, 2013, Defendant, acting as co-counsel, filed a Motion to Vacate and Continue Jury Trial. The Defendant based his Motion upon the fact that his chosen counsel, Keith Roark, was unavailable at the time of trial due to his calendar of cases. In addition, the Defendant stated that three (3) witnesses had now become unavailable due to the Court shifting the trial date from May 30-31, 2013, to May 23-24, 2013. In response to Defendant's Motion, a telephone status conference was conducted on May 22, 2013, at approximately 4:30 o'clock p.m.
- 13. That even though your Affiant complied with the Court's Order of May 17, 2013, the Court ordered that all of the Defendant's witnesses, other than the Defendant AFFIDAVIT OF DANIEL S. BROWN 3

and Patricia Rockstahl, would be excluded;

- 14. That in the State's Objection filed in the instant case, as well as the statements made of record at the telephone conference held on or about May 22, 2013, the State failed to set forth a scintilla of evidence relating to prejudice to the State. That according to your Affiant's understanding of the law and pursuant to the Idaho Appellate Court's finding in *State v. Johnson*, 149 Idaho 259, 264 (App. 2010), 233 P.3d 190, wherein it stated, "It is error for the trial court to exclude a witness based solely on late disclosure if there has been no showing of prejudice to the State." (Citing *State v. Lamphere*, 130 Idaho 630, 634, 945 P.2d 1, 5 (1997).) In addition, *Johnson* states: "[w]hen determining whether to exclude defense evidence due to late disclosure or nondisclosure, the trial court must weigh the prejudice to the State against the defendant's right to a fair trial." *Id.* It is your Affiant's belief that this Honorable Court should have considered the competing interests at stake and whether less severe remedies would be sufficient for untimely disclosure. *Id.*;
- 15. That based upon your Affiant's understanding of the law and the Court's decisions in the instant case, your Affiant believes that the Honorable Mick Hodges is biased or prejudiced against the Defendant and/or Defendant's case;
- 16. That in addition to the above and foregoing events, your Affiant was counsel of record in Cassia County Case No. CV-2006-1201, entitled *Patterson v. Hakes*, wherein the Honorable Mick Hodges made comments, on the record, that your Affiant was "slippery" in seeking to avoid answering the Court's questions. In addition, the Honorable Mick Hodges had exparte contact with your Affiant, over the telephone, while AFFIDAVIT OF DANIEL S. BROWN 4

**Fuller Law Offices** 



I was seated in my office. That based upon that exparte contact, as well as the statements made of record, I have been informed that a party to that suit has filed a complaint with the Idaho Judicial Council. That based upon your Affiant's understanding of the complaint, your Affiant is a material witness to the allegations complained of;

- 17. That it is your Affiant's belief that based upon the exparte contact, as well as what your Affiant considers to be derogatory remarks, your Affiant believes that the Honorable Mick Hodges has developed a bias against Affiant, which is negatively impacting the Defendant's case;
- 18. That based upon the above, your Affiant respectfully requests that this Honorable Court grant the Motion to Disqualify For Cause.

FURTHER YOUR AFFLANT SAYETH NAUGHT.

DATED This 2 day of May, 2013.

FULLER LAW OFEICES

DANIEL S. BROWN Attorney for Defendant

day of May, 2013. SUBSCRIBED AND SWORN TO Before me this

otary Public for State

Residing at: SCOVY

Commission expires: 04-09-20/5

AFFIDAVIT OF DANIEL S. BROWN - 5

## **CERTIFICATE OF FACSIMILE**

I, the undersigned, do hereby certify that on the day of May, 2013, a true and correct copy of the foregoing document was mailed, United States Mail, postage prepaid, to the following:

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812 1-888-789-0935

AFFIDAVIT OF DANIEL S. BROWN - 6

--- - - -1<del>22</del>-- ---

TWIN FALLS CO. IDAHO

2013 MAY 23 AM 7: 47

BY\_\_\_

CLERK

Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301 Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

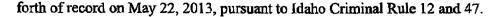
# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

THE STATE OF IDAHO,	)	
	)	Case No. CR-2012-00012841
Plaintiff,	j ,	
	)	MOTION FOR
VS.	)	RECONSIDERATION
	)	
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	Ĵ	
	* * * * *	

COMES NOW Defendant, Joseph R. Rockstahl, by and through his attorneys of record, Fuller Law Offices, and hereby moves this Court to reconsider its decision set

MOTION FOR RECONSIDERATION - 1



Pursuant to State v. Johnson, 149 Idaho 259, 264 (App. 2010), 233 P.3d 190, the Court stated:

The right of an accused to call witnesses in his defense is guaranteed by the Compulsory Process Clause of the Sixth Amendment. Taylor v. Illinois, 484 U.S. 400, 410, 108 S.Ct. 646, 648, 98 L.Ed.2d 798, 811 (1988); Harris, 132 Idaho at 846, 979 P.2d at 1204. However, the State also has a legitimate interest in obtaining timely and complete discovery responses from a defendant. Taylor, 484 U.S. at 412 n. 17, 108 S.Ct. at 654 n. 17, 98 L.Ed.2d at 812 n. 17; Albert, 138 Idaho at 287, 62 P.3d at 211. To accommodate these competing interests, when determining whether to exclude defense evidence due to late disclosure or nondisclosure, the trial court must weigh the prejudice to the State against the defendant's right to a fair trial. Harris, 132 Idaho at 847, 979 P.2d at 1205; Albert, 138 Idaho at 287, 62 P.3d at 211. It is error for the trial court to exclude a witness based solely on late disclosure if there has been no showing of prejudice to the State. State v. Lamphere, 130 Idaho 630, 634, 945 P.2d 1, 5 (1997).

Defendant would assert that the State has failed to demonstrate prejudice and, therefore, the Defendant's witnesses and exhibits should be allowed.

This Motion is made and based upon the papers and pleadings on file herein.

Counsel requests oral argument.

DATED This 22 day of May, 2013.

FULLER LAW OFFICES

DANIEL S. BROWN Attorney for Defendant

MOTION FOR RECONSIDERATION - 2

Sanethharsing

## **CERTIFICATE OF FACSIMILE**

I, the undersigned, do hereby certify that on the day of May, 2013, a true and correct copy of the foregoing document was mailed, United States Mail, postage prepaid, to the following:

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812 1-888-789-0935

**MOTION FOR RECONSIDERATION - 3** 

UISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 MAY 23 AM 7: 49

BY\_

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Greg J. Fuller Daniel S. Brown FULLER LAW OFFICES

Attorney at Law P. O. Box L 161 Main Avenue West Twin Falls, ID 83301

Telephone: (208) 734-1602 Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\*\*\*\*

THE STATE OF IDAHO,	)
	) Case No. CR-2012-00012841
Plaintiff,	j
Sept.	) MOTION TO
vs.	) SHORTEN TIME
JOSEPH R. ROCKSTAHL,	)
Defendant.	)

COMES NOW Defendant, by and through his attorneys of record, Fuller Law Offices, and hereby moves this Honorable Court to shorten the time in which to hold a

\*\*\*\*

MOTION TO SHORTEN TIME - 1

hearing relative to Defendant's Motion for Disqualification For Cause and Motion for Reconsideration and allowing same to be heard on Thursday, May 23, 2013, at 8:15 o'clock a.m.

This Motion is made and based upon the papers and pleadings on file herein as well as Idaho Criminal Rule 7 and 47.

Counsel requests oral argument.

Fuller Law Offices

DATED This 22 day of May, 2013.

**FULLER LAW OFFICES** 

DANIEL S. BROWN Attorney for Defendant

Janeet Marsin/

### CERTIFICATE OF FACSIMILE

I, the undersigned, do hereby certify that on the day of May, 2013, a true and correct copy of the foregoing document was mailed. United States Mail, postage prepaid, to the following:

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, ID 83303-1812 1-888-789-0935

**MOTION TO SHORTEN TIME - 2** 

## DISTRICT COURT Fifth Judicial District County of Twin Falls • State of Idaho

MAY 23 2013

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD. 440 Fairfield St. North

Twin Falls, Idaho 83301
Telephone (208) 734-8810
Facsimile (208) 734-8820
ISBN #6576

Dv	1
Бу	Clerk
	Deputy Clerk

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

ORDER TO VACATE AND
CONTINUE JURY TRIAL

JOSEPH R. ROCKSTAHL

Defendant.

The Court having reviewed the Defendant's MOTION TO VACATE AND

CONTINUE JURY TRIAL, and good cause appearing, now therefore;

**IT IS HEREBY ORDERED** That the jury trial scheduled for Thursday, May 23-24, 2013 at 8:30 a.m. is vacated and continued to a time convenient to the Court and counsel.

DATED this 27 day of May, 2013

Teried

HONORABLE MICK HODGES

Magistrate Judge

#### CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the day of May, 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

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D	lain	tit	+.
	ann		

Fritz Wonderlich [ ] U.S. Mail
Twin Falls City Prosecutor [ ] Court Box
PO Box 1812 [ ] Hand Delivery
Twin Falls, ID 83303-1812 [ ] Facsimile

### Defendant:

Joe Rockstahl

Rockstahl Law Office, Chtd.

440 Fairfield St. North

Twin Falls, Idaho 83301

Telephone (208) 734-8810

Facsimile (208) 734-8820

COURT CLERK

Court Bex

y: Denuty Clerk

Dan Brown

DISTRICT COURT
Fifth Judicial District
County of Twin Falls • State of Idaho

MAY 23 2013

## JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576 Clerk
Deputy Clerk

Attorney for Defendant

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*\*

STATE OF IDAHO CASE NO.: CR-2012-12841 Plaintiff, ORDER TO SHORTEN TIME FOR HEARING ON DEFENDANT'S VS MOTION TO VACATE AND JOSEPH R. ROCKSTAHL **CONTINUE JURY TRIAL** Defendant. Pursuant to Defendant's Motion to Shorten Time, and good cause appearing, now therefore: IT IS HEREBY ORDERED that the Defendants' Motion To Shorten Time to allow Defendants' Motion to Vacate and Continue Jury Trial to be heard on the day of May, 2013 at \_\_\_\_\_ a.m./p.m. or as soon thereafter as counsel can be heard at the Twin Falls County Courthouse, Twin Falls, Idaho. day of May 2013. Honorable MICK HODGES Magistrate Judge

### CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the day of May, 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

TAI			cc
PI	ain	111	+++
1 1	am	LI.	ш.

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812

1 WIII 1 alls, 1D 05505-1

## Defendant:

Joe Rockstahl
Rockstahl Law Office, Chtd.
440 Fairfield St. North
Twin Falls, Idaho 83301
Telephone (208) 734-8810
Facsimile (208) 734-8820
ISBN #6576

[ ] U.S. Mail

Court Box

[ ] Hand Delivery

[ ] Facsimile

[ ] U.S. Mail

Court Box

[ ] Hand Delivery

Cerupt Box

[ ] Facsimile

Dan Brow

COURT CLERK

Deputy Clerk

DISTRICT COURT WIN FALLS CO. IDAHO

**INSTRUCTION NO. 1** 

2013 MAY 24 PM 3: 09

This is the case of State of Idaho v.Joe Rockstahl. Are the parties ready to proceed?

In a moment the Clerk will call the roll of the jury. When your name is called you will also be identified with a number. Please remember your number as we will be using it later in the jury selection process.

The Clerk will now call the roll of the jury.

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select 6 jurors.

I am Mick Hodges, the judge in charge of the courtroom and this trial. The deputy clerk of court, Lorraine Robinson, she marks the trial exhibits and administers oaths to you jurors and to the witnesses. The bailiff, [Insert name of Bailiff], will assist me in maintaining courtroom order and working with the jury.

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 Fritz Wonderlich, the Prosecuting Attorney For Twin Falls City.

The defendants in this action is Joe Rockstahl. The lawyer representing Mr. Rockstahl is Daniel Brown, an attorney from the Fuller Law Offices. Mr. Rockstahl is also an attorney and will be representing himself as co-counsel.

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

With regard to Joe Rockstahl, the complaint charges in Count I that Joe Rockstahl on or about July 2,2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Exhibition of Deadly Weapon, and while in the presence of two (2) or more persons, did exhibit a deadly weapon in a rude, angry or threatening manner, not in necessary self-defense, in violation of Idaho Code 18-3303.

The complaint in Count 2 charges that Joe Rockstahl,, on or about July 2,2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Aiming Firearm at others, and did intentionally point or aim a firearm at or toward another, in violation of 1C 18-3304.

The complaint in Count 3 charges that that the above-named Defendant, on or about July 2,2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Disorderly Conduct, and did maliciously and wilfully disturb the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, in violation of Idaho Code 18-6409.

2

To these charges Joe Rockstahl has pled not guilty.

Under our law & system of justice, every Defendant is presumed to be innocent. This 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 may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

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.

We will now call an initial selection of 6 jurors. As your name is called please take a seat as directed by the bailiff. The clerk will please draw the initial jurors' names.

## \* \* \*\* The clerk calls the jurors \* \* \*\*

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 6 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 the voir dire examination one or more of you may be challenged.

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

feel that your honesty or integrity is being questioned. It is not.

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

### **INSTRUCTION NO. 2**

1. You have heard the charge made in the information against the defendant.

Other than what I have told you, do any of you know anything about this case, either through your own personal knowledge, by discussion with anyone else or from radio, television or newspapers?

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

Do you have a state of mind with reference to the charges against this defendant which would in any way prevent you from acting with impartiality?

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

2. Are any of you related by blood or marriage to [defendant's name] or do you know him from any business or social relationship?

## SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF DEFENDANT:

In which of those capacities have you known Joe Rockstahl]?

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

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

b

In which of those capacities have you known him?

4. One of the alleged complaining witnesses in this matter is Steven Nielsen.....Jeremy Merchant.....Randy Carpenter. Are any of you related by blood or marriage toMr. Nielsen, or do you know him from any business or social relationship? Are any of you business relationship employed by. stock in. have any with own Mr. Nielsen....Merchant......Randy Carpenter?]

## SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF VICTIM:

In which of those capacities have you known [victim]?

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

- 5. Does the relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, boarder or lodger exist between any of you and Joe Rochstal or alleged complaining witnesses Steven Nielsen....Jeremy Merchant...Randy Carpenter?
  - 6. Are any of you a party in any civil action against Joe Rochstahl?
- 7. Have any of you ever complained against Joe Rochstahl or been accused by Joe Rochstahl in a criminal prosecution?
- 8. Have any of you ever formed or expressed an unqualified opinion that Joe Rochstahl, is guilty or not guilty of the offense charged?
- 9. I have introduced you to the lawyers representing the parties. Are any of you related by blood or marriage to any of the lawyers or do any of you know the any of the lawyers from any professional, business or social relationship?

## SUGGESTED FOLLOW UP QUESTION WHERE THERE IS KNOWLEDGE OF COUNSEL:

Who do you know and how do you know them?

Would your knowledge of Wonderlich/Brown prevent you from acting with impartiality in this case?

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

- 10. Do any of you have a religious or moral position that would make it impossible to render judgment?
  - 11. Do any of you have any bias or prejudice either for or against Joe Rochstahl?
- 12. I will now read to you the names of those who may possibly testify in this cause. I will read their names slowly and I ask that if you know any of them in any capacity that you immediately advise me of this fact.

#### WITNESS LIST

1. Steven Neilsen, Jeremy Merchant, Eric Schindler, Justin Cyr, Randy Carpenter, Kevin Loosli, & Patricia Rockstahl,.

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

In what capacity have you known [name of witness]?

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

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

3

### [Repeat as necessary for each witness]

13. Are there any of you who are unwilling to follow my instructions to you, the jury,

as to the law that you must apply in determining this case?

- 14. Are there any of you, if selected as a juror in this case, who is unwilling or unable to render a fair and impartial verdict based upon the evidence presented in this courtroom and the law as instructed by the Court?
- 15. Do any of you have any other reason why you cannot give this case your undivided attention and render a fair and impartial verdict?

#### **INSTRUCTION NO. 3**

These instructions explain your duties as jurors and define the law that applies to this case. It is your duty to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. Your decision should be based upon a rational and objective assessment of the evidence. It should not be based on sympathy or prejudice.

It is my duty to instruct you on the points of law necessary to decide the case, and it is your duty to follow the law as I instruct. You must consider these instructions as a whole, not picking out one and disregarding others. The order in which these instructions are given or the manner in which they are numbered has no significance as to the importance of any of them. If you do not understand an instruction, you may send a note to me through the bailiff, and I will try to clarify or explain the point further.

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 admitted into evidence, and any stipulated or admitted facts. While the arguments and remarks of the attorneys may help you understand the evidence and apply the instructions, what they say is not evidence. If an attorney's argument or remark has no basis in the evidence, you should disregard it.

The production of evidence in court is governed by rule of law. At times during the trial, I sustained an objection to a question without permitting the witness to answer it, or to an offered exhibit without receiving it into evidence. My rulings are legal matters, and are solely my responsibility. You must not speculate as to the reason for any objection, which was made, or my ruling thereon, and in reaching your decision you may not consider such a question or exhibit or

speculate as to what the answer or exhibit would have shown. Remember, a question is not evidence and should be considered only as it gives meaning to the answer.

There were occasions where an objection was made after an answer was given or the remark was made, and in my ruling on the objection I instructed that the answer or remark be stricken, or directed that you disregard the answer or remark and dismiss it from your minds. In your deliberations, you must not consider such answer or remark, but must treat it as though you had never heard it.

The law does not require you to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. There is no magical formula for evaluating testimony. 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 considerations you use in making the more important decisions in your everyday dealings are the same considerations you should apply in your deliberations in this case.

#### **INSTRUCTION NO. 4**

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

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

The state will offer evidence that it says will support the charge(s) 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.

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 may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

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.

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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.

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.

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

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.

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

Do not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. "No discussion" also means no emailing, text messaging, tweeting, blogging, posting to electronic bulletin boards, and any other form of communication, electronic or otherwise.

Do not discuss this case with other jurors until you begin your deliberations at the end of the trial. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don't think you are paying attention, but because experience has shown this is one of the hardest instructions for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common: what they just watched together.

There are at least two reasons for this rule. The first is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won't have that until the very end of the trial. The second reason for the rule is that we want all of you working together on this decision

when you deliberate. If you have conversations in groups of two or three during the trial, you won't remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial.

Ignore any attempted improper communication. If any person tries to talk to you about this case, tell that person that you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to the bailiff.

Do not make any independent personal investigations into any facts or locations connected with this case. Do not look up any information from any source, including the Internet. Do not communicate any private or special knowledge about any of the facts of this case to your fellow jurors. Do not read or listen to any news reports about this case or about anyone involved in this case, whether those reports are in newspapers or the Internet, or on radio or television.

In our daily lives we may be used to looking for information on-line and to "Google" something as a matter of routine. Also, in a trial it can be very tempting for jurors to do their own research to make sure they are making the correct decision. You must resist that temptation for our system of justice to work as it should. I specifically instruct that you must decide the case only on the evidence received here in court. If you communicate with anyone about the case or do outside research during the trial it could cause us to have to start the trial over with new jurors and you could be held in contempt of court.

While you are actually deliberating in the jury room, the bailiff will confiscate all cell phones and other means of electronic communications. Should you need to communicate with me or anyone else during the deliberations, please notify the bailiff.

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Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on any or all of the offenses charged.

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.

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.

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 will apply 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.

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.

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.

Upon retiring to the jury room, select one of you as a presiding officer, 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.

It is alleged that the crime charged was committed "on or about July 2, 2012". If you find the crime was committed, the proof need not show that it was committed on that precise date.

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.

In every crime or public offense there must exist a union or joint operation of act and intent

An act is "willful" or done "willfully" when done on purpose. One can act willfully without intending to violate the law, to injure another, or to acquire any advantage.

"Malice" and "maliciously" mean the desire to annoy or injure another or the intent to do a wrongful act.

You heard testimony that the Joe Rockstahl or the complaining witnesses made statements to the police\ concerning the crime charged in this case. You must decide what, if any, statements were made and give them the weight you believe is appropriate, just as you would any other evidence or statements in the case.

During the trial I may have admonished the attorneys. Do not let that influence your decision. Lawyers are required to represent their clients diligently. One of my duties is to oversee the conduct of this trial. Sometimes there are good faith disagreements between the judge and the attorneys about what questions, argument, and conduct are proper. Your verdict must be based solely upon the facts shown by the evidence and the law contained in these instructions.

The term "firearm" means any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas or mechanical means, whether operable or inoperable.

The kind and degree of force which a person may lawfully use in self-defense or defense of another is limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense or defense of another, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

In the exercise of the right of self-defense or defense of another, one need not retreat.

One may stand one's ground and defend oneself or the other person by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and a person may pursue the attacker until that person or the other person has been secured from danger if that course likewise appears reasonably necessary. This law applies even though the person being attacked or defended might more easily have gained safety by flight or by withdrawing from the scene.

INSTR	UCTION	NO
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In order for the defendant to be guilty of Exhibition of a Deadly Weapon, in violation of Idaho Code 18-3303, the state must prove each of the following:

- 1. On or about July 2, 2012,
- 2. In the State of Idaho,
- 3. The defendant, Joseph Rockstahl,
- 4. Not in necessary self-defense or the defense of another,
- 5. In the presence of two or more persons,
- 6. Draws or exhibits any deadly weapon in a rude, angry and threatening manner.

Exhibition of a Deadly Weapon is justifiable if the defendant was acting in self-defense.

In order to find that the defendant acted in self-defense, all of the following conditions must be found to have been in existence at the time of the Exhibition of a Deadly Weapon:

- 1. The defendant must have had some reasonable fear of bodily harm.
- 2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.
- The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant was in imminent danger of bodily harm and believed that the action taken was necessary.
- The defendant must have acted only in response to that danger and not for some other motivation.
- 5. When there is no longer any reasonable appearance of danger, the right of self-defense ends.

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and circumstances which the evidence shows existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of bodily injury is not sufficient to justify Exhibition of a Deadly Weapon. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove beyond a reasonable doubt that the Exhibition of a Deadly Weapon was not justifiable. If there is a reasonable doubt whether the Exhibition of a Deadly Weapon was justifiable, you must find the defendant not guilty.

The kind and degree of force which a person may lawfully use in self-defense or defense of another are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

In the exercise of the right of self-defense, one need not retreat. One may stand one's ground and defend oneself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. This law applies even though the person being attacked might more easily have gained safety by flight or by withdrawing from the scene.

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In order to find the defendant guilty of Aiming Firearms at Others, you must find the following:

- 1. That on or about July 2, 2012
- 2. in the state of Idaho
- 3. the defendant, Joseph Rockstahl,
- 4. intentionally, without malice,
- 5. pointed or aimed a firearm at or toward another person.

If any of the above has not been proved beyond a reasonable doubt, you should find the defendant not guilty. If each of the above has been proved beyond a reasonable doubt, you must find the defendant guilty.

INSTR	UCTION	NO.	

In order to find the defendant guilty of Disorderly Conduct, you must find the following:

- 1. That on or about July 2, 2012
- 2. in the state of Idaho
- 3. the defendant, Joseph Rockstahl,
- 4. maliciously and wilfully disturbed the peace or quiet of Steven Neilsen, Randy Carpenter and/or Jeremy Merchant,
- 5. by tumultuous or offensive conduct, by threatening, traducing, quarreling, challenging to fight, or fighting.

If any of the above has not been proved beyond a reasonable doubt, you should find the defendant not guilty. If each of the above has been proved beyond a reasonable doubt, you must find the defendant guilty.

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INICTOLICTION NO	33	
INSTRUCTION NO.		

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	) CASE NO. CR-2012-12841
Plaintiff,	)
VS.	) VERDICT
JOSEPH ROCKSTAHL,	)
Defendant.	) ) )
We, the Jury, unanimously find the def	endant Joseph Rockstahl:
(Count I, Mark only one)	
Guilty of Pointing or Aiming	Firearms at or Towards Others
Not Guilty	
We, the Jury, unanimously find the def	endant Joseph Rockstahl:
(Count II, Mark only one)	
Guilty of Exhibition of a De	adly Weapon
Not Guilty	
We, the Jury, unanimously find the def	endant Joseph Rockstahl:
(Count III, Mark only one)	
Guilty of Disorderly Conduc	et
Not Guilty	
DATED this day of May, 2	013.
	Presiding Juror

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.

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, and 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.

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 will 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.

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

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.

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. 38**

Upon retiring to the jury room, select one of you as a presiding officer, 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 officer 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.

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

### INSTRUCTION NO. 33

2013 MAY 24 PM 3: 02

	FOR THE COUNTY OF TWIN FALLS
STATE OF IDAHO,	) CASE NO. CR-2012-12841
Plaintiff,	)
vs.	) ) VERDICT
JOSEPH ROCKSTAHL,	)
Defendant.	) ) )
We, the Jury, unanimously find the defe	endant Joseph Rockstahl:
(Count I, Mark only one)	
Guilty of Pointing or Aiming	Firearms at or Towards Others
Not Guilty	
We, the Jury, unanimously find the defe	endant Joseph Rockstahl:
(Count II, Mark only one)	
X Guilty of Exhibition of a Dea	adly Weapon
Not Guilty	
We, the Jury, unanimously find the defe	endant Joseph Rockstahl:
(Count III, Mark only one)	
	et "
Not Guilty	
DATED this 24 day of May, 20	013.

Presiding Juror

TWIN FALLS CO. IDAHO

2013 MAY 24 PM 3: 02

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

### COURT MINUTES

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Jury Trial Hearing date: 5/23/2013

Time: 9:21 am Judge: Mick Hodges

Courtroom: 2

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich

- 924 The Court called case and addressed the parties and the prospective jurors.
- 925 The Clerk called the roll.
- 930 The Court addressed the jury.
- 933 The Court read the complaint to the prospective jurors.
- 941 The Clerk duly swore the jury panel for Voir Dire examination
- 942 The Court conducted Voir Dire examination.
- 949 Juror 449 was excused for cause.
- 957 Mr. Wonderlich conducted Voir Dire examination.
- 1003 Juror 462 was excused for cause.
- 1008 Mr. Wonderlich passed the panel for cause.
- 1008 Mr. Brown conducted Voir Dire examination.
- 1012 Juror 418 was excused for cause.
- 1019 Juror 483 was excused for cause.
- 1022 Juror 484 was excused for cause.
- 1026 Juror 430 was excused for cause.
- 1033 Mr. Brown passed the panel for cause.
- 1034 The parties conducted their peremptory challenges.
- 1042 The Court excused **Jurors 548**, **474**, **465**, **495**, **485**, **502**, **536**, **539**, based on the peremptory challenges.
- 1044 A jury has been selected and seated. Jurors 409, 503, 437, 436, 513 and 425 were selected for the jury panel.
- 1044 The clerk duly swore in the jury panel.

### State v. Rockstahl

- 1045 The jury was excused to the jury room. The Court is in recess at this time.
- 1058 The Court is back on the record.
- 1058 Mr. Wonderlich addressed the Court regarding preliminary matters.
- 1059 Mr. Brown addressed the Court regarding the matters.
- 1102 The Court introduced a visiting government class.
- 1102 Mr. Wonderlich requested another preliminary matter be heard regarding hearsay.
- 1103 The Court agreed.
- 1103 Mr. Brown further addressed the matter.
- 1105 The jury is in the court room.
- 1107 The Court addressed the jury and read the preliminary instructions to the jury.
- 1120 Mr. Brown questioned the Court regarding the reading of jury instructions 4 and 6.
- 1120 The Court responded that the instructions were read to the jury.
- 1121 Mr. Brown moved to exclude witnesses. The Court excluded all witnesses.
- 1122 Mr. Wonderlich gave his opening statement.
- 1129 Mr. Brown gave his opening statement.
- 1144 **State's 1<sup>st</sup> witness**, Eric Shindler, was duly sworn and examined by Mr. Wonderlich.
- 1145 The witness identified the defendant.
- 1146 The Court admonished the witness regarding answering the questions.
- 1149 Cross-examination by Mr. Brown.
- 1156 Re-direct by Mr. Wonderlich.
- 1156 The witness stepped down and was excused. The witness will be subject to recall.
- 1157 The Court will take lunch recess. The Court will resume at 1pm.
- 1157 The Jury excused from the court room.
- 100 The Court is back from recess.
- 100 Mr. Brown made motions regarding the jury instructions and a video to be offered by the state.
- 103 Mr. Wonderlich gave argument regarding the motion regarding the video.
- 104 The Court will allow the video to be played.
- 105 The Court questioned Mr. Brown regarding jury instructions. The Court will re-read jury instruction.
- 106 The jury is back in the court room.
- 106 The Court re-read jury instruction #3 to the jury.
- 110 **State's 2<sup>nd</sup> witness**, Randy Carpenter, was duly sworn and examined by Mr. Wonderlich.
- 116 Objection, hearsay, by Mr. Brown. Mr. Wonderlich commented. Over-ruled.

### State v. Rockstahl

- 119 Objection by Mr. Brown, leading question. The question was rephrased.
- 124 Objection by Mr. Brown, hearsay. Mr. Wonderlich commented. Over-ruled.
- 130 Objection by Mr. Brown, leading question. The Court asked the question be reasked without leading.
- 132 State's Exhibit A, an audio CD, was marked, identified, offered, and admitted.
- 135 The Court will take a 5 minute break to set up for the audio cassette.
- 140 The Court is back from recess, the jury is back in the court room.
- 141 Mr. Wonderlich played the audio on exhibit A.
- 146 Mr. Wonderlich continued his examination.
- 148 Objection by Mr. Brown, foundation. Mr. Brown examined the witness regarding foundation. Objection by Mr. Wonderlich. Over-ruled.
- 149 Mr. Wonderlich continued his examination.
- 152 Cross-examination by Mr. Brown.
- 153 Objection by Mr. Wonderlich, misstatement of witness testimony. Mr. Brown will restate the question.
- 154 Objection by Mr. Wonderlich.
- 154 Mr. Brown continued his examination.
- 155 Objection by Mr. Wonderlich.
- 155 Mr. Brown continued his examination.
- 158 Objection by Mr. Wonderlich, legal conclusion. Sustained.
- 204 Objection by Mr. Wonderlich. Sustained.
- 208 The Court admonished the witness regarding answering the questions.
- 210 Objection by Mr. Wonderlich, line of questioning. The Court advised Mr. Brown to move on in his questioning.
- 211 Objection by Mr. Wonderlich. The Court advised Mr. Brown to move on.
- 220 Re-direct by Mr. Wonderlich.
- 221 Mr. Brown objected to the witness refreshing his memory with his statement (state's exhibit B).
- 222 **State's Exhibit B,** witness statement, was marked and identified. Objection by Mr. Brown.
- 223 Objection by Mr. Brown as to the witness testimony.
- 224 The witness stepped down and was excused for the day and is subject to recall tomorrow.
- 225 **State's 3<sup>rd</sup> witness**, Steven Robert Nielson, was duly sworn and examined by Mr. Wonderlich.
- 229 Objection by Mr. Brown, leading. Mr. Wonderlich will restate the question.
- 230 State's Exhibit C, an audio CD, was marked, identified, offered and admitted.
- 232 The Court will take a short recess. The jury excused to the jury room.
- 232 The Court is in Recess.

### State v. Rockstahl

- 239 The Court is back on the record. The jury is back in the court room.
- 239 Mr. Wonderlich played state's Exhibit C.
- 245 Cross-examination by Mr. Brown.
- 250 No- Redirect by Mr. Wonderlich.
- 250 The witness stepped down and was excused.
- 251 **State's 4<sup>th</sup> witness**, Jeremy Alan Merchant, was duly sworn and examined by Mr. Wonderlich.
- 255 Objection by Mr. Brown, relevance. Mr. Wonderlich restated the question.
- 256 Objection by Mr. Brown. Mr. Wonderlich commented and continued.
- 257 Objection by Mr. Brown, relevance. Mr. Wonderlich will continue with his questioning.
- 259 Objection by Mr. Brown, foundation and move to strike. Sustained.
- 259 Cross-examination by Mr. Brown.
- 304 Objection by Mr. Brown, non-responsive, move to strike. Sustained.
- 305 Objection by Mr. Wonderlich, after the fact. Sustained
- 305 Objection by Mr. Wonderlich, after the fact. Sustained.
- 309 Re-direct by Mr. Wonderlich.
- 310 The witness stepped down, and is subject to recall.
- 310 State's 5th witness, Officer Justin Cyr, was duly sworn and
- 312 State's Exhibit D, Joe Rockstahl's statement, marked, identified, offered
- (Objection by Mr. Brown) and admitted.
- 313 Cross-examination by Mr. Brown.
- 317 Re-direct by Mr. Wonderlich.
- 319 Objection by Mr. Brown, leading. The Court admonished Mr. Wonderlich.
- 320 The witness stepped down and was excused.
- 320 The state rests.
- 321 The Court will take a short recess. The jury was excused to the jury room.
- 326 The Court is back on the record.
- 328 Mr. Brown made a motion for judgment of acquittal.
- 329 The Court made finding there is enough evidence for conviction and denied the motion for acquittal.
- 332 The jury is back in the court room.
- 333 **Defense 1<sup>st</sup> witness**, Patricia Darlene Rockstahl, was duly sworn and examined by Mr. Brown.
- 345 Objection by Mr. Wonderlich, leading. Mr. Brown will rephrase.
- 353 Objection by Mr. Wonderlich, leading. Mr. Brown will rephrase.
- 355 Objection by Mr. Wonderlich, foundation. Sustained.
- 356 Objection by Mr. Wonderlich. Mr. Wonderlich requested to question the witness.
- The Court allowed the questions.

- 357 Mr. Brown continued his examination.
- 400 Objection by Mr. Wonderlich, leading. Sustained.
- 404 Objection by Mr. Wonderlich. Sustained.
- 405 Objection by Mr. Wonderlich and move to strike. Comments by Mr. Brown. Sustained.
- 406 Mr. Rockstahl addressed the Court regarding the objection. Objection is still sustained.
- 407 Cross-examination by Mr. Wonderlich.
- 418 Re-direct by Mr. Brown.
- 419 Objection by Mr. Wonderlich, relevance. Comments made by Mr. Brown. Sustained.
- 421 The witness stepped down and was excused.
- 422 **Defense 2<sup>nd</sup> witness**, Terrance Thueson, was duly sworn and examined by Mr. Brown.
- 426 Objection by Mr. Wonderlich, legal conclusion. Over-ruled.
- 432 Cross-examination by Mr. Wonderlich.
- 433 Objection by Mr. Brown, beyond scope. Mr. Wonderlich restated the question.
- 433 Objection by Mr. Brown, beyond scope. Over-ruled.
- 434 Re-direct by Mr. Brown.
- 435 Objection by Mr. Wonderlich. Sustained.
- 436 The witness
- 436 Mr. Brown requested a short recess. The jury was excused to the jury room.
- 436 The Court is in recess.
- 446 The Court is back on the record.
- 446 Mr. Brown informed the Court the defense next witness will be Mr. Rockstahl.
- 446 The jury is back in the court room.
- 446 The Court made comments to the Jury and excused the jury for the day. The Court will reconvene tomorrow at 9:00 am.

### **END OF DAY 1**

### Day 2 - May 24, 2013

902 The Court called the case and addressed the parties.

904 The Jury is in the court room.

904 Defense 3<sup>rd</sup> witness, Joe Rockstahl, was duly sworn and examined by Mr. Brown.

924 Objection by Mr. Wonderlich. Sustained.

929 Objection by Mr. Wonderlich, foundation. Sustained.

929 Objection by Mr. Wonderlich, foundation. Sustained.

933 Objection by Mr. Wonderlich, leading. Sustained.

936 Cross-examination by Mr. Wonderlich.

938 Objection by Mr. Brown, characterization. Over-ruled.

944 Objection by Mr. Brown, question. Over-ruled.

946 Mr. Wonderlich motioned the Court to exclude the jury, so Mr. Rockstahl could refresh his memory with an audio interview.

947 The jury was excused to the jury room.

949 The audio CD was played for the witness.

952 The jury is back in the court room.

952 Mr. Wonderlich continued his examination.

952 Mr. Wonderlich motioned the Court to exclude the jury so Mr. Rockstahl could refresh his memory with and audio interview.

953 The jury was excused to the jury room.

954 The audio CD was played for the witness.

955 The jury is back in the court room.

956 Mr. Wonderlich continued his examination.

957 Objection by Mr. Brown, speculation. Over-ruled.

1000 Objection by Mr. Brown, speculation. Over-ruled.

1004 Objection by Mr. Brown. Mr. Wonderlich will restate the question.

1005 Objection by Mr. Brown, hearsay. Over-ruled.

1006 Re-direct by Mr. Brown.

1008 Objection by Mr. Wonderlich, leading. Sustained.

1009 Objection by Mr. Wonderlich, leading. Sustained.

1010 Objection by Mr. Wonderlich, leading. Sustained.

1010 The witness stepped down.

1011 Mr. Brown requested a short recess.

1011 The jury was excused to the jury room.

1011 The Court will take a short recess and return in 15 minutes.

1034 The Court is back on record.

1034 The jury in the courtroom.

1034 The defense rests.

### State v. Rockstahl

- 1034 **State's 1<sup>st</sup> rebuttal witness**, recalled Jeremy Merchant. Mr. Merchant was duly sworn and examined by Mr. Wonderlich.
- 1035 Objection by Mr. Brown, witness present during testimony. Over-ruled.
- 1040 Objection by Mr. Brown, relevance. Over-ruled.
- 1040 No cross-examination by Mr. Brown.
- 1040 The state rests.
- 1041 The jury was excused to the jury room.
- 1042 The Court addressed the parties regarding adding jury instructions 35 through 38 and the instructions to be read.
- 1044 The parties read through the additional jury instructions, and agreed on them.
- 1045 The jury is back in the court room.
- 1046 The Court read the final jury instructions.
- 1109 The Court struck instruction 35, duplicative.
- 1110 The Court struck instructions 37 and 38, duplicative.
- 1110 Mr. Wonderlich gave his closing argument.
- 1116 Mr. Brown gave his closing argument.
- 1119 Objection by Mr. Wonderlich, instruction on credibility. Sustained.
- 1132 Objection by Mr. Wonderlich, misstating the law. Sustained.
- 1139 Mr. Wonderlich gave his final argument.
- 1147 The clerk swore in the bailiff.
- 1147 The jury is excused to the jury room for deliberations.
- 1147 The Court is adjourned for deliberations.
- 237 The Court is in session, a verdict has been reached.
- 237 The jury is in the court room.
- 238 The Clerk read the verdict into the minutes.
- 238 The Court read the discharge instructions to the jury.
- 240 The Court dismissed the Jury.
- 241 The Court ordered the defendant take a drug and alcohol evaluation be obtained within 30 days and prior to sentencing. Sentencing date to be set by the Court.
- 241 The Court is in recess.

TWIN FALLS CO. IDAHO

2013 MAY 28 AM 9: 43

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DEPUTY

#### ~MAGISTRATE DIVISION~

STATE OF IDAHO,	) Case No. CR 2012-12841
Plaintiff,	<u>}</u>
vs.  Joseph R. Rockstahl	ORDERS ON MOTIONS
Defendant.	)

This matter came before the Court pursuant to Defendant's Motion to Dismiss and pursuant to an Ex-Parte Order to Withdraw.

The Defendant's Motion to Dismiss was brought for hearing on February 22, 2013 pursuant to Rule 6.2(a) ICR. This is a rule dealing with a Prosecutor's duties and had no bearing on these proceedings. The Defendant basically wanted to argue a Summary Judgment Motion on this criminal case. As the argument had no basis in the Criminal Rules or case law, the Motion was denied from the bench, and by written Order, is hereby denied..

The Pretrial Conference was set for May 17, 2013, by this Court's March 21, 2013 Pretrial and Trial Order. On May 15, 2013, the Defendant filed an ex-parte Motion to Withdraw as attorney of record. The Defendant did not state under which rule the motion was brought, nor did he explain why the ex-parte motion was filed only two days before the pretrial conference.

According to the Affidavit of Greg Fuller filed with the motion, Defendant Rockstahl fired Fuller by letter dated March 28, 2013, with intentions of having another attorney substitute in. At the May 15, 2013 hearing counsel explained that the new attorney could not try the case until the first week of August, 2013. As the crime allegedly occurred on July 2, 2012, the State

argued that the trial would occur over one year from the date this misdemeanor allegedly occurred, if leave to withdraw was granted.

Leave to withdraw can be granted for "good cause shown", (I.C.R. Rule 44.1). However, the Court must decide if the withdrawal will cause a delay in disposition of the pending action while considering the rights of the parties. In this instance, the Defendant is a licensed, practicing attorney who can assist his attorney in his defense. His attorney waited fifty (50) days from the date of "termination" to file a motion to withdraw, and then only two days before the pretrial. Under these circumstances, as a matter of discretion, while balancing the rights of the parties, the Court cannot find good cause and the motion is denied.

IT IS SO ORDERED.

DATED this 20 day May, 2013

Mick Hodges Magistrate Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that on the <u>%</u> day of May, 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Fritz Wonderlich, Twin Falls City Prosecutor Dan Brown (X) Court Folder

(X) Court Folder

Deputy Clerk



### 2013 MAY 28 PM 4: 49

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

State of Idaho	)
Plaintiff(s),	) Case No. CR-2012-0012841
VS.	)
Joseph R Rockstahl	) NOTICE AND AGREEMENT RE: ) PURCHASE OF AUDIO
Defendant(s).	) RECORDING )

### NOTICE AND AGREEMENT RE: PURCHASE OF AUDIO RECORDING OF MAGISTRATE AND/OR DISTRICT COURT PROCEEDINGS

Date(s) of Proceedings Purchased: 3/15/13, 5/17/13, 5/23/13, 5/24/13

Pursuant to Idaho Court Administrative Rule 27(d) and (e), I acknowledge and agree that I am NOT AUTHORIZED and WILL NOT CITE to this recording as evidence in a legal proceeding; that only an official transcript as defined in the above rule may be cited as evidence in any legal proceeding.

NAME: Representing (if applicable) the Law Firm of: Rockston

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576 DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 JUN - 7 PM 4: 15

BY
CLERK
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO	)	CASE NO.: CR-2012-12841
Plaintiff,	)	MOTION FOR NEW TRIAL
vs	)	(I.C.R. 34)
JOSEPH R. ROCKSTAHL	)	
Defendant.	)	

COMES NOW the Defendant, Joseph Rockstahl, by and through his counsel of record, and moves for a New Trial pursuant to Idaho Criminal Rule 34, I.C. § 19-2406 and applicable case law.

19-2406. GROUNDS FOR NEW TRIAL. When a verdict has been rendered against the defendant the court may, upon his application, grant a new trial in the following cases only:

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

This Motion is requested in the interests of justice.

Defendant requests a New Trial in this matter on those counts not barred by prior acquittal, double jeopardy or collateral estoppel.

This Motion is supported by the Memorandum in Support of Motions and Affidavit(s) filed contemporaneously herewith. The Defendant requests a hearing and the opportunity to present additional evidence and oral argument.

DATED this 6 day of June, 2013.

Joe Rockstahl

Attorney for Defendant



### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] U.S. Mail [ → ] Court Box [ ] Hand Delivery [ ] Facsimile

Joe Rockstahl Or legal assistant 8

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576



Attorney for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

Plaintiff,

MOTION FOR MISTRIAL

(I.C.R. 29.1)

Defendant.

COMES NOW the Defendant, Joseph Rockstahl, by and through his counsel of record, and moves for a Mistrial pursuant to Idaho Criminal Rule 29.1 and applicable case law.

Defendant argues that the following warrant a mistrial in this matter:

- Variance between the charging document, preliminary jury instructions and the verdict form.
- 2. Failure to properly instruct jury.
- 3. The legal rulings of the Court:
  - Ordering Defendant to "work with" an attorney who had declared a breakdown in communication and who wished to withdraw from representation;
  - b. Denying Defendant witnesses and exhibits;
  - c. Denying Defendant a continuance of the trial;
  - d. Denying defendant the attorney of his choice;
  - e. Moving the trial up one week;
  - f. Denying Defendant's proposed jury instructions;

ORIGINAL

- g. Evidentiary rulings during trial were biased in favor of the prosecution;
- h. The Court improperly questioned a defense witness.

This Motion is supported by the Memorandum in Support of Motions and Affidavit(s) filed contemporaneously herewith. The Defendant requests a hearing and the opportunity to present additional evidence and oral argument.

DATED this day of June, 2013.

Joe Rockstahl

Attorney for Defendant

### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] U.S. Mail
[ → Court Box
[ ] Hand Delivery
[ ] Facsimile

Joe Rockstahl Or legal assistant JOE ROCKSTAHL
ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576



Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

Plaintiff,

MOTION FOR JUDGMENT OF

ACQUITTAL

(I.C.R. 29)

Defendant.

COMES NOW the Defendant, Joseph Rockstahl, by and through his counsel of record, and moves for a Judgment of Acquittal pursuant to Idaho Criminal Rule 29, the Idaho and U.S. Constitutions and applicable case law.

Defendant argues that the following warrant entry of Judgment of Acquittal:

- Variance between the charging document, preliminary jury instructions and the verdict form.
- 2. Double jeopardy.
- 3. Collateral Estoppel.

This Motion is supported by the Memorandum in Support of Motions and Affidavit(s) filed contemporaneously herewith. The Defendant requests a hearing and the opportunity to present additional evidence and oral argument.

DATED this 6 day of June, 2013.

Joe Rockstahl

Attorney for Defendant

ORIGINAL

### **CERTIFICATE OF MAILING**

	I HEREBY CERTIFY that on the	day of June, 2013, I caused to be served a true
and co	rrect copy of the foregoing document by	the method indicated below and addressed to the
follow	ing:	

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] U.S. Mail
[★] Court Box
[ ] Hand Delivery
[ ] Facsimile

Joe Rockstahl Or legal assistant of.

JOE ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576



Attorney for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

Plaintiff,

MOTION TO RENEW MOTION TO
DISMISS ON SELF-DEFENSE

Defendant.

Defendant.

COMES NOW the Defendant, Joseph Rockstahl, by and through his counsel of record, and submits this MOTION TO RENEW MOTION TO DISMISS ON SELF-DEFENSE.

The Defendant by and through counsel filed a Motion to Dismiss and Memorandum in Support on or about January 31, 2013 and hereby incorporates those filings by reference as if fully set forth and hereby moves to renew that motion.

Defendant requests a hearing and opportunity to present evidence, testimony, affidavits and argument.

Defendant reserves the right to supplement the renewed motion as evidence and arguments become known.

DATED this \_\_\_\_\_\_day of June, 2013.

Jee Rockstahl

Attorney for Defendant

MOTION TO RENEW MOTION TO DISMISS ON SELF-DEFENSE



### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 17th day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] U.S. Mail
[ ◯ Court Box
[ ] Hand Delivery
[ ] Facsimile

Joe Rockstahl Or legal assistant 8

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576



Attorney for Defendant

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

Plaintiff,

MEMORANDUM IN SUPPORT OF

MOTIONS FOR MISTRIAL,

ACQUITTAL AND NEW TRIAL

Defendant.

COMES NOW the Defendant, Joseph Rockstahl, by and through his counsel of record, and submits his Memorandum in Support of Motions for Mistrial, Acquittal and New Trial.

### ISSUES RE: MISTRIAL, ACQUITTAL AND NEW TRIAL:

- Variance between Charging Document, preliminary jury instructions and the Verdict Form.
- 2. Failure to properly instruct the jury.
- 3. Improper Evidentiary Rulings
- 4. Double Jeopardy
- 5. Collateral Estoppel
- 6. Judicial bias

### MISTRIAL

There are numerous reasons for granting a mistrial in this matter. The charging document, Criminal Complaint, lists the charges in descending order of seriousness:



Count 1 is exhibition of Deadly Weapon,

Count 2 is Aiming Firearm at Others and

Count 3 is Disorderly Conduct.

This order of Counts was also in the preliminary jury instructions.

Throughout the trial the attorneys referred to the counts as set forth in the criminal complaint.

The Verdict form switched Counts 1 and 2, such that the Verdict reads:

Count 1 Pointing or Aiming Firearms at or Towards Others.

Count 2 Exhibition of a Deadly Weapon.

The deputy clerk read the Verdict: "Count One – Acquitted. Count Two – Guilty. Count Three – Guilty."

A variance such as this warrants a mistrial.

"Whether a discrepancy between a charging instrument and a jury instruction is a harmless imperfection in the trial or prejudicial error that requires reversal is a question of law subject to free review on appeal. Colwell I, 124 Idaho at 565, 861 P.2d at 1230; State v. McBride, 123 Idaho 263, 265, 846 P.2d 914, 916 (Ct. App. 1992).

In State v. Windsor, 110 Idaho 410, 716 P.2d 1182 (1985), the Idaho Supreme Court held that a variance between a charging document and a jury instruction requires reversal "only when it deprives the defendant of his right to fair notice or leaves him open to the risk of double jeopardy." Windsor, 110 Idaho at 417-18, 716 P.2d at 1189-90. In the present case, we perceive no risk of double jeopardy, and therefore our analysis focuses on the fair notice prong of this standard. This notice element "requires courts to determine whether the record suggests the possibility that the defendant was misled or embarrassed in the preparation or presentation of his defense." Id. at 418, 716 P.2d at 1190."

State v. Sherrod, 131 Idaho 56 (Idaho Ct. App. 1998)

"... Day cannot affirmatively show that this occurred. However, Perry does not require that Day make such an affirmative showing. Rather, as Day asserts, Perry requires that Day must demonstrate there is a <u>reasonable possibility</u> that the error affected the outcome of the trial. Perry, 150 Idaho at 226, 245 P.3d at 978. As the state concedes, the variance allowed a possibility that the jury found Day guilty solely on his contact with the victim's breast, which is contact for which Day was not charged in the information and for which he could not be convicted of lewd conduct. See Kavajecz, 139 Idaho at 487, 80 P.3d at 1088. We conclude that Day has demonstrated there is a reasonable possibility that the variance in this case affected the outcome of trial." [Emphasis Added]. State v. Day, 299 P.3d 788 (Idaho Ct. App. 2013)

"If it is established that a variance exists, we must examine whether it rises to the level of prejudicial error requiring reversal of the conviction. State v. Brazil, 136 Idaho 327, 330, 33 P.3d 218, 221 (Ct. App. 2001)."

State v. Ormesher, 296 P.3d 427 (Idaho Ct. App. 2012).

There is prejudicial error in the variance here between the charging document, preliminary jury instructions and the verdict form. The Court, counsel, defendant and the public cannot be sure which charge was addressed in Count 1 – the Count 1 listed in the criminal complaint, preliminary jury instructions and as argued by counsel, or Count 1 as listed on the Verdict form *amended* to read Pointing or Aiming Firearms at or Towards Others. Nor can it be determined if the jury found the defendant acted in self defense or not. These uncertainties require a mistrial.

The Court failed to properly instruct the jury. Self defense pursuant to I.C. § 19-202A was requested for each count and was denied, as evidenced by the Defendant's requested jury instructions presented to the Court and state.

The other self defense instructions were improperly presented as they were not in the form of a charge to the jury – "If you find the defendant acted in self defense or defense of others, you must..."

The Court did not read the jury instructions verbatim and seemed to add, change or at time paraphrase the language in the instructions. The Defendant's affidavit in support sets forth some of the variances. In the final jury instructions the Court read some additional instructions at the end only to realize they were duplicative of the instructions previously provided.

"A court may grant a new trial if, during the course of the trial, the court has "erred in the decision of any question of law," I.C. § 19-2406(5), including evidentiary error.

. . .

Where a new trial is sought on an assertion of trial court error in admitting or excluding evidence, if error has occurred the issue becomes whether the incorrect evidentiary ruling was harmless or reversible error. State v. Roberts, 129 Idaho 194, 198, 923 P.2d 439, 443 (1996); State v. Howell, 137 Idaho 817, 820, 54 P.3d 460, 463 (Ct. App. 2002). A trial error will be deemed harmless if the appellate court can conclude, beyond a reasonable doubt, that the jury's verdict would have been the same absent the error. State v. Moore, 131 Idaho 814, 821, 965 P.2d 174, 181 (1998); Giles v. State, 125 Idaho 921, 925, 877

P.2d 365, 369 (1994)."

State v. Critchfield, 153 Idaho 680 (Idaho Ct. App. 2012)

The Idaho Supreme Court's web site provides "INTRODUCTION AND GENERAL DIRECTIONS FOR USE" in reference to jury instructions.

Which includes: "A trial judge should remain vigilant in observing the duty to set forth in Idaho Code § 19-2132: "In charging the jury, the court must state to them all matters of law necessary for their information."

Further down the page: "In particular, the instructions should be tailored to fit the allegations in the complaint, information or indictment. Failure to do so may cause a fatal variance between the instructions and charging document, which could deprive the defendant of the right to fair notice of the charges of leave the defendant open to the risk of double jeopardy. See, State v. Tiffany, 139 Idaho 909, 918-19, 88 P.3d 737-38 (2004); State v. Windsor, 110 Idaho 410, 417-18, 716 P.2d 1182, 1189-90 (1985)."

In reference to I.C. § 19-202A, our Court of Appeals said: "The statute, which has not been cited, interpreted or explained by an appellate court since its enactment in 1974, states that no person shall be in legal jeopardy for actions taken "when coming to the aid of another whom he reasonably believes to be in imminent danger of or the victim of ... rape... or other heinous crime."

State v. Arrasmith, 132 Idaho 33 (Idaho Ct. App. 1998)

In State of Idaho v. McNeil, 141 Idaho 383, 385; 109 P.3d 1125 (Ct.App. 1999) Judge Schwartzman referred to this statute (I.C. § 19-202A) as "the self-defense and defense of others immunity statute." [emphasis added].

During the pretrial period the Defendant in the instant case filed a Motion to Dismiss and Memorandum in Support seeking to invoke I.C. § 19-202A's immunity and avoid legal jeopardy. The Motion to Dismiss was summarily dismissed but should have put the Court and State on notice of the defendant's invoking of the immunity statute which put the burden on the state to prove beyond a reasonable doubt that the defendant did not act in self defense or defense of others. Similarly, it should have also placed the Court on notice of the State's burden and the need for the correct self-defense instructions.

Defendant submitted his proposed jury instructions which provided that I.C. § 19-202A applied to all the counts charged, i.e., if Defendant acted in self defense and/or defense of others all of the alleged crimes are covered by I.C. § 19-202A's immunity. Failing to do so improperly instructed the jury on the law and likely lead to confusion when coupled with the variance in the verdict form. The failure to make the other self defense instructions as a charge to the jury further added to their confusion.

The Court's improper evidentiary and other rulings began with denying the Ex Parte Motion by defense counsel, Greg Fuller, to withdraw, due to a breakdown in communication. As set forth in Defendant's Affidavit in Support, the Court ordered Defendant to "work with" counsel who had declared a conflict and a breakdown in communication. Substitute counsel, Mr. Roark, was on the telephone during the first part of the hearing and could be ready for trial the first part of August – a two month continuance. The fact that the incident requiring the Defendant to act in self defense and the defense of his wife occurred on July 2, 2012 but the Defendant was not charged until November 26, 2012 – a five month delay, was ignored.

Defendant's counsel pointed out he had a conflict with a District Court trial already set on the trial dates, which was also ignored. The Defendant then pointed out that the trial was set outside of the 180 day speedy trial limit and offered to waive his speedy trial rights for a continuance and the opportunity to have his attorney of choice substitute in as counsel. In response the Court moved the trial up a week and ordered the parties to have their exhibit and witness lists to each other by close of business Monday (this hearing was late Friday afternoon). The Defendant, a licensed attorney, asked the Court if he (the Defendant) was to act as co-counsel.

The Defendant did provide witness and exhibit lists on Monday to the State as ordered. The Defendant also learned that the trial dates were just before a 3-day weekend and some of his witnesses were unavailable as they were on vacation and had counted on the original trial date. Defendant filed a Motion to Vacate Trial and Continue due to unavailability of witnesses. The state objected and claimed the defense had not provided discovery pursuant to the Court's order, said discovery being due the previous Friday at the hearing. The Court granted the state's motion and denied the defendant character witnesses. Of the character witnesses to testify two are active duty police officers, one a shift supervisor told defense counsel: "Well, I can say Joe has never

lied to me.", the other while a drug detective was given Defendant's then teenage daughter's cell phone on two occasions which lead to arrests of drug dealers. The third is a retired law enforcement officer and the Defendant's neighbor, who vetted Defendant before inviting Defendant over for a Christmas time dinner, additionally the neighbor would testify as to the Defendant's reputation in the neighborhood which is also the scene of the alleged crime.

During the trial, as set forth in the Defendant's Affidavit in Support, the Court Minutes, the audio and, when available, the transcript; the Court was biased and hostile toward Defendant and especially his attorney. The Court either overruled or ignored all together defense counsel's objections; the Court Minutes show two times the defense objection was sustained. The Defendant's wife was testifying as to her feelings at the time the two men were attacking her when the state objected, the Court sustained the objection stating the Defendant's state of mind would be at issue not his wife's. During the Defendant's direct examination he was explaining what "four time felon" meant to him (one of the men who attacked his wife yelled at her: "I am a four time felon, I know where you live, I am going to get you.") Defendant was explaining his understanding of Idaho's Habitual Offender statute and what being a four time felon meant; when interrupted by the state's objection, which was sustained. This testimony was clearly about the Defendant's state of mind and would explain why he did what he did that night – and was not allowed into evidence.

"Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See Carey v. Piphus, 435 U.S. 247, 259-262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See Mathews v. Eldridge, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him."

Marshall v. Jerrico, Inc., 446 U.S. 238 (U.S. 1980)

"The discovery process in criminal cases in Idaho is governed by I.C.R. 16. Counsel is to respond to a discovery request within fourteen days. I.C.R. 16(e). If a party failed to comply with a request for discovery, the court may order discovery, prohibit discovery of part of the information or enter such other order as it deems fit. I.C.R. 16(j). Failure to comply with a discovery request shall be grounds for the imposition of sanctions by the court. I.C.R. 16(e)(2).

The magistrate in this case stated that everyone who practices before that court was aware that the pre-trial conference was the final deadline for discovery. Winson's counsel failed to meet that deadline and a discovery sanction was therefore appropriate. However, in the appeal before the district court. Winson's trial counsel stated that he was unfamiliar with this rule. Even if both parties understood that all discovery requests were to be satisfied by the pre-trial conference, a request must have been made before Winson was obligated to provide the discovery materials. Idaho Criminal Rule 16(c) provides that the defense must disclose certain information upon written request by the state; this rule does not require the defense to provide discovery upon its own initiative. There is nothing in the record to indicate that the state made the required written request for discovery. although the fact that the state made some request is not disputed. If Winson was under no obligation to provide discovery, the timing of his choice to do so cannot be a discovery violation. Further, even if a written request for discovery was made, the state failed to file a motion to compel discovery after Winson's failure to comply, I.C.R. 16(e), (i). Although the defense may have violated the rules of discovery in this case, the record indicates that the violation, if any, was likely inadvertent. Further, any harm to the state from the untimely disclosure could have been prevented had the state brought a motion to compel discovery prior to trial.

Even assuming there was a sanctionable discovery violation, this Court must still review the sanction imposed. In reviewing a discretionary decision of a trial court we review the record to determine if the lower court: (1) perceived the issue as one of discretion; (2) acted within the bounds of discretion and consistently with any legal standards; and (3) reached its decision by an exercise of reason. Stradley, 127 Idaho at 212, 899 P.2d at 425; State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

In a recent case involving a discovery violation, the Idaho Supreme Court determined a monetary sanction against the public defender to be within the discretion of the trial court. Stradley, 127 Idaho at 212, 899 P.2d at 425. In that case the trial court found that defense counsel had deliberately violated the discovery rules and a direct order of the court. The trial court went on to hold that, although I.C.R. 16(j) allowed for the exclusion of the relevant witness, Stradley's right to a fair trial outweighed the benefit of excluding the witness. In reviewing that case the Supreme Court noted that the trial court rejected the most severe sanction and instead imposed a narrowly tailored sanction against the individual responsible for the discovery violations—defense counsel.

In contrast, in this case the magistrate adopted the state's requested remedy--without evaluating whether it penalized the individual responsible for the discovery violation and without considering less severe sanctions. Winson argues that the magistrate could have ordered a continuance, giving the prosecution time to prepare, with the costs of retaining the jury charged to the defense. The district court determined that neither attorney suggested such a remedy at the time the magistrate imposed the discovery sanction. However, the imposition of discovery sanctions is to be the result of an exercise of reason

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by the trial court, not limited to those suggested by the attorneys. The magistrate did not refer to the discretionary nature of the decision or to the applicable rules in imposing the sanction. Further, the magistrate did not make an independent determination that prohibiting the defense's presentation of the witnesses was an appropriate sanction. The magistrate's exclusion of defense witnesses as a discovery sanction for missing the discovery deadline, which severely penalized Winson for his attorney's error, was an abuse of discretion.

The magistrate's errors in instructing the jury and in imposing a discovery sanction without a proper exercise of discretion are each independent grounds for reversal in this case. Together these errors created a violation of Winson's rights and denied him a fair trial. Accordingly we vacate the judgment of conviction. Winson also challenges his conviction on the basis that the magistrate admitted evidence of the breath test results without the proper foundation. However, in view of the fact that the judgment of conviction must be vacated, we do not deem it necessary to comment on this issue."

State v. Winson, 129 Idaho 298 (Idaho Ct. App. 1996)

"Larson's waiver argument turns on a colloquy that took place after the district court instructed the jury. The court asked if there were "any objections to the instructions as read," and Neimi's counsel said, "No." The requirement of Federal Rule of Civil Procedure 51 that specific objections to instructions must be made before the jury retires is strictly enforced in the Ninth Circuit. Hammer v. Gross, 932 F.2d 842, 847-48 (9th Cir.) (en banc), cert. denied, \_\_\_\_ U.S. \_\_\_\_, 112 S. Ct. 582, 116 L. Ed. 2d 607 (1991). The sole permissible deviation from the strictures of Rule 51 is that, where the trial court is aware of the party's concerns with an instruction and further objection would be unavailing, we will not require a formal objection." Id. at 847.

Neimi falls within the exception. The instruction was first discussed before trial, and the district court said it would give no such instruction. Nevertheless, Neimi filed a proposed instruction in that form and at the end of the jury charge conference he objected to the omission of that instruction. The district judge then stated his reasons for refusing to give the instruction. It is pellucid that the district court was well aware of Neimi's position and that further objection would have been unavailing. The fact that counsel courteously refrained from carrying on about the form of the instructions the district court gave did not, and does not, change the posture of the case. Neimi preserved his claim of error. See id.; Brown v. Avemco Inv. Corp, 603 F.2d 1367, 1370-73 (9th Cir. 1979) (court was aware of objection through examination of witnesses, proposed instructions and a directed verdict motion); Martinelli v. City of Beaumont, 820 F.2d 1491, 1493-94 (9th Cir. 1987) (court was fully aware of the objection where proposed alternate instructions and discussion made that clear); compare, United States v. Parsons Corp., 1 F.3d 944, 945 (9th Cir. 1993) (a mere suggestion cannot take the place of an objection). We return to the main theme. [Emphasis Added].

Larson v. Neimi, 9 F.3d 1397, \*; 1993 U.S. App. LEXIS 29928, \*\*; 93 Cal. Daily Op. Service 8528; 93 Daily Journal DAR 14699

In the instant matter, defense counsel *courteously refrained* from making every proper objection as it had become clear to all that any further objection would be unavailing. The Court did not consider alternative sanctions, pursuant to I.C.R. 16 and *Winson supra.*, and simply denied Defendant witnesses. The conflict declared by defense counsel affected the ability to prepare and provide witness and exhibit lists in accordance with the Court's scheduling order. Defense counsel and Defendant expected a continuance and the ability to later obtain a fair trial. When considering all of the above, the Defendant did not receive due process or a fair trial and must be granted a mistrial.

### **ACQUITTAL**

The following provide several bases for granting an acquittal of all counts in this matter. Due to the variance between charging document, preliminary jury instructions, counsels' arguments and the verdict form, we cannot determine whether the jury intended to acquit Defendant of Count 1 as set forth in the Complaint – Exhibition of a Deadly Weapon, or of the Amended Count 1 Pointing or Aiming Firearms at or Towards Others. Therefore, due process, double jeopardy, collateral estoppel and simple justice require the Defendant be acquitted of both.

Alternatively, if deemed to have been acquitted of Count 1 Exhibition of a Deadly Weapon, then the jury found the Defendant acted in self defense and pursuant to I.C. § 19-202A's immunity, the Defendant is acquitted of all charges.

Alternatively, if deemed to have been acquitted of Pointing or Aiming Firearms at or Towards Others, then the Defendant cannot be retried, after mistrial, for Exhibition of a Deadly Weapon as it is a greater included charge.

"The Fifth Amendment's Double Jeopardy Clause prohibits retrial after an acquittal, whether express or implied by jury silence. See Green, 355 U.S. at 191. An implied acquittal occurs when a jury returns a guilty verdict as to a lesser included or lesser alternate charge, but remains silent as to other charges, without announcing any signs of hopeless deadlock. See id. at 191, 194. As early as 1898, the Supreme Court announced that jury silence is tantamount to acquittal, explaining: "where a jury, although convicting as to some, are silent as to other, counts in an indictment, and are discharged without the consent of the accused, . . . the effect of such discharge is

'equivalent to acquittal' . . . . " Selvester v. United States, 170 U.S. 262, 269, 18 S. Ct. 580, 42 L. Ed. 1029 (1898).

When, as here, the defendant's conviction is overturned due to a jury instruction error, the government may retry the defendant as to the charge of conviction, but not for other charges of which the first jury impliedly or expressly acquitted him. See, e.g., Ball v. United States, 163 U.S. 662, 672, 16 S. Ct. 1192, 41 L. Ed. 300 (1896) ("[A] defendant who procures a judgment against him upon an indictment to be set aside may be tried anew upon the same indictment, or upon another indictment, for the same offense of which he had been convicted.").

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Then, in Price, the Court reaffirmed its "refus[al] to rule that jeopardy for an offense continues after an acquittal, whether that acquittal is express or implied by a conviction on a lesser included offense when the jury was given a full opportunity to return a verdict on the greater charge." 398 U.S. at 329."

Brazzell v. State of Washington, 491 F.3d 976; 2007 U.S. App. LEXIS 14836

"The United States Supreme Court has made clear that if an acquittal has occurred, double jeopardy bars a retrial even if the acquittal was entered because of an error of law by the trial court. In Arizona v. Rumsey, 467 U.S. 203, 211, 104 S. Ct. 2305, 81 L. Ed. 2d 164 (1984), the United States Supreme Court held: In making its findings, the trial court relied on a misconstruction of the statute defining the pecuniary gain aggravating circumstance. Reliance on an error of law, however, does not change the double jeopardy effects of a judgment that amounts to an acquittal on the merits. "[T]he fact that 'the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles' . . . affects the accuracy of that determination, but it does not alter its essential character." United States v. Scott, 437 U.S. 82, 98, 98 S.Ct. 2187, 2197, 57 L.Ed.2d 65 (1978) (quoting id, at 106, 98 S.Ct, at 2201 (BRENNAN, J., dissenting)). Thus, this Court's cases hold that an acquittal on the merits bars retrial even if based on legal error. See also Smalis v. Pennsylvania, 476 U.S. 140, 144 n.7, 106 S. Ct. 1745, 90 L. Ed. 2d 116 (1986) (double jeopardy bars a retrial even if the trial court's acquittal was based upon a mistake in determining the degree of recklessness necessary to sustain a conviction); [\*9] Sanabria v. United States, 437 U.S. 54, 64, 98 S. Ct. 2170, 57 L. Ed. 2d 43 (1978) ("When a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous."). See also United States v. Blanton, 476 F.3d 767 (9th Cir. 2007); United States v. Ogles, 440 F.3d 1095 (9th Cir. 2006). Compare State v. Korsen, 138 Idaho 706, 716-18, 69 P.3d 126, 136-38 (2003)."

State v. Howard, 2010 Ida. App. LEXIS 5, 7-10 (Idaho Ct. App. Jan. 26, 2010)

"The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make

repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." *Green v. U.S.*, 335 U.S. 184, 187-88, 78 S. Ct. 221, 2 L. Ed. 2d 199, 77 Ohio L. Abs. 202, 61 A.L.R.2d 1119 (1957).

"And society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws." *U.S. v. Jorn*, 400 U.S. 470, 479, 91 S. Ct. 547, 27 L. Ed. 2d 543, 71-1 U.S. Tax Cas. (CCH) P 9172, 27 *A.F.T.R.2d* 71-552 (1971).

"It protects defendants in cases in which a judge exercises his authority to help the prosecution, at a trial in which its case is going badly, by affording it another, more favorable opportunity to convict the accused..."

Harpster v. State of Ohio, 128 F.3d 322, 327, 1997 FED App. 0281P (6th Cir. 1997).

"The law attaches particular significance to an acquittal.... This is justified on the ground that, however mistaken the acquittal may have been, there would be an unacceptably high risk that the Government, with its superior resources, would wear down a defendant, thereby enhancing the possibility that even though innocent he may be found guilty....[W]e necessarily afford absolute finality to a jury's verdict of acquittal – no matter how erroneous its decision."

U.S. v. DiFrancesco, 449 U.S. 117, 129-30, 101 S. Ct. 426, 66 L. Ed. 2d 328, (1980).

"...with one exception. Namely, when 'bad-faith conduct by [a] judge or prosecutor' forces a defendant to move for a mistrial, re-prosecution is barred even though the defendant consented to the mistrial." *Tinsley v. Million*, 399 F.3d 796, 2005 FED App. 0085P (6<sup>th</sup> Cir. 2005), dert. Denied, 126 S. Ct. 760, 163 L. Ed. 2d 591 (U.S. 2005).

### Collateral Estoppel

"Here, the prosecution asked the court to impose restitution in the amount of \$45,031.96. Defense counsel objected, arguing that, based on the doctrine of collateral estoppel and Ashe v. Swenson, 397 U.S. 436, 90 S. Ct. 1189, 25 L. Ed. 2d 469 (1970), the amount of restitution that the court could impose was limited to \$14,999.99, which reflected the jury's verdicts.

The trial court agreed with defense counsel and ordered restitution in the amount of \$15,000, plus interest. It noted that the two charges involved the same victim, the same set of facts, and the same financial loss and concluded: In this particular case the defendant was tried for just general theft of more than \$15,000. He was found not guilty of it. And in the Court's opinion using the same analysis as in Ashe v. Swenson and in People v. Arrington, [682 P.2d 490 (Colo. App. 1983)], there is only one possible explanation that justifies the verdict; that is, the theft wasn't more than \$15,000....

So the Court feels compelled to accept the reasoning of the defense on this point. The Court does believe, however, that all the verdicts of the jury means is that the theft was no more than \$15,000.

The doctrine of collateral estoppel is incorporated in the Double Jeopardy Clause. Ashe v. Swenson, supra, 397 U.S. at 445, 90 S. Ct. at 1195. Collateral estoppel guarantees that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." Ashe v. Swenson, supra, 397 U.S. at 443, 90 S. Ct. at 1194.

Relying on Ashe, a division of this court held in People v. Arrington, supra, that a defendant's acquittal constituted a conclusive determination that he was not the perpetrator of the prior robbery, and therefore collateral estoppel barred admission of the prior act evidence in a subsequent proceeding against that defendant. The sole issue in both cases was the identity of the perpetrator—in the first case, to determine the defendant's guilt, and in the second, to determine the admissibility of the evidence under CRE 404(b). People v. Arrington, supra.

People v. Pagan, 165 P.3d 724 (Colo. Ct. App. 2006)

"The rule of collateral estoppel in criminal cases is "embodied in the Fifth Amendment guarantee against double jeopardy." Ashe v. Swenson, 397 U.S. 436, 445, 25 L. Ed. 2d 469, 90 S. Ct. 1189 (1970). Collateral estoppel means that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." Id. at 443; see also Dowling v. United States, 493 U.S. 342, 348, 107 L. Ed. 2d 708, 110 S. Ct. 668 (1990) (clarifying that the prior acquittal must have determined an ultimate issue presented in the subsequent trial); Santamaria v. Horsley, 133 F.3d 1242, 1244-45 [\*\*9] (9th Cir.) (en banc), cert. denied, 525 U.S. 824, 142 L. Ed. 2d 53, 119 S. Ct. 68 (1998). "

Charles v. Hickman, 228 F.3d 981 (9th Cir. Cal. 2000)

"In determining whether collateral estoppel bars subsequent criminal prosecutions, we engage in a two-step analysis. Initially, we must decide which facts necessarily were decided in the first proceeding. Then we must consider whether the facts necessarily decided in the first trial constitute essential elements of the offense in the second trial. In criminal cases, collateral estoppel is not to be applied with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and rationality. Where a previous judgment of acquittal was based upon a general verdict, as is usually the case, this approach requires a court to examine that record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. n16" Bolden v. Warden, W. Tenn. High Sec. Facility, 194 F.3d 579 (5th Cir. La. 1999)

"Under the collateral-estoppel element in the Double Jeopardy Clause, the government may not relitigate at a second trial an issue of ultimate fact previously determined by a valid and final judgment. See Ashe v. Swenson, 397 U.S. 436, 443, 25 L. Ed. 2d 469, 90 S. Ct. 1189 (1970). When a jury reaches a general verdict of acquittal on certain counts, therefore, the defendant may argue that the jury must have based its acquittal on certain factual findings favorable to him, and that those findings bar any retrial on other counts upon which he was not acquitted, since his conviction in the retrial necessarily would depend on the jury at retrial reaching contrary findings as to the same essential facts."

United States v. Marino, 200 F.3d 6 (1st Cir. Mass. 1999)

"It has long been settled under the Fifth Amendment that a verdict of acquittal is final, ending a defendant's jeopardy, and even when not followed by any judgment, is a bar to a subsequent prosecution for the same offence." Green v. United States, 355 U.S. 184, 188, 2 L. Ed. 2d 199, 78 S. Ct. 221, 77 Ohio Law Abs. 202 (1957) (citation and internal quotation marks omitted). This is true "even though an acquittal may appear to be erroneous." Id. That a jury's verdict of acquittal bars a subsequent retrial on those same offenses is "perhaps the most fundamental rule in the history of double jeopardy jurisprudence." Martin Linen, 430 U.S. at 571. "This rule is assumed to be fundamental because it is the most 'absolute' [and] operates without exception." Peter Westen, The Three Faces of Double Jeopardy: Reflections on Government Appeals of Criminal Sentences, 78 Mich. L. Rev. 1001, 1004 (1979). This "fundamental" and "absolute" rule applies here to the jury's "Not Guilty" verdicts on the two counts of attempted second degree murder. n13"

Stow v. Murashige, 389 F.3d 880 (9th Cir. Haw. 2004)

In the instant case Defendant argues that double jeopardy and collateral estoppel bar any retrial of all three charges after a mistrial is granted. As the case law set forth above indicates, the state had its chance and even though the prosecutor took advantage of a very prosecution friendly judge, errors in the jury instructions and verdict form lead to an acquittal or implied acquittal of Counts 1 and 2. Alternatively, whether acquitted of 1 or 2, the result prevents retrial on the remaining count, as set forth above.

### **NEW TRIAL**

Defendant requests a new trial after mistrial is declared, but only on those counts not barred by prior acquittal or implied acquittal, double jeopardy and collateral estoppel, if any.

"A court may grant a new trial if, during the course of the trial, the court has "erred in the decision of any question of law," I.C. § 19-2406(5), including evidentiary error.

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"Where a new trial is sought on an assertion of trial court error in admitting or excluding evidence, if error has occurred the issue becomes whether the incorrect evidentiary ruling was harmless or reversible error. State v. Roberts, 129 Idaho 194, 198, 923 P.2d 439, 443 (1996); State v. Howell, 137 Idaho 817, 820, 54 P.3d 460, 463 (Ct. App. 2002)."

State v. Critchfield, 290 P.3d 1272, 1274-1275 (Idaho Ct. App. 2012)

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, Chambers v. Mississippi, supra, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, Washington v. Texas, 388 U.S. 14, 23 (1967); Davis v. Alaska, 415 U.S. 308 (1974), the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." California v. Trombetta, 467 U.S., at 485; cf. Strickland v. Washington, 466 U.S. 668, 684-685 (1984) ("The Constitution guarantees a fair trial largely through the several provisions of the Sixth Amendment")."

Crane v. Ky., 476 U.S. 683 (U.S. 1986)

"The right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present a defense . . . [and] a fundamental element of due process of law." Castellon v. United States, 864 A.2d 141, 159-60 (D.C. 2004) (citing Bassil v. United States, 517 A.2d 714, 716 (D.C. 1986)) (quoting Washington, supra, 388 U.S. at 18) (internal quotation marks omitted)."

Sykes v. United States, 897 A.2d 769 (D.C. 2006)

The Court's actions of moving the trial up one week earlier, denying the defendant witnesses and exhibits without having considered less onerous sanctions and denying the defense

to put on their testimonial evidence at trial, coupled with the evidentiary rulings during trial resulted in the Defendant being denied due process and warrants a new trial on any counts not barred by acquittal, implied acquittal, double jeopardy and collateral estoppel.

#### CONCLUSION

As set forth above the Defendant is entitled to a mistrial, a judgment of acquittal on at least two and possibly all three counts and a new trial on any remaining count(s), assuming there are any not barred by double jeopardy and collateral estoppel.

The Defendant reserves the right to supplement with additional evidence, affidavits and argument as it becomes available.

DATED this 7 day of June, 2013.

Joe Rockstahl

Attorney for Defendant

#### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 1th day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812

[ ] U.S. Mail
[ズ] Court Box
[ ] Hand Delivery
[ ] Facsimile

Joe Rockstahl Or legal assistant 8

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD.

440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576



Attorney for Defendant

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*

STATE OF IDAHO

Plaintiff,

Plaintiff,

SUPPORT OF MOTIONS

JOSEPH R. ROCKSTAHL

Defendant.

STATE OF IDAHO

(ss.

COUNTY OF TWIN FALLS
)

CASE NO.: CR-2012-12841

AFFIDAVIT OF DEFENDANT IN
SUPPORT OF MOTIONS
)

(ss.

JOSEPH ROCKSTAHL, being first duly sworn upon oath, deposes and says:

- 1. I am over the age of 18 years and a party to the above-entitled action.
- I am the Defendant in the above-entitled matter and make this Affidavit upon my own personal knowledge of the facts contained herein.
- 3. On the evening of July 2, 2012, my wife and I were sitting in our back yard. At approximately 9:00 pm my wife went two houses over to ask the workers when they would be stopping for the day. She came back and said they weren't happy but were wrapping things up. At 10:00 pm the nail guns are still going so my wife goes back over



to see if she could get them to agree to a definite quitting time, especially over the 4<sup>th</sup> of July. After a few minutes I hear a commotion, male voices yelling, and decide I need to go over and check on my wife. I had recently had wrist surgery, three bones removed from my left wrist, and not knowing what I was getting into but knowing I would be outnumbered, I got a 9mm pistol from a night stand. I tucked the gun under my left arm pit and walked to where I thought my wife had gone. It was very dark and as I approached the first thing I saw was two men standing shoulder to shoulder facing my wife. Suddenly one of the men shoved my wife causing her to go back 3-4 steps, almost falling down. One of the men pointed at my wife and yelled: "I am a four time felon, I know where you live, I am going to get you!" I said in a commanding tone: "Knock it off." To draw their attention away from my wife and to me. One of the men said: "You need to get your fucking wife out of here." I said: "that is why I am here, you guys calm down." That seemed to set them off and they came at me causing me to show them my gun and say "Let's get this gun fight started." In hopes saying something ludicrous (modified from a scene in Butch Cassidy and the Sundance Kid movie) would cause them to stop – instead they ran at me. They chest bumped me out of my sandals but kept their arms behind them, obviously their prior criminal experience had taught them the first to throw a punch goes to jail. I acted in defense of my wife and then my self.

- 4. Attached as Defendant's Exhibit A, is a certified copy, true and accurate of the Criminal Complaint in this matter.
- 5. Attached as Defendant's Exhibit B, is a certified copy, true and accurate of the Verdict from in this matter.
- 6. On or about March 28, 2013, I learned from my attorney that he had recently had ex parte contact with the judge presiding over this case. This information made me uncomfortable and I contacted Keith Roark about substituting in as my counsel. Mr. Roark advised he was in a murder trial which conflicted with the trial dates in this case and that he did not have time to argue for a continuance; but he was interested in helping me.
- 7. I contacted my attorney, Fuller Law Office, and requested they seek a continuance. I called, texted, emailed and faxed requests for a motion seeking a continuance to be filed.

- 8. Eventually I drafted a motion on their letterhead and faxed it over. Finally, two days before the pretrial conference Fuller Law Office filed an Ex Parte Motion to Withdraw declaring a conflict and citing a breakdown in communication.
- 9. At the pretrial conference, Friday, May 17, 2013, the honorable Mick Hodges ruled that the Motion to Withdraw was likely a delaying tactic and ordered me to "work with" Dan Brown on preparing for trial. I informed Mr. Brown that the trial dates were set outside of the speedy trial 180 limit and to inform the court and offer to waive my speedy trial rights so the matter could be continued. During the first part of this hearing Mr. Roark was on the telephone and was available to do my trial the first part of August.
- 10. Mr. Brown informed the Court that he had a conflict with a previously scheduled trial in District court on my trial dates which was ignored.
- 11. The prosecutor objected and claimed further delay would harm his case. That fact that the incident requiring me to act in self-defense and defense of my wife occurred on July 2, 2012 and the prosecutor didn't charge me until November 26, 2012, a five month delay was also ignored.
- 12. The Court replied by moving the trial up one week earlier and ordering us to have our witness and exhibit lists exchanged by close of business the coming Monday, we complied with the Court's order. After everything had occurred at the pretrial conference, I asked the Court if I was now co-counsel in my own case.
- 13. On Monday, May 20, 2013, we called our proposed witnesses and learned many were out of town vacationing as we were approaching the Memorial Day weekend.
- 14. I filed a Motion to Vacate and to Continue the Trial due to unavailability of witnesses.

  The prosecution objected and the Court ruled I could have fact witnesses: my wife and any of the state's witnesses; no character witnesses and was silent as to exhibits. At this time I learn that Mr. Brown has filed a motion to have the honorable Mick Hodges removed for Cause, said motion was denied. Your affiant requests the Court take judicial notice of the Motion and Affidavit.
- 15. Three of my witnesses included two active duty police officers, one, a shift supervisor, told us prior to the Court's ruling: "Well, Joe has never lied to me.". While the other officer was serving as a drug detective, I twice gave my then teenage daughter's cell phone to him which resulted in two drug dealers being arrested. The third is a retired law

- enforcement officer and my neighbor. This neighbor checked me out through her sources before inviting my wife and I over at Christmas time; this neighbor is also familiar with our neighborhood, the scene of the alleged crime, and my reputation in the neighborhood.
- 16. While on the witness stand I was being questioned about my wrist surgery and I saw my attorney pick up copies of the before and after X-rays of my wrist, he showed them to the prosecutor and instead of offering them to me for explanation/foundation and admittance into evidence he turned them upside down and never tried to enter them or any other exhibits during the trial. I assume the prosecutor told him they were also untimely pursuant to the Court's scheduling order and would be excluded.
- 17. I prepared our proposed Jury Instructions and Verdict form and sent them to Fuller Law Office, I am informed they were signed and submitted to the Court.
- 18. The first morning of trial at the jury instruction conference the Court seemed even more aggravated at my attorney than previous. The attorneys and court discussed and argued over the jury instructions. Our proposed self-defense instruction was ignored.
- 19. During the reading of the preliminary jury instructions my attorney advised the court that it appeared he had missed instructions 4 and 6 and had paraphrased parts of other instructions.
- 20. Attached as Defendant's Exhibit C is a true and accurate copy of the Court's Minutes from all proceedings in this matter.
- 21. The Court Minutes match my recollection of the trial, by my count in the Minutes only two of Mr. Brown's objections were sustained.
- 22. During the trial the prosecution was asking blatantly leading questions and objections to those questions were overruled.
- 23. During my wife's testimony she was attempting to describe what her feelings were when she was attacked by the two men. The prosecution objected and the Court sustained ruling that her state of mind was not in issue that mine was and I would have the opportunity to describe it during my testimony.
- 24. During my wife's testimony the prosecution was unable to phrase an intelligent question about where she was struck by one of the men; and then the Court on its own volition took over the questioning of the witness to better help the prosecution, and in doing so act as a second prosecutor.

- 25. During my testimony I was attempting to describe what hearing one of the men yell at my wife: "I am a four time felon, I know where you live, I am going to get you." meant to me. I was telling the jury about Idaho's Habitual Offender law and before I could describe what a threat from a four time felon meant to me, the prosecution objected and the Court sustained the objection shutting down any testimony about my state of mind at the time the two men attacked my wife and why I did what I did that night.
- 26. During the trial the Court yelled at my attorney and I multiple times, in front of the jury when the Court would repeatedly overrule blatant leading questions, Mr. Brown would turn to me, shrug and whisper "What do I do?", I would shrug back and whisper "I don't know". The Court described this as "eye rolling and head-shaking" and admonishing us to stop it and move on.
- 27. During the defense case the prosecutor apparently hearing the truth for the first time and finding it didn't match what a four time felon had told him, was making all sorts of odd faces and theatrical gestures with no admonition from the Court of any kind.
- 28. Attached as Defendant's Exhibit D are true and accurate copies of Jury Instructions No. 13, 22 and 30. Having been put on notice that the Court had not read the preliminary jury instructions verbatim, I followed along during the final instructions and made notations. The crossed out words were not read by the Court and the handwritten words were added by the Court. The handwriting is mine.
- 29. I have not obtained a transcript of the trial to be able to list any discrepancies in the reading of the preliminary jury instructions; but will supplement once I do receive the transcript.
- 30. It is my recollection that the deputy clerk read the verdict: "Count one acquitted, Count two guilty, Count three guilty".
- 31. It wasn't until we checked the Idaho Repository a few days after the verdict was read that we learned of the variance in the verdict form.
- 32. I have been a licensed attorney for 20 years this July, starting in California and then Idaho; and outside of television programs I have never seen a trial conducted as mine was in this matter. It was very obvious that the Court had made up its mind and wanted me convicted and did not want to waste time on evidence or the law.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this \_\_\_\_\_\_ day of June, 2013.

Joe Rockstahl

SUBSCRIBED and SWORN to before me this 1th day of June, 2013.

RHONDA RAE ASLETT NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho Residing at Twin Falls, Idaho My Commission Expires:

#### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 Joe Rockstahl Or legal assistant

DISTRICT COURT TWIN FALLS CO. IDAHO

2012 NOV 23 AM 10: 18

BY\_

Twin Falls, ID 83303-1812 (208)352-0811 ISB#2591 Prosecution File: 33083

FRITZ WONDERLICH

P.O. Box 1812

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO. IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

State of Idaho.

Plaintiff,

Case No. CR-12-12841

VS.

Joseph Rockstahl

CRIMINAL COMPLAINT

Defendant.

above entitled action.

County of Twin Falls.

I hereby certify the foregoing to be a full, true and correct copy of the original on file in the

DOB:

SS# or OLN#:

2214 Nisqually Twin Falls Idaho

The above named Defendant did commit the offenses as more fully set forth herein, to-wit:

#### Count 1.

That the above-named Defendant, on or about July 2, 2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Exhibition of Deadly Weapon, and while in the presence of two (2) or more persons, did exhibit a deadly weapon in a rude, angry or threatening manner, not in necessary self-defense, in violation of Idaho Code 18-3303.

#### Count 2.

That the above-named Defendant, on or about July 2, 2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Aiming Firearm at others, and intentionally point or aim a firearm at or toward another, in violation of IC 18-3304.

That the above-named Defendant, on or about July 2, 2012, in the City and County of Twin Falls, State of Idaho, committed the offense of Disorderly Conduct, and did maliciously and wilfully disturb the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, in violation of Idaho Code 18-6409.

Attorney for the State of Idaho

Dated, this 23day of Now

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

INSTRUCTION NO. 33

		2013 MAY 24 PM 3: 02
· 프로그리 - "이렇게 되었다면, 세계를 하는데 없다면 제계되었다면,() 이렇게 가르겠다.	OF THE FIFTH JUDICIAL DIS	STRICT OF THE
STATE OF IDAHO,	) CASE NO. CR-2	2012-12841
Plaintiff,		
VS.	) VERDICT	
JOSEPH ROCKSTAHL,	ý	
Defendant.		
We, the Jury, unanimously find the	defendant Joseph Rockstahl:	
(Count I, Mark only one)		
Guilty of Pointing or Air	ming Firearms at or Towards 0	Others
Not Guilty		58-1
We, the Jury, unanimously find the	defendant Joseph Rockstahl:	*
(Count II, Mark only one)		
— Guilty of Exhibition of a	Deadly Weapon	
Not Guilty	N No.	file in the country of the country o
We, the Jury, unanimously find the	defendant Joseph Rockstahl:	
(Count III, Mark only one)		ho win Falls, with Falls, tify the forego copy of the cet action. KRESTINA G
Guilty of Disorderly Cor	nduct	State of Idaho County of Twin Falls, I hereby certify the foregor and correct copy of the or above entitled action. KRISTINA GP CLERK OF THE DI
Not Guilty		State of Idaho County of Tw I hereby certil and correct co above entitled KI CLERK
DATED this 24 day of Ma	y, 2013.	S

Presiding Juror



CASE # (K 12-12841) DATE 1-10-13	DISTRICT COURT TWIN FALLS CO. IDAHO FILED
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COURTROOM Anag (40)	BYACLERN
INTERPRETER	(landay)
CTATE / *	2 A STATE OF THE PUTY
STATE PLAINTIFF	PLAINTIFF'S ATTORNEY
-VS-	PLAINTIFF'S ATTORNET
Goseph Rockstade D. B	DEFENDANT'S ATTORNEY
Proceedings: ( )Motion ( ) Trial ( ) Sentencing ( ) Arra Public Defender Appointed ( )Yes ( )No ( )Waive Cour Rights Charges & Penalties ( )Not Grand Hearing	nsel ()Retain Counsel
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DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 MAR 15 PH 3: 47

CLERK

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF THE JUDICIAL DISTRICT OF THE STATE OF TH

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Motion to Dismiss

Hearing date: 3/15/2013

Time: 3:30 pm

Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich

338 The Court called case and addressed the parties.

339 Mr. Brown made argument to the Court regarding his motion to dismiss.

342 Mr. Wonderlich gave argument to the Court.

344 The Court made comments to the parties.

345 The Court denied the motion to dismiss.

345 The Court is in recess.

MAY 17 2013

Ву	0_
	Clerk
Depp	y Clerk

#### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Pretrial Conference/ Motion to Withdraw

Hearing date: 5/17/2013

Time: 3:22 pm

Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown / Keith Roark (phone)

Prosecutor: Fritz Wonderlich

#### (Court Room 3)

333 The Court called the case, reviewed the file and addressed the parties. The parties gave argument as to the motion to withdraw.

335 The Court inquired if a speedy trial waiver had been filed. Mr. Brown stated one had not but would be willing to provide one upon request.

335 Reschedule dates were discussed.

336 Mr. Wonderlich argued against pushing the trial dates out to August.

338 The Court denied the motion for Dan Brown to withdraw as attorney of record. The Court terminated the phone call with Mr. Roark.

339 The Court ordered the parties to have jury instructions within 1 week. Mr.

Wonderlich provided Jury instructions, witness list, and exhibits to the Court.

340 Mr. Brown addressed the Court regarding his conflict with another Court.

340 Mr. Brown made a motion to dismiss based on speedy trial violation.

341 Mr. Wonderlich objected to the motion.

344 The Court will take a short recess in order to listen to a prior hearing.

350 The Court is back on the record. The Court made comments regarding extending the speedy trial based on good cause.

351 Mr. Wonderlich offered to move up his trial date one week. The parties agreed.

351 POWER OUTAGE

352 Mr. Brown agreed to moving up the trial 1 week.

352 – 353 (off record discussion between all parties)

CR-2012-0012841

Page 2

## (Court Room 4)

357 The Court is back on the record in Courtroom 4.

357 The Court discussed moving trial up 1 week to May 23 and 24. Those dates work for all parties.

358 The parties must provide jury instructions and a witness list by Monday at 5 pm. The Court will meet at 815 on Thursday May 23<sup>rd</sup> to go over jury instructions.



MAY 23 2013

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# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Motion for Disqualification / Preliminary Matters

Hearing date: 5/23/2013

Time: 8:17 am

Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich

821 The Court called the case and addressed the parties. Mr. Brown submitted to the Court the motion based on the affidavit. The Court commented.

822 Mr. Brown made comments regarding the ex-parte communication.

824 The Court made comments regarding the communication. There was ex-parte communication; the Court put that communication on the record. The Court discussed the denial of the motion to continue. **The Court denied the motion for disqualification.** 

826 Mr. Brown gave argument regarding his motion for reconsideration.

828 Mr. Wonderlich responded to Mr. Brown's argument.

831 Mr. Brown responded to Mr. Wonderlich's argument.

832 The Court denied the motion for reconsideration.

833 The Court will allow fact witnesses, but no character witnesses.

834 Mr. Brown gave more argument regarding character witnesses.

834 The Court again denied the motion for reconsideration.

834 Mr. Rockstahl gave argument regarding the denied motions.

836 The Court commented on Mr. Rockstahl's argument. The Court's ruling on the original motion to withdraw will stand.

837 The Court gave all parties copies of the jury instructions.

837 The Court will take a short recess for the parties to review the jury instructions.

CR 2012-12841 Page 2

843 The is back on the record. The Court discussed the motion in limine. **The Court granted the motion; the parties will not use the word victim**. Instruction 17 will be amended to the correct date. On the verdict form. The word "providing" will be stricken. The form will be changed to "pointing or aiming firearms at or towards others."

849 Mr. Brown made comments regarding the self-defense instruction.

856 The will take a short recess.

858 The Court is back on the record. The Court read the ICJI instruction regarding the self-defense instruction.

859 Mr. Brown addressed the Court regarding the ICJI instruction. And modifying instruction 28, according to State v. Hanson.

904 Mr. Wonderlich made comments regarding the change.

907 The Court reviewed the stated case and the requested footnotes.

909 The Court will make adjustments to instruction # 28.

917 The Court is in recess.

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 MAY 24 PM 3: 02

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MAGISTRATE DIVISION

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Jury Trial Hearing date: 5/23/2013

Time: 9:21 am

Judge: Mick Hodges

Courtroom: 2

Minutes Clerk: Lorraine Robinson

Defense Attorney: Daniel Brown Prosecutor: Fritz Wonderlich

- 924 The Court called case and addressed the parties and the prospective jurors.
- 925 The Clerk called the roll.
- 930 The Court addressed the jury.
- 933 The Court read the complaint to the prospective jurors.
- 941 The Clerk duly swore the jury panel for Voir Dire examination
- 942 The Court conducted Voir Dire examination.
- 949 Juror 449 was excused for cause.
- 957 Mr. Wonderlich conducted Voir Dire examination.
- 1003 Juror 462 was excused for cause.
- 1008 Mr. Wonderlich passed the panel for cause.
- 1008 Mr. Brown conducted Voir Dire examination.
- 1012 Juror 418 was excused for cause.
- 1019 Juror 483 was excused for cause.
- 1022 Juror 484 was excused for cause.
- 1026 **Juror 430** was excused for cause.
- 1033 Mr. Brown passed the panel for cause. 1034 The parties conducted their peremptory challenges.
- 1042 The Court excused **Jurors 548, 474, 465, 495, 485, 502, 536, 539,** based on the peremptory challenges.
- 1044 A jury has been selected and seated. **Jurors 409, 503, 437, 436, 513 and 425** were selected for the jury panel.
- 1044 The clerk duly swore in the jury panel.

- 1045 The jury was excused to the jury room. The Court is in recess at this time.
- 1058 The Court is back on the record.
- 1058 Mr. Wonderlich addressed the Court regarding preliminary matters.
- 1059 Mr. Brown addressed the Court regarding the matters.
- 1102 The Court introduced a visiting government class.
- 1102 Mr. Wonderlich requested another preliminary matter be heard regarding hearsay.
- 1103 The Court agreed.
- 1103 Mr. Brown further addressed the matter.
- 1105 The jury is in the court room.
- 1107 The Court addressed the jury and read the preliminary instructions to the jury.
- 1120 Mr. Brown questioned the Court regarding the reading of jury instructions 4 and 6.
- 1120 The Court responded that the instructions were read to the jury.
- 1121 Mr. Brown moved to exclude witnesses. The Court excluded all witnesses.
- 1122 Mr. Wonderlich gave his opening statement.
- 1129 Mr. Brown gave his opening statement.
- 1144 **State's 1<sup>st</sup> witness**, Eric Shindler, was duly sworn and examined by Mr. Wonderlich.
- 1145 The witness identified the defendant.
- 1146 The Court admonished the witness regarding answering the questions.
- 1149 Cross-examination by Mr. Brown.
- 1156 Re-direct by Mr. Wonderlich.
- 1156 The witness stepped down and was excused. The witness will be subject to recall.
- 1157 The Court will take lunch recess. The Court will resume at 1pm.
- 1157 The Jury excused from the court room.
- 100 The Court is back from recess.
- 100 Mr. Brown made motions regarding the jury instructions and a video to be offered by the state.
- 103 Mr. Wonderlich gave argument regarding the motion regarding the video.
- 104 The Court will allow the video to be played.
- 105 The Court questioned Mr. Brown regarding jury instructions. The Court will re-read jury instruction.
- 106 The jury is back in the court room.
- 106 The Court re-read jury instruction #3 to the jury.
- 110 **State's 2<sup>nd</sup> witness**, Randy Carpenter, was duly sworn and examined by Mr. Wonderlich.
- 116 Objection, hearsay, by Mr. Brown. Mr. Wonderlich commented. Over-ruled.

- 119 Objection by Mr. Brown, leading question. The question was rephrased.
- 124 Objection by Mr. Brown, hearsay. Mr. Wonderlich commented. Over-ruled.
- 130 Objection by Mr. Brown, leading question. The Court asked the question be reasked without leading.
- 132 State's Exhibit A, an audio CD, was marked, identified, offered, and admitted.
- 135 The Court will take a 5 minute break to set up for the audio cassette.
- 140 The Court is back from recess, the jury is back in the court room.
- 141 Mr. Wonderlich played the audio on exhibit A.
- 146 Mr. Wonderlich continued his examination.
- 148 Objection by Mr. Brown, foundation. Mr. Brown examined the witness regarding foundation. Objection by Mr. Wonderlich. Over-ruled.
- 149 Mr. Wonderlich continued his examination.
- 152 Cross-examination by Mr. Brown.
- 153 Objection by Mr. Wonderlich, misstatement of witness testimony. Mr. Brown will restate the question.
- 154 Objection by Mr. Wonderlich.
- 154 Mr. Brown continued his examination.
- 155 Objection by Mr. Wonderlich.
- 155 Mr. Brown continued his examination.
- 158 Objection by Mr. Wonderlich, legal conclusion. Sustained.
- 204 Objection by Mr. Wonderlich. Sustained.
- 208 The Court admonished the witness regarding answering the questions.
- 210 Objection by Mr. Wonderlich, line of questioning. The Court advised Mr. Brown to move on in his questioning.
- 211 Objection by Mr. Wonderlich. The Court advised Mr. Brown to move on.
- 220 Re-direct by Mr. Wonderlich.
- 221 Mr. Brown objected to the witness refreshing his memory with his statement (state's exhibit B).
- 222 **State's Exhibit B,** witness statement, was marked and identified. Objection by Mr. Brown.
- 223 Objection by Mr. Brown as to the witness testimony.
- 224 The witness stepped down and was excused for the day and is subject to recall tomorrow.
- 225 **State's 3<sup>rd</sup> witness**, Steven Robert Nielson, was duly sworn and examined by Mr. Wonderlich.
- 229 Objection by Mr. Brown, leading. Mr. Wonderlich will restate the question.
- 230 State's Exhibit C, an audio CD, was marked, identified, offered and admitted.
- 232 The Court will take a short recess. The jury excused to the jury room.
- 232 The Court is in Recess.

- 239 The Court is back on the record. The jury is back in the court room.
- 239 Mr. Wonderlich played state's Exhibit C.
- 245 Cross-examination by Mr. Brown.
- 250 No- Redirect by Mr. Wonderlich.
- 250 The witness stepped down and was excused.
- 251 **State's 4<sup>th</sup> witness**, Jeremy Alan Merchant, was duly sworn and examined by Mr. Wonderlich.
- 255 Objection by Mr. Brown, relevance. Mr. Wonderlich restated the question.
- 256 Objection by Mr. Brown. Mr. Wonderlich commented and continued.
- 257 Objection by Mr. Brown, relevance. Mr. Wonderlich will continue with his questioning.
- 259 Objection by Mr. Brown, foundation and move to strike. Sustained.
- 259 Cross-examination by Mr. Brown.
- 304 Objection by Mr. Brown, non-responsive, move to strike. Sustained.
- 305 Objection by Mr. Wonderlich, after the fact. Sustained
- 305 Objection by Mr. Wonderlich, after the fact. Sustained.
- 309 Re-direct by Mr. Wonderlich.
- 310 The witness stepped down, and is subject to recall.
- 310 State's 5<sup>th</sup> witness, Officer Justin Cyr, was duly sworn and
- 312 **State's Exhibit D**, Joe Rockstahl's statement, marked, identified, offered (Objection by Mr. Brown) and **admitted**.
- 313 Cross-examination by Mr. Brown.
- 317 Re-direct by Mr. Wonderlich.
- 319 Objection by Mr. Brown, leading. The Court admonished Mr. Wonderlich.
- 320 The witness stepped down and was excused.
- 320 The state rests.
- 321 The Court will take a short recess. The jury was excused to the jury room.
- 326 The Court is back on the record.
- 328 Mr. Brown made a motion for judgment of acquittal.
- 329 The Court made finding there is enough evidence for conviction and denied the motion for acquittal.
- 332 The jury is back in the court room.
- 333 **Defense 1<sup>st</sup> witness**, Patricia Darlene Rockstahl, was duly sworn and examined by Mr. Brown.
- 345 Objection by Mr. Wonderlich, leading. Mr. Brown will rephrase.
- 353 Objection by Mr. Wonderlich, leading. Mr. Brown will rephrase.
- 355 Objection by Mr. Wonderlich, foundation. Sustained.
- 356 Objection by Mr. Wonderlich. Mr. Wonderlich requested to question the witness.
- The Court allowed the questions.

Page 5

- 357 Mr. Brown continued his examination.
- 400 Objection by Mr. Wonderlich, leading. Sustained.
- 404 Objection by Mr. Wonderlich. Sustained.
- 405 Objection by Mr. Wonderlich and move to strike. Comments by Mr. Brown. Sustained.
- 406 Mr. Rockstahl addressed the Court regarding the objection. Objection is still sustained.
- 407 Cross-examination by Mr. Wonderlich.
- 418 Re-direct by Mr. Brown.
- 419 Objection by Mr. Wonderlich, relevance. Comments made by Mr. Brown. Sustained.
- 421 The witness stepped down and was excused.
- 422 **Defense 2<sup>nd</sup> witness,** Terrance Thueson, was duly sworn and examined by Mr. Brown
- 426 Objection by Mr. Wonderlich, legal conclusion. Over-ruled.
- 432 Cross-examination by Mr. Wonderlich.
- 433 Objection by Mr. Brown, beyond scope. Mr. Wonderlich restated the question.
- 433 Objection by Mr. Brown, beyond scope. Over-ruled.
- 434 Re-direct by Mr. Brown.
- 435 Objection by Mr. Wonderlich. Sustained.
- 436 The witness
- 436 Mr. Brown requested a short recess. The jury was excused to the jury room.
- 436 The Court is in recess.
- 446 The Court is back on the record.
- 446 Mr. Brown informed the Court the defense next witness will be Mr. Rockstahl.
- 446 The jury is back in the court room.
- 446 The Court made comments to the Jury and excused the jury for the day. The Court will reconvene tomorrow at 9:00 am.

**END OF DAY 1** 

#### CR 12-12841

#### State v. Rockstahl

Page 6

#### Day 2 - May 24, 2013

902 The Court called the case and addressed the parties.

904 The Jury is in the court room.

904 **Defense 3<sup>rd</sup> witness,** Joe Rockstahl, was duly sworn and examined by Mr. Brown.

924 Objection by Mr. Wonderlich. Sustained.

929 Objection by Mr. Wonderlich, foundation. Sustained.

929 Objection by Mr. Wonderlich, foundation. Sustained.

933 Objection by Mr. Wonderlich, leading. Sustained.

936 Cross-examination by Mr. Wonderlich.

938 Objection by Mr. Brown, characterization. Over-ruled.

944 Objection by Mr. Brown, question. Over-ruled.

946 Mr. Wonderlich motioned the Court to exclude the jury, so Mr. Rockstahl could refresh his memory with an audio interview.

947 The jury was excused to the jury room.

949 The audio CD was played for the witness.

952 The jury is back in the court room.

952 Mr. Wonderlich continued his examination.

952 Mr. Wonderlich motioned the Court to exclude the jury so Mr. Rockstahl could refresh his memory with and audio interview.

953 The jury was excused to the jury room.

954 The audio CD was played for the witness.

955 The jury is back in the court room.

956 Mr. Wonderlich continued his examination.

957 Objection by Mr. Brown, speculation. Over-ruled.

1000 Objection by Mr. Brown, speculation. Over-ruled.

1004 Objection by Mr. Brown. Mr. Wonderlich will restate the question.

1005 Objection by Mr. Brown, hearsay. Over-ruled.

1006 Re-direct by Mr. Brown.

1008 Objection by Mr. Wonderlich, leading. Sustained.

1009 Objection by Mr. Wonderlich, leading. Sustained.

1010 Objection by Mr. Wonderlich, leading. Sustained.

1010 The witness stepped down.

1011 Mr. Brown requested a short recess.

1011 The jury was excused to the jury room.

1011 The Court will take a short recess and return in 15 minutes.

1034 The Court is back on record.

1034 The jury in the courtroom.

1034 The defense rests.

1034 **State's 1**<sup>st</sup> **rebuttal witness**, recalled Jeremy Merchant. Mr. Merchant was duly sworn and examined by Mr. Wonderlich.

1035 Objection by Mr. Brown, witness present during testimony. Over-ruled.

1040 Objection by Mr. Brown, relevance. Over-ruled.

1040 No cross-examination by Mr. Brown.

1040 The state rests.

1041 The jury was excused to the jury room.

1042 The Court addressed the parties regarding adding jury instructions 35 through 38 and the instructions to be read.

1044 The parties read through the additional jury instructions, and agreed on them.

1045 The jury is back in the court room.

1046 The Court read the final jury instructions.

1109 The Court struck instruction 35, duplicative.

1110 The Court struck instructions 37 and 38, duplicative.

1110 Mr. Wonderlich gave his closing argument.

1116 Mr. Brown gave his closing argument.

1119 Objection by Mr. Wonderlich, instruction on credibility. Sustained.

1132 Objection by Mr. Wonderlich, misstating the law. Sustained.

1139 Mr. Wonderlich gave his final argument.

1147 The clerk swore in the bailiff.

1147 The jury is excused to the jury room for deliberations.

1147 The Court is adjourned for deliberations.

237 The Court is in session, a verdict has been reached.

237 The jury is in the court room.

238 The Clerk read the verdict into the minutes.

238 The Court read the discharge instructions to the jury.

240 The Court dismissed the Jury.

241 The Court ordered the defendant take a drug and alcohol evaluation be obtained within 30 days and prior to sentencing. Sentencing date to be set by the Court.

241 The Court is in recess.

#### **INSTRUCTION NO. 13**

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. 22
the Joe Rockstahl You heard testimony that the Joe Rockstahl or the complaining witnesses made statements to the police\ concerning the crime charged in this case. You must decide what, if any, statements were made and give them the weight you believe is appropriate, just as you would any other evidence or statements in the case.

#### **INSTRUCTION NO. 30**

In the exercise of the right of self-defense, one need not retreat. One may stand one's ground and defend oneself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. This law applies even though the person being attacked might more easily have gained safety by flight or by withdrawing from the scene.

8

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 JUN 10 PM 12: 01

BY\_\_\_\_CLERK

DEPUTY

Joe Rockstahl JD&LLM

ROCKSTAHL LAW OFFICE CHTD.

440 Fairfield Street North

Twin Falls, Idaho 83301

Telephone (208) 734-8810

Facsimile (208) 734-8820

ISB#6576

Attorney for the Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, INAND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO

Case No. 27-2012-001284

PLAINTIFF

AFFIDAVIT OF SUSAN PARNELL

V

JOSEPH ROCKSTAHL

DEFENDANT.

STATE OF IDAHO )

(ss:

County of Twin Falls)

SUSAN PARNELL, being first duly sworn upon oath, deposes and says the following:

- 1. My name is Susan Parnell.
- 2. I have personal knowledge of the factual information contained herein.
- I am over the age of 18 years.
- I am competent to testify to the facts as stated herein.
- This affidavit is made upon personal knowledge setting forth facts that I believe to be true and would be admissible in evidence.
- I am a resident and have been living in the county of Twin Falls, Idaho for 52
  years.

AFFIDAVIT OF SUSAN PARNELL - 1

- 7. I attended all of the jury trial of Joe Rockstahl in Twin Falls on May 23, 2013 and May 24, 2013.
- 8. I have personal knowledge of and have been personally involved in various lawsuits and in front of over 8 (eight) different judges over the past twenty years and the judges have always been a fair and polite.
- 9. I have never seen a Judge act in such an inappropriate manner. I thought it was rude and outrageous.
- I felt that the Judge Mick Hodges had a personnel problem with either Mr.
   Rockstahl or his attorney Mr. Brown.
- 11. I watched when Mr. Brown had any objection and the Judge would not allow him to explain his objection before he overruled him.
- 12. I listened to the Jury Instructions being read and Mr. Brown asking the Judge to please read the full Jury Instruction correctly and Judge Hodges was outraged and on several occasions it appeared he was acting as prosecutor.
- 13. I was present when Mrs. Rockstahl was being questioned and listened to several objections to leading and when asked how she felt she wasn't allowed to explain because she wasn't a victim.
- 14. I saw Mrs. Rockstahl trying to answer with all the objections and rulings by the judge and then at one point Judge Hodges stopped and asked her the question the prosecutor was trying to get out.
- 15. I felt that in watching the Judge he was not in any way fair or impartial, I felt he must have some additional knowledge about this case because he was very angry at both Mr. Rockstahl and Mr. Brown.
- 16. I was present for the reading of the Complaint and charges and for the reading of AFFIDAVIT OF SUSAN PARNELL 2

the Verdict by the clerk.

17. When the clerk was given the verdict form to read by the Judge, the clerk read

Count 1 the defendant was found acquitted. Count 2 the defendant was found guilty, and

Count 3 the defendant was found guilty.

#### **FURTHER YOUR AFFIANT SAYETH NAUGHT**

Susan Parnell

SUBSCRIBED and SWORN to before me this 10th day of June, 2013.

RHONDA RAE ASLETT NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho Residing at Twin Falls, Idaho

My Commission Expires: 4-6-2017

### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the <u>IOTA</u> day of June, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Joe Rockstahl or Legal Assistant

gi

Greg J. Fuller
Daniel S. Brown
FULLER LAW OFFICE
Attorney at Law
P. O. Box L
161 Main Avenue West
Twin Falls, ID 83301
Telephone: (208) 734-1602
Facsimile: (208) 734-1606

ISB #1442 ISB #7538

Attorneys for Defendant



# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

\* \* \* \* \*

THE STATE OF IDAHO,	}	Case No. CR-2012-12841
Plaintiff,	į	
vs.	{	SUBSTITUTION OF ATTORNEY
JOSEPH R. ROCKSTAHL,	Š	
Defendant.	ć	
	****	

TO: The Clerk of the above-entitled Court and to Grant Loebs, Twin Falls County Prosecutor:

YOU ARE HEREBY NOTIFIED That Joseph R. Rockstahl is hereby substituted in

SUBSTITUTION OF ATTORNEY - 1

the place of Fuller Law Offices as counsel, pro se, in the above-entitled matter. All future notices should be mailed to Joseph R. Rockstahl, 440 Fairfield Street North, Twin Falls, ID 83301.

DATED This 6 day of June, 2013.

GREG J. FULLER

JOSEPH R. ROCKSTAHL

#### CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on the day of June, 2013, I caused a true and correct copy of the foregoing Substitution of Attorney to be mailed, United States mail, postage prepaid, to the following:

Grant Loebs
Twin Falls County Prosecutor
P. O. Box 126
Twin Falls, ID 83303-0126

SUBSTITUTION OF ATTORNEY - 2

JOE ROCKSTAHL ROCKSTAHL LAW OFFICE, CHTD. 440 Fairfield St. North Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820 ISBN #6576

TWIN FALLS CO. IDAHO

2013 JUN 11 AM 11: 45

DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\*\*\*\*\*\*

)	CASE NO.: CR-2012-12841
)	
)	NOTICE OF HEARING:
)	MOTION FOR NEW TRIAL
)	
)	
)	
)	
	)))))))

TO: The Clerk of the Court, all parties and their counsel of record:

YOU ARE HEREBY NOTIFIED that a hearing on the Defendant's Motion for New Trial for the above-entitled case has been scheduled for the 12<sup>th</sup> day of July 2013 at the hour of 9:00 a.m., or as soon thereafter as counsel can be heard, at the Twin Falls County Courthouse, Twin Falls, Idaho.

DATED this 11th day of June 2013.

ROCKSTAHL LAW OFFICE, CHTD.

. .

1 | Page

#### **CERTIFICATE OF MAILING**

I, the undersigned, hereby certify that on the 11<sup>th</sup> day of June 2013, I caused the foregoing to be served on the following, by the method indicated:

Attorney for Plaintiff:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ] FIRST CLASS MAIL
FACSIMILE

[ ] COURT BOX

Joe Rockstahl
Or legal assistant

ROCKSTAHL LAW OFFICE, CHTD.

DISTRICT COURT TWIN FALLS CO. IDAHO

2013 JUN 11 PM 3: 35

Attorney for Defendant

ISBN #6576

JOE ROCKSTAHL

440 Fairfield St. North

Twin Falls, Idaho 83301 Telephone (208) 734-8810 Facsimile (208) 734-8820

> IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

> > \*\*\*\*\*\*

STATE OF IDAHO	) CASE NO.: CR-2012-12841
Plaintiff,	) NOTICE OF HEARING:
V8	) MOTION TO RENEW MOTION TO
	DISMISS ON SELF-DEFENSE;
JOSEPH R. ROCKSTAHL	) MOTION FOR JUDGMENT OF
*	) ACQUITTAL AND MOTION FOR
Defendant.	) MISTRIAL

TO: The Clerk of the Court, all parties and their counsel of record:

YOU ARE HEREBY NOTIFIED that a hearing on the Defendant's Motion To Renew Motion to Dismiss on Self-Defense; Motion for Judgment of Acquittal and Motion for Mistrial for the above-entitled case has been scheduled for the 12th day of July 2013 at the hour of 9:00 a.m., or as soon thereafter as counsel can be heard, at the Twin Falls County Courthouse, Twin Falls, Idaho.

DATED this 11th day of June 2013.

ROCKSTAHL LAW OFFICE, CHTD.

1 | Page

NOTICE OF HEARING: MOTION TO RENEW MOTION TO DISMISS ON SELF-DEFENSE; MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR MISTRIAL

#### **CERTIFICATE OF MAILING**

I, the undersigned, hereby certify that on the 11<sup>th</sup> day of June 2013, I caused the foregoing to be served on the following, by the method indicated:

Attorney for Plaintiff:

Fritz Wonderlich Twin Falls City Prosecutor PO Box 1812 Twin Falls, ID 83303-1812 [ ]FIRST CLASS MAIL

[★ FACSIMILE

[ ]COURT BOX

Joe Rockstahl
Or legal assistant

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 JUN 12 PM 1: 15

CLEDK

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Plaintiff,	) Case No.: CR-2012-0012841
vs.	) ORDER FOR ALCOHOL EVALUATION AND
Joseph R Rockstahl,	NOTICE OF HEARING
Defendant.	

The Court having ordered the defendant obtain an alcohol evaluation on May 24, 2013, hereby orders that evaluation be submitted to the Court by 5:00 pm Thursday, August 1, 2013.

Sentencing is scheduled Friday, August 9, 2013, at 9:00 am.

\_\_, day of June, 2013.

DATED this \_\_\_

Honorable Judge

#### **CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> of June, 2013, I served a true, correct copy of the ORDER FOR ALCOHOL EVALUATION AND NOTICE OF HEARING upon the following in the manner provided:

Fritz Wonderlich

Court Box

Joe Rockstahl

Court Box

Clerk of the District Court

Deputy Clerk

Separie.

06-24-'13 13:33 FROM-

Rockstahl, Att.

208-734-8820

T-996 P0002/0003 F-793

I WIN FALLS CO., IDAHO FILED 2013 JUL -2 PM 2: 38

SE CLERK

JOE ROCKSTAHL
ROCKSTAHL LAW OFFICE, CHTD.
440 Fairfield St. North
Twin Falls, Idaho 83301
Telephone (208) 734-8810
Facsimile (208) 734-8820
ISBN #6576

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE	OF IDAHO,		?	CASE NO: C	R-2012-12841
	Plaintif	Ę	)	*F	9
	i i	* 4	)	NOTICE OF	SUBSTITUTION
VS.	* *		)	OF COUNSE	L.
			. )	K)	
JOSEP	HR. ROCKS	rahl,	)		(#)
	Defend	ant,	3	*	

#### TO: THE CLERK OF THE COURT OF THE ABOVE-ENTITLED COURT:

YOU ARE HEREBY NOTIFIED that the above-named defendant in the aboveentitled action has substituted R. Keith Roark, of Roark Law Firm, as attorney of record in the above-entitled action and in the place and stead of attorney Joe Rockstahl.

DATED this \_\_\_\_day of June/2013

R. Keith Roam

Attorney at Law

APPROVED

Joe Rockstahl
Attorney at Law

Substitution of Counsel -

06-24-'13 13:33 FROM-

Bockstahl, Att.

208-734-8820

T-996 P0003/0003 F-793

#### CERTIFICATE, OF SERVICE

I HEREBY CERTIFY that on \_\_\_\_\_ day of July 2013, I served a true and correct copy of the within foregoing document upon the attorney named below in the manner noted:

#### Plaintiff:

Fritz Wonderlich Twin Falls City Prosecuting Attorney PO Box 1812 Twin Falls, ID 83301 Fax: \$88-789-0935 Court Box
U.S. Mail

Facsimile
Hand Deliver

Jes Rockstahl or Legal Assistant

#### DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 JUL -9 AM 11: 36

BY	
	CLERK

## IN DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
Plaintiff,	) Case No: CR-2012-0012841	
VS.	) )	
JOSEPH R ROCKSTAHL,	) HEARING CANCELLATION NOTICE	
Defendant.	)	
	)	
On this 9th day of July, 2013, at the ho	our of 11:30 am, I received a <b>call</b> from Alice	
from the office of Roark Law Firm vacating the hearing which is presently set for		
7/12/2013 at 09:00 AM.		
Said hearing is being vacated for the following reason:		
Has stipulated / settled / complied.		
No service.		
Has been reset to:		
XXX Other – reason: New counsel is	unavailable.	
Call/message received	by: Allaw Combra	
	Deputy Clerk	



2013 JUL -9 PM 1:31

BY\_\_\_\_CLERK

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333 TEL: 208/788-2427

FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,		)	
		)	Case No. CR-2012-12841
Plaintiff,		)	AMENDED NOTICE OF
VS.		)	HEARING
JOSEPH R. ROCKSTAHL,	8	)	
Defendant.		)	
		_)	*

PLEASE TAKE NOTICE that the hearing on Defendant's Motion to Renew Motion to Dismiss on Self-Defense and Motion for Judgment of Acquittal and Mistrial currently set to commence on July 12, 2013 is VACATED and RESET to commence at 9:00AM on July 30, 2013 before the Honorable Mick Hodges at the Twin Falls County Courthouse in Twin Falls, Idaho.

DATED this \_\_\_\_ day of July 2013.

THE ROARK LAW FIRM, LLP

R. KEITH ROAR

Attorney Joseph R. Rockstahl

#### **CERTIFICATE OF SERVICE**

I HER	EBY CERTIFY that on the day of July 2013, I served a true and correct copy
of the within	and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
X	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789 0935.
·	R KRITHROARK

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 JUL 30 AM 9: 38

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MAGISTRATE DIVISION

#### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Hearing type: Motion For New Trial, Motion To Acquit, Motion For Mistrial,

Hearing date: 7/30/2013

Time: 9:00 am

Judge: Mick Hodges

Courtroom: 3

Minutes Clerk: Lorraine Robinson

Defense Attorney: R. Keith Roark Prosecutor: Fritz Wonderlich

900 The Court called the case, reviewed the file and addressed the parties.

902 Mr. Roark gave argument to the Court regarding the motions.

922 The Court made a clarification regarding the memorandum filed by Mr. Rockstahl and examined Mr. Rockstahl regarding the clarification.

923 Mr. Wonderlich gave his argument regarding the defendant's motions.

926 Mr. Roark gave rebuttal argument.

931 The Court made findings regarding the motions. The Court will stand by the rulings on moving the trail dates. The Court discussed the issues raised regarding bad faith made by the Court and Mr. Wonderlich. The Court ruled the verdict form was not confusing. On the matter of inconsistent verdicts, the Court ruled there was no inconsistency. The self-defense issue was again addressed. The Court denied all motions. Mr. Wonderlich will prepare the order.

## DISTRICT COURT Fifth Judicial District County of Twin Falls • State of Idaho

JUL 3 0 2013 Pm3:00

Deputy Clerk

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN PALLS, MAGISTRATE DIVISION

State of Idaho,	) Case No.: CR-2012-12841
Plaintiff,	)
VS.	) ORDER DENYING MOTIONS FOR
Joseph R. Rockstahl	) JUDGMENT OF ACQUITTAL, DISMISSAL,
Defendant	) MISTRIAL AND NEW TRIAL

The Defendant's Motions for Judgment of Acquittal, Dismissal, Mistrial and New Trial came on for hearing on July 30, 2013. The Defendant was represented by his counsel, Keith Roark. The State was represented by Fritz Wonderlich. The Court having considered the Motions filed by the Defendant, the Affidavit of Defendant in Support of Motions, the Defendant's Memorandum in Support of Motions, and the entire record of the case, the Court hereby denies the motions for the reasons stated during the hearing, and as further set forth below:

Motion for Judgment of Acquittal: The Defendant, in his Memorandum, argues that the jury's finding of Not Guilty on the offense of Aiming Firearms at or Towards Others requires acquittal of the offense of Exhibition of a Deadly Weapon. The argument is that the Not Guilty finding must have been based upon self-defense, which should also have resulted in a Not Guilty Verdict on the offense of Exhibition of a Deadly Weapon. This argument fails to acknowledge that Aiming Firearms at or Towards Others has the element of "aiming" which Exhibition of a Deadly Weapon does not. The Defendant presented evidence at trial that, although he did exhibit the deadly weapon while stating "Let's get this gun fight started", he did not aim the weapon at or towards the victims. The jury's verdict was not inconsistent. The Motion for Judgment of Acquittal is denied.

Motion for Dismissal on Self-Defense: Defendant has renewed his Motion to Dismiss based upon Idaho Code 19-202A. The Court previously denied the Motion, finding no procedural basis for a pretrial factual determination that a criminal prosecution is barred by self-defense. In addition, the Court having heard all the evidence at the jury trial, the Court does not find that the Defendant used reasonable means (exhibiting a deadly weapon) under the circumstances, nor that he should reasonably have believed that his wife was in imminent danger

ORDER DENYING MOTIONS FOR AQUITTAL, DISMISSAL, MISTRIAL AND NEW TRIAL

of aggravated assault, robbery, rape, murder or other heinous crime, as required by Idaho Code 19-202A.

Motion for Mistrial: The Defendant's Motion for Mistrial is based upon an argument that the designated counts in the Complaint differed from the designated counts on the Verdict Form. This argument ignores the fact that the jury did not receive the Complaint, and would not have known the count designations, and the fact that each count in the verdict specifically spelled out the criminal charge. The Court cannot find that the jury would have been confused by a document (the Complaint) which they did not have. The Motion for Mistrial is denied.

Motion for New Trial: The Defendant has moved for a new trial, based upon the declaration of a mistrial, which this Court has denied. In addition, the Defendant argues that the Court denied him a meaningful opportunity to present a complete defense, by moving the trial up one week, and by denying the use of "character witnesses" never before disclosed in discovery or pursuant to the Pretrial Order, but only on the eve of trial. This argument ignores the Defendant's demand for speedy trial, asserted at the last pretrial conference, and the fact that the Defendant's failure to disclose "character witnesses" as required by discovery and as required by the Court's Pretrial Order placed the State (and the victims) in a position where it would be denied the right to a fair trial. In addition, the character evidence (truthfulness) sought to be presented to the jury was not admissible evidence pursuant to Idaho Rule of Evidence 404(a)(1) (evidence of a person's character or a trait of character for the purpose of proving that the person acted in conformity therewith on a particular occasion), nor pursuant to Idaho Rule of Evidence 608(a)(2) (the evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise). The Defendant has not shown any legal or factual basis requiring a new trial, therefore the motion is denied.

DATED, This 30 day of July

Mick Hodges, Magistrate Judge

#### **CERTIFICATE OF MAILING**

I hereby certify that on Aug 2, 201	3. I served the foregoing by depositing true copies
thereof in the method indicated below, and	addressed to the following:
U.S.Mail, Prepaid	Keith Roark
Courthouse Mail	409 N. Main
Fax	Hailey, ID 83333
L'Court House Box	
	Fritz Wonderlich

TWIN FALLS CO. IDAHO

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333 TEL: 208/788-2427

FAX: 208/788-3918

PILED

2013 AUG -2 PM 4: 44

BY\_\_\_\_\_\_\_CLERK

CLERK

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Plaintiff,	) Case No. CR-2012-12841
Flamon,	) MOTION FOR DISQUALIFICATION
VS.	) PURSUANT TO ICR 25(b)
JOSEPH R. ROCKSTAHL,	Š
Defendant.	)

CCOMES NOW THE DEFENDANT, in the above entitled action, by and through his attorneys of record, R. Keith Roark and THE ROARK LAW FIRM, and here by move this Court to enter its ORDER OF DISQUALIFICATION pursuant to ICR 25(b) and/or 25(d) upon the grounds and reasons set forth in the AFFIDAIVT OF R. KEITH ROARK filed herewith and incorporated herein as if fully set forth in its entirety.

ORAL ARGUMENT IS RESPECTFULLY REQUESTED.

MOTION PURSUANT TO ICR 25(b) - 1

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of August, 2013, I served a true and correct

copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303

By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

By hand delivering copies of the same to the office of the attorney(s) at his office.

By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.



TWIN FALLS CO. IDAHO
FILED

2013 AUG -2 PM 4: 44

Y\_\_\_\_

CLERK

50

DEPUTY

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333 TEL: 208/788-2427

FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Plaintiff,	) Case No. CR-2012-12841
	) AFFIDAVIT OF R. KEITH ROARK
vs.	) IN SUPPORT OF ICR 25(b) MOTION
JOSEPH R. ROCKSTAHL,	)
Defendant.	Š
STATE OF IDAHO, ) ss.	
County of Blaine )	

#### R. KEITH ROARK, being swom upon oath, deposes and states as follows:

- I am a resident of the State of Idaho, County of Blaine and make the averments contained herein of my own, personal knowledge.
- I am an attorney duly licensed to practice law in the State of Idaho and am counsel of record for the Defendant in the above captioned case.
- 3. I recently substituted in as counsel for the Defendant in the above referenced matter and did not observe or participate in the trial of this cause and, therefore, have no direct knowledge of how that trial was conducted.



`AUG/02/2013/FRI 04:18 PM

- 4. I have known the presiding judge in this case, the Honorable Mick Hodges, for a very long time and have the greatest respect for him and his work.
- 5. On July 30, 2013, I attended and participated in the hearing on several post-trial motions that had been prepared and briefed by my client. I presented oral argument on two issues only: the self-defense instruction read to the jury and the question of inconsistent verdict.
- 6. Prior to commencing my remarks to the court, Judge Hodges interrupted to as if I was going to argue the issue of bad faith judicial conduct that had been raised by my client in his post-trial pleadings. I responded that I did not intend to do so. I was then asked if I joined in my clients position that there had been bad faith judicial conduct in the trial of the cause and I responded that I had not been present, had no basis to believe that there had been bad faith judicial conduct and did not join in that claim at all.
- 7. Following my response to his questions about judicial conduct, Judge Hodges asked my client if he still maintained that there had been bad faith judicial conduct in the trial and my client responded in the affirmative. Judge Hodges then remarked that he believed the claim was unfounded and considered it to be a scurrilous remark that reflected badly upon his, the Judge's, integrity. Judge Hodges made it clear that he deeply resented the charge by my client.
- 8. Your affiant has great respect and affection for Judge Hodges and his judicial record.

  However, it is clear that the charge of prejudicial judicial conduct during the trial has deeply hurt Judge Hodges and, therefore, so that the record in this case at sentencing can be completely devoid of any taint of prejudice or bias that the claim of bad faith judicial conduct may have raised, I have filed a Motion, pursuant to I.C.R. 25(b), (c)

and (d), asking that Judge Hodges voluntarily recuse himself from further proceedings in this case or, in the alternative, that he be disqualified upon the grounds set forth in I.C.R. 25(b)(4) and assert that it would be in the best interests of justice that the motion be granted.

#### FURTHER YOUR AFFIANT SAYETH NOT.

R. Keith Roark

SUBSCRIBED AND SWORN to before me this \_\_\_\_day o

NOTAR BUILD OF IDAHOLINIA

Notary Public in and for the State of Idaho

residing at Hailey, therein.

My Commission expires 7/20/15.



II	IEREBY CERTIFY that on the day of August, 2013, I served a true and correct
copy of the	e within and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.



DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 AUG -5 PM 1: 42

IY\_\_\_\_\_

CLERK \_\_DEPUTY

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333 TEL: 208/788-2427

FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	) Case No	o. CR-2012-12841
Plaintiff,	)	
	) NOTIC	CE OF HEARING
VS.	)	
	)	
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	)	34
	)	

PLEASE TAKE NOTICE that the hearing on Defendant's Motion for Disqualification will be heard on the 9<sup>th</sup> day of August 2013 at the hour of 9:00AM before the Honorable Mick Hodges at the Twin Falls County Courthouse in Twin Falls, Idaho.

DATED this 5 day of August 2013.

THE ROARK LAW FIRM, LLP

R. KEITH ROAR

Attorney Joseph R. Rockstahl

#### **CERTIFICATE OF SERVICE**

I HER	EBY CERTIFY that on the day of August 2013, I served a true and correct	
copy of the within and foregoing document upon the attorney(s) named below in the manner noted:		
	Twin Falls City Prosecuting Attorney	
	Post Office Box 1812	
	Twin Falls, Idaho 83303	
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.	
	By hand delivering copies of the same to the office of the attorney(s) at his office.	
70	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.	

R. KEITH ROARK

August 6, 2013

TWIN FALLS CO., IDAHO

2013 AUG -6 PM 4: 07

BY\_\_\_\_

The Honorable Mick Hodges Magistrate Court

RE: Idaho v Rockstahl Twin Falls County Case CR-2012-12841

Letters of Reference

Dear Judge Hodges:

Attached please find copies of letters of reference and support from the following people

Steven P. Stephens, SFC, IDARNG

Christopher V. Webb, SFC, IDARNG

Robert A. Smith

John C. Larsen

Patty Rockstahl

Rhonda Aslett

Vickie Jones

Joe Russell

David Patrick & Joyia Lovell

Sharon Sweesy

Andy & Susan Barry

Dave Vahlberg

Sue Vahlberg

Geoffroi A. Golay, D.C. Russell : Natalie Wielsma Stan ! Laurie Suntly

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# IDAHO ARMY NATIONAL GUARD Recruiting & Retention RSP CO C 1069 Frontier Road, Twin Falls, Idaho 83705



**NGID-RRB-C** 

05 August 2013

#### MEMORANDUM FOR RECORD TO The Honorable Mick Hodges

SUBJECT: Letter of Reference/Support for Joseph Raymond Rockstahl.

#### Your Honor,

I am writing this letter on behalf of Joe Rockstahl as a testimony of his character and his unwavering morality. I hope to show in the later words that I type just how Mr. Rockstahl has been an awesome individual to know and to call a friend. This letters intent is to have you show leniency when considering this case and the outcome of Mr. Rockstahls future. Please look as this letter as the least that I could do for a man who has helped with so much and deserves a pardon from what is about to happen.

I first met Mr. Rockstahl and his wife Patty through my wife. They would always patron the restaurant that my wife was working at. My wife knew exactly what they wanted to drink and most of the time what they wanted to eat and would have everything ready by the time Joe and Patty had a chance to settle in. This told me immediately that these individuals meant a lot to her otherwise she would not have bothered to remember anything about them. In return, the Rockstahls would not have requested her to be their server if the feeling was not mutual. My wife would ask Joe legal questions about her ex husband and Mr. Rockstahl would offer free legal advice to my wife while they were eating. I got to know them a short time after my wife had become friends with them. I was faced with a legal issue concerning my former wife and Mr. Rockstahl was ready to help. He always served us at a reduced rate because he served in the military and understood what military service members go through. I have sat in Joes office many times weather it was just to chat or seeking information. He has always had a calm demeanor that made me feel comfortable to be around him. I am not fully aware of why Mr. Rockstahl is facing adversity but can assure you that he would never hurt or attempt to hurt anyone.

A year ago, I was faced with being a Casualty Assistance Officer for Jordan Brown. A CAO has the job of being the comforter to the family of a soldier who has died in action. The last face of the Army, which the family will get to know and share their last experience of their loved one with. The CAO also coordinates paperwork and other issues for the family of the deceased. I found out that legal assistance had to be coordinated and I immediately thought of Rockstahl law office. Mr. Rockstahl agreed to do pro bono work for Mrs. Jordan Brown without hesitation and clear up the estate of Staff Sergeant Daniel Brown deceased. If I had to make an assumption of why he did it, it would be; as a former soldier, you feel a sense of pride helping out another fellow soldier even if that soldier is deceased. It takes a special person to take time out of their busy day to do a mentally intense task for no wages and to do more than is asked. That's exactly who Joe Rockstahl is.

I have referred numerous individuals to Mr. Rockstahl for legal advice or legal service. These are people who are close to me and trust me with their lives. He has always taken on their cases with vigor and a calmness that allows for trust. I have checked up on these individuals and have asked if they had any reservations about using Mr. Rockstahl and his legal advice. None of my friends have had issues with his service and refer Mr. Rockstahl to their friends. This tells me that he is to be trusted and that his service is above and beyond what people expect.

Joe is someone who cares, a person who gives more than he takes, and someone who deserves to have leniency from whomever is about to pass judgment on him. The great book says let he who is without sin cast the first stone. I know that I haven't lived a perfect life, none of us have. We all have things we wish we could "re-do", rethink, do over, or just plain forget. Please consider my letter in support of Mr. Joe Rockstahl. He is a good man and doesn't deserve to lose his livelihood over something that can be seen as a rash decision that he can't take back. Thank you for your time.

STEVEN P. STEPHENS

SFC, IDARNG

Senior Recruiting and Retention NCO

208-731-0804



# IDAHO ARMY NATIONAL GUARD Recruiting & Retention RSP CO C 1069 Frontier Road, Twin Falls, Idaho 83705



NGID-RRB-C 5 AUG 2013

**MEMORANDUM FOR: Courts** 

SUBJECT: Letter of reference and support for Joe Rockstahl

- 1. To Whom It May Concern, I am writing this letter as a personal character reference for Joe Rockstahl. I have personally known Joe for several years and threw my career in the Military I have watched Joe Continually make selfless sacrifices to support and help out fellow soldiers. Joe has spent countless hours providing free or low-cost legal support and representation to soldiers in need. Over the years I have personally gotten to know Joe very well. Mr. Rockstahl is the type of person that truly cares about others and places the needs of others before his own. Joe has a calm reassuring demeanor that makes you feel comfortable and cared for when you're with or around him. I would trust Joe with my life as well as fellow soldiers and comrades in my unit. Joe Rockstahl made what some may call a questionable decision. I can assure based on my personal experience being around and knowing him. Joe would never intend to hurt or bring harm to others around him.
- 2. Military experience and training teaches Soldiers to react to situations accordingly and use calculated escalation of force when necessary. If Joe escalated a show of force I am certain that he felt himself and members of his family were threatened. Joe as a trained soldier and Special Forces veteran it would be my personal opinion that Joe's reactions to the situation would have been second nature. We are not talking about an untrained unfamiliar citizen flailing a weapon. We are talking about a highly trained soldier with years of military training, using a weapon as a tool necessary to show a use of force to help de-escalate a potentially hostile situation. Society does not question every time a police officer un-holsters a weapon or uses a taser on an individual, we trust that the officer is highly trained in the use of force, as well as the escalated show and use of force necessary to properly deescalate a bad situation. In my eyes a highly trained soldier with an impeccable military record is no different. I can assure you based off of Joes military experience and training, Mr. Rockstahl Has received numerous hours of military training concerning the use of force and how to properly use a weapon as a deterrent in a potentially life threatening environment. I would bet my life on the fact that if Joe intended to do any harm to the potential aggressor things would have ended far differently. It is my personal belief and understanding based off my Military training and combat experience. Joe's show of force was a carefully calculated move to de-escalate what he felt was a hostile and potentially life threatening situation.
- 3. Joe's selfless service, moral character, and the personal sacrifices that he makes to help fellow soldiers are of the highest military tradition. I personally have sent many struggling soldiers to Joe for assistance and have always found that he is willing to place

NGID-RRC-CDR
SUBJECT: Leave Policy (Policy Letter #7

their needs before his own. Joe continually reaches out, researches, and provides resources to soldiers coming back from combat environments struggling with PSTD. Joe is always willing to help soldiers assist with will's and other legal matters before leaving for prolonged deployments. Recently I had the opportunity and honor to be the Casualty Assistance Officer to a family that had lost their son during combat operations fighting for our country. I reached out to Mr. Rockstahl on numerous occasions to help assist with the family's overwhelming legal matters while suffering the loss of their son. Mr. Rockstahl helped this family and I work through legal matters and this tragic situation free of charge. In my eyes Joe is a public servant deserving of the utmost respect for his willingness to help others in need. Joe is a productive member of society and his numerous contributions far outweigh any downfalls that may be in question.

CHRISTOPHER V. WEBB SFC, IDARNG Senior Recruiting and Retention NCO 208-961-1663 Clerk of the District Court

August 5<sup>th</sup>, 2013

300 North Lincoln Rm. 310

Attn: Veterans Services-Robert A. Smith

Jerome, Idaho 83338

**Honorable Mick Hodges** 

**Magistrate Court** 

1459 Overland Ave.

Burley, Idaho 83318

Honorable Mick Hodges,

In reference to Mr. Joe Rockstahl's sentencing, as part of my job functions as Jerome County Veteran Service Officer, Post level Service Officer for VFW Post 2136 Twin Falls, Id. and American Legion Post 46 Jerome, Id. I require assets and networking capabilities from various local and State agencies and most importantly from the private sector to accomplish my goals. It is in this aspect that I am writing to you on behalf of Mr. Rockstahl, I have had the opportunity to work with him on several veteran issues and non veteran issues for the past few years. I have yet to find another individual in South Central Idaho or even the State that comes close to his level of commitment and compassion for people in his community. Time and again I have witnessed Mr. Rockstahl put his personal interests aside to ensure that those needing his assistance have been made a priority. I jokingly refer to Mr. Rockstahl as the "Patron Saint of lost Veterans". I admire him in his profession but more importantly as a person who has a firm grasp of basic human dignity and respect and a clear path of thinking as to how a problem should be resolved. I am grateful to have Mr. Rockstahl in my community and look forward to many years of continued success in our related fields. Thank you for your time and consideration.

Respectfully,

Robert A. Smith

To The Honorable Judge Hodges,

I would want you to know that as a 20 year Army Combat Veteran I consider Joe Rockstahl, to be a very selfless and giving veteran. He always helps other veterans and is always looking out for veterans that may be in need in the community. He is well respected by many veterans in this great State of Idaho. I hope you would take this into consideration while presiding over this case, and know that he is selfless, giving, and always caring for people in general in our community.

Thank you for your consideration in this matter.

Sincerely,

John C. Larsen

Patty Rockstahl 2214 Nisqually Street Twin Falls, Idaho 83301

Honorable Mick Hodges Magistrate Court 1459 Overland Ave. Burley, Idaho 83318

Honorable Mick Hodges

I am Joe Rockstahl' s wife and I am writing in support of my husband and his upcoming sentencing.

I am the reason that Joe went down to the work site where the story starts.

I understand that Joe was found guilty of brandishing a fire arm and disturbing the peace all in my defense. I ask that you consider the reason Joe went down to the construction site and why he took his gun.

I was threatened and attacked all for asking the construction worker if we could come to an agreement on working times. I did not yell nor did I call anyone names. I have had great respect for law enforcement and our judicial system. I am now understanding that since my husband is a defense attorney it's alright if I get shoved and threatened with bodily harm (I know where you live and I am going to get you and I am a four time F\*\*king felon). I asked several times that night for a restraining Order against Mr. Merchant, I even went to the police station and met with a police officer and they refused to give me my attacker's names. It is unfortunate that Mr. Brown missed a deadline for exhibits and the full police recordings didn't get to the record. The jurors would have heard Mr. Merchant laughing about the gun that Joe brought and they could have heard who was cursing.

I don't know what would have happened if Joe didn't come to my defense but I do know that that night I was a very frightened (still am). My life was in danger and I was shoved and pushed away when both Mr. Merchant and Mr. Carpenter rushed past me to get to Joe. In my eyes my husband is a hero not a criminal for protecting his wife from the animals that were attacking me.

I respectfully hope you consider that both Joe and I have not changed our story about what happened that night. The prosecutor has stated on the record that the construction workers stories have not been consistent.

& odishark

Thank you,

### Rhonda Aslett Twin Falls ID 208-734-8810

To: Honorable Mick Hodges Magistrate Court 1459 Overland Ave. Burley Id 83318

RE: Joe Rockstahl

Honorable Mick Hodges:

I am writing on behalf of Joe Rockstahl.

I have known Joe's wife, Patty for over 10 years and have never known her to be anything but an honest Christian woman. I met Joe approximately 4 years ago and have been employed at Rockstahl Law Office for almost three years. I have never seen Joe get frustrated, angry or lose his temper. I know Joe to be a compassionate, fair and honorable man who does a great deal of pro bono work for fellow veterans as well as people who are struggling financially but need legal assistance. During the time I have worked for Joe, he has always put the needs and concerns of others first. He genuinely cares for others and takes great joy in helping people in the community.

When Patty and Joe told me what happened the day after the incident, they were still extremely upset by what had happened and that the police had literally talked Patty into not pressing charges against the construction worker that had assaulted and threatened her. I was shocked that the police would have done that and that one or both of the construction workers were never charged.

I truly believe that Joe, feeling his wife was in imminent danger, reacted as you would expect someone to react if a loved one was being threatened. I believe that Joe acted out of instinct and not with any malice or intent to harm.

It is concerning that our judicial system is willing to believe a convicted felon and drug user's statement over 2 very honest, hardworking and respected people. The fact that the prosecutor chose to file any type of charges against Joe after 1) prosecutors in Cassia County reviewed and said there was nothing to prosecute and 2) they waited over 4 months to file charges is also concerning.

This case in my opinion is not only a travesty; it has been a waste of the Courts time and taxpayer dollars. I hope that you, in your wisdom, can see that when considering Joe's sentencing.

Thank you for your time,

Thonde Astell

Vickie Jones 2598 Granadillo Meridian, ID 83746

Honorable Mick Hodges Magistrate Court 1459 Overland Ave. Burley, ID 83318

Honorable Mick Hodges:

I am writing in support of my brother-in-law, Joe Rockstahl, in his upcoming sentencing.

I met Joe about five years ago. Since that time, my husband and I have spent a significant amount of time with my sister, Patty, and Joe. We have spent numerous weekends together exploring Idaho's great outdoors. During many of these explorations, I have witnessed Joe with firearms. He does not take the responsibility of carrying a firearm lightly. I feel comfortable enough with his use of a firearm that I have ask him advice on many occasions. When hunting, he often reminds me the importance of taking safety precautions. I felt so confident in his abilities with firearms that I asked him to work with and instruct a friend of mine who had purchased a hand gun. He did so without hesitation because he knows that anyone with a firearm needs to know how to safely use their weapon.

My sister and I were blessed to be raised by wonderful Christian parents. We were taught to find the good in others. It came to no surprise to me that my sister went to talk to construction works that were being very loud. I, too, would have gone down there to talk to them thinking that if I ask them to quiet down they would. It would not have occurred to me that such a simple request would have caused such an aggressive response. I was, and still am, concerned for my sister's safety with these known criminals knowing where she lives and works. Their response frightened my sister, as it would have me. I appreciate Joe protecting my sister with the means he had available. He could not use his physical size/strength as he had just had a surgery that disabled his use of one arm. Had he had the full use of both arms, I do not believe that the situation would have escalated.

Sincerely,

Vickie Jones



August 5, 2013

To: Twin Falls District Court

Ref. Letter in support of Joe Rockstahl

To whom it may concern:

I have known Joe Rockstahl for several years. I am proud that Joe is a member of our family, as my brother in law.

I have observed Joe Rockstahl, in a number of circumstances, over many years. It would be challenging for any man to remain completely calm, while his wife's life was threatened, but I have come to appreciate Joe's consistently calm and thoughtful manner, as well as his humility and quite compassion. I have observed Joe Rockstahl, on numerous occasions, giving of his time and financial resources to individuals, and to worthwhile organizations, within the Magic Valley community.

Taking into account the circumstances and evidence of this case, which the court has knowledge of, it seems appropriate that leniency be granted in this instance. This outcome seems especially appropriate, considering the charge of a prosecutor and the court "To see that justice is carried out".

Respectfully Submitted,

Joe Russell

From: David Patrick & Joyia Lovell 3740 N 2600 E Twin Falls Id 83301 208-731-7153

To: Honorable Mick Hodges
Magistrate Court
1459 Overland Ave.
Burley Id 83318

RE: Joe Rockstahl's

Honorable Mick Hodges,

We are friends and clients of Mr. Rockstahl's. We heard about the unfortunate altercation Between Joe and the construction workers. We were quite surprised of the accusations brought on by the construction workers toward Joe and Patty. I talked with Patty and Joe and must say they were very shook up by the incident. Patty was afraid for her and Joes safety and quite frankly we were afraid for them. If my wife and I were put in this situation, I personally would have handled it the same way they did.

I would like to comment on Joe's character. I have found Joe as a friend and my Attorney, to be a kind, caring, honest man. I see him as someone who made the best decision he could to protect his wife and himself that night from aggressive men going after them. This truly must have been a horrifying experience for Joe and Patty.

We pray you will see that, Joe and Patty were victims in the wrong place at the wrong time. My wife and I hope to never have to go through such a terrify experience.

Sincerely,
David Patrick and Joyia Lovell

From: Sharon E. Sweesy

To:

Honorable Mick Hodges

Magistrate Court 1459 Overland Ave. Burley, ID 83318

RE:

Joe Rockstahl

I have been a personal friend of Patty Rockstahl for over 30 years and I met Joe approximately 4 years ago. I consider both Patty and Joe good friends as well as hiring Joe Rockstahl as my attorney for both personal and financial purposes.

My son Jerod is an ISP officer and my daughter-in-law, Jill, a senior deputy prosecutor. Jerod's father was also in law enforcement for a number of years working as a Deputy Sheriff for Twin Falls County under Sheriff Paul Corder. I consider myself somewhat knowledgeable of our legal system and well versed on the "letter of the law" as well as the "spirit of the law."

I presently am very concerned with our judicial system that, in this case, seems to trust a convicted felon and drug user's statement over two very honest and upstanding citizens. Patty and Joe both spoke to me after the incident with the construction workers and I was shocked that one or both of the construction workers weren't charged. I too was stunned when reading the inaccurate information published in articles appearing in the Times News.

I would hope that my son, should he ever be caught in a similar situation, would respond and do whatever he deemed necessary to protect his wife from bodily harm. Obviously because he is a law enforcement officer, the letter of the law would justify his actions. It appears possibly because of Joe's status as a defense attorney, he must now rely on the spirit of the law to come to his aide.

I hope too that it will be beneficial to you in knowing Joe Rockstahl's legal practice provides substantial financial support to many in the city of Twin Falls; the St. Edwards private school where my grandson attends, to the Victory House Drug Rehab Center, as well as other small community organizations and individuals. He supports his community, not because he has to but because he chooses to.

This case, in my opinion, is a travesty of justice and I hope that you, in your wisdom, can support the spirit of the law when considering Joe's sentencing. I sincerely thank you for that consideration as well as your valuable time.

Very Sincerely,

Sharon E. Sweesy

2514 East 3707 North Twin Falls, ID 83301 (208) 308-4147 August 5, 2013

Hon. Mick Hodges Magistrate Court 1459 Overland Ave. Burley, ID 83318

Re: Joe Rockstahl

Dear Mick,

We are writing this letter in support of Joe Rockstahl. It is our understanding that he will be sentenced on Friday for brandishing a firearm and disturbing the peace.

We have known Patty for over 15 years and Joe for about 5. They are both good, hardworking citizens of Twin Falls who have contributed greatly to the betterment of this community. Joe has no past criminal record, and we would hope that you would take that into consideration. Joe probably knows the darker side of Twin Falls more than most ordinary citizens by some of the very clients he represents. Should he have taken a gun to the scene? We think that was prudent. Was it the time to pull it out? Maybe not, but he did not shoot. Joe is good man you will not likely see in your courtroom again. He acted reasonably in a highly-charged exchange involving his wife who was in a potentially dangerous situation with three other men.

Please don't punish a man for protecting his wife who was being harassed and bullied by a convicted felon. Just as Joe said at the end of his testimony... if he had hind sight, he would have brought a video camera to the situation and not a gun. However, we, as human beings, don't have that ability, and he acted as we would hope any husband would in taking steps to protect a loved one who may be in danger.

This incident has been time- and cost-consuming, as well as emotionally taxing for them both, and we think that is plenty of punishment as it is. Thank you, Mick, for your thoughtful consideration.

Sincerely,

Andy & Susan Barry

#### Honorable Mick Hodges:

I am writing this letter of support for my long-time friend, Joe Rockstahl, to convey his good character, kindness and non-aggressive nature.

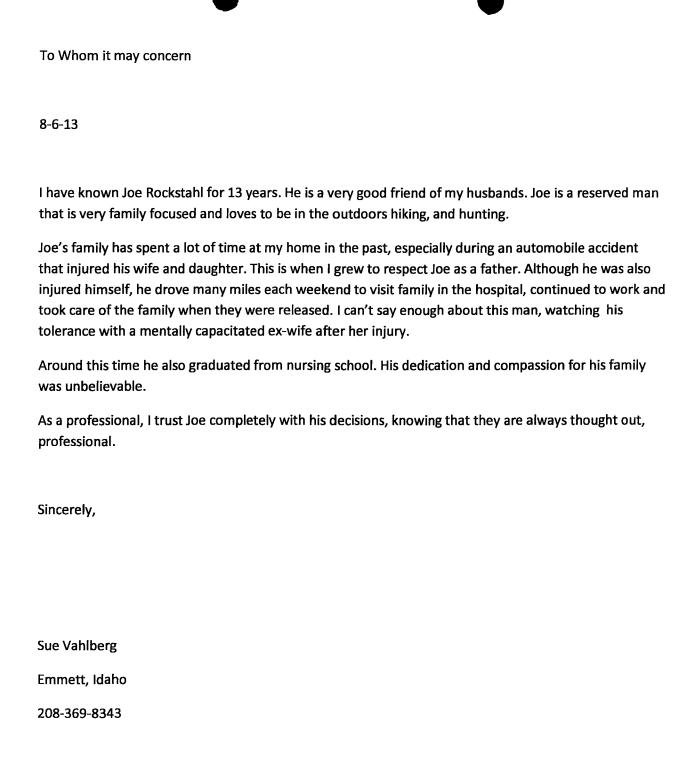
In the thirty-five years I have known Joe, I have worked and socialized with him, and have seen him in situations that would have angered or caused negative reactions in others, facing the same situation, and he was never ruffled. Joe has a calm, easy demeanor and I have never seen him become confrontational, fight or threaten anyone.

He is however, very family/friend oriented and would come to the aid of anyone he knew, being threatened or aggressed, which I believe is the case in these proceedings. Pure and simple, his wife Patty, was being bullied verbally and physically as well as maliciously, threatened with bodily harm and Joe did what any loving husband would do; he came to the rescue and defended her from harm and possibly worse.

I thank you for allowing me to speak on Joe's behalf; he is a fine man and deserves fair treatment.

Respectfully,

Dave Vahlberg





Honorable Mick Hodges

August 6, 2013

Magistrate Court

1459 Overland Ave.

Burley, Id.

A few words of positive personality of Joe Rockstahl. Joe has been a positive and pleasant person for me to be around. He has given him self to serve the military and our United States in the past as a "Special Forces". This can be beyond the call of duty! But he gives more of his time and service to people in need as legal attorney and counsel. I know sometimes in legal care you may work for pro-bono, and Mr. Rockstahl has himself.

Mr. Rockstahl has been more than honest with me in person and professionally with dealing with common cases.

May this shed a little more light,

Dr. Geoffroi Golav. DC.

Russell and Natalie Wiersma 1005 Waller St. Waycross, GA August 6, 2013

Honorable Mick Hodges Magistrage Court 1459 Overland Ave. Burley, ID 83318

### Dear Honorable Mick Hodges:

We are writing this letter in support of Joe Rockstahl who is my husband's Step Father and my Father-In-Law. Joe came into our lives about 3 years ago and is truly a good man. Joe has been a positive influence in our lives and in our extended family's lives. He always lends a helping hand and is a very caring person. Joe has always been a very happy, positive and a calm individual. We have never seen him ever be aggressive toward others. We are so very relieved that Joe Rockstahl was able to protect Patty Rockstahl our mother in this unfortunate situation. It is a tragedy that one cannot protect themselves when they or their family is in fear of injury or worse without being charged or punished. In our opinion Joe was just doing what any good man and husband would do: Protect their wife anyway they can.

Russell and Natalie Wiersman

Thank you for your time.

Sincerely,

Russell and Natalie Wiersma

August 6, 2013

### Honorable Mick Hodges

Our family feels blessed that we can call Joe and Patty Rockstahl our friends. Our society needs hardworking people like them.

In my opinion, our country today has two difficult problems, bullying and the right to keep and bear arms.

Bullying is in our schools, on our highways and seemingly all around us.

I worked in heavy construction all over southern Idaho for 30 plus years for Western Construction, Inc. as a superintendent. Our company took great pride that the employees had class and showed respect to everyone, like the construction workers that helped on the Twin Towers after 9-11, they were our heroes. Unfortunately a small percent of construction workers who are usually in good physical condition do not come under this heading and fall into the category as a Bully.

Any three construction workers that would show disrespect to a woman who lives in the neighborhood they were working in and then shove her are scary.

In the Constitution, our forefathers gave us a right to bear arms for a reason.

When three classless construction workers threaten to harm your wife, it is time to show them you are bearing arms.

Things could have turned into a tragedy if Joe Rockstahl wasn't a cool head.

I am glad we live in the USA and have Judges like you that will come to a fair verdict with major problems like bullying and the right to bear arms.

Sincerely

Stan and Laurie Guntly

DISTRICT COURT
Fifth Judicia! District
County of Twin Falls • State of Idaho

August 7, 2013

AUG 07 2013 Pm 4:14

The Honorable Mick Hodges Magistrate Court Deputy Clerk

RE: Idaho v Rockstahl Twin Falls County Case CR-2012-12841

Letters of Reference

Dear Judge Hodges:

Attached please find copies of letters of reference and support from the following people

John L. Horgan Diana Obenauer, RN, BSN, MPA, COL, RET, US Army John L. Horgan 148 Keyhole Drive Jerome, Idaho 83338

Honorable Mick Hodges
Twin Falls Magistrate Court

Re: State v. Joseph Rockstahl, Twin Falls County case CR 12-12841

Dear Judge Hodges,

Joe has asked that I write this letter of support. I've read a bunch, but this is the first one I've written. Please bear with me.

The article done by the local newspaper was pointed out to me by the Deputies at the security desk. I don't usually pay much attention to the paper, but that article I read. The repository was also somewhat helpful, and bits and pieces of the proceedings have trickled over the canyon. The machinations of the criminal justice system usually interest me greatly, but in this case, not so much.

I've known of Joe for a long time, but after we shared public defender office space for a couple of years, I got to know him on a personal level. His Idaho upbringing, his kids, the collision that had such a deleterious effect on his family. We talked about his military background, which may explain in part why he helps veterans out with various legal problems to this day.

Joe came up to visit me four years ago, something I will always be grateful for. I can't tell you what was in his heart during this incident, but I can tell you what wasn't...malevolence. Joe is one of the good guys, and I hope you will take that into account in your sentencing deliberations.

Sincerely.

nd. Holgan 8/6/13



From: Diana Obenauer [mailto:dobenauer@hotmail.com]
Sent: Tuesday, August 06, 2013 9:27 PM
To: Joe Rockstahl
Subject:

To whom it may concern,

This letter is in support of Mr. Joe Rockstahl's character, professional performance, and total commitment to assist those who could not afford attorney fees as well as defend his fellow comrades in arms within many communities of Southern Idaho.

I have gotten to know Mr. Rockstahl over the course of the past five years as a trained military emergency medical care provider, soldier, and diligent attorney.

He has always been willing to assist his fellow soldiers who have served terms in direct combat, sustained devastating injury and/or severe depravation with concern and sincere dedication to help them

find solace and return to productive citizenry. Many times he has chosen to do so, pro bono". That speaks volumes as to his allegiance to protect, support and defend our country and community to ensure that he replicates his oath of office.

He is a compassionate Attorney who really "cares" about those in need of legal advice and intervention. I fully trust his judgment and convictions and compassionate approach and his legal ethics. I trust him implicitly.

He has always treated my soldier clients with understanding and compassion. He is a very unique, thorough and proactive attorney. I trust his decisions and support his interventions as always warranted.

Sincerely yours,
Diana Obenauer, RN, BSN, MPA, , COL, RET, US ARMY
22 South 150 West
Jerome, Idaho 83338
Office 324-4022Cell 208-490-0511

August 8, 2013

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 AUG -8 AM 11: 34

CLERK

The Honorable Mick Hodges Magistrate Court

RE: Idaho v Rockstahl Twin Falls County Case CR-2012-12841

Letters of Reference

Dear Judge Hodges:

Attached please find copies of letters of reference and support from the following people

Brandi L. Pierce, RN, BSN

August 8, 2013

RE: Joe Rockstahl

To Whom It May Concern,

I am writing in support of Mr. Rockstahl during his upcoming sentencing hearing. I have known Joe, professionally and personally, for approximately 7 years. I met Joe while working at Canyon View Psychiatric and Addiction services while he was employed there as an LPN. Joe was always tough but fair — and treated the patients with dignity and respect, even when they treated him with neither. I later had the pleasure of working with Joe at North Canyon Medical Center. Again, Joe treated his patients with compassion and dignity. Frequently during this time when dealing with combative and aggressive patients in the Emergency Department I would ask Joe to assist in their care. Joe was always responded quickly to protect the other staff and patients and did so in a manner which promoted the safety of the facility and the patient. Since that time, I have retained Joe and Patty's services for a personal matter and have had the opportunity to assist them as a consultant. This has afforded me the opportunity to get to know both of them on a much more personal level and I consider them both to be dear friends.

I am only familiar with some of the details of the misdemeanors for which he is being sentenced. I do know that Joe will protect his family, friends, and if needed — perfect strangers. I believe Joe's military, legal and medical training all have one thing in common, and that is to make the quick decision to protect the ones who cannot defend themselves. I have seen Joe make this decision on numerous occasions, and have even been the one who needed protection on occasion.

I hope that Joe's character and contributions to the community, as well as the facts of this case, can be a factor in determining his sentence. I greatly appreciate the court's time and consideration.

Sincerely.

Brandi L. Pierce, RN, BSN

Consultant

802 A 3<sup>rd</sup> Ave. E.

Gooding, ID 83330

(208) 358-1585

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF OUR THE STATE OF IDAHO, IN AND FOR THE COUNTWONT WAS ESLED. IDAHO MAGISTRATE DIVISION FILED

SENTENCING MINUTES

Date 8 9 13 Time 9 am Counter 9D7 2013 AUG -9 AM 9: 53 Case No. 042-12841
Judge Deputy Clerk Comson Interpreter BY Ctrm# 1
CLERK
State of Idaho In custody Attorney Attorney Attorney
vs Joseph Rockstahl Attorney Roar K
Offense: 1) Exhibition of Deadly Weapon Oraquetted & Doturbing the Pelice
Count(s) Dismissed
Appeared in person
☐ Failed to appear ☐ Warrant Issued ☐ Bond Set ☐ Forfeit Previous Bond ☐ PC needed
☐ Defendant Advised of Rights and Penalties ☐ Plead Guilty ☐ on record ☐ Alford plea ☐ Court accepted plea
☐ Plea Withdrawn ☐ Pretrial ☐ Court trial ☐ Sentencing continued
SENTENCE:  Jail   60   180   Days   Suspended   Days   Days   Credit time served   Days   Day
Report to jail   Consecutive   with
COUNT 1: Fine \$ 1000 Suspended \$ 500 Court costs \$ 150. 50
COUNTY! Fine \$ Suspended \$ Court costs \$
COUNT Fine \$ 1000 Suspended \$ 500 Court costs \$ 50.
COUNT 4: Fine \$ Suspended \$ Court costs \$ waived/uncollectable
COUNT(S) Fine \$ Court costs \$
Fines are due Schedule with P.O End of probation
Court compliance fees due Restitution   Defendant has days to object Already Pair
Driving Privileges Suspended Days Beginning 1ST Days Absolute
Restricted Permit Approved: when reinstated when insured Work/School/Health/Emergency Purposes Only
PROBATION: Probation fees waived Concurrent with any other pending probation
Probation 24 months Supervised 24 months or until fines are paid and upon completion of work detail/court compliance
Work Detail Hours within days Community Service 50 Hours within 180 days
TREATMENT: UA Today
☐ Court Alcohol School (with Proof to Court) Next available Date ☐ Substance Abuse Treatment (with Proof to Court)
☐ Complete Evaluation ☐ Comply with recommendations of evaluation ☐ Anger Management
☐ Do not enter country illegally ☐ Court approved completion of ☐ Work Detail ☐ Jail Time ☐ Probation in County
☐ Court reissued no contact order expiring on ☐ No contact order to remain in effect ☐ No contact order dismissed
☐ SCRAM unit authorized
Comments:

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 AUG -9 AM 10: 21

8Y	
UE OTATE OF	CLERK
HE STATE OF	DEPUTY
	WEPUTY

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS MAGISTRATE DIVISION

### **COURT MINUTES**

CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl Hearing type: Motion to Disqualify

Hearing date: 8/9/2013

Time: 9:00 am

Judge: Mick Hodges

Courtroom: 1

Minutes Clerk: Lorraine Robinson

Defense Attorney: R. Roark Prosecutor: Fritz Wonderlich

### Motion to Disqualify

900 The Court called the case, reviewed the file, and addressed the parties.

901 Mr. Roark gave argument regarding the Motion for Disgualification.

905 Mr. Wonderlich gave argument regarding the motion.

905 The Court ruled on the Motion for Disqualification. The Court denied the motion for disqualification.

## Sentencing

907 Mr. Wonderlich informed the Court 2 victims would like to address the Court.

907 Victim Randy Carpenter, was duly sworn and gave his statement to the Court.

912 Victim Jeremy Merchant, was duly sworn and gave his statement to the Court.

917 Objection by Mr. Roark. Over-ruled.

919 The witness stepped down.

919 Mr. Roark addressed the Court regarding sentencing.

927 Mr. Rockstahl addressed the Court.

928 No comment from Mr. Wonderlich

929 The Court made findings. See sentencing minutes.

939 The Court is in recess.

	THUBISTRICT
	TWIN FALLS CO. IDAHO
	HE FIFTH JUDICIAL DISTRICT AM 11: 12
IN THE DISTRICT COURT OF THE	
OF THE STATE OF IDAHO, IN AND F MAGISTRATI	E DIVISION CLERK
STATE OF IDAHO,	) CASE NO: CR-2012-0012841
Plaintiff, vs.	) MISDEMEANOR DEFERRED ) PAYMENT AGREEMENT
JOSEPH R ROCKSTAHL	) PATMENT AGREEMENT
2214 NISQUALLY TWIN FALLS, ID 83301	)
Defendant	1

**JUDGMENT HAVING BEEN ENTERED** for the charge against the above-named defendant and for the penalty or fine and court costs of \$1202.50, and the defendant having shown good cause for a deferred payment;

IT IS HEREBY AGREED that the defendant is granted a deferred payment agreement as follows: To be paid in full by 5:00 p.m. by 2/9/14

Payments can be mailed to: Court Services P. O. Box 126 Twin Falls, Idaho 83303-0126

You are further advised that an additional statutory \$2.00 handling fee will be assessed for <u>EACH</u> partial payment.

THIS CHARGE IS A MISDEMEANOR – YOU ARE HEREBY NOTIFIED that if you do not pay said penalty within the time agreed, you must make a written request to the judge for an extension prior to your due date. Failure to pay amount due may result in a warrant for your arrest or a collection agency may seek to collect any unpaid monies and/or your Idaho State Income Tax return may be intercepted by the county to be applied toward this debt, according to I.C. title 1 chapter 16.

Dated:	Friday, August 09, 2013 Kristina Glascock Clerk of the District Court
Ву:	B# Deputy Clerk

#### RECEIPT

I acknowledge receipt of this agreement and state that I have read and agree to the terms of this Agreement and acknowledge that I REALIZE THAT MY FAILURE TO MAKE PAYMENTS AS AGREED MAY RESULT IN A WARRANT FOR MY ARREST AND/OR MY STATE INCOME TAX MAY BE INTERCEPTED.

- mailed -	
Defendant	

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333

TEL: 208/788-2427 FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 AUG -9 PM 12: 12

BY CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

JOSEPH ROCKSTAHL,	)	
	)	Case No. CR-2012-12841
Appellant,	)	
• • • • • • • • • • • • • • • • • • • •	)	NOTICE OF APPEAL
VS.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

TO: THE ABOVE-NAMED RESPONDENT, THE STATE OF IDAHO AND ITS ATTORNEYS, FRITZ WONDERLICH, Post Office Box 1812, Twin Falls, Idaho 83303 AND THE CLERK OF THE ABOVE-ENTITLED COURT

- Appeal is taken from the Magistrate Division of the District Court of the
   Fifth Judicial District, State of Idaho, County of Twin Falls.
- Appeal is taken to the District Court 5<sup>th</sup> Judicial District Court of the Fifth Judicial District, State of Idaho, County of Twin Falls.
- Appeal is taken from the Judgment of Conviction entered Friday, August 9,
   2013.
  - 4. Appeal is taken upon matters of law and upon matters of fact:
- (a) Is a reporter's transcript requested? The proceedings were all recorded electronically.
  - (b) Said recording are believed to be in possession of the Clerk of the Court,

Twin Falls County, Idaho.

- 6. Preliminary issues on Appeal are as follows:
- (a) Did the Magistrate Court commit reversible error when they denied Defendant's Pre-Trial Motions;
- (b) Did the Magistrate Court commit reversible error when they denied Defendant's Post-Trial Motions.

DATED this \_\_\_\_\_day of August, 2013.

THE ROARK LAW FIRM, LLP

R KEITH ROARK

Attorney Joseph R. Rockstahl

I HER	EBY CERTIFY that on the 2 day of August, 2013, I served a true and correct
copy of the wi	thin and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.
	R. KEITH ROARK

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333

TEL: 208/788-2427 FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

DISTRICT COURT TWIN FALLS CO., IDAHO FILED

2013 AUG -9 PM 12: 12

Y\_\_\_\_CLERK

8 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	
	)	Case No. CR-2012-12841
Plaintiff,	)	
	)	MOTION TO STAY EXECUTION
vs.	)	OF SENTENCE PENDING
	)	APPEAL
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant.	)	
	)	

COMES NOW the Defendant Joseph Rockstahl, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this Court to STAY the sentence ordered by this court on the 9<sup>th</sup> day of August, 2013 pending the appeal in this matter.

DATED this day of August, 2013.

THE ROARK LAW FIRM

R. KEITH ROARK

I HER	EBY CERTIFY that on the day of August, 2013, I served a true and correct
copy of the wi	thin and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333

TEL: 208/788-2427 FAX: 208/788-3918 DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 AUG -9 PM 12: 12

BY\_\_\_\_\_\_\_CLERK

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Plaintiff,	) Case No. CR-2012-12841
	) MOTION FOR BOND
VS.	) PENDING APPEAL
	)
JOSEPH R. ROCKSTAHL,	)
	)
Defendant.	)
	)

COMES NOW the Defendant Joseph Rockstahl, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this court pursuant to I.C.R. 46(d) to set an appeal bond in the above entitled action.

DATED this \_\_\_\_ day of August, 2013.

R. KEITH ROARK

THE ROARK LAW FIRM

I HER	EBY CERTIFY that on theday of August, 2013, I served a true and correct
copy of the wi	thin and foregoing document upon the attorney(s) named below in the manner noted:
,	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
<u> </u>	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
( <u>————</u> )	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.

R. KEITH ROARK

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street

TEL: 208/788-2427 FAX: 208/788-3918

Hailey, Idaho 83333

CLERK DEPUTY

DISTRICT COURT TWIN FALLS CO., IDAHO

2013 AUG -9 PM 12: 12

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
	) Case No. CR-2012-12841
Plaintiff,	)
	) MOTION TO SET
VS.	) APPEAL BOND
	j
JOSEPH R. ROCKSTAHL,	j
	Ĵ
Defendant.	)
	)

COMES NOW the Defendant Joseph Rockstahl, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this court pursuant to I.C.R. 46(c)(d) to set an Appeal Bond in the above entitled matter.

DATED this \_\_\_\_\_ day of August, 2013.

THE ROARK LAW FIRM, LLP

R. KEITH ROARK

Attorney Joseph R. Rockstahl

I HER	EBY CERTIFY that on theday of August, 2013, I served a true and correct
copy of the wi	thin and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.
	REITHROARK

OF TWIN FALLS

TWIN FALLS, IDAHO 83303-0126 STATE OF IDAHO VS JUDGMENT 8-9-13 JOSEPH R ROCKSTAHL 2214 NISQUALLY TWIN FALLS ID 83301 CLERK OF THE DISTRICT COURT 131 # DOB: 7/7/1959 AGENCY: TWIN FALLS CITY POLICE , DEPUTY CASE# CR-2012-0012841 CITATION# CHARGE: 1 Weapon-Exhibition or Use of Deadly Weapon. 118-3303 AMENDED: : CHARGE: 3 Disturbing the Peace, 118-6409 AMENDED: : DEFENDANT having been advised of all rights and penalties per ICR 5, 11, IMCR 5(f) and 6(c). DEFENDANT WAS: ★Present □ Not present ★ Was represented □ Appeared without counsel and waived right to counsel Defendant knowingly, voluntarily, and intelligently waived the following rights: right against compulsory self-incrimination, right to confront and cross-examine witnesses, right to a jury trial and any defenses to the charge(s). COURT ENTERS JUDGMENT AFTER: 

Voluntary Guilty Plea Trial: Found Guilty 

WITHHELD JUDGMENT DEFENDANT, IS ORDERED TO SERVE JAIL TIME beginning 1: 60. days w/ 179 uspended □ Credit for time served 15 to 17 Suspended 

Credit for time served days w/ □ Credit for time served days w/ Suspended Count days w/ Suspended 

Credit for time served Count hours work detail and/or 150 hours community service completed within 18 days house arrest CASECINTIVE **DEFENDANT ORDERED TO PAY**: to be paid in full by Count \_ : Fine \$ \_/000 w/\$ \_ 500 suspended plus costs \$ Count 2: Fine \$ 1000 W/S 500 plus costs \$ suspended Count : Fine \$ plus costs \$ suspended Count : Fine \$ w/S suspended plus costs \$ Prosecutor to submit Order of Restitution within 30 days. ☐ Reimburse Public Defender \$ □ Restitution \$ ; or first DEFENDANT'S DRIVING PRIVILEGES SUSPENDED days beginning absolute suspension 

Consecutive to any current suspension 

With restricted license 

Concurrent with ALS PROBATION ORDERED/CONDITIONS: Probation for 24 months, ≠ 24 months supervised at discretion of probation officer □ Unsupervised for months Report to Probation Office today. Successfully complete all programs required by probation office. Comply with standard conditions of probation agreement. Violate no Federal, State, or local laws, except traffic infractions. Pay all fines, costs, reimbursements and restitution. ☐ Do not drive a vehicle unless validly licensed and insured. ☐ Do not operate a motor vehicle with any alcohol in your blood. Do not consume alcohol, illegal substances, have them in your possession, or be where they are present. ★ Submit to alcohol/drug test requested of you by a peace officer, probation officer, or drug/alcohol counselor. Do not re-enter United States illegally. If re-enter, report to probation within fifteen (15) days. Probation then supervised. □ Notify Court of change of address within 10 days of the change. Obtain a substance abuse evaluation and follow recommendations. Attend Court Alcohol School on next available date of the Follow all theat ment necommendations of Alcohol Evaluation THE SUSPENSION OF PENALTIES IS SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN Defendant is notified of the right, to appeal this judgment within 42 days of today and may apply for a public defender to assist in the appeal. By signing this Judgment the defendant acknowledges and accepts the terms and conditions of probation.

By Deputy Clerk

Accepted by Defendant
Copies To: Def. Def. Atty.

Pros. W Other

DISTRICT COURT I WIN FALLS CO. IDAHO FILED

2013 AUG 12 PM 2: 40

2010 1100 12 111 2.1

CLERK

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333 TEL: 208/788-2427 FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
	) Case No. CR-2012-12841
Plaintiff,	)
	) EXPARTE MOTION TO SET
vs.	) APPEAL BOND
JOSEPH R. ROCKSTAHL,	
Defendant.	)
	)

COMES NOW the Defendant Joseph Rockstahl, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this court pursuant to I.C.R. 46(c)(d) to set an Appeal Bond in the above entitled matter.

DATED this 12 day of August 2013.

THE ROARK LAW FIRM, LLP

R. KEITH ROARK

Attorney Joseph R. Rockstahl

	1774
I HER	REBY CERTIFY that on theday of August, 2013, I served a true and correct
copy of the wi	ithin and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.
	R-KEITH ROARK

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 AUG 12 PM 2: 39

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333

TEL: 208/788-2427 FAX: 208/788-3918

Attorneys for Defendant Joseph R. Rockstahl

CLERA

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
	) Case No. CR-2012-12841
Plaintiff,	)
, ° ×	ORDER SETTING
vs.	) APPEAL BOND
	)
JOSEPH R. ROCKSTAHL,	)
	)
Defendant.	)
	)

Based upon the *Exparte* Motion to Set Appeal Bond filed by the Defendant, and good cause appearing therefor;

IT IS HEREBY ORDERED that an Appeal Bond is set in the amount of \$ /000 . 60.

Λ

DATED this | day of August, 2013.

HONOR ABLE IONATH

District Judge

I HEREBY CERTIFY that on the \_\_\_\_\_ day of August, 2013, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Twin Falls City Prosecuting Attorney
Post Office Box 1812
Twin Falls, Idaho 83303

R. Keith Roark
The Roark Law Firm
409 North Main Street
Hailey, Idaho 83333

By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

By hand delivering copies of the same to the office of the attorney(s) at his office.

By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.

Date: 8/12/2013 Time: 02:58 PM

Fifth Judicial District Court - Twin Falls County Receipt

NO. 1320418

\$ 1000.00

Received of: Patty Rockstahl

440 Fairfield St N Twin Falls, ID 83301

One Thousand and 00/100 Dollars

Case: CR-2012-0012841

Defendant: Rockstahl, Joseph R

Cash bond:

1000.00

Payment Method:

Cash

**Amount Tendered:** 

1000.00

Kristina Glascock, Clerk of the District Court

By: .

**Deputy Clerk** 

Clerk: HANSON **Duplicate** 

314

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2013 AUG 12 PM 2: 39

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE DEPUTY
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

	)	CASE NO. CR 2012-12841
STATE OF IDAHO	)	
Plaintiff/Respondent	)	PROCEDURAL ORDER
	)	GOVERNING CRIMINAL APPEAL
	j.	FROM MAGISTRATE DIVISION TO
vs.	)	DISTRICT COURT
	j j	
	)	
JOSEPH ROCKSTAHL	)	
Defendant/Appeallant	)	
* *	)	
	)	
	)	

A Notice of Appeal has been filed in the above-entitled District Court seeking appellate review of judgments or orders of the Magistrate Division. This Order, together with Rules 54.1 through 54.5, *Idaho Criminal Rules*, and applicable provisions of the *Idaho Appellate Rules* shall govern all further proceedings before this Court.

- Notices of Appeal or Cross-Appeal: The appellant's notice of appeal was filed August 09, 2013. A notice of cross-appeal has not been filed.
- 2. Stays of Execution; Bail on Appeal: The filing of the appeal shall not serve to automatically stay the execution of sentence, and any stay shall be only by order of the Magistrate or this Court pursuant to *I. C. R. 54.5*. Motions for release on bail or own-recognizance shall be governed by *I.C.R. 46(b)*. Any motion for the entry of a stay or for release during pendency of the

appeal shall first be made to the Magistrate from whose decision the appeal has been taken. Any party aggrieved by the Magistrate's decision granting or denying a stay or order of release may thereafter challenge such decision by motion to this Court pursuant to *I.C.R.* 46(b). Notwithstanding pendency of the appeal, unless otherwise ordered, the Magistrate shall retain the jurisdictional authority specified in *I.C.R.* 54.5(b).

- 3. <u>Indigent Defendants:</u> In the event that the defendant was previously deemed financially indigent as evidenced by the appointment of counsel in the trial court, appointed counsel shall continue to represent the defendant in connection with this appeal. In addition, the subsequent provisions of this order requiring payment for preparation of a transcript shall not apply. However, it remains the responsibility of the appellant to place a timely order for preparation of the transcript.
- 4. Form of Appeal: Pursuant to I.C.R. 54.6(a), this matter will proceed as an appeal on the record rather than as a trial de novo. It is the sole responsibility of the appellant (or cross-appellant, as the case may be) to arrange for the timely preparation and lodging of an appellate record sufficient to facilitate review.
- 5. Clerk's Record: Pursuant to I.C.R. 54.8, the clerk's record shall consist of the original case file maintained by the Clerk, along with any exhibits offered or admitted. No separately-bound clerk's record is required, but any party may submit an optional appendix or addendum containing important or frequently-referenced documents. It shall be the responsibility of the party relying upon the contents of the record to review the original clerk's file and confirm that all necessary materials were filed and are included as part of the clerk's

record on appeal.

- 6. Transcript on Appeal: The Court requires the provision of a written transcript prepared from the recorded tapes of proceedings in the Magistrate Division. It is the responsibility of the appellant (or cross-appellant, as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review. Pursuant to *I.C.R. 54.7*, the responsible party shall contact the appellate clerk, determine the estimated cost of the transcript and, within fourteen (14) days after filing of the notice of appeal (or cross-appeal), pay such estimated cost to the appellate clerk. Any balance in excess of the estimate shall be payable upon completion of the transcript. The transcript will not be served upon the parties until all fees for preparation have been paid in full. Failure to timely remit the estimated and/or final preparation costs shall be grounds for dismissal of the ordering party's appeal or cross-appeal. Absent an order enlarging time, the transcript shall be lodged within thirty-five (35) days after payment of the estimated cost of preparation.
- 7. Augmentation of Record: Pursuant to I.C.R. 54.11, the clerk's record and/or transcript on appeal may be augmented in the manner prescribed by I.A.R. 30.
- 8. Appellate Briefs: The initial Appellant's brief shall be filed with the clerk within thirty-five (35) days after lodging of the transcript, or, in cases in which no transcript is to be furnished, within thirty-five (35) days after filing of the notice of appeal or in the event of an objection to the transcript, the appellants brief is due within 35 days of the settlement of the transcript. The Respondent's (and Cross-Appellant's) Brief shall be filed within twenty-eight (28) days after service of the Appellant's Brief. The appellant may file a Reply (and Cross-

Respondent's) Brief within twenty-one (21) days after service of the Respondent's (Cross-Appellant's) Brief. The organization and content of briefs shall be governed by *I. A. R. 35 and 36*. In accordance with *I.C.R. 54.15*, only one signed original brief need be filed, and only one copy must be served upon the opposing party.

- 9. Extensions of Time: Motions to extend the time for filing an appellate brief shall be submitted in conformity with I.A.R 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.
- 10. <u>Motions:</u> All motions shall be submitted in conformity with *I.C.R.* 54.14, provided that only one original motion, affidavit or brief shall be filed and further provided that all motions shall be scheduled for hearing by the moving party on the court's regular civil law and motion calendar.
- 11. Oral Argument: After all briefs are filed (or the time for filing briefs has expired), either party may, within fourteen (14) days, contact the appellate clerk (phone no. 736-4162) to request that the case be set for oral argument, pursuant to *I.C.R.* 54.16. If neither party does so, the Court will deem oral argument waived, and the case will be decided on the briefs, transcript and record. If the case is set for oral argument, the form and order of argument shall be the same as that before the Idaho Supreme Court, and shall be governed by *I.A.R.* 37.
- 12. <u>Appellate Decision:</u> The court's decision will be by written memorandum opinion.
  - 13. Petitions for Rehearing: A party desiring to file a petition for rehearing must do

so within twenty-one (21) days after filing of the court's opinion, and must lodge a supporting brief within fourteen (14) days after filing of the petition. Proceedings relating to petitions for rehearing shall be governed by *I.A.R.* 42.

- 14. Remittitur to the Magistrate Division: If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a Remittitur remanding the matter to the Magistrate Division as provided in I.A.R. 38(c).
- 15. **Failure to comply:** Failure by either party to timely comply with the requirements of this *Order*, or applicable provisions of the *Idaho Criminal Rules* or *Idaho Appellate Rules* shall be grounds for the imposition of sanctions, including, but not limited to the allowance of attorney fees, striking of briefs or dismissal of the appeal pursuant to *I.C.R.* 54.13 and *I.A.R.* 11.1 and 21.

District Judge

DATED this 9<sup>th</sup> day of August 2013.

319

I HEREBY CERTIFY THAT ON THE day of August, 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Hon. Mick Hodges, Magistrate Burley, Idaho	(X) E-Mailed/Mailed
Fritz Wonderlich	( ) U.S. Mail
Twin Falls City Prosecutor	( ) Hand delivered
P. O. Box 1812	( ) Faxed
Twin Falls, Idaho 83303-1812	(X) Court Folder
Keith Roark	(X) U.S. Mail
409 N Main St	( ) Hand delivered
Hailey, ID 83333	( ) Faxed
	( ) Court Folder
	Deputy Clerk

Rockstahl, Joseph 07-07-1959

## PROMISE TO APPEAR

CR12-12841

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

I HEREBY Promise to appear before the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, MAGISTRATE DIVISION, Tocated in The Judicial Annex Building, next to the County Courthouse, in Twin Falls, Idaho, within five (5) days (excluding Saturday and Sunday of my release from custody, for arraignment before said Courth

DATED This 12 day of August 2013

YOU ARE TO APPEAR: Monda x, the 19 day of August, 2013.
at 8 nm - 12 p.m.

Signature

TWIN FALLS PRINTING



# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF PH 4: 04

IDAHO, IN AND FOR	THE COUNTY OF TWIN FALLS	
	Ne	CLERK
STATE OF IDAHO,	)	_DEPUTY
Plaintiff/Respondent,	) CR 12-12841 ) ORDER FIXING	
vs.	) SCHEDULE FOR	
73.	SUBMISSION OF BRIEFS	
JOSEPH ROCKSTAHL,	į	
Defendant/Appellant.		
Pursuant to I.A.R. 34 and the General Pro-	cedural Order previously entered by the Court,	
it is hereby ordered that briefs shall be file	d as follows:	
<ul> <li>Appellant's brief</li> </ul>	October 16, 2013	
<ul> <li>Respondent's brief</li> </ul>	November 13, 2013	
Appellant's Reply brief	December 4, 2013	
Dated this day of Septe	ember, 2013	
	DISTRICT JUDGE	

I HEREBY CERTIFY THAT on the 12 and correct copy of the foregoing, by the m	_ day of Oetober, 2011, I caused to be served a true ethod indicated below:
Hon. Mick Hodges, Magistrate Burley, Idaho	(X) E-Mailed/Mailed
Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, Idaho 83303-1812	( ) U.S. Mail ( ) Hand delivered ( ) Faxed (X) Court Folder
Keith Roark 409 N Main St Hailey, ID 83333	(X) U.S. Mail email 10-1-13 () Hand delivered () Faxed () Court Folder
	Deputy Clerk

TWIN FALLS CO. IDAHO

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333

TEL: 208/788-2427 FAX: 208/788-3918 2013 OCT 11 PM 1: 41

BY\_\_\_\_\_\_CLERK

SR DEPUTY

Attorneys for Appellant Joseph R. Rockstahl

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Marchael Mortella (March ) (2004) and a mortella (2005) (2004) (Pro-	) Case No. CR-2012-12841
Respondent,	)
Star Motor ( ) = 10 Professor ( ) Start Council ( )	) MOTION TO STAY BRIEFING
VS.	) SCHEDULE
	)
JOSEPH R. ROCKSTAHL,	)
	)
Appellant.	)
	)

COMES NOW the Appellant, JOSEPH R. ROCKSTAHL, by and through his attorneys of record, R. KEITH ROARK and The Roark Law Firm, LLP, and hereby moves this Court for its ORDER Staying the Briefing Schedule in this matter upon the grounds and for the reason that neither the transcript nor record in this matter have been settled and it is impossible to complete briefing without such settlement.

DATED this \_\_\_\_\_day of October, 2013.

D K PITH D APK

THE ROARK LAW FIRM, LLP

Attorney for Appellant Joseph R. Rockstahl

### **CERTIFICATE OF SERVICE**

	, zA-
I HER	EBY CERTIFY that on theday of October, 2013, I served a true and correct
copy of the wi	thin and foregoing document upon the attorney(s) named below in the manner noted:
	Twin Falls City Prosecuting Attorney
	Post Office Box 1812
	Post Office Box 1812 Twin Falls, Idaho 83303  Jhdy Brooks
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
	By hand delivering copies of the same to the office of the attorney(s) at his office.
<del>\frac{\frac}\fint}{\fint}}}}}}}}{\frac{\frac{\frac{\frac{\frac{\frac{\frac}{\frac{\frac{\frac{\frac{\frac{\frac{\frac}{\frac{\frac{\frac{\frac{\frac{\frac{\frac{\frac{\frac{\frac}{\frac{\frac{\frac{\fin}}}}}}}}}{\frac}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}}</del>	By telecopying copies of same to said attorney(s) at the telecopier number: 888/789-0935.

OCT/11/2013/FRI 01:09 PM RC LAW FIRM FAX No. 208 788

P. 003/004

R. KEITH ROARK, ISBN 2230 THE ROARK LAW FIRM, LLP 409 North Main Street Hailey, Idaho 83333 TEL: 208/788-2427 FAX: 208/788-3918	DISTRICT COURT & Malled & Fifth Judicial District  Fifth Judicial District  OCT 1 & 2013 PM J:010 16-13  OCT 1 & 2013 PM J:010 16-13  Deputy Clerk  Deputy Clerk
Attorneys for Appellant Joseph R. Rockst	ahl .
	OF THE FIFTH JUDICIAL DISTRICT OF THE ND FOR THE COUNTY OF TWIN FALLS
STATE OF IDAHO,	)
Respondent,	) Case No. CR-2012-12841 ) ORDER GRANTING MOTION TO
V8.	STAY BRIEFING SCHEDULE
JOSEPH R. ROCKSTAHL,	\$
Appellant.	}
THIS COURT, having consider	ed Appellant's Motion to Stay Briefing Schedule, does
hereby ORDER that the Briefing Schedu	le previously entered in this matter is hereby stayed and a
Status Conference is set for the	day of, 2013 at the hour ofM in
order for the parties to this appeal to assis	t the court in settling the record on appeal.
>	HONORABLE JONATHAN BRODY

ORDER GRANTING MOTION TO STAY BRIEFING SCHEDULE - 1

FAX No. 208 788.

P. 004/004

#### CERTIFICATE OF SERVICE

i her	REBY CERTIFY that on the day of October 2013, I served a true and correct
copy of the w	ithin and foregoing document upon the attorney(s) named below in the manner noted;
	Twin Palls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	TWIL PAIRS, IORIO 65303
	R. Keith Roark The Roark Law Firm 409 North Main Street Hailey, Idaho 83333
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
<del></del>	By hand delivering copies of the same to the office of the attorney(s) at his office.
	By telecopying copies of same to said attorney(s) at the telecopier number: \$88/789-0935 and 208/788-3918.
	CLERK
	CALINE No.

### **Sharie Cooper**

From:

Janet Sunderland

Sent:

Wednesday, November 27, 2013 09:55 AM

To:

Sharie Cooper

**Subject:** 

RE: RE:

He said we can just set it by telephone conference with court here in Rupert. We have the following options: 12-9-13 @ 8:45 a.m.; 12-16-13 @ 8:30 a.m.; 12-30-13 @ 8:45 a.m.) The State is to initiate the call to court and counsel. Our phone number is 208-436-9041. Let me know what works best for the parties.

Thanks.

**Janet** 

From: Sharie Cooper [mailto:scooper@co.twin-falls.id.us]

Sent: Wednesday, November 27, 2013 9:42 AM

To: Janet Sunderland

Subject: RE:

Ok do you have some dates, does he want it by phone to the Court room there?

From: Janet Sunderland [mailto: JSunderland@co.minidoka.id.us]

Sent: Wednesday, November 27, 2013 9:41 AM

To: Sharie Cooper Subject: RE:

Judge Brody would like this set for a status to keep it moving after the order suspending the briefing schedule that was entered on October.

From: Sharie Cooper [mailto:scooper@co.twin-falls.id.us]

Sent: Wednesday, November 27, 2013 8:30 AM

To: Janet Sunderland

Subject:

Janet do you know what is going on with the Joe Rockstahl appeal? Are we still waiting or do we need to move forward on something?

Fifth Judicial District County of Twin Falls – State of Idaho

December 9, 2013 9:41 AM

By		
	De	Clerk
	De	eputy Clerk

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS 427 Shoshone Street North Twin Falls, Idaho 83301

STATE OF IDAHO, Plaintiff.	)
vs.	CASE NO: CR-2012-0012841
Joseph R Rockstahl	) NOTICE OF HEARING
2214 Nisqually	
Twin Falls, ID 83301	j
Defendant.	j
DOB:	}
DL:	))
NOTICE IS HEREBY GIVEN that the abov	e-entitled case is hereby set for:

Status by Phone Monday, December 30, 2013 08:45 AM

The State to initiate the call to Court and Counsel at 436-9041

Joseph R Rockstahl Mailed

Judge: Honorable Jonathan Brody

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Monday, December 09, 2013.

Alternate Judges: Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.C.R. 25(a)(6). Notice is given that if there are multiple defendants, any disqualification pursuant to I.C.R. 25(a)(1) is subject to prior determination under I.C.R. 25(a)(3). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action: Judges Bevan, Brody, Butler, Crabtree, Elgee, Hurlbutt, McDermott, Schroeder, Stoker, Wildman and Williamson.

Hand Delivered

		20000120142014	
Private Counsel: R. Keith Roark 409 N. Main St. Hailey ID 83333		Mailed Y	Box
Prosecutor:	Fritz A. Wonderlich	Mailed	Box X & phone
			nckClerk of the District Court  Duce Cooper  Clerk

NOTICE OF HEARING

Defendant:

DISTRICT COUPT Fifth Judicial Dis of County of Twin Falls . State of ideho

DEC 3 0 2013 PM 4:00

Ву	0
	1 2/2
HE TOWN	Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS \* \* \* \* \* \*

STATE OF IDAHO,	) CASE NO. CR-2012-12841*D
Plaintiff	
Vs.	) STATUS CONFERENCE
JOSEPH R. ROCKSTAHL. Defendant,	

JONATHON BRODY, District Judge Kristina Glascock, Clerk Maureen Newton, Court Reporter

Janet Sunderland, Deputy Clerk

DATE: December 30, 2013

TIME: 8:45 a.m.

Plaintiff's Counsel: Fritz Wonderlich

Defendant's Counsel: Keith Roark (not present)

Defendant Rockstahl Not Present

Court calls case, is set for status, Mr. Wonderlich is present by phone in Court in Minidoka County

Mr. Wonderlich notes that he has not been able to contact Mr. Roark, is only able to get a voice mail, and has tried cell number

Court questions as to status -

Mr. Wonderlich responds, has not yet seen the trial transcripts -

Court Minutes - 1

Court responds, reviews transcripts he has received and do have trial transcript -

Mr. Wonderlich responds does not have yet -

Court instructs to check on transcript, check with Mr. Roark and resets for further status on 1-13-14 @ 8:45 a.m. by phone

8:55 a.m. recess

Court Minutes

DISTRICT COURT TWIN FALLS CO. IDAHO

2014 FEB -4 PM 5: 03

CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS \* \* \* \* \* \*

STATE OF IDAHO	) CASE NO. 2012-12841*D
Plaintiff	) COURT MINUTES ON STATUS
Vs. JOSEPH R. ROCKSTAHL	
Defendant,	

JONATHAN BRODY, District Judge KRISTINA GLASCOCK, Clerk Maureen Newton, Court Reporter Janet Sunderland, Deputy Clerk

DATE:

January 13, 2014

TIME:

08:48 a.m.

Fritz Wonderlich for the City Keith Roark for the defense

Court calls case, set for status, briefly reviews status of matter and notes that briefing was stayed, inquires

Mr. Roark addresses the Court, does not have the clerk's record or the transcript - Court inquires - Mr. Wonderlich clarifies that neither party has the clerk's record or the transcript -Court responds, asks how long after they receive would parties need to file a brief - Mr. Roark responds, would need 30 days -Court will check on status and get to the parties, refers to prior scheduling order which doesn't really work now

Mr. Wonderlich responds, refers to scheduling order dated 9-11-14, need to start over whenever get record and transcript

Court Minutes - 1

Court notes that order gives 35 days - Mr. Roark will take all of that - Court will check as not good that parties do not have, will probably want to hear oral argument so will have to find date for that

Counsels have nothing further

Recess @ 8:52 a.m.

Court Minutes

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRCIT OF THE STRITE OF OURT County of Twin Falls - State of Ideas IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

		By 26 2014 4:56 M
STATE OF IDAHO,	)	Mil
	)	CR 12-12841 Deputy Clerk
Plaintiff/Respondent,	)	O Sparty Clerk
	)	ORDER FIXING
VS.	)	SCHEDULE FOR
	)	SUBMISSION OF BRIEFS
JOSEPH ROCKSTAHL,	)	
	)	
Defendant/Appellant.	)	
	``	

Pursuant to I.A.R. 34 and the *General Procedural Order* previously entered by the Court, it is hereby ordered that briefs shall be filed as follows:

Appellant's brief

April 4, 2014

Respondent's brief

May 2, 2014

Appellant's Reply brief

May 23, 2014

Dated this  $\frac{2}{3}$  day of Febru

DISTRICT JUDGE

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the \_\_\_\_\_\_ day of February, 2014, I caused to be served a true and correct copy of the foregoing, by the method indicated below:

Hon. Mick Hodges, Magistrate Burley, Idaho

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, Idaho 83303-1812

Keith Roark 409 N Main St Hailey, ID 83333 (X) E-Mailed/Mailed

- () U.S. Mail
- ( ) Hand delivered
- () Faxed
- (X) Court Folder
- (X) U.S. Mail
- ( ) Hand delivered
- ( ) Faxed
- ( ) Court Folder



2014 MAR -4 PM 3: 41

BY\_\_\_\_CLERK

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)	CASE NO. CR 12-12841
Plaintiff/Respondent,	)	ACKNOWLEDGMENT OF
	)	RECEIVING "COPIES" OF
VS.	)	THE FILE INCLUDING,
	)	EXHIBITS, JURY INFO AND
JOESPEH R. ROCKSTAHL,	)	TRANSCRIPTS
	)	
Defendant/Appellant.	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that "copies" of the file, including the exhibits, jury info and transcripts have been delivered to the parties listed below.

KRISTINA GLASCOCK Clerk of the District Court

Deputy Clerk

cputy Cicin

Plaintiff/Respondent

(Signature & date received)

3-4-14

efendant/Appellant

(Signature & date received)

Roack

#### **ACKNOWLEDGEMENT - 1**

CHSTRICT COURT TWIN FALLS CO. IDAHO FILED

2014 APR -4 PM 1:57

	01
IN THE DISTRICT COURT OF THE THE STATE OF IDAHO, IN AND FOR	
STATE OF IDAHO,	Case No. CR-2012-12841
Plaintiff/Respondent,	
)	APPELLANT'S BRIEF
vs )	
JOSEPH ROCKSTAHL,	
Defendant/Appellant.	
)	

#### APPELLANT'S BRIEF

Appeal from the Magistrate Division of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, The Honorable Mick Hodges presiding.

## HONORABLE JONATHAN BRODY District Judge

R. Keith Roark The Roark Law Firm, LLP 409 N. Main Street Hailey, Idaho 83333 (208) 788-2427

Attorney for Appellant

Fritz Wonderlich Twin Falls City Prosecuting Attorney P.O. Box 1812 Twin Falls, Idaho 83303 (208) 352-0811

Attorney for Respondent

# I. <u>Table of Contents</u>

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# II. Table of Cases and Authorities

## Cases

Gandy v. Alabama, 569 F.2d 1318 (5th Cir.1978)
Glasser v. U.S., 315 U.S. 60, 76, 62 S.Ct. 457, 467 (1942)
Powell v. Alabama, 287 U.S. 45, 59, 53 S.Ct. 55, 60 (1934)
State v. Albert, 138 Idaho 284, 287, 62 P.3d 208, 211 (Ct. App. 2002)
State v. DeWitt, 153 Idaho 658, 289 P.3d 60, 64 (Ct. App. 2012)
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State v. Rothwell, 294 P.3d 1137, 1142 (Idaho 1999)
Taylor v. Illinois, 484 U.S. 400, 410, 108 S.Ct. 646, 654 (1998)
United States v. Burton, 439 U.S. 1069, 99 S.Ct. 837, 59 L.Ed.2d 34 (1979)8
United States v. Inman, 416 U.S. 988, 945 S.Ct. 2374, 40 L.E.d.2d 766 (1974)8
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I.R.E. 404(a)(1)14
IPF 608(a)

# **State Rules and Statutes**

Idaho Code § 18-3303	6
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Idaho Code § 18-6409	6

#### III. Statement of the Case

#### A. Nature of the Case

Joseph Rockstahl appeals from his Judgment of Conviction for Exhibition of a Deadly Weapon and Disorderly Conduct. Mr. Rockstahl's appeal is based on the Magistrate Court's conduct denying motions filed before and after trial. The trial court would not allow Mr. Rockstahl's attorney to withdraw, denied most of Mr. Rockstahl's witnesses from testifying, and refused to grant Mr. Rockstahl a continuance even though Mr. Rockstahl was willing to waive speedy trial. Furthermore, the trial court not only refused to grant the continuance, it advanced the trial by a full week. When considering the conduct of the trial court, Mr. Rockstahl asserts that he did not receive due process or a fair trial.

#### B. Course of Proceedings and Disposition

Defendant's trial began on May 23, 2013. Before trial began, Defendant brought a Motion for Reconsideration, asking the Court to reconsider his objections to Defendant's witnesses from testifying. The Court denied the motion, stating that the State would suffer prejudice because the State would not have enough time to find rebuttal witnesses. Trial then began to proceed for the next two days. The Defendant was found guilty of Exhibition of a Deadly Weapon and Disorderly Conduct and found not guilty of Pointing or Aiming Firearms at or Towards Others. The Defendant filed his Notice of Appeal on August 9, 2013.

#### C. Statement of the Facts

On July 2, 2012, at around 10:00 p.m., Joseph Rockstahl ("Appellant") and his wife were sitting in the backyard of their house when they were disrupted by a loud noise from

construction work at a neighboring house. Tr. Day 2 p. 15, Il. 20-24. The Appellant's wife went to ask the worker's if they could agree to a definite quitting time. Tr. Day 2 p. 15, Il. 2-10. The Appellant heard a commotion and male voices yelling, and, worrying about the safety of his wife, grabbed a 9mm pistol. Tr. Day 2 p. 16, Il. 24-25, p. 17 Il. 24-25. Once the Appellant reached the location of his wife, with the gun under his left armpit, one of the men shoved his wife, nearly causing the wife to fall. Tr. Day 2 p. 18, Il. 20-22, p. 21, Il. 3-4. One of the men pointed at the Appellant's wife and yelled: "I am a four time felon, I know where you live, I am going to get you!" Tr. Day 2 p. 21, Il. 5-6. The Appellant told the men to calm down, which seemed to set the men off, causing the Appellant to show the men his gun. Tr. Day 2 p. 22, Il. 23-24, p. 23, Il.15, 20. The Appellant then said, "Let's get this gun fight started," in hopes that saying something ludicrous would cause the men to stop. Tr. Day 2 p. 24, Il. 1-3. Instead, the men chest bumped the Appellant. Tr. Day 2 p. 25, I. 6. The Appellant was clearly acting in defense of his wife and himself.

On November 23, 2012, nearly five months after the events described above occurred, the State filed a criminal complaint, charging the Appellant with Idaho Code § 18-3303 Exhibition of a Deadly Weapon, Idaho Code § 18-3304 Aiming a Firearm at Others, and Idaho Code § 18-6409 Disorderly Conduct. On or about March 28, 2013, the Appellant declared that he wished to retain other counsel because he was dissatisfied with his then counsel, the Fuller Law Office. Appellant contacted the Fuller Law Office and asked them to request a continuance so that Appellant could have The Roark Law Firm represent him. For the next two months, no continuance was requested. Two days before the Pre-Trial hearing, the Fuller Law Office filed an Ex Parte Motion to Withdraw, declaring a conflict

and citing a breakdown in communications. On May 17, 2013, at the Pre-Trial hearing, the Court denied the Motion to Withdraw and ordered the Appellant to "work together with" his attorney, Dan Brown of the Fuller Law Office. During the course of this hearing, Mr. Brown informed the Court that he had a conflict with the current trial date, and asked for a continuance on that basis and further indicated that Appellant was willing to waive speedy trial.

Instead of granting a continuance, the Court actually moved the trial up one week. As a result, many of Appellant's witnesses, who were out of town during the new trial date, could not appear at trial. As a result of the trial being moved up one week, the Appellant filed his witness list the day before trial; he planned on calling around 20 witnesses. The Appellant planned to offer many of these witnesses as character witnesses. The Court ordered that such witnesses would not be permitted to testify and ruled that the Appellant could have himself, his wife, and any of the state's witnesses testify on his behalf. The Court also refused to grant a continuance because the case was "nearly a year" old. The Court failed to note or acknowledge that nearly five months of the delay was occasioned by the State's failure to file a complaint until late November of 2012. Notwithstanding the Appellant's request to change counsel, counsel's declaration of a conflict and a request for a reasonable continuance of the trial, the Court forced the cause to trial commencing May 23, 2013.

#### IV. Issue Presented on Appeal

 Did the Magistrate Court commit reversible error when they denied Appellant's Pre-Trial Motions? 2. Did the Magistrate Court commit reversible error when they denied Appellant's Post-Trial Motions?

#### V. Argument

A. THE COURT ERRED IN DENYING THE APPELLANT HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY DENYING THE MOTION TO WITHDRAW

The sixth amendment provides that criminal defendants who can afford retained counsel have a qualified right to counsel of their choice. *United States v. Ray*, 731 F.2d 1361, 1365 (9th Cir.1984). *United States v. Washington*, 797 F.2d 1461, 1465 (9th Cir. 1986). See also, *United States v. Burton*, 439 U.S. 1069, 99 S.Ct. 837, 59 L.Ed.2d 34 (1979); *Gandy v. Alabama*, 569 F.2d 1318 (5th Cir.1978); *United States v. Inman*, 416 U.S. 988, 94 S.Ct. 2394, 40 L.E.d.2d 766 (1974). Wrongful denial of this qualified right is reversible error even without a showing of prejudice. *Washington*, 797 F.2d at 1467; *United States v. Wheat*, 486 U.S. 153, 108 S. Ct. 1692, 100 L.Ed.2d 140 (1988).

The United State District Court for the Eastern District of Pennsylvania concisely stated the law on this point as follows:

The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Roe v. Flores–Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). The purpose of the right to counsel is "to protect the fundamental right to a fair trial." *Lockhart v. Fretwell*, 506 U.S. 364, 368, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993) (quoting *Strickland v. Washington*, 466 U.S. 668, 684, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). Derivative of the right to effective assistance of counsel is a defendant's right to representation by the counsel of his choice. *United States v. Gonzalez–Lopez*, 548 U.S. 140, 144, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006); *see United States v. Moscony*, 927 F.2d 742, 748 (3d Cir.1991)

("[A] presumptive right to the counsel of one's choice has been recognized as arising out of the Sixth Amendment."). The primary purpose of these rights is to grant a criminal defendant control over the conduct of his defense—as "it is he who suffers the consequences if the defense fails." *Moscony*, 927 F.2d at 748 (quoting *Faretta v. California*, 422 U.S. 806, 820, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)).

United States v. Massimino, 832 F. Supp. 2d 510, 514 (E.D. Pa. 2011).

If a Defendant seeks to obtain new private counsel just before trial, the district court must decide if the reasons for a defendant's request constitute good cause and are sufficiently substantial to justify a continuance of the trial. *State v. DeWitt*, 153 Idaho 658, 289 P.3d 60, 64 (Ct. App. 2012). See *United States v. Wely*, 674 F.2d 185, 190 (3d Cir. 1982). Good cause includes an actual conflict of interest; a complete, irrevocable breakdown of communication; or an irreconcilable conflict that leads to an apparently unjust verdict. *State v. Lippert*, 145 Idaho 586, 596, 181 P. 3d 512, 522 (Ct. App. 2007).

Factors to be used in examining constitutional implications of a total breakdown in communication include:

(1) Whether the defendant's motion for new counsel was timely; (2) whether the trial court adequately inquired into defendant's reasons for making the motion; (3) whether the defendant-attorney conflict was so great that it led to a total lack of communication precluding an adequate defense; and (4) whether the defendant substantially and unreasonably contributed to the communication breakdown.

State v. Lippert, 181 P. 3d at 523.

In *Dewitt*, the error complained of was a Sixth Amendment violation that occurred when the district court denied DeWitt his request to obtain alternate counsel without providing DeWitt an opportunity to explain the conflict he had with counsel. *DeWitt*, 289

P.3d at 62. Where a defendant seeks new counsel, the court stated that several factors are relevant:

The timing of the motion; the requested length of delay, including whether the delay is an attempt to manipulate the proceedings; the number, if any, of similar continuances sought by the defendant; inconvenience to witnesses; any prejudice to the prosecution; whether an irreconcilable conflict exists between the accused and counsel; and the qualifications possessed by present counsel.

Id. at 65. The court held that because neither DeWitt nor his counsel disclosed any irreconcilable conflicts or represented that communication had broken down, it would be inconvenient to empanel another jury and conduct another trial and re-subpoena witnesses. Id. at 66.

In this case, the Appellant clearly expressed his desire to have his then current counsel replaced with a new attorney because there was a conflict of opinion as to how to proceed. Although the motion had been prepared a full week before the pre-trial conference, it was not filed until two days prior. The prosecutor did not raise any concern as to this issue. The motion clearly cites a conflict between client and attorney and a total breakdown in communications between them. In its colloquy with Attorney Daniel Brown, the Court inquired as to why the motion to withdraw was being filed and Attorney Brown responded that he had a scheduling conflict and that he and the Appellant had developed a conflict. This should have been conclusive on the issue of whether or not the motion to withdraw and subsequent rescheduling of the trial was mandated. Instead, as noted in the trial court's remarks, the court focused on the delay and the effect the delay might have on the "justice" the "victims" were entitled to in this

"year old misdemeanor."

The trial court did not cite any case precedent for the proposition that the right of a victim to "justice" somehow trumps the sixth amendment right of a criminal defendant to effective assistance of counsel. Furthermore, the reference to a "year old misdemeanor" is highly misleading. The incident out of which the case arose occurred on July 2, 2012. The prosecutor sat on the case for nearly five months before finally filing a criminal complaint on November 26, 2012. The Court's suggestion that the Appellant was somehow responsible for the prosecutor's delay in charging the case is clearly in error. In *Glasser v. U.S.*, 315 U.S. 60,76, 62 S.Ct. 457, 467 (1942), the court said that "the right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

Moreover, the prosecution, although not stipulating to the continuance required for substitution of counsel, raised no issue of "justice for the victims." The Court's comments in that regard are troubling and suggest the possibility that the Court had already made up its mind that the Appellant was guilty and the "victims" were entitled to "justice", i.e., a guilty verdict and prompt imposition of sentence.

Additionally, the Court, in its ruling from the bench, stated that, "You may have concerns with your attorney that may be taken up independently, and I'm sorry you have not been able to communicate well with your attorney, but I made my ruling on that. A two-month time from date of filing certainly is time to file a motion to withdraw, and particularly, you're an attorney." Tr. Day 1 p. 15, ll. 6-15. The Court clearly asserted

that, because he was a licensed attorney, the Appellant's sixth amendment right was somehow diminished and the continuance of the trial was unnecessary. This statement belies an upside down sixth amendment analysis. It is the Defendant who has the right to effective assistance of counsel rather than counsel having a right to effective assistance of his client. The Court concluded its denial of the motion by stating that "I am going to order you two to work together". Pre-Trial Tr. p. 5, Il. 22-23. The Court apparently was laboring under the assumption that it could strip Appellant of his sixth amendment rights by "ordering" the client to "work" with an attorney he no longer wanted to represent him and who had already declared a conflict.

# II. THE COURT ERRED IN ADVANCING THE TRIAL BY ONE WEEK AND THEN EXCLUDING APPELLANT'S WITNESSES FOR LATE DISCLOSURE

The United States Supreme Court has held that "The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense." *Powell v. Alabama*, 287 U.S. 45, at 59; 53 S.Ct. 55, at 60 (1934).

The right of an accused to call witnesses in his defense is guaranteed by the Compulsory Process Clause of the Sixth Amendment to the United States Constitution. *State v. Albert*, 138 Idaho 284, 287, 62 P.3d 208, 211 (Ct. App. 2002). The United States Supreme Court has said that "[f]ew rights are more fundamental" than this one." *Taylor v. Illinois*, 484 U.S. 400, 410, 108 S.Ct. 646, 654 (1998). When faced with a request by the State to exclude defense evidence due to late disclosure or nondisclosure, the trial court must weigh the prejudice to the State against the defendant's right to a fair trial.

*Albert*, 62 P.3d at 211. It is the primary and fundamental duty of the prosecuting attorney and his assistants to see that an accused receives a fair trial. *Albert*, 62 P.3d at 213.

In this case the trial court, having been informed by both the Appellant and his attorney that they could not work together in preparing an adequate defense, not only denied the request for a delay to facilitate retention of new counsel, but actually advanced the trial date by one full week. Then, almost as if to underscore its elevation of "justice for victims" over basic constitutional rights of the accused, the Court later issued its ruling that a list of witnesses the Appellant wished to call in his defense would be excluded on the grounds that they had been disclosed several days too late – ignoring the fact that the Court had in the meantime moved the disclosure date up by a full week. These actions appear to have been taken by the Court sua sponte without any active input from the State.

The State did, however, argue that it would suffer prejudice if the Appellant's witnesses were permitted to testify. As the witnesses were disclosed several days too late, the State argued that they would not be able to find rebuttal witnesses in enough time, therefore causing them prejudice. This prejudice, however, should have been weighed against the defendant's right to a fair trial. *Albert*, 62 P.3d at 211. If a continuance had been granted, and the trial had not been moved up one week, the Appellant would have had time to retain new counsel, disclose his witnesses and the State would have had time to find rebuttal witnesses, therefore protecting his right to a fair trial. The Court, however, seemed to feel that Appellant's right to a fair trial was outweighed by the "prejudice" caused by "late" witness disclosure. The entire matter could have been

cleared up by the simple act of granting a reasonable continuance.

The Court, in effect, negated Appellant's right to a fair and impartial jury trial by forcing him to go forward a week earlier than scheduled with an attorney he did not want and who had declared a conflict based upon a breakdown in communications. The Court then poured salt in this grievous wound by eviscerating the Appellant's right to call witnesses on his own behalf.

#### III. THE COURT ERRED BY EXCLUDING CHARACTER WITNESSES

Evidence of a person's trait of character is generally not admissible for the purpose of proving that the person acted in conformity with that trait on a particular occasion. I.R.E. 404(a). As an exception to this rule, however, criminal defendants are allowed to present evidence of a pertinent trait of character in defense of a charge. *State v. Rothwell*, 294 P.3d 1137, 1142 (Idaho 1999). I.R.E. 404(a)(1) allows an accused the opportunity to present evidence of good character that is pertinent to the nature of the charged offense. *Id.* at 1143. A pertinent character trait is one that is relevant to the crime charged by making any material fact more or less probable. *Id.* At 1142. The Idaho Supreme Court ruled in *Rothwel* that the district court erred in holding that a trait of character is pertinent and admissible under I.R.E. 404(a)(1) only if that trait is an element of the offense or of a defense to the charge. *Id.* at 1142.

In a hearing on May 22, 2013, the day before trial was to begin, the Court excluded Appellant's character witnesses, reasoning that the proffered character evidence was not admissible because the character trait in question was not an essential element of the charge or claimed defense. Tr. p. 11, ll. 10-12. Pursuant to *Rothwell* and Rule 404(a)

(1), the character evidence does not need to be an element of the offense or of a defense to the charge to be admissible; the character evidence just needs to be pertinent to the nature of the charged offense. The charges in this case involved Exhibition of a Deadly Weapon, Aiming a Firearm at others, and Disorderly conduct. Appellant, who asserted that he acted in self-defense and defense of others, was going to present witnesses who would testify as to his peacefulness. Character evidence of Appellant's peacefulness would be pertinent to the nature of the charged offenses, as the charges involved assertions of aggressive behavior.

The Appellant was also going to present character evidence as to his truthfulness. Evidence of a witness's character for truthfulness or untruthfulness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence. I.R.E. 608(a). Appellant did not know whether his character for truthfulness would be attacked, but he did want to have character witnesses available in case his character for truthfulness were to be attacked. Appellant disclosed these witnesses the day before trial. The Court denied these witnesses from testifying, not because of the nature of their proffered testimony, but because they were not timely disclosed. The Court concluded that the prejudice to the State (the State indicated they would not have enough time to find rebuttal witnesses) outweighed Appellant's right to a fair trial.

In order to have his character witnesses testify, Appellant was willing to waive

speedy trial so that a continuance could be granted and time afforded to the State to gather rebuttal witnesses if it felt the need. Instead of granting the continuance, the Court moved the trial up a week to avoid any speedy trial issue. The Court refused to grant a continuance because a continuance meant that a misdemeanor trial would occur some 13 months after the alleged incident. By refusing to grant a continuance, because in doing so the trial would occur some 13 months after the alleged incident, the Court effectively violated Appellant's right to a fair trial.

#### VI. Conclusion

The Appellant in this case had a clear, constitutional right to effective assistance of counsel and the right to jury trial. The trial court deprived him of those rights by insisting that he go to trial notwithstanding that: 1) he clearly demanded that his attorney withdraw; 2) his attorney clearly declared a conflict and breakdown in communication between himself and the Appellant; 3) there was no finding that his request for a continuance was made in bad faith or an attempt to gain a tactical advantage in the case. Then, having stomped all over the Appellants right to effective assistance of counsel and to a fair jury trial, the Court compounded the prejudice by advancing the trial by a full week and excluding Appellant's proposed witnesses on the grounds of "late disclosure."

<sup>1</sup>The trial court's concern with delay is extremely troubling because it is so clearly myopic. For nearly five months the State sat on the case before filing its complaint on November 23, 2012. There was no assertion (much less reasonable conclusion) that the Appellant had in any way attempted to delay the proceedings to gain some tactical advantage. If in fact Appellant's motion to continue had been granted and the trial re-set for August of 2013, some thirteen months after the events in question had occurred, forty percent of that delay would be attributable to the State's dilatory approach in filing – but one hundred percent of the delay was nonetheless charged to the Appellant by the trial Court. This is clearly unjust and prejudicial.

The trial court's words and actions demonstrate a belief that because Appellant is a licensed attorney, his constitutional rights are diminished or judged by a lower standard than that applied to all non-lawyer criminal defendants. This obviously is not true and the verdict should be vacated and the matter remanded for a new and fair trial.

RESPECTFULLY SUBMITTED this \_\_ day of April, 2014.

Attorney for Appellant Joseph Rockstahl

# CERTIFICATE OF SERVICE

I HEREBY C	ERTIFY that on the Zdday of April 2014, I served a true and correct copy
of the within	and foregoing document upon the attorney(s) named below in the manner
noted:	
	Twin Falls City Prosecuting Attorney Post Office Box 1812 Twin Falls, Idaho 83303
	By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
<del></del>	By hand delivering copies of the same to the office of the attorney(s) at his office.
<u> </u>	By telecopying copies of same to said attorney(s) at the telecopier number: 208/789-0935.

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE	DEPUTY

# STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO, Plaintiff/Respondent,	) Case No. CR-2012-12841
v.	
JOSEPH ROCKSTAHL,  Defendant/Appellant,	) 

#### RESPONDENT'S BRIEF

APPEAL FROM THE MAGISTRATE DIVISION OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

Honorable Mick Hodges, Presiding

Fritz Wonderlich (ISB#2591) Wonderlich & Wakefield P.O. Box 1812 Twin Falls, ID 83303-1812

Attorney for Respondent

R. Keith Roark The Roark Law Firm, LLP 409 N. Main St. Hailey, ID 83333

Attorney for Appellant

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# II. TABLE OF CASES AND AUTHORITIES

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#### **III. STATEMENT OF THE CASE**

#### A. NATURE OF THE CASE.

The Defendant, a licensed Idaho attorney, was served with a criminal complaint on November 23, 2012, and appeared on his own behalf. Thereafter, on November 30, 2012, Daniel Brown substituted as counsel of record. On the eve of trial and almost six months after the Defendant initially appeared, Daniel Brown moved to withdraw from the case, citing a conflict with another criminal trial scheduled at the same time. When the motion to withdraw was denied, the right to speedy trial was asserted. In response, the court moved the trial one week earlier in order to preserve the Defendant's right to speedy trial. The Defendant agreed to the new trial setting. The Defendant issued his first subpoenas, and then filed a Motion to Vacate and Continue the trial until August, 2013. The court denied the motion.

#### B. COURSE OF PROCEEDINGS BELOW.

A criminal complaint was filed in this case on November 23, 2012, alleging Exhibition of a Deadly Weapon, Aiming a Firearm at Another, and Disorderly Conduct. The Defendant, a licensed Idaho attorney, appeared on November 26, 2012, and filed a Request for Discovery. On November 29, 2012, the State filed its Request for Discovery, Response to Request for Discovery, and Response to Request for Sworn Complaint. On November 30, 2012, Daniel Brown substituted as attorney of record for the Defendant. On November 30, 2012, the first Pretrial Conference was scheduled for January 10, 2013. The January 10, 2013, Pretrial Conference was continued at the request of the Defendant, pending hearing on a Motion to Dismiss, which was filed on January 31, 2013. Hearing on the Motion to Dismiss was scheduled for February 22, 2013, and subsequently rescheduled for March 15, 2013.

#### **RESPONDENT'S BRIEF-1**

After the Motion to Dismiss was denied, the Court filed its Pretrial and Trial Order on March 21, 2013. The jury trial was set for May 30 and 31, 2013, with another Pretrial Conference scheduled for May 17, 2013. The Pretrial Order required discovery to be completed, witness lists exchanged, and jury instructions to be submitted, prior to the May 17, 2013, Pretrial Conference. On May 15, 2013, and just two days before the final Pretrial Conference, Daniel Brown filed his Ex-Parte Motion to Withdraw.

On May 17, 2012, the State filed its Witness List, Jury Instructions and an Exhibit, in compliance with the Pretrial Order. The Defendant did not file its Witness List, Jury Instructions or Exhibit List in compliance with the Pretrial Order.

At the final Pretrial Conference, the Court took up the Motion to Withdraw, which motion was denied. Mr. Brown announced that he had a conflict with another trial scheduled to begin on May 29, 2013, and moved to dismiss the case based upon violation of the right to speedy trial. The Court then discussed the suggestion of moving the trial one week earlier in order to comply with the Defendant's speedy trial demand. The Defendant agreed to this option.

The Defendant failed to comply with the March 21, 2013, Pretrial Order, requiring completion of all discovery before the May 17, 2013, Pretrial Conference. In fact, the Defendant filed no response to the State's Request for Discovery. On Monday, May 20, 2013 at 4:57 PM, just as the Courthouse was closing, and literally two days before jury trial, the Defendant filed a Witness List and Exhibit List, with a list of twenty witnesses never previously disclosed. The Defendant also issued his first subpoenas for trial.

On Tuesday, May 21, 2013, at 4:27 PM, the Defendant filed a Motion to Vacate and Continue the Jury Trial, due to an alleged "unavailability" of some "character" witnesses. On

Wednesday, May 22, 2013, at 8:35 AM, the State filed its Objection to the Motion. On Wednesday, May 22, 2013 at 4:30 PM, the afternoon before the scheduled May 23, 2013 trial date, the Court took up the Defendant's motion by telephone conference, and the motion was denied. Trial began on Thursday, May 23 and ended on May 24, 2013.

During the course of the trial, the State presented no evidence of the Defendant's untruthfulness, nor evidence of the Defendant's aggressiveness, except as shown by the *undisputed* evidence from all witnesses, including the Defendant, that he confronted three construction workers on their construction site with a 9 mm pistol, and exclaimed "Let's get this gun fight started."

#### C. STATEMENT OF FACTS.

On the evening of July 2, 2012, Randy Carpenter, Jeremy Merchant and Steve Nielson were working on construction on a house down the street from the residence of the Defendant. Randy Carpenter and Jeremy Merchant were carpenters, taking care of a few odds and ends on a nearly completed new house, while Steve Nielson was putting shingles on the roof. Tr. May 23, Pp. 88-89. According to Eric Shindler, who lived in the house immediately next to the construction site and was in his back yard for a family gathering, the construction was not disturbing to either them or the neighborhood. Tr. May 23, P. 68, Ll. 9-13. The workers planned to quit at dark, but the Defendant's wife, who had been drinking, interrupted in a very angry manner, and demanded that they shut down their work. Tr. May 23, Pp. 91-94. The Defendant's wife left, and the workers began "rolling up" or shutting down the compressors, gathering their equipment, and loading it on their trucks. Tr. May 23, P. 95. Steve Nielson, the roofer, completed his roll up before the other two, and was waiting for them to finish rolling up so he could move

#### **RESPONDENT'S BRIEF-3**

his truck, which was blocked in by Mr. Carpenter's truck. Tr. May 23, P. 96, Ll. 16-18. The Defendant's wife returned to the job site, demanded to know who was in charge, and began yelling at the workers. Tr. May 23, Ll. 8-21. The workers told her that they were finished and were trying to finish loading up their tools, and that she needed to leave. Tr. May 23, P. 98, Ll. 7-16. At that point the Defendant, who had also been drinking, appeared behind his wife and flashed a handgun and announced "Let's get this gun fight started." Tr. May 23, P. 99, Ll. 5-12. Steve Nielson called 911, and the Defendant and his wife returned to their home, where they were contacted by the police.

#### IV. ARGUMENT

# A. THE TRIAL COURT PROPERLY DENIED COUNSEL'S MOTION TO WITHDRAW ON THE EVE OF TRIAL.

Although the Appellant argues in his brief that he was denied the right to hire alternate counsel, the record shows no such request by the Defendant. The actual motion that was denied was a motion to allow Mr. Brown to withdraw. There was no motion to allow substitution of counsel, nor a denial of such a motion.

Curiously, counsel's Affidavit in Support of his Motion to Withdraw states that the Defendant terminated the services of Mr. Brown on March 28, 2013, and informed him that he was hiring Keith Roark. Yet from March 28, 2013 until May 15, 2013, Keith Roark did not appear, no substitution of counsel was filed, and Mr. Brown continued representation of the Defendant. Neither the Defendant nor Mr. Roark provided any information to the Court why Mr. Roark could not have appeared and substituted in the case during the two months prior to the

scheduled trial, nor why, having known that the trial was scheduled at the end of May, could not participate until the following August.

During the May 17, 2013 hearing, the Defendant was present and participated, acknowledging that he had initially appeared in the case as a licensed Idaho attorney, but made no request for alternative counsel. There was no showing of any impediment to alternative counsel substituting for Mr. Brown from March 28, 2013, and during the time leading up to the trial. The only issue before the Court was whether Mr. Brown would be allowed to withdraw from the case on the eve of trial, and at the end of the Defendant's 6-month speedy trial period, which he demanded during the hearing.

I.C.R. 44.1. states: "No attorney may withdraw as an attorney of record for any defendant in any criminal action without first obtaining leave and order of the court upon notice to the prosecuting attorney and the defendant except as provided in this rule. Leave to withdraw as the attorney of record for a defendant may be granted by the court for good cause." No good cause for withdrawal was shown. The Court noted that the Defendant, who had represented himself initially in the case, was a licensed attorney, and he was permitted to assist Mr. Brown during the trial.

Even if the facts of the case could be construed as a request for alternative counsel rather than a Motion to Withdraw, there is no presumption that the trial court failed to provide a full and fair opportunity to explain an alleged conflict with counsel. In *State v. DeWitt*, 289 P.3d 60, 153 Idaho 658 (Idaho App. 2012), the Court stated:

Even assuming that *Cuyler*, *Welty*, and *Lippert* require that, where a defendant informs the district court that he or she is dissatisfied with retained counsel's representation on the morning of trial, the district court must inquire and provide a full and fair opportunity for the defendant to show good cause to support a request for alternate counsel in order to

justify a continuance, the record does not disclose that DeWitt was deprived of such an opportunity in this case ... The district court should not be required to act as advocate for the defendant in a criminal proceeding. *State v. Clayton*, 100 Idaho 896, 898, 606 P.2d 1000, 1002 (1980). Additionally, it is the responsibility of the appellant to provide a sufficient record to substantiate his or her claims on appeal. *State v. Murinko*, 108 Idaho 872, 873, 702 P.2d 910, 911 (Ct.App.1985). In the absence of an adequate record on appeal to support the appellant's claims, we will not presume error. *State v. Beason*, 119 Idaho 103, 105, 803 P.2d 1009, 1011 (Ct.App.1991). Thus, we will not presume the district court failed to provide DeWitt a full and fair opportunity to explain his alleged conflict with counsel.

The record in this case shows that a hearing was conducted on the Motion to Withdraw, that the Defendant was present and participated in the hearing as co-counsel, and was provided with a full and fair opportunity to explain any conflict with his counsel. In fact, there is no complaint by the Defendant about his counsel anywhere in the record in this case, nor any request from the Defendant to the Court requesting alternate counsel.

Where a defendant seeks new counsel, several factors are relevant: the timing of the motion; the requested length of delay, including whether the delay is an attempt to manipulate the proceedings; the number, if any, of similar continuances sought by the defendant; inconvenience to witnesses; any prejudice to the prosecution; whether an irreconcilable conflict exists between the accused and counsel; and the qualifications possessed by present counsel. *Carman*, 114 Idaho at 793, 760 P.2d at 1209.

State v. Cagle, 126 Idaho 794, 797, 891 P.2d 1054, 1057 (Ct.App. 1995).

Applying the factors described in *Cagle*, the Motion to Withdraw, if construed as a motion for alternate counsel, occurred on the eve of trial. The delay requested was more than two months beyond the six month speedy trial period. The delay appears to have been an attempt to manipulate the proceedings, coming on the eve of trial when the claimed termination of counsel and hiring new counsel occurred two months earlier. This was the second delay requested by the Defendant, the first occurring in January at the first Pretrial Conference. The State's witnesses had been planning on the May 2013 trial for two months. Further delay of the trial would

certainly lead to claims by the Defendant that the State's witnesses memories were impaired by the passage of time. There was only a conclusory statement, and no showing of any irreconcilable conflict between the Defendant and his counsel. Defendant's existing counsel was well-qualified and able to represent the Defendant at trial, as demonstrated by the transcript of the trial. Weighing all these factors, the court properly denied the Motion to Withdraw.

B. EXCLUDING WITNESSES FOR LATE DISCLOSURE, AND ADVANCING THE TRIAL BY ONE WEEK IN RESPONSE TO THE DEMAND FOR SPEEDY TRIAL.

The Defendant, a licensed Idaho attorney who initially appeared and filed the Defendant's Request for Discovery with the Court, completely failed to respond to the State's Request for Discovery, filed on November 29, 2012, which request sought the names and addresses of the witnesses the Defendant intended to call at trial. The Defendant is neither required to testify nor to call witnesses, so the failure to respond to the request does not prejudice the State when no witnesses are called at trial. Further, the failure of the Defendant to provide a witness list in response to the Pretrial Order of March 28, 2013, does not prejudice the State when no witnesses are to be called at trial. But in this case, the failure to respond to the State's request for the names and addresses of all witnesses, and the failure to comply with the Pretrial Order, and then surprising the Court and the State with a list of twenty witnesses just two days before trial deprives the State of the opportunity to contact the witnesses, find out what evidence they have to provide, and to find rebuttal witnesses, if necessary.

I.C.R. 16(c)(3) required the Defendant to furnish the State a list of names and addresses of witnesses the Defendant intended to call at trial. I.C.R. 16(f)(2) provides that the failure to file

and serve a response shall be grounds for the imposition of sanctions by the court. When a defendant asks to present evidence at trial that was not timely disclosed to the State, the trial court must consider whether the State would be prejudiced from the late disclosure if the evidence were admitted and with that prejudice against the defendant's right to a fair trial. *State* v. *Thomas*, 133 Idaho 800, 992 P.2d 795 (Idaho App. 1999). But the evidence to be presented through the witnesses not disclosed in response to a discovery request must be relevant and have some probative value, before the court is even required to engage in a balancing test.

In the present case, we are unpersuaded by Thomas' argument that the district court inadequately considered his right to a fair trial or alternative sanctions in performing the balancing test, for Thomas made no showing that the excluded testimony would have been relevant or helpful to the defense in any significant way. Proffered evidence must be relevant and possess some probative value to exculpate the defendant or to rebut the State's case before the defendant's request to present the evidence can have any weight to be balanced against prejudice to the State.

State v. Thomas, Id., 133 Idaho at 803.

As discussed in Part C. below, none of the proposed witnesses were factual witnesses, but rather proposed "character" witnesses intended to rebut evidence never presented by the State.

None of the character witnesses who were proposed to testify regarding the Defendant's reputation for honesty, would be permitted to testify under I.R.E. 608(a), where the Defendant's reputation for honesty was not attacked by opinion or reputation evidence. Further, character evidence of peacefulness is irrelevant where the undisputed facts are that the Defendant approached a construction site armed with a 9 mm pistol and exclaimed "Let's get this gunfight started."

The characterization of the rescheduling of the trial as "forcing him to go forward a week earlier than scheduled" is not supported by the Record. The transcript of the May 17, 2013,

**RESPONDENT'S BRIEF -8** 

hearing confirms that the Defendant demanded his speedy trial right, the Court moved the trial a week to grant the Defendant's demand for speedy trial, and the Defendant consented to the new trial date. When Mr. Brown brought of the issue of a conflicting jury trial scheduled at the same time as this case, the Court responded:

"THE COURT: Well I have had this set for months, Dan.

MR. BROWN: Then I respectfully move to dismiss this case on the basis of speedy trial violation; speedy trial runs tomorrow.

. . .

THE COURT: The time runs May 26. When is our six months?

MR. BROWN: May 26 by our calculation. So it would be two days before trial.

. . .

THE COURT: Can be extended for good cause shown. State versus Naccorato, 126, Idaho 10. Again, how long has this case been set for trial:

MR. WONDERLICH: I think your order's March 20.

Your honor, we're not opposed to moving it up a week so they have speedy trial.

...

THE COURT: Back on the record.

We have two days, actually, Fritz, Thursday and Friday.

MR. WONDERLICH: Thursday's okay.

MR. ROCKSTAHL: It works for me too..."

Transcript of hearing, May 17, 2013, Pp. 7-11.

**RESPONDENT'S BRIEF-9** 

## C. THE COURT PROPERLY EXCLUDED PROPOSED CHARACTER WITNESSES.

The Defendant was convicted of Exhibition of a Deadly Weapon and Disorderly Conduct. He was found not guilty of the charge of Aiming a Firearm at Another. All of the factual evidence presented at trial, including the testimony from the Defendant and his wife, was that the Defendant approached the construction site with a 9 mm pistol, and exclaimed "Let's get this gunfight started."

No evidence was presented by the State attacking the character of the Defendant or his witnesses for truthfulness. That being the case, I.R.E. does not permit the presentation of evidence of character for truthfulness. The refusal of the trial court to permit witnesses to testify for the Defendant as to his character for truthfulness is irrelevant where, as here, truthfulness was not attacked by opinion or reputation evidence. I.R.E. 608(a) provides:

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Character evidence of "peacefulness" in this case is completely irrelevant where, as here, the undisputed facts are that the Defendant approached a neighboring construction site, armed with a 44 mm pistol, and exclaimed "Let's get this gunfight started."

I.R.E. 404(a)(1) provides:

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of the accused's character offered by an accused, or by the prosecution to rebut the same;

In State v. Harvey, 129 P.3d 1276, 142 Idaho 527 (Idaho App. 2006), the court stated:

Error is not reversible unless it is prejudicial. *State v. Stoddard*, 105 Idaho 169, 171, 667 P.2d 272, 274 (Ct.App.1983). With limited exceptions, even constitutional error is not necessarily prejudicial error. Id. Thus, we examine whether the alleged error complained of in the present case was harmless. *See State v. Poland*, 116 Idaho 34, 37, 773 P.2d 651, 654 (Ct.App.1989). An error is harmless if the appellate court is able to say, beyond a reasonable doubt, that the jury would have reached the same result absent the error. *State v. Boman*, 123 Idaho 947, 950-51, 854 P.2d 290, 293-94 (Ct.App.1993).

If the Defendant contended that he did not approach a construction site armed with a 9 mm handgun, and did not exclaim "Let's get this gunfight started," then character evidence of peacefulness would be relevant or pertinent to the issue of whether he had done what the other witnesses claimed. But where, as here, all witnesses agreed to the relevant facts, then the requested character evidence is irrelevant.

#### **CONCLUSION**

There is nothing in the record to support the Defendant's argument that he was denied effective assistance of counsel. The Court advanced the trial date by one week in order to comply with the Defendant's demand for speedy trial. The exclusion of the Defendant's proposed character witnesses was appropriate under the circumstances of failure to comply with the State's Request for Discovery. In addition, the exclusion of these character witnesses was harmless because the character evidence would have been inadmissible during trial, and would not have changed the outcome of the trial.

DATED THIS 2nd day of May, 2014.

WONDERLICH & WAKEFIELD

Fritz Wonderlich

Attorneys for Respondent

#### **CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 2<sup>nd</sup> day of May, 2014, I caused a true and correct copy of the **RESPONDENT'S BRIEF** to be delivered by fax to the following person:

R.Keith Roark The Roark Law Firm, LLP 409 N. Mains St. Hailey, ID 83333 FAX: 208-788-3918

Fritz Wonderlich



## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FABLED

STATE OF IDAHO,	) BY
Plaintiff/Respondent,	) Case No. CR-2012-12841 ) ) APPELLANT'S REPLY BRIEF
v\$	)
JOSEPH ROCKSTAHL,	)
Defendant/Appellant.	)

#### APPELLANT'S REPLY BRIEF

Appeal from the Magistrate Division of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

### HONORABLE JONATHAN BRODY District Judge

R. Keith Roark The Roark Law Firm, LLP 409 N. Main Street Hailey, Idaho 83333 (208) 788-2427

Attorney for Appellant

Fritz Wonderlich Twin Falls City Prosecuting Attorney P.O. Box 1812 Twin Falls, Idaho 83303 (208) 352-0811

Attorney for Respondent

#### I. Argument

The Respondent's Brief alleges that the Appellant never made a complaint about his counsel anywhere in the record in this case, nor did the Appellant make a request to the Court requesting alternate counsel. Respondent's Brief 6. However, on the first day of trial, and on the record, the Appellant restated his desire to have alternate counsel. The Appellant, to the Court, stated that, "As you know, two months ago, roughly, I said I wanted to switch attorneys ... At a certain point, I drafted the Motion under their letterhead, faxed it over, and said, please file this because they're my attorneys ... All I got in response two days before the pretrial is a motion to withdraw from Mr. Fuller that there's been a breakdown in communication." Tr. Day 1, p. 14, Il. 8-9, 13-16, 18-20.

The Court, in its ruling from the bench, stated that, "You may have concerns with your attorney that may be taken up independently, and I'm sorry you have not been able to communicate well with your attorney, but I made my ruling on that. A two-month time from date of filing certainly is time to file a motion to withdraw, and particularly, you're an attorney. Tr. Day I p. 15, ll. 6-15. The Appellant did make it clear, even though he did not file the motion to withdraw or file a motion for substitution of counsel, that he desired to have alternate counsel. It is the Appellant's qualified right to have counsel of his choice.

The Respondent's Brief takes the position that even though the Appellant argues in his brief that he was denied the right to hire alternate counsel, the record shows no such request by the Defendant nor was there a motion to allow substitution of counsel. Respondent's Brief 4. The Appellant clearly stated that he had a conflict with his current counsel and no longer trusted his counsel to handle his case. The Appellant should have

had a right to terminate his counsel's services forthwith, regardless of whether the

Appellant had made arrangements for substitution of counsel. If the Judge had granted

Attorney Daniel Brown's motion to withdraw, the Appellant would have been given

additional time to obtain counsel and the trial would have been reset.

#### II. Conclusion

For all the foregoing reasons, the Appellant respectfully requests that the verdict be vacated and the matter be remanded for a fair and new trial.

DATED this \_\_\_\_\_ day of May, 2014.

THE ROARK LAW FIRM, LLP

B. KEITH ROARK

Attorney for Appellant Joseph Rockstahl

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of May 2014, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Twin Falls City Prosecuting Attorney
Post Office Box 1812
Twin Falls, Idaho 83303

By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

By hand delivering copies of the same to the office of the attorney(s) at his office.

R-KEITH ROARK

By telecopying copies of same to said attorney(s) at the telecopier number:

208/789-0935.

Fifth Judicial District County of Twin Falls – State of Idaho

June 23, 2014 10:13 AM

By	
Su	Clerk
CT OF THE	Deputy Clerk

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS 427 Shoshone Street North Twin Falls, Idaho 83301

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STATE OF IDAHO, Plainti	ff.	)	CASE NO:	CR-2012-0012841
Joseph R Rockstahl		) )	NOTICE OF	
2214 Nisqually Twin Falls, ID 8330 Defendance		) ) )		
DOB: DL:		) ) )		
NOTICE IS HEREBY	GIVEN that the above	e-entitled case is	hereby set for:	
Oral Argumer Judge:		, June 27, 2014 able Jonathan B	10:00 AM rody	
				Hearing entered by the Court and follows on this date Monday, June
utilize the provision disqualification pur panel of alternate ju	s of I.C.R. 25(a)(6). It suant to I.C.R. 25(a)( dges consists of the Bevan, Brody, Butle	Notice is given t 1) is subject to a following judge	hat if there are n prior determinat es who have oth	ned to this case intends to nultiple defendants, any ion under I.C.R. 25(a)(3). The erwise not been disqualified in Dermott, Schroeder, Stoker,
Defendant:	Joseph R Rockstahl	Mailed	Hand Delivered_	
Private Counsel: R. Keith Roark 409 N. Main St. Hailey ID 83333		Mailed_X	Box	
Prosecutor:	Fritz A. Wonderlich	Mailed	Box_X	
			v, June 23, 2014 ockClerk of the I	District Court
		By	Clerk	Sechem

NOTICE OF HEARING

375

TWIN FALLS CO. IDAHO

2014 JUN 27 PM 3: 46

BY\_\_\_

CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MAGISTRATE DIVISION

#### **COURT MINUTES**

#### CR-2012-0012841

State of Idaho vs. Joseph R Rockstahl

Judge: Jonathan Brody

Court reporter: Sabrina Vasquez Minutes Clerk: Teresa Yocham

Hearing type: Oral Arugment on Appeal

Hearing date: 6/27/2014

Time: 10:09 am Courtroom: 5

#### Counsel:

Defense Attorney: R. Roark Prosecutor: Fritz Wonderlich

- 10:10 Mr. Roark gave argument.
- 10:23 Court inquired of Mr. Roark.
- 10:27 Court inquired of Mr. Roark. Mr. Roark responded.
- 10:28 Mr. Wonderlich gave argument.
- 10:31 Court inquired of Mr. Wonderlich. Mr. Wonderlich responded and continued with Argument.
- 10:32 Mr. Wonderlich and the Court discussed the facts of the case.
- 10:43 Mr. Roark gave final arguments.
- 10:49 Court informed Counsel this matter will be taken under advisement and will issue a written decision.
- 10:49 Court inquired of Counsel. Mr. Roark responded. Court addressed Counsel.
- 10:50 Court in responded

Arighm Arighm

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 JUL 31 PM 4: 29

CLERK

DEPUTY

## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

	)	
STATE OF IDAHO,	) C	ase No. CR-2012-12841
	)	
Plaintiff/Respondent,	) M	IEMORANDUM DECISION
	) 0	N APPEAL FROM
v.	) M	IAGISTRATES
	) <b>D</b>	IVISION
JOSEPH ROCKSTAHL,	j	
	)	
Defendant/Appellant.	)	
	)	
	)	

#### BACKGROUND

This case presents a situation where the Defendant fired his attorney well before trial, but because neither his former attorney nor new attorney took steps to address the situation before a pretrial conference, the trial judge denied a motion to withdraw and declined to continue the trial. The Defendant proceeded to trial with counsel he did not want. Additionally, because the discharged attorney had not disclosed witnesses, the Defendant was not allowed to call certain

witnesses. The Defendant was also not allowed to present relevant character evidence. For these reasons, the Judgment of Conviction must be reversed and the case remanded for a new trial on the counts the Defendant was convicted of.

#### STATEMENT OF FACTS

On July 2, 2012 the Defendant became involved in a dispute in his neighborhood with construction workers over noise in the evening. The Defendant brought a pistol and displayed it. The facts of the case are in dispute, and the factual details of the case are only relevant on appeal insofar as they provide a basis for analyzing the relevance of the proffered character evidence. It suffices to say that the charges stem from a confrontation with a gun involved where the Defendant claims self-defense. On November 23, 2012, the Defendant was charged with Exhibition of a Deadly Weapon, Aiming a Firearm at Others, and Disorderly Conduct, all misdemeanors, approximately five months after the incident.

The Defendant is an attorney and on November 26, 2012, entered an appearance and plea of not guilty on his own behalf. Only two days later, however, trial counsel substituted in. Trial counsel entered the case on November 28, 2012. On March 28, 2013, trial counsel was terminated. Trial counsel did not file a Motion to Withdraw or request a continuance until two days before the May 17, 2013 pretrial conference. Jury trial was scheduled for May 30 and 31, 2013. Current counsel did not substitute in during the time between trial counsel's termination and the pretrial, but participated in the pretrial conference in an effort to get the case continued and represent the Defendant. (Current counsel entered after the verdict and represented the Defendant at sentencing and is handling this appeal) It was the Defendant's desire to have current counsel represent him at trial. Current counsel had a scheduling conflict with the May trial date and needed a continuance in order to represent the Defendant at trial. The transcript of

the pretrial conference and the transcript of the first morning of trial contain the efforts of Defendant and trial counsel to seek new counsel for the Defendant and explain the situation. The first morning of trial the Defendant asked to make a record and indicated that he requested trial counsel to withdraw in the time period between the discharge and the pretrial conference, and even drafted a motion for counsel to sign. The Defendant did not file a motion himself, but it appears from the record that he took steps to seek other counsel.

At the pretrial conference, trial counsel sought leave to withdraw. This motion was denied, although trial counsel had been dismissed almost two months previously. The trial court properly inquired why there had been no motion to withdraw filed until two days before the pretrial conference. Trial counsel indicated that it was his understanding that current counsel would substitute in and that he was told to stop working on the case. When no substitution of counsel was filed, trial counsel filed the motion to withdraw. Counsel also indicated he had a problem with the trial date, and sought a continuance. This was denied. Trial counsel then pointed out that the trial was set beyond the speedy trial deadline. In response, the trial date was moved up; it was moved a week earlier to May 23, 2013. The pretrial conference was contentious, particularly after the speedy trial issue was raised, but it was clear the Defendant wanted new counsel, wanted a continuance, and was willing to waive his rights to a speedy trial in order to obtain counsel of his choice. The Defendant was forced to go to jury trial with an attorney he had dismissed. The trial court ordered trial counsel and the Defendant to work together and it was noted the Defendant is an attorney.

After the motion to withdraw was denied and the trial moved up, trial counsel and the Defendant did work together, and witnesses were disclosed shortly before trial. On the morning of trial several witnesses were excluded on the grounds of late disclosure. There is an indication

in the transcript, although it is ambiguous, that the trial court gave the defendant a week from the pretrial conference to supply a witness list. (Pretrial Conference T. p. 6.). The morning of trial the State indicated it had received the list on May 20, 2013. Additionally, some character evidence was excluded based on relevance. The matter proceeded to a jury trial and the Defendant was found guilty on two counts.

The trial court was justified in being frustrated at the procedural posture of the case. The motion to withdraw, or a substitution of counsel, should have been filed earlier. However, these failures cannot be attributed to the Defendant. The exclusion of witnesses was not justified in the circumstances. The ruling excluding character evidence of peacefulness was error.

#### **ANALYSIS AND DISCUSSION**

The Defendant's right to counsel was violated when he had to go to trial with an attorney he discharged two months previously. Criminal defendants who hire their own attorney have a qualified right to counsel of their choice. *United States v. Ray*, 731 F.2d 1361 (9<sup>th</sup> Cir. 1984). Wrongful denial of the qualified right is reversible error without a showing of prejudice. *United States v. Davila*, \_\_\_\_ U.S. \_\_\_\_,133 S.Ct. 2139, 186 L.Ed. 2d139 (U.S. 2013); *United States v. Gonzales*-Lopez, 548 U.S. 140, 126 S.Ct. 2557 (2006). This is because the violation of the defendant's right is "complete" upon the denial, thus no prejudice need be shown. The right to effective assistance of counsel was derived from the purposes of the Sixth Amendment, but the right to counsel of choice is the root meaning of the Amendment. *United States v. Gonzales-Lopez*, 548 U.S. at 147-148, *citations omitted*. Thus unlike ineffective assistance claims, no showing of prejudice is required. However, forcing a Defendant to trial with counsel with whom he has an irreconcilable conflict can be a denial of effective assistance. *Daniels v. Woodford*, 428 F.3d. 1181 (9<sup>th</sup> Cir. 2005). If a defendant seeks new retained counsel before trial, the court must

determine if the reasons offered show good cause and are sufficiently substantial to justify a continuance. State v. DeWitt, 153 Idaho 658 (Ct.App. 2012). Good cause includes a breakdown in communication. State v. Lippert, 145 Idaho 586 (Ct.App. 2007). The factors the court must consider are the timing of the motion, the requested length of the delay, whether the delay is an attempt to manipulate the proceedings, the number of other continuances sought, inconvenience to witnesses, any prejudice to the prosecution, whether an irreconcilable conflict exists between the accused and counsel, and the qualifications of counsel. State v. DeWitt, 153 Idaho at 663, citations omitted. Here, the defendant preferred other counsel. His preference alone is enough to trigger the protection of his rights in the absence of other circumstances, as U.S. v. Gonzales-Lopez indicates, but current counsel is a very skilled defense attorney who has done countless jury trials, thus the motive to seek new counsel is appears reasonable. Well before trial, the Defendant discharged trial counsel. Certainly either trial counsel or current counsel should have taken steps to deal with the situation earlier than two days before the pretrial. However, nothing in the record indicates this was defendant's fault, even if he could have done more to address the situation. He is an attorney to be sure, but he was not representing himself in the case. Thus, the defendant had no obligation to act as his own attorney by filing motions or substitutions of counsel.

It appears the situation was one of miscommunication or misunderstanding. The morning of trial the Defendant made an additional record saying he took steps to get counsel to withdraw. The requested delay was not an attempt to manipulate the proceedings. There was definitely a justified desire on the part of the Court and the State to have the trial sooner rather than later, but there was no showing of actual prejudice to the State. There had not been other continuances. The length of the proposed delay was not unreasonable, even though it was longer than is ideal

and longer than the State or Court preferred. The motion to withdraw should have been filed earlier, but was still filed before the pretrial; this was not a situation where a defendant seeks to fire his attorney the morning of trial. The motion to withdraw was filed approximately fifteen days before the scheduled trial. Trial counsel asserted the breakdown of the attorney-client relationship. Clearly, being discharged is a breakdown in the relationship. Trial counsel was forced to go to trial on a case from which he had been discharged. Counsel and the defendant apparently made the best of the situation, but were given no other choice. As cited above, the wrongful denial of the right to counsel of choice does not require a showing of prejudice; where the right is denied it does not matter how skilled or effective trial counsel was. Denial of the motion to withdraw, denial of a continuance, and the order for counsel and the Defendant to work together denied the Defendant his right to counsel of his choice (which is structural error) as well as his due process rights and right to effective assistance of counsel. After the motion to withdraw was denied, several more problems arose.

After trial counsel was not permitted to withdraw, he still had the issue of a scheduling conflict. After the denial of a continuance, the speedy trial issue was raised. The issue of trial scheduling related to speedy trial also appeared to create some tension between the court and trial counsel, as the record shows. The speedy trial issue was addressed at pretrial by moving the trial earlier, which created more problems because it shortened the State's time to prepare for Defendant's witnesses and made some defense witnesses unavailable. Counsel had been discharged and had not provided witness disclosures. The State had a right to know who the Defendant would call; however, the State's interests could have been protected other ways. Witness exclusion is a drastic remedy in a criminal case and should not be ordered without considering alternatives, such as a continuance, or other remedies. See, State v. Winson, 129

Idaho 298 (Ct.App. 1996). Here, there is also the mention of the timing of witness disclosures at the pretrial conference. At the pretrial, the Court requested jury instructions and a witness list within a week. This was before the trial was moved up a week, however. Thus, a close reading of the transcripts indicates the witness disclosure complied with the Court's oral order at the pretrial. Given the scheduling, this gave the State no time to rebut the evidence. Disclosure very close to trial is not the usual practice. In any event, even if the disclosure did not comply with the Court's order, exclusion of witnesses given the circumstances here was an abuse of discretion.

The unfortunate posture of the case, and the trial court's desire to provide a speedy resolution to the case, led to error. This type of situation is frustrating to courts to be sure, but the problems could have been solved with a continuance and a waiver of speedy trial. An instructive case in this regard is *U.S. v. Nguyen*, 262 F.3d. 998 (9th Cir. 2001), where the trial judge had to travel to Guam and would not continue a trial where there were significant issues between the defendant and his attorney. In that case the defendant's right to counsel and due process rights were violated by the refusal to continue the trial and allow substitution. Here, allowing withdrawal and a substitution of counsel would have entailed some delay, perhaps more than desirable given the schedule of Defendant's current attorney (see Pretrial Conference Trans pp.2-5) but would have ensured a fair trial and protected the Defendant's right to counsel of his choice. The Defendant was entitled to a reasonable chance to have an attorney of his own choosing, and had a right to present witnesses on his behalf. The net result of the denial of the Motion to Withdraw and the denial of a continuance was to deny Defendant a fair trial. His witnesses were excluded because they were disclosed late (The record also suggests exclusion based on relevance as to character evidence.) The exclusion of witnesses was not an appropriate

sanction for the late disclosure, particularly since trial counsel did not have the right or obligation to conduct discovery after his discharge, and the discussion at the pretrial conference appeared to give the Defendant a week to get a witness list in.

As to the character evidence, Defendants have the right to present evidence of a pertinent trait of character. I.R.E. 404(a). Under I.R.E. 404(a) defendants are specifically allowed to present character evidence to show they acted in conformity with that trait of character on a particular occasion. *State v. Rothwell*, 154 Idaho 125, 130 (Ct.App. 2013). The word "pertinent" means relevant. Id. Therefore, "...a pertinent character trait is one that is relevant to the crime charged by making any material fact more or less probable." *Id. citations* omitted. Peacefulness is a pertinent trait of character here because of the nature of the case. *See*, *State v. Dobbins*, 102 Idaho 706 (1981) (Character evidence of trait of peacefulness apparently relevant in a battery case but there was a foundation issue.) Clearly the trait of peacefulness makes many of the material facts more or less probable in this case. As this is a question of relevance, not balancing pursuant to I.R.E. 403, the decision of the trial court is reviewed *de novo*.

Normally this type of evidence is not presented by Defendants, likely because the reality of the system is that few defendants would likely be helped by such evidence or presentation of such evidence is likely to open the door to cross-examination or rebuttal that the State is overjoyed to have the chance to present. But that risk is placed on defendants if they choose to present character evidence. I.R.E. 404(a) indicates it is their choice. Evidence of peacefulness is relevant. Neither can it be said beyond a reasonable doubt that the denial of evidence of peacefulness was harmless error given the facts of the case. This was a self-defense case and if a juror believed the defendant was peaceful, it could have affected the outcome. The State argues that the undisputed facts mean it was not pertinent, but to the contrary evidence of peacefulness

might answer the facts the State asserts are undisputed. Even if a particular detail is not disputed, the overall picture or meaning of the details is important and could be affected by evidence of peacefulness. The weight of the character evidence is left to the jury, but it should have been admitted here.

Additionally, how to characterize the Defendant's actions was a critical part of the trial.

The cross-examination of the Defendant shows this. There was a dispute about what happened, a dispute about the appropriateness of the Defendant's actions, and a serious question of the Defendant's judgment relating to the events.

The issue of character evidence of truthfulness need not be decided. Cross-examination on bias or the facts of the case does not automatically open the door to such evidence. State v. Siegel, 137 Idaho 538 (2002). It is not clear that the Defendant's character for truthfulness was attacked; the Appellant focused more on the exclusion of all the witnesses and there was no briefing on the particular issue of whether the door to character evidence for truthfulness had been opened. Thus, the exclusion of such evidence cannot be said to be error. This issue is intertwined with the exclusion of witnesses generally, but the exclusion of character evidence for truthfulness alone is different. The basis of the exclusion or admissibility can and should be evaluated during the trial upon remand. The witnesses can be disclosed and if the evidence becomes relevant the issue can be addressed in trial in light of the evidence adduced and any cross-examination.

The defendant asserted in his issues on appeal that it was error for the court to deny the Defendant's post-trial motions, but provided no argument or authority in the briefing to support the issue to the extent it is different from or additional to the issues discussed above. Thus, the

issue will not be addressed and will be deemed waived. It is not necessary to reach that issue in light of the decisions on the other issues in any case.

For the foregoing reasons, The Judgment of Conviction dated August 9, 2013 is

REVERSED and the case is REMANDED for a new trial on the two counts upon which the jury found the Defendant guilty.

Dated:

Signed:

onathan Brody, District Judge

#### CERTIFICATE OF SERVICE

the 31 day of why	k for the County of Twin Falls, do hereby certify that on, 2014, I filed the original and caused to be served a oregoing document: ORDER to each of the persons as
Fritz Wonderlich Twin Falls City prosecuting Attorney P.O. Box 1812 Twin Falls, ID 83303	U.S. Mail, Postage Prepaid Hand Delivery Overnight Mail Via Facsimile
Keith Roark The Roark Law Firm, LLP 409 North Main Street Hailey, ID 83333	U.S. Mail, Postage Prepaid Hand Delivery Overnight Mail Via Facsimile
	DATED KRISTINA CLASCOCK CLERK OF THE DISTRICT COURT
	BY: Deputy Clerk

from.

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## IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

	)	
STATE OF IDAHO,	)	Case No. CR-2012-12841
	)	
Plaintiff/Respondent,	)	MEMORANDUM DECISION
	)	ON APPEAL FROM
v.	)	MAGISTRATES
	)	DIVISION
JOSEPH ROCKSTAHL,	)	
	)	
Defendant/Appellant.	)	
	)	
	)	

#### BACKGROUND

This case presents a situation where the Defendant fired his attorney well before trial, but because neither his former attorney nor new attorney took steps to address the situation before a pretrial conference, the trial judge denied a motion to withdraw and declined to continue the trial. The Defendant proceeded to trial with counsel he did not want. Additionally, because the discharged attorney had not disclosed witnesses, the Defendant was not allowed to call certain

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#### STATEMENT OF FACTS

On July 2, 2012 the Defendant became involved in a dispute in his neighborhood with construction workers over noise in the evening. The Defendant brought a pistol and displayed it. The facts of the case are in dispute, and the factual details of the case are only relevant on appeal insofar as they provide a basis for analyzing the relevance of the proffered character evidence. It suffices to say that the charges stem from a confrontation with a gun involved where the Defendant claims self-defense. On November 23, 2012, the Defendant was charged with Exhibition of a Deadly Weapon, Aiming a Firearm at Others, and Disorderly Conduct, all misdemeanors, approximately five months after the incident.

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and longer than the State or Court preferred. The motion to withdraw should have been filed earlier, but was still filed before the pretrial; this was not a situation where a defendant seeks to fire his attorney the morning of trial. The motion to withdraw was filed approximately fifteen days before the scheduled trial. Trial counsel asserted the breakdown of the attorney-client relationship. Clearly, being discharged is a breakdown in the relationship. Trial counsel was forced to go to trial on a case from which he had been discharged. Counsel and the defendant apparently made the best of the situation, but were given no other choice. As cited above, the wrongful denial of the right to counsel of choice does not require a showing of prejudice; where the right is denied it does not matter how skilled or effective trial counsel was. Denial of the motion to withdraw, denial of a continuance, and the order for counsel and the Defendant to work together denied the Defendant his right to counsel of his choice (which is structural error) as well as his due process rights and right to effective assistance of counsel. After the motion to withdraw was denied, several more problems arose.

After trial counsel was not permitted to withdraw, he still had the issue of a scheduling conflict. After the denial of a continuance, the speedy trial issue was raised. The issue of trial scheduling related to speedy trial also appeared to create some tension between the court and trial counsel, as the record shows. The speedy trial issue was addressed at pretrial by moving the trial earlier, which created more problems because it shortened the State's time to prepare for Defendant's witnesses and made some defense witnesses unavailable. Counsel had been discharged and had not provided witness disclosures. The State had a right to know who the Defendant would call; however, the State's interests could have been protected other ways. Witness exclusion is a drastic remedy in a criminal case and should not be ordered without considering alternatives, such as a continuance, or other remedies. See, State v. Winson, 129

Idaho 298 (Ct.App. 1996). Here, there is also the mention of the timing of witness disclosures at the pretrial conference. At the pretrial, the Court requested jury instructions and a witness list within a week. This was before the trial was moved up a week, however. Thus, a close reading of the transcripts indicates the witness disclosure complied with the Court's oral order at the pretrial. Given the scheduling, this gave the State no time to rebut the evidence. Disclosure very close to trial is not the usual practice. In any event, even if the disclosure did not comply with the Court's order, exclusion of witnesses given the circumstances here was an abuse of discretion.

The unfortunate posture of the case, and the trial court's desire to provide a speedy resolution to the case, led to error. This type of situation is frustrating to courts to be sure, but the problems could have been solved with a continuance and a waiver of speedy trial. An instructive case in this regard is U.S v. Nguyen, 262 F.3d. 998 (9th Cir. 2001), where the trial judge had to travel to Guam and would not continue a trial where there were significant issues between the defendant and his attorney. In that case the defendant's right to counsel and due process rights were violated by the refusal to continue the trial and allow substitution. Here, allowing withdrawal and a substitution of counsel would have entailed some delay, perhaps more than desirable given the schedule of Defendant's current attorney (see Pretrial Conference Trans pp.2-5) but would have ensured a fair trial and protected the Defendant's right to counsel of his choice. The Defendant was entitled to a reasonable chance to have an attorney of his own choosing, and had a right to present witnesses on his behalf. The net result of the denial of the Motion to Withdraw and the denial of a continuance was to deny Defendant a fair trial. His witnesses were excluded because they were disclosed late (The record also suggests exclusion based on relevance as to character evidence.) The exclusion of witnesses was not an appropriate

sanction for the late disclosure, particularly since trial counsel did not have the right or obligation to conduct discovery after his discharge, and the discussion at the pretrial conference appeared to give the Defendant a week to get a witness list in.

As to the character evidence, Defendants have the right to present evidence of a pertinent trait of character. I.R.E. 404(a). Under I.R.E. 404(a) defendants are specifically allowed to present character evidence to show they acted in conformity with that trait of character on a particular occasion. *State v. Rothwell*, 154 Idaho 125, 130 (Ct.App. 2013). The word "pertinent" means relevant. Id. Therefore, "...a pertinent character trait is one that is relevant to the crime charged by making any material fact more or less probable." *Id, citations* omitted. Peacefulness is a pertinent trait of character here because of the nature of the case. *See*, *State v. Dobbins*, 102 Idaho 706 (1981) (Character evidence of trait of peacefulness apparently relevant in a battery case but there was a foundation issue.) Clearly the trait of peacefulness makes many of the material facts more or less probable in this case. As this is a question of relevance, not balancing pursuant to I.R.E. 403, the decision of the trial court is reviewed *de novo*.

Normally this type of evidence is not presented by Defendants, likely because the reality of the system is that few defendants would likely be helped by such evidence or presentation of such evidence is likely to open the door to cross-examination or rebuttal that the State is overjoyed to have the chance to present. But that risk is placed on defendants if they choose to present character evidence. I.R.E. 404(a) indicates it is their choice. Evidence of peacefulness is relevant. Neither can it be said beyond a reasonable doubt that the denial of evidence of peacefulness was harmless error given the facts of the case. This was a self-defense case and if a juror believed the defendant was peaceful, it could have affected the outcome. The State argues that the undisputed facts mean it was not pertinent, but to the contrary evidence of peacefulness

might answer the facts the State asserts are undisputed. Even if a particular detail is not disputed, the overall picture or meaning of the details is important and could be affected by evidence of peacefulness. The weight of the character evidence is left to the jury, but it should have been admitted here.

Additionally, how to characterize the Defendant's actions was a critical part of the trial.

The cross-examination of the Defendant shows this. There was a dispute about what happened, a dispute about the appropriateness of the Defendant's actions, and a serious question of the Defendant's judgment relating to the events.

The issue of character evidence of truthfulness need not be decided. Cross-examination on bias or the facts of the case does not automatically open the door to such evidence. *State v. Siegel*, 137 Idaho 538 (2002). It is not clear that the Defendant's character for truthfulness was attacked; the Appellant focused more on the exclusion of all the witnesses and there was no briefing on the particular issue of whether the door to character evidence for truthfulness had been opened. Thus, the exclusion of such evidence cannot be said to be error. This issue is intertwined with the exclusion of witnesses generally, but the exclusion of character evidence for truthfulness alone is different. The basis of the exclusion or admissibility can and should be evaluated during the trial upon remand. The witnesses can be disclosed and if the evidence becomes relevant the issue can be addressed in trial in light of the evidence adduced and any cross-examination.

The defendant asserted in his issues on appeal that it was error for the court to deny the Defendant's post-trial motions, but provided no argument or authority in the briefing to support the issue to the extent it is different from or additional to the issues discussed above. Thus, the

issue will not be addressed and will be deemed waived. It is not necessary to reach that issue in light of the decisions on the other issues in any case.

For the foregoing reasons, The Judgment of Conviction dated August 9, 2013 is REVERSED and the case is REMANDED for a new trial on the two counts upon which the jury found the Defendant guilty.

Dated: 7/3//2014

Signed: Jonathan Brody, District Judge

### CERTIFICATE OF SERVICE

		for the County of Twin Falls, do hereby certify that on
the	day of	, 2014, I filed the original and caused to be served a regoing document: ORDER to each of the persons as
true and listed be		regoing document: ORDER to each of the persons as
P.O. Box	lls City prosecuting Attorney	U.S. Mail, Postage Prepaid Hand Delivery Overnight Mail Via Facsimile
409 Nor	oark rk Law Firm, LLP th Main Street D 83333	U.S. Mail, Postage Prepaid Hand Delivery Overnight Mail Via Facsimile
		DATEDCLERK OF THE DISTRICT COURT
		BY: Janet Sunderland Deputy Clerk



### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS DEPUTY MAGISTRATE DIVISION

STATE OF IDAHO,	)
Plaintiff,	) Case No. CR-2012-0012841
vs.	ORDER OF DISQUALIFICATION
JOSEPH R ROCKSTAHL,	<b>'</b>
Defendant.	;

Pursuant to ICR 25 (d) this Court disqualifies itself in the above entitled matter and requests the Trial Court Administrator to appoint another judge to sit in the above entitled matter.

Dated this 7th of August, 2014.

Mick Hodges

Judge, Fifth Judicial District

Magistrate Division

ORDER OF DISQUALIFICATION



STATE OF IDAHO,	)
Plaintiff,	) CASE NO. CR 2012-12841
	) ORDER OF ASSIGNMENT
vs.	(
JOSEPH R. ROCKSTAHL,	
Defendant.	

IT IS HEREBY ORDERED that the above-entitled case be assigned to Honorable Keith Walker, Senior Magistrate Judge, for all further proceedings.

DATED this 8th day of August, 2014.

LINDA E. WRIGHT
Trial Court Administrator

Fifth Judicial District

C:

DISTRICT COURT TWIN FALLS CO. IDAHO FILED

2014 AUG 27 PM 4: 44

DY\_\_\_\_CLERA

# IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,	)
Plaintiff/Respondent,	) Case No. CR 12-12841
VS.	) REMITTITUR
JOSEPH R. ROCKSTAHL,	)
Defendant/Appellant.	
	)

TO: HONORABLE S. MICK HODGES and KEITH WALKER OF THE MAGISTRATE DIVISION, DISTRICT COURT, FIFTH JUDICIAL DISTRICT, TWIN FALLS COUNTY

The Court having announced its Decision in this cause on August 4, 2014, which has now become final; therefore,

IT IS HEREBY ORDERED that this case is remanded to the Magistrate Division of the District Court which shall forthwith comply with the directive of the Decision, if any action is required.

DATED this \_\_\_\_\_ day of August, 2014.

District Judge

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THE day of August, 2014, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Hon. Mick Hodges, Magistrate Burley, Idaho

2084365272

(X) E-Mailed/Mailed

Hon. Keith Walker Senior Judge (X) E-Mailed/Mailed

Fritz Wonderlich Twin Falls City Prosecutor P. O. Box 1812 Twin Falls, Idaho 83303-1812 ( ) U.S. Mail ( ) Hand delivered ( ) Faxed (X) Court Folder

Keith Roark 409 N Main St Hailey, ID 83333 (X) U.S. Mail
( ) Hand delivered
( ) Faxed
( ) Court Folder

Sprie

LAWRENCE G. WASDEN Attorney General State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

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

C	DISTRICT Fifth Judicia County of Twin Falls	al District	
Bv	SEP 10		1:54pm
Бу		Sp	Clerk
		De	outy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

STATE OF IDAHO	)
Plaintiff-Appellant,	) Case No. CR-2012-12841
vs.	) NOTICE OF APPEAL
JOSEPH ROCKSTAHL,	)
Defendant-Respondent.	)
	)

TO: JOSEPH ROCKSTAHL, THE ABOVE-NAMED RESPONDENT, KEITH ROARK, ROARK LAW, 409 N. MAIN STREET, HAILEY, IDAHO, 83333, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

#### NOTICE IS HEREBY GIVEN THAT:

 The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM DECISION ON APPEAL FROM MAGISTRATES DIVISION, entered in the

NOTICE OF APPEAL - 1

above-entitled action on the 31st day of July, 2014, the Honorable Jonathan Brody presiding.

- 2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.
- 3. Preliminary statement of the Issues on appeal: Did the district court err by concluding that the magistrate denied the defendant his choice of counsel? Did the district court err by concluding the magistrate abused its discretion by excluding character witnesses on the basis that they were not timely disclosed?
  - 4. There is no sealed portion of the record.
- 5. The appellant requests the preparation of the following portions of the reporter's transcript: The State is not requesting preparation of any transcripts. The state requests that transcripts prepared for the appeal to the district court from the magistrate division be included in the record as exhibits.
- 6. Appellant requests the normal clerk's record pursuant to Rule 28(b)(2), I.A.R.,

#### 7. I certify:

- (a) A copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:
- (b) Arrangements have been made with the Twin Falls City

  Prosecuting Attorney who will be responsible for paying for the reporter's

  transcript;

#### NOTICE OF APPEAL - 2

- (c) The appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);
- (d) There is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));
- (e) Service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 10th day of September, 2014.

KENNETH K. JORGENSEN Deputy Attorney General Attorney for the Appellant

#### CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 10th day of September, 2014, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JONATHON BRODY Twin Falls District Court PO Box 126 Twin Falls, ID 83303-0126

THE HONORABLE MICK HODGES
Twin Falls District Court
PO Box 126
Twin Falls, ID 83303-0126

FRITZ WONDERLICH
Twin Falls County Prosecutor's Office
PO Box 126
Twin Falls, ID 83303-0126

KEITH ROARK Roark Law 409 N. Main Street Hailey, ID 83333

#### HAND DELIVERY

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

> KENNETH K. JORGENSEN Deputy Attorney General

KKJ/pm

#### DISTRICT COURT TWIN FALLS CO. IDAHO IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE D STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS 7814 SEP 16 PM 5: 14

	)	BYCLERK
STATE OF IDAHO,	)	2
	)	CASE NO. CR 12-12841 DEPUTY
Plaintiff/Apellant,	)	
	)	
vs	)	CLERK'S CERTIFICATE
	)	OF APPEAL
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant/Respondent.	)	

APPEAL FROM:

Fifth Judicial District, Twin Falls County.

Honorable Jonathan Brody, presiding

CASE NUMBER FROM COURT: CR 12-12841

ORDER OR JUDGMENT APPEALED FROM: Memorandum Decision on Appeal from Magistrates Division which was entered in the above-entitled matter on August 4, 2014.

ATTORNEY FOR RESPONDENT:

Keith Roark

ATTORNEY FOR APPELLANT:

Lawrence Wasden

APPEALED BY:

State of Idaho

APPEALED AGAINST:

Joseph R. Rockstahl

NOTICE OF APPEAL FILED:

September 10, 2014

AMENDED APPEAL FILED:

NOTICE OF CROSS-APPEAL FILED:

AMENDED NOTICE OF CROSS-APPEAL FILED:

APPELLATE FEE PAID: exempt

ESTIMATED CLERK'S RECORD FEE PAID: exempt

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED: No

ESTIMATED NUMBER OF PAGES: \_\_\_\_\_.

REPORTER'S TRANSCRIPT FILED:

IF SO, NAME OF EACH REPORTER OF WHOM A TRANSCRIPT HAS BEEN REQUESTED AS NAMED BELOW AT THE ADDRESS SET OUT BELOW:

NAME AND ADDRESS:

DATED: September 16, 2014

KRISTINA GLASCOCK Clerk of the District Court

**Sharie Cooper** 

DISTRICT COURT FILED

From:

supremecourtdocuments@idcourts.net

Sent:

Wednesday, September 17, 2014 03:14 PM

To:

wednesday, September 17, 2014 03:14 PM 2014 SEP 26 PM 4: 41 KEITH@ROARKLAW.COM; ali@roarklaw.com; jonathan.brody@co.minidoka.id.us; BY.

scooper@co.twin-falls.id.us; ecf@ag.idaho.gov

CLERK

Attachments:

Subject:

42525 STATE v. ROCKSTAHL (TWIN FALLS CR2012-12841) 42525 CC.pdf; 42525 NOA.pdf

DEPUTY

FILED NOTICE OF APPEAL. CLERK'S RECORD DUE 11-24-14. SEE ATTACHMENT(S). Please Note: All notices from the Supreme Court will be served via email to the district court clerk, the court reporter, the district judge, and counsel of record. The Court's email notices to counsel will be sent to the current email address of record according to the Idaho State Bar. If you would like others to receive additional electronic notices of the proceedings in this appeal please call the Supreme Court Clerk's Office at 334-2210. Pro se without a valid email address will be served notice via U.S. Mail. Please review the Clerk's Certificate for any errors, if Clerk's Certificate is attached.



2019 SEP 17 AN 9: 12

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE D STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,				
Plaintiff/Apellant,				
vs )  JOSEPH R. ROCKSTAHL, )	CLERK'S CERTIFICATE OF APPEAL Supreme Court No. 42525			
Defendant/Respondent.				
APPEAL FROM: Fifth Judicial District, Twin Falls County. Honorable Jonathan Brody, presiding				
CASE NUMBER FROM COURT: CR 12-1284	41			
ORDER OR JUDGMENT APPEALED FROM: Memorandum Decision on Appeal from Magistrates Division which was entered in the above-entitled matter on August 4, 2014.				
ATTORNEY FOR RESPONDENT: Keith Roark				
ATTORNEY FOR APPELLANT: Law	rrence Wasden			
APPEALED BY: State of Idaho				
APPEALED AGAINST: Joseph R. Rockstahl				
NOTICE OF APPEAL FILED: September 10. 2014				
AMENDED APPEAL FILED:				
NOTICE OF CROSS-APPEAL FILED:				
AMENDED NOTICE OF CROSS-APPEAL FILED:				
APPELLATE FEE PAID: exempt				

**CLERK'S CERTIFICATE OF APPEAL - 1** 

ESTIMATED CLERK'S RECORD FEE PAID: exempt

SEP I 7 2014

Supreme Court Court of pacels
Entered on ATS by 18

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT FILED:

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED:

No
ESTIMATED NUMBER OF PAGES:

IF SO, NAME OF EACH REPORTER OF WHOM A TRANSCRIPT HAS BEEN REQUESTED AS NAMED BELOW AT THE ADDRESS SET OUT BELOW:

NAME AND ADDRESS:

DATED: September 16, 2014

KRISTINA GLASCOCK Clerk of the District Court

STATE OF IDAHO,	)	
Plaintiff/Appellant	)	SUPREME COURT NO. 42525 DISTRICT COURT NO. CR 12-12841
танкни дренати	)	DIOTRIOT 0001(1100.01(12-120+1
vs.	ý	CLERK'S CERTIFICATE
	)	
JOSEPH R. ROCKSTAHL,	)	
Defendant/Respondent,	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

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.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 24<sup>th</sup> day of October, 2014.

KRISTINA GLASCOCK Clerk of the District Court

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 42525
Plaintiff/Appellant	)	DISTRICT COURT NO. CR 12-12841
	)	
vs.	)	CERTIFICATE OF EXHIBITS
	)	
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant/Respondent,	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify:

That the following is a list of exhibits to the record that have been filed during the course of this case.

State's Exhibit B - Randy Carpenter witness statement, Admitted - Jury Trial 5/23/13 State's exhibit D - Joe Rockstahl's statement, Admitted - Jury trial 5/23/13

Jury Question answered by judge, NOT ADMITTED - Jury Trial 5/24/13

- CD Transcription Wednesday May 22, 2013, Filed October 11, 2013
- CD Transcription Friday March 15, 2013, Filed July 15, 2013
- CD Transcription Friday May 17, 2013, Filed July 15, 2013
- CD Transcription Thursday May 23, 2013, Filed July 15, 2013
- CD Transcription Friday May 24, 2013, Filed July 15, 2013

#### **CONFIDENTIAL EXHIBITS**

Jury Roll Call (Confidential), Filed May 24, 2013 Initial Jury Seating Chart (Confidential), Filed May 24, 2013 Jury Seating Chart (Confidential), Filed May 24, 2013 Peremptory Challenges (Confidential), Filed May 24, 2013 Alcohol/Drug Evaluation (Confidential), Filed July 31, 2013

#### CD'S SENT

State's Exhibit A - Audio CD - Randy Carpenter 911 call, Admitted - Jury trial - 5/23/13 State's exhibit C - Audio CD Steven Nielson 911 call, Admitted - Jury Trial 5/23/13

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this  $24^{th}$  day of October, 2014.

KRISTINA GLASCOCK Clerk of the District Court

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 42525
Plaintiff/Appellant	)	DISTRICT COURT NO. CR 12-12841
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
JOSEPH R. ROCKSTAHL,	)	
	)	
Defendant/Respondent,	)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

LAWRENCE WASDEN Attorney General Statehouse Mail Room P.O. Box 83720 Boise, Idaho 83720-0010 Keith Roark The Roark Law Firm 409 N. Main Street

Hailey, Idaho 83333

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 27<sup>th</sup> day of October, 2014.

KRISTINA GLASCOCK Clerk of the District Court