

5-27-2014

# State v. Neal Transcript 1 Dckt. 42806

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

FILED

2014 MAY 27 PM 12 23

3 STATE OF IDAHO, )  
4 )  
5 Plaintiff, )  
6 vs. )  
7 BRIAN E. NEAL, )  
8 )  
9 Defendant. )  
10 ----- )

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
Case No. CR2014-03285

*P. O. Weeks*  
DEPUTY

ORIGINAL

11 TRANSCRIPT OF PROCEEDINGS

12 MAY 14, 2014

23  
24 THE HONORABLE GREG K. KALBFLEISCH, PRESIDING  
25 MAGISTRATE JUDGE

A P P E A R A N C E S

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For the STATE: APRIL SMITH, ESQ.  
Nez Perce County Prosecuting  
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For the DEFENDANT: GREGORY R. HURN, ESQ.  
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E X H I B I T S

Mark Rec'd

STATE'S EXHIBIT NOS. 1A-1G

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34

STATE'S EXHIBIT NO. 2

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31

1 WEDNESDAY, MAY 14, 2014 2:00 P.M.  
 2  
 3 PROCEEDINGS  
 4  
 5 THE COURT: We're on the record in State of  
 6 Idaho versus Brian Neal, Case No. CR14-3285. Ms. Smith  
 7 is here on behalf of the State. Mr. Neal is present,  
 8 along with his attorney, Mr. Hurn. And this is the time  
 9 set for a preliminary hearing.  
 10 And are we ready to proceed, Ms. Smith?  
 11 MS. SMITH: Yes, Your Honor.  
 12 THE COURT: Mr. Hurn, are you ready?  
 13 MR. HURN: Yes, Your Honor.  
 14 THE COURT: Any preliminary matters,  
 15 Ms. Smith?  
 16 MS. SMITH: No, Your Honor.  
 17 THE COURT: Mr. Hurn?  
 18 MR. HURN: Witness exclusion, if there are  
 19 any. But there aren't.  
 20 THE COURT: I don't -- I don't see anybody,  
 21 I think, in the courtroom that's a witness.  
 22 So with that, you can call your first  
 23 witness, Ms. Smith.  
 24 MS. SMITH: State calls Ken Yount.  
 25 THE COURT: Sir, if you'd come forward,

1 raise your right hand, be sworn in by the clerk, have a  
 2 seat in the witness chair, please.  
 3 KEN YOUNT,  
 4 a witness of lawful age, having been first duly sworn to  
 5 tell the truth, the whole truth and nothing but the  
 6 truth, was thereupon called as a witness on behalf of  
 7 the State and testified upon his oath as follows:  
 8 THE COURT: Go ahead and have a seat there.  
 9 Thank you.  
 10 DIRECT EXAMINATION  
 11 BY MS. SMITH:  
 12 Q. If you could please state your name and spell  
 13 your last name.  
 14 A. **Ken Yount, Y-O-U-N-T.**  
 15 Q. Are you currently employed?  
 16 A. **Yes.**  
 17 Q. And where are you employed?  
 18 A. **With the Idaho State Police.**  
 19 Q. How long have you been employed with the Idaho  
 20 State Police?  
 21 A. **Eleven years.**  
 22 Q. And what are your current duties with the Idaho  
 23 State Police?  
 24 A. **I'm a patrol sergeant.**  
 25 Q. Are you certified in the state of Idaho to be a

1 police officer?  
 2 A. **Yes.**  
 3 Q. And what certification do you hold?  
 4 A. **An advanced certificate.**  
 5 Q. Okay. And what type of training have you  
 6 received?  
 7 A. **In total, over 2500 hours of POST certified**  
 8 **training. I attended the Idaho POST patrol academy. I**  
 9 **think it was 12 weeks at the time. Thereafter, attended**  
 10 **the Idaho State Police advanced training course, ten**  
 11 **weeks. Previously assigned as a detective with the**  
 12 **Idaho State Police, served for approximately three**  
 13 **years, received various narcotics and**  
 14 **investigation-related training during that time.**  
 15 **Prior to that, I was a trooper for approximately**  
 16 **six years, served as a drug recognition expert,**  
 17 **extensive training regarding impaired driving, both**  
 18 **alcohol and drug impairment.**  
 19 Q. Okay. Were you working as a patrol sergeant on  
 20 April 24th of this year?  
 21 A. **Yes.**  
 22 Q. What were your duties?  
 23 A. **Patrolling.**  
 24 Q. Okay. And where were you at approximately 12 --  
 25 or midnight on April 24th?

1 A. **About midnight, I had initiated a traffic stop**  
 2 **that ended up in the parking lot of the Dyna Mart out in**  
 3 **north Lewiston.**  
 4 Q. Okay. And after you completed that traffic stop,  
 5 what did you do?  
 6 A. **As I drove away, I saw a car parked over by**  
 7 **the -- the pumps. And it had caught my attention**  
 8 **because it had been there unoccupied through the --**  
 9 **throughout the duration of that traffic contact. And so**  
 10 **I drove by to see if anybody was there. There was no**  
 11 **gas pump inserted into the gas tank. And I confirmed it**  
 12 **was unoccupied and observed that the windows appeared to**  
 13 **be very dark.**  
 14 Q. What kind of car was it?  
 15 A. **It was a black Pontiac Bonneville.**  
 16 Q. Okay. And so what did you do?  
 17 A. **I ended up parking down the street near the**  
 18 **intersection of State Highway 128 and U.S. 12 where I**  
 19 **was conducting a stationary patrol.**  
 20 Q. Okay. And did you ever observe that vehicle  
 21 again?  
 22 A. **Yes.**  
 23 Q. When did you observe that vehicle?  
 24 A. **It was about 40 minutes after midnight.**  
 25 Q. And what drew your attention to that vehicle?

1 A. As it drove by eastbound, it appeared to be that  
2 same vehicle that had the dark window tint, so I entered  
3 the highway behind it to confirm that it was that  
4 vehicle with the tint violations.

5 Q. Okay. And what observations did you make?

6 A. As I followed behind it, it merged -- it had been  
7 traveling east on 128, and so it merged onto westbound  
8 U.S. 12. And that's just north of the Third Avenue  
9 North intersection. It failed to display a turn signal  
10 when it merged onto U.S. 12.

11 Q. Okay. And so what did you do?

12 A. I continued to follow it. Because of the  
13 intersection and Memorial Bridge, I waited to initiate a  
14 traffic stop until I found a better location. It  
15 continued on Highway 12 toward the downtown portion of  
16 Lewiston. And then it made an abrupt lane change just  
17 prior to the Jack in the Box parking lot. It signaled  
18 for approximately one second before changing from the  
19 outside lane to the inside lane.

20 Q. And what did you do?

21 A. I activated the emergency lights and initiated a  
22 traffic stop, and we stopped in the parking lot of Jack  
23 in the Box.

24 Q. And why did you initiate the traffic stop?

25 A. For the three violations I explained: The window

1 forehead region was wet. And he -- his -- his left leg  
2 was -- was bouncing steadily, and he appeared to have  
3 difficulty sitting still in his seat. As we spoke, his  
4 speech was quick or rapid.

5 Q. Okay. And what did you do?

6 A. Well, I think we spoke about him -- I asked him  
7 if he was sweating, because it was approximately  
8 45 degrees outside, and I was wearing a jacket. So the  
9 weather was cool, and I asked him if he had -- if he was  
10 sweating, and he stated he had -- he was sweating.

11 Q. Did he give any explanation for that?

12 A. Eventually, he did. As we spoke about his  
13 anxiety -- initially, he said that he was anxious just  
14 being pulled over. And then when I -- I pointed out  
15 other observations of his anxiety, he said that he had a  
16 medical condition suffering from anxiety. And then he  
17 explained that it caused him to talk quickly and to  
18 sweat profusely and to exhibit signs of anxiousness.

19 Q. Okay. And so you -- during this time, you got  
20 his identification, and you were speaking with him.

21 What did you do next?

22 A. Asked for his vehicle registration and proof of  
23 insurance.

24 Q. Was he able to provide that to you?

25 A. He did.

1 tint, had estimated it was darker than legal; failing to  
2 signal when merging, and then failing to display a  
3 continuous turn signal prior to the lane change.

4 Q. Okay. And did the vehicle pull over?

5 A. It did.

6 Q. And once the vehicle pulled over, what did you  
7 do?

8 A. I contacted the driver at the driver's side and  
9 observed he was the only occupant of the vehicle.

10 Q. Were you able to identify the driver?

11 A. Yes.

12 Q. How were you able to identify him?

13 A. He provided a Washington driver's license.

14 Q. And what -- what did the identification identify  
15 him as?

16 A. Brian Neal.

17 Q. Do you see Brian Neal in the courtroom today?

18 A. Yes.

19 Q. Could you please point to him and describe what  
20 he's wearing?

21 A. Yes. Seated to the right of defense counsel in a  
22 black and gray striped shirt.

23 Q. Once you were able to identify him, what  
24 observations did you make about him?

25 A. Immediately, I noticed that his -- his face and

1 Q. Okay. And then what did you do?

2 A. I observed the insurance was expired, continued  
3 to talk about his trip. He said that he was in town to  
4 visit his son; that he had -- he lived in Pasco,  
5 Washington, had been in town for a couple of days.  
6 Asked what he was doing out so late if he was in town to  
7 visit family, and he said that he was out mobbing  
8 around, was his statement.

9 Q. And so what did you do next?

10 A. I asked him -- I noticed on his tee shirt that  
11 he -- there was -- the design was what I believed to be  
12 a marijuana leaf behind the Space Needle of Seattle.  
13 And so I asked him about his shirt and about marijuana.

14 Q. Okay. And then what happened?

15 A. We spoke about that. He said that he didn't use  
16 marijuana. He didn't believe it should be illegal, but  
17 he -- he didn't -- didn't care either way. I asked him  
18 if there was any marijuana in the car. He said no.

19 Q. And during this time while you were speaking with  
20 him, did you make any other observations?

21 A. Yes. I'll review my report here real quick.  
22 Because -- because of the way that he was -- was  
23 behaving in the vehicle, I also suspected that he may be  
24 impaired by drugs, based on my previous experience as a  
25 DRE, I suspected from a central nervous system stimulant

1 such as methamphetamine or cocaine.

2 Q. And so far, your testimony about the observations  
3 you made about him was that it was sweating -- that he  
4 was sweating, he had rapid speech and his leg was  
5 bouncing. Were there other indicators that you observed  
6 as well?

7 A. There were. Let me just look through my report  
8 here.

9 Q. Sure. Are you missing a page?

10 A. I think I'm just skipping a little bit.

11 Q. Okay.

12 A. So if you'll bear with me. The observation I  
13 made was that he appeared to be sweating profusely. He  
14 appeared tense. His leg was bouncing. He avoided eye  
15 contact with me, rapid speech, appeared to have  
16 difficulty sitting still.

17 I had asked him about the contents of the vehicle  
18 as well. When I -- when I asked if everything in the  
19 car belonged to him, he stammered as he was responding,  
20 and he -- he said, everything. When I asked about  
21 weapons or firearms or anything illegal, he was very  
22 quick to respond. He stated, absolutely not.

23 Q. And so based on all of this information that you  
24 had gathered, what did you do next?

25 A. Based on the totality of my observations, I

1 face increased. It appeared that he, again, was  
2 profusely sweating from this conversation. I asked  
3 him -- I pointed those observations out to him.

4 Q. And what did he tell you?

5 A. He said that it was because I was giving him the  
6 third degree. And I explained that I was asking him  
7 simple questions, and he responded, I know. And he  
8 apologized.

9 Q. Okay. And so what did you do next?

10 A. I returned to my -- I actually, because of his  
11 behavior, for my safety, I requested he exit the  
12 vehicle. And once he did that, I positioned him in  
13 front of my patrol car and returned to my car to request  
14 my dispatch have another trooper respond to assist as I  
15 intended to evaluate him for drug impairment and also to  
16 request the response from Lewiston Police drug detection  
17 K-9, which at that time was not on duty.

18 Q. Okay. And so earlier in your testimony, you said  
19 that you conducted your traffic stop at approximately  
20 12:40?

21 A. I think the actual stop time was 12:41.

22 Q. 12:41 a.m.? And at what time did you request  
23 backup and/or dispatch to request a K-9 unit?

24 A. It was approximately 12:47.

25 Q. And did backup arrive?

1 believed that he was involved in major criminal  
2 activity. And I believed that, based on our  
3 conversation, that he was concealing something illegal.  
4 And so I asked -- I intended to write him a citation for  
5 the insurance violation, so I asked him when we finished  
6 if he would give me consent to search the vehicle.

7 Q. And were -- had you contacted dispatch at all?

8 A. Not at this time. This is our initial contact.

9 Q. Okay. And so then what did you do?

10 A. Mr. Neal declined to allow me to search his  
11 vehicle. And I informed him that based on what I had  
12 seen of his behavior, that I believed he was concealing  
13 something illegal. And I asked if there was any reason  
14 a narcotics detection K-9 would alert to his vehicle.

15 Q. And what did he tell you?

16 A. He said no. And I told him that I intended to  
17 request a narcotics detection K-9 respond to the scene.

18 Q. Okay. And did you do that?

19 A. Eventually, I did, yes.

20 Q. Okay.

21 A. I made observations in response to that  
22 conversation. When I told him about the -- the  
23 narcotics K-9, I observed that his breathing became more  
24 rapid, and I attributed that to his ongoing anxiety. I  
25 also observed that the -- the wetness of his head and

1 A. Yes.

2 Q. And approximately what time was backup arriving?

3 A. About 12:52.

4 Q. Okay. Now, during this time, you were in your  
5 patrol car speaking with dispatch?

6 A. Part of that time, and then part of that time, I  
7 was also talking with Mr. Neal.

8 Q. Okay. And so after you spoke with dispatch and  
9 requested backup and a K-9 unit respond, then what did  
10 you do?

11 A. After that time, I recontacted Mr. Neal, and I  
12 wanted to follow up on his statement that he suffered  
13 from an anxiety condition. So I wanted to ask him if he  
14 was using any medication for that condition. He -- he  
15 told me -- I think he had previously said that he -- he  
16 used Xanax or Klonopin for that condition. I wanted to  
17 confirm whether he used that or -- and I also asked him  
18 about any illegal substances. He told me he hadn't used  
19 them.

20 Q. That he hadn't used any of his Klonopin?

21 A. I think he told me that it had been about three  
22 days since he had used his prescribed medication. And  
23 he said he hadn't used any illegal substances.

24 Q. Okay. And so then what did you do?

25 A. I asked -- I asked to see his arms, and I

1 **observed that there were scabs, a lot of scabs on his**  
 2 **arms that I suspected were old injection sites from the**  
 3 **use of a hypodermic needles.**

4 **Q.** And then what did you do?

5 **A.** I think after that time, ISP Trooper Dave Wesche  
 6 had arrived to help. And I asked him -- I explained  
 7 briefly the circumstances of the contact, asked that he  
 8 stand near Mr. Neal for safety while I completed a  
 9 citation for the insurance violation.

10 **Q.** Okay. And was it at that point that you returned  
 11 to your vehicle?

12 **A.** Yes.

13 **Q.** Okay. And what happened once you returned to  
 14 your vehicle?

15 **A.** I began writing the insurance citation. Dispatch  
 16 advised that his driver's status was clear through  
 17 Washington. And I had asked for a criminal history  
 18 check as well for prior drug offenses.

19 **Q.** Okay. And -- and was it also at that time that  
 20 you were working on the citation?

21 **A.** Yes.

22 **Q.** Okay. And so then what happened?

23 **A.** As part of the information I received from  
 24 dispatch, they advised that Mr. Neal was on active  
 25 probation in Washington.

1 **Q.** Okay. So what did you do with that information?

2 **A.** I needed to -- as I was completing the citation,  
 3 I realized that he had given me a different address than  
 4 what was on his paperwork. So I -- I recontacted him to  
 5 obtain his current address for the citation, confirmed  
 6 that he lived in Pasco. And then I followed up asking  
 7 about his probation status.

8 **Q.** Okay. And what did he tell you?

9 **A.** He said that he had been released from probation  
 10 two months ago and that he had served time in prison for  
 11 bank robbery.

12 **Q.** And were you able to confirm that with dispatch?

13 **A.** Dispatch showed, through the Washington State  
 14 Patrol, that his probation status was active. They had  
 15 the name of his probation officer on file. When I had  
 16 spoke with Mr. Neal about his probation status, he said  
 17 that he had been released, but he -- he was unable to  
 18 provide me the name of -- of the probation officer.

19 **Q.** Okay.

20 **A.** And due to the hour, we were not able to confirm  
 21 that by calling the -- the probation office.

22 **Q.** Okay. And then what happened?

23 **A.** I began to prepare my electronic tint meter to  
 24 measure the window tint. And during this time, LPD  
 25 Officer Reese arrived with his drug detection K-9.

1 **Q.** Okay. And approximately what time was that that  
 2 Officer Reese arrived on scene?

3 **A.** 1:07 a.m.

4 **Q.** And what happened once Officer Reese arrived?

5 **A.** I spoke briefly with him about the contact. It's  
 6 his routine, just from my experience with working with  
 7 him, to -- to contact the owner of the vehicle, or the  
 8 operator. And while he spoke with him briefly to  
 9 explain what he was going to do, I began to apply the  
 10 tint meter to confirm the window tint violations.

11 **Q.** Okay. And what did your tint meter tell you?

12 **A.** The -- I measured the front passenger door window  
 13 tint. It measured 17 percent. The legal limit is  
 14 35 percent. So it was too dark. I then moved to the  
 15 rear passenger door, and it measured 16 percent. And it  
 16 can be darker in Idaho on that window, as dark as  
 17 20 percent. And then I moved to the rear glass, so  
 18 opposite of the windshield just straight back. And,  
 19 again, that window is required to measure 35 percent.  
 20 It measured 26 percent. And Idaho Code allows for a  
 21 three-percent variance, plus or minus.

22 **Q.** Okay. And so after measuring the window tint on  
 23 all the windows, then what did you do?

24 **A.** At that time, Officer Reese deployed his drug  
 25 detection K-9. It was approximately 1:11 a.m.

1 **Q.** Okay. And what happened?

2 **A.** Officer Reese advised his K-9 alerted to drug  
 3 odor. And he spoke to Mr. Neal about the response from  
 4 the K-9.

5 **Q.** Okay. And then what did you do?

6 **A.** I was -- I was present when Officer Reese and  
 7 Mr. Neal had that brief conversation. And Mr. Neal  
 8 commented that there might be drug odor in the car from  
 9 the previous owner. He did not elaborate on that, but  
 10 he stated that he had earned -- excuse me, he had owned  
 11 that vehicle for approximately six months.

12 **Q.** And was it at that point that you began searching  
 13 the vehicle?

14 **A.** Yes.

15 **Q.** And now, where did this -- you testified that  
 16 this traffic stop occurred in the Jack in the Box  
 17 parking lot?

18 **A.** Yes.

19 **Q.** And what city and state is that located in?

20 **A.** In Lewiston, Idaho.

21 **Q.** Okay. And you began your search of the vehicle?

22 **A.** Yes.

23 **Q.** And what did you find?

24 **A.** I found a -- a digital scale that had a white  
 25 crystal residue that, from my training and experience, I



1 believed to be methamphetamine residue. And it was  
2 found in the center console between the front -- the two  
3 front seats.

4 Also in that same center console, there was a  
5 gray and black flip-style cell phone. And there was  
6 another phone that looked identical to that phone in  
7 plain view in a cup holder. So one was in plain view  
8 from the vehicle in a cup holder. The other cell phone  
9 was in the center console that was concealed, until I  
10 opened it, with the scale. And then there was some  
11 other just personal items in that center console.

12 Q. Okay. Where did you search next?

13 A. That was the area that I was searching at the  
14 same time Officer Reese was searching. And he found  
15 a -- like a tin measuring cup. He said it was in the --  
16 the lower pocket of the driver's door. And I observed  
17 it contained a black-colored residue.

18 And then he also found three hypodermic needles  
19 on the floor area in front of the driver's seat. And  
20 these -- the syringes had been placed inside of a  
21 plastic toothbrush container. And they -- they all  
22 appeared to have been used, but there was no substance  
23 left inside of them.

24 Q. Okay. And where did you search next?

25 A. In the trunk of the vehicle.

1 Q. Okay. And what did you find?

2 A. There was a black backpack inside the trunk. And  
3 when I opened it, there was an unused hypodermic needle  
4 that was sealed in plastic wrapping. And then there was  
5 another -- in a separate pocket, there was another used  
6 hypodermic needle. Again, it didn't appear to contain  
7 any substance.

8 Q. Were you able to determine who that backpack  
9 belonged to?

10 A. Yes.

11 Q. How were you able to determine that?

12 A. In speaking with Mr. Neal, he claimed that the  
13 backpack was his property.

14 Q. Okay. And what else did you find in the  
15 backpack?

16 A. There was a -- a notebook inside the -- there  
17 was -- there was a laptop computer, and then a notebook  
18 in the large area -- pocket of the backpack. And the  
19 first few pages of the notebook appeared to contain  
20 school-related notes. The majority of the pages of that  
21 notebook were blank. And then when I flipped to the --  
22 the last page, I noticed some notes written on that last  
23 page.

24 Q. And why did you think those notes were  
25 significant?

1 A. The -- the notes were -- they had names or a  
2 letter, like an initial. For example, the name Ben,  
3 another name Matt, and then maybe the initial "R" or  
4 other -- other initials. And next to the name or  
5 initial was a number. For example, next to Ben was 140.  
6 And next to Matt was 90. 90 had then been crossed out,  
7 and then next to that was 470. So those notes were  
8 significant to me.

9 Q. Why were they significant? What was their  
10 significance?

11 A. From my training and experience, I believed that  
12 those notes were a drug ledger, a pay owe sheet. It's a  
13 method that people sometimes use to track who they sell  
14 controlled substances to for how much, how much is still  
15 owed.

16 Q. And then did you continue your search of the  
17 vehicle?

18 A. I did. There was -- there was a -- I didn't  
19 notice initially until I found the notebook, but there  
20 was another notepad in the passenger area from a hotel.  
21 I think it was from the Red Lion Hotel. And it had  
22 similar notes written on that notepad, multiple letters  
23 as if they were initials with numbers written next to  
24 it. For example, "G" with 200 next to it. And 200 was  
25 crossed out, and then 400 was written to the side of

1 that. So I -- I believed that that was an additional  
2 drug ledger.

3 Q. And were you able to determine who the owner of  
4 that second notebook was?

5 A. I know we discussed them. I don't know if I  
6 specifically discussed the notepad, but --

7 Q. The second notebook?

8 A. We talked about the notebook. And in a later  
9 conversation while we were -- I think it was when we  
10 were en route to the jail, he said that the notes were  
11 from a fantasy football league.

12 Q. Is what the defendant told you?

13 A. Correct.

14 Q. Okay. And at that point, did that conclude your  
15 search of the vehicle?

16 A. I believe so. Yes, I believe so.

17 Q. Okay. And so then what did you do?

18 A. Based on the totality, the syringes, the  
19 paraphernalia, his behavior, again, I was even more  
20 suspicious that -- that he had recently used  
21 methamphetamine. And so I asked him if he had.

22 Q. And what did he tell you?

23 A. He said it had been years since he had used meth.

24 Q. Okay. Now, at this point, did you place him  
25 under arrest?

1 **A. No. We had a conversation about the use of**  
2 **methamphetamine and the needles found in the car. And**  
3 **then I requested he perform the standardized field**  
4 **sobriety evaluations.**

5 **Q.** And that was because you thought that he was  
6 impaired driving?

7 **A. Correct.**

8 **Q.** Okay. And what were your results for those field  
9 sobriety tests?

10 **A. I -- I observed signs and symptoms that, based on**  
11 **my training and experience, believed were consistent**  
12 **with drug influence, but I did not conclude that he was**  
13 **impaired.**

14 **Q.** Okay. And so what did you do next?

15 **A. I asked Mr. Neal about the scabs that I had**  
16 **previously observed on his arm, and he explained to me**  
17 **that -- that he had been bitten by a dog. That is what**  
18 **caused the scabs. He denied that they were injection**  
19 **sites.**

20 **Q.** Okay. And what did you do next?

21 **A. I asked him about the digital scale. I told him**  
22 **that there was residue on the scale, and he said he**  
23 **didn't know anything about it. He did claim ownership**  
24 **of the two cell phones, and I informed him that I had**  
25 **found one of the cell phones in the same compartment as**

1 **the scale and -- and that that led me to believe that he**  
2 **was aware the scale was in his car.**

3 **Q.** Okay. And was it at that point that you placed  
4 him under arrest?

5 **A. Yes.**

6 **Q.** Okay. And approximately what time was that?

7 **A. About 1:53 a.m., I arrested him for possession of**  
8 **drug paraphernalia.**

9 **Q.** Okay. And what did you do?

10 **A. Secured him in handcuffs, conducted a search of**  
11 **his person and secured him in the back seat of my patrol**  
12 **car.**

13 **Q.** Okay. And you indicated that you completed a  
14 search of his person?

15 **A. Yes.**

16 **Q.** What did you find?

17 **A. There was some small -- I think a small piece**  
18 **of -- of cotton and then another full cotton swab. The**  
19 **piece of cotton was in the pocket of, I think, a vest he**  
20 **was wearing. Excuse me. And then the cotton swab was**  
21 **in his pant pocket.**

22 **Q.** And did you find anything else?

23 **A. No. I just thought it was odd that he had the**  
24 **cotton on his person.**

25 **Q.** And then did you also find his wallet?

1 **A. Yes.**

2 **Q.** Where was that located?

3 **A. In his -- the back pocket of his jeans.**

4 **Q.** Okay. And what did you find?

5 **A. A large amount of cash inside.**

6 **Q.** How much cash?

7 **A. \$1,677.**

8 **Q.** Okay. And so at this point, was he transported  
9 to the Nez Perce County Jail?

10 **A. Yes.**

11 **Q.** And what happened once you arrived at the jail?

12 **A. Previously to the transport, I had advised him of**  
13 **his Miranda rights. He stated he understood them. Then**  
14 **we had a conversation during the transport.**

15 **Q.** Okay. And what was the nature of that  
16 conversation?

17 **A. He was asking about what would happen next, his**  
18 **bond and such. And he told me that he was trying to be**  
19 **cooperative because there was nothing in his car. And I**  
20 **reminded him that I had found drug paraphernalia in his**  
21 **car. And he said that he hadn't even thought of that**  
22 **because he was thinking of serious things like -- I'm**  
23 **trying to remember what he said. I know he said**  
24 **weapons. I think he said he was thinking of serious**  
25 **things like guns.**

1 **Q.** Okay.

2 **A. And so I told him I would have appreciated him**  
3 **telling me about the syringes so that I -- to avoid the**  
4 **hazard of getting stuck by one. And he apologized for**  
5 **that.**

6 **And so in our conversation, he admitted that he**  
7 **used meth by using hypodermic needles. He said that**  
8 **he -- that there were multiple needles in the car**  
9 **because he tried to be clean with using one needle per**  
10 **use rather than multiple uses.**

11 **And I asked where he would inject the meth, and**  
12 **he said in his muscles and all over his body. And so I**  
13 **commented that, in my experience, a lot of people**  
14 **that -- that use meth also sometimes sell it because**  
15 **it's an expensive habit, and that way, they can finance**  
16 **that -- that habit. And he replied, yeah, I see what**  
17 **you're saying.**

18 **So we talked about his use of meth, and he said**  
19 **that he -- he agreed that he used about four or five**  
20 **times every couple weeks, which would equal**  
21 **approximately one gram of meth during that time. And he**  
22 **commented -- he said, that shit is cheap in Tri-Cities.**

23 **Q.** And so at this point, had you arrived at the  
24 jail?

25 **A. Not quite. In our conversation, I asked him**

1 about, you know, at this point, when he had admitted  
2 that he used meth, I asked why -- why do you have a  
3 scale then? And he said that if he purchases it, he  
4 didn't want to get ripped off for the quantity of it.

5 And so I asked if -- since he had said that he --  
6 that it was really cheap from where he lived, I asked  
7 how much he brought with him, because he previously said  
8 he had been staying in Lewiston for four or five days.  
9 And he -- he said that he didn't bring any with him and  
10 commented that was his problem. I believed he was  
11 referring to the sweating and the way he was acting, as  
12 I've seen people exhibit similar signs when they're  
13 detoxing from using a controlled substance.

14 And that pretty much concluded our conversation.  
15 We arrived at the jail at about 3:00 a.m. -- or excuse  
16 me, I think it was before -- it was prior to 3:00 a.m.

17 Q. And once you arrived at the jail, did you take  
18 the defendant into the jail?

19 A. Yes.

20 Q. And what happened once you got inside the jail?

21 A. I released him to the custody of jail staff, and  
22 I requested a full body search based on the -- my  
23 investigation and my suspicions that he may be  
24 concealing contraband on his person.

25 Q. Okay. And did you remain at the jail while they

1 were conducting the search?

2 A. Yes.

3 Q. And what happened after they conducted the  
4 search?

5 A. Corporal Bonds from the Nez Perce County  
6 Sheriff's Office, he returned to the booking area with a  
7 black sock and had told me he found it in Mr. Neal's  
8 underwear during the -- the strip search.

9 Q. And did you look to see what the contents of the  
10 black sock was?

11 A. Yes.

12 Q. And what did you find?

13 A. There was a plastic baggy with a black tar-like  
14 substance that I believed to be heroin. There was a  
15 separate plastic baggy with a -- a large piece of a  
16 white crystal substance that I believed to be  
17 methamphetamine. And then there was another plastic  
18 baggy with four yellow pills that were later identified  
19 as Hydrocodone.

20 Q. Okay. And once Corporal Bonds provided you with  
21 those items, what did you do with them?

22 A. I -- I secured them -- eventually, secured them  
23 in, initially, my patrol car, and then eventually into  
24 an evidence locker at the State Police office. And then  
25 I completed the charging paperwork at the jail.

1 Q. Okay. And once you placed those items in the  
2 evidence locker at ISP, were they sent to the lab?

3 A. They were. I -- I used a field testing kit prior  
4 to submitting them to the lab, and also weighed the  
5 substances on a certified scale in our evidence room.

6 Q. Okay. And then it was at that point that they  
7 were --

8 A. Correct.

9 Q. -- put in the evidence locker?

10 A. Yes.

11 Q. And sent to the lab?

12 A. Yes.

13 Q. And have you received a report back from the lab?

14 A. Yes.

15 Q. Have you had an opportunity to review it?

16 A. Yes.

17 MS. SMITH: May I approach the witness, Your  
18 Honor?

19 THE COURT: You may.

20 BY MS. SMITH:

21 Q. Okay. If you could first take a look at what's  
22 been marked as State's Exhibit 2. Do you recognize  
23 State's Exhibit 2?

24 A. Yes.

25 Q. And how do you recognize that?

1 A. Appears to be a copy of the Idaho State Police  
2 Forensic Laboratory report regarding this case.

3 Q. And how do you know that it's related to this  
4 case?

5 A. I see my case number that was assigned to this  
6 case. The date of offense is correct, April 24th. My  
7 name is noted here. The suspect -- or excuse me, the  
8 defendant's name, Brian Neal, is noted here, as well as  
9 the exhibits tested are consistent with the exhibit  
10 numbers assigned to the substances that were submitted  
11 for testing.

12 MS. SMITH: The State moves for the  
13 admission of State's Exhibit 2.

14 THE COURT: Mr. Hurn?

15 MR. HURN: No objection, Your Honor.

16 THE COURT: State's Exhibit 2 will be  
17 admitted.

18 EXHIBITS:

19 (State's Exhibit No. 2 received into  
20 evidence.)

21 BY MS. SMITH:

22 Q. The substance that is listed as Item No. 1 on the  
23 lab report, what does the lab report indicate that  
24 substance is?

25 A. Heroin.

1 Q. And Item No. 2?  
 2 **A. Methamphetamine.**  
 3 Q. Okay. And now, going back to the heroin, what is  
 4 the weight of the heroin?  
 5 **A. Indicated here on the report, 6.9 grams.**  
 6 Q. And is that consistent with what you got the  
 7 weight as when you weighed it?  
 8 **A. Yes.**  
 9 Q. Okay. Now, over to the side, there's a column  
 10 indicating additional information.  
 11 **A. Yes.**  
 12 Q. Did you speak with the lab, an analyst, about  
 13 that information?  
 14 **A. Yes.**  
 15 Q. And what is that information regarding?  
 16 **A. It talks about -- it says the uncertainty was**  
 17 **calculated at the 95 percent confidence level. And**  
 18 **that's regarding the weight. It was explained that**  
 19 **because the weight of the heroin was so close to seven**  
 20 **grams, which is the upper sentencing criteria, instead**  
 21 **of -- two to seven grams would be three years, and ten**  
 22 **to 28 grams would be ten years. Because of that,**  
 23 **they -- they put this comment to see what -- what level**  
 24 **of certainty that the weight is accurate.**  
 25 **As you can see, under the description, it says**

1 **6.90 grams, plus or minus .05 grams. So that's**  
 2 **95 percent accurate that they're in that weight range.**  
 3 Q. Okay. And now if you wouldn't mind looking at  
 4 State's Exhibit 1A. Actually, if you would just look  
 5 through all of the pictures and tell me if you recognize  
 6 all of the pictures.  
 7 **A. Yes, I do.**  
 8 Q. And how do you recognize them?  
 9 **A. Each is a copy of a photograph that I took of**  
 10 **the -- regarding this case.**  
 11 Q. And the items that are depicted in the  
 12 photographs, those are true and accurate representations  
 13 of items that you seized on the night of April -- or the  
 14 morning of April 24th?  
 15 **A. Yes.**  
 16 MS. SMITH: State moves for the admission of  
 17 State's Exhibit 1A through 1G.  
 18 THE COURT: Any objection, Mr. Hurn?  
 19 MR. HURN: If I could just look at the  
 20 original color copies here. I have one that I just  
 21 wanted to see what it looks like.  
 22 THE COURT: All right.  
 23 MR. HURN: No objection, Your Honor.  
 24 THE COURT: All right. State's 1A through  
 25 1G will be admitted.

1 EXHIBITS:  
 2 (State's Exhibit Nos. 1A-1G received into  
 3 evidence.)  
 4 (DISCUSSION HELD OFF THE RECORD.)  
 5 BY MS. SMITH:  
 6 Q. Now, you also indicated that you took the  
 7 defendant to the Nez Perce County Jail. And what city  
 8 and state is that located in, or county and state?  
 9 **A. It's located in Lewiston, Nez Perce County,**  
 10 **Idaho.**  
 11 Q. Thank you.  
 12 MS. SMITH: I have no further questions,  
 13 Your Honor.  
 14 THE COURT: Cross-examination?  
 15 MR. HURN: Yes, Your Honor.  
 16 CROSS EXAMINATION  
 17 BY MR. HURN:  
 18 Q. So you said you originally observed my client at  
 19 the Dyna Mart?  
 20 **A. The vehicle.**  
 21 Q. Oh, the vehicle? Okay. So you didn't see him at  
 22 the Dyna Mart then?  
 23 **A. I did not.**  
 24 Q. And did you attempt to make any inquiries of the  
 25 owner of that vehicle having a tint violation at the

1 Dyna Mart?  
 2 **A. No.**  
 3 Q. And that night, do you recall what the weather  
 4 conditions were?  
 5 **A. I believe it was cloudy. It was approximately**  
 6 **45 degrees. It was sprinkling. It was raining just --**  
 7 **just lightly.**  
 8 Q. Now, you say you observed the first alleged  
 9 infraction was failing to signal when he merged onto  
 10 U.S. 12?  
 11 **A. Yes.**  
 12 Q. If I could back up just a little bit. How long  
 13 were you at the Dyna Mart?  
 14 **A. Probably about ten minutes.**  
 15 Q. And that involved a traffic stop prior?  
 16 **A. Correct.**  
 17 Q. Okay. And where were you positioned the next  
 18 time you observed Mr. Neal's car?  
 19 **A. I was parked east of the Dyna Mart near the**  
 20 **parking area for the Pacific Pride fuel pumps. It's**  
 21 **right near the intersection there of Highway 12 and 128.**  
 22 Q. And what direction were you facing?  
 23 **A. I was facing north. And 128 runs east and west.**  
 24 Q. Now, when you pulled my client over, it was your  
 25 testimony that he -- he told you that he was under some

1 sort of doctor's care for anxiety?

2 **A. He didn't necessarily say he was under a doctor's**  
3 **care. He said that he had a condition for anxiety and**  
4 **he used some medication. He later in that conversation**  
5 **said that he also saw a psychiatrist.**

6 **Q.** And I heard -- or correct me if I'm wrong, but  
7 did I hear testimony that you have training in  
8 recognizing people that are on -- under the influence of  
9 a controlled substance?

10 **A. Yes.**

11 **Q.** As part of that training, were you taught to  
12 eliminate things that may also be an observed sign that  
13 could be misinterpreted?

14 **A. Sure. We always make that effort.**

15 **Q.** Would part of that include trying to eliminate  
16 someone who may be under -- let me back up. Would  
17 anxiety be something you would be looking for to try to  
18 eliminate in that examination?

19 **A. We would ask questions to see if there's a**  
20 **condition, yes.**

21 **Q.** Okay. So anxiety could potentially exhibit signs  
22 that are similar to someone who's under the influence;  
23 is that accurate?

24 **A. I think anxiety -- yeah, I would -- I would agree**  
25 **that some signs and symptoms would be consistent.**

1 **Q.** When you pulled my client over, when you were  
2 initially talking with him, did you smell any odor of  
3 alcohol?

4 **A. No.**

5 **Q.** Did you smell any odor of marijuana?

6 **A. No.**

7 **Q.** And did you say that you were a drug  
8 recognition -- excuse me, a drug recognition expert?

9 **A. Yes.**

10 **Q.** Does that mean that you no longer are certified  
11 or --

12 **A. That's correct.**

13 **Q.** So you didn't do anything to lose your  
14 certification; you just did not renew it?

15 **A. That's correct. When I left patrol as an ISP**  
16 **detective, because of that assignment in investigations,**  
17 **they did not keep up my certification.**

18 **Q.** Now, when you were observing my client while --  
19 as he's driving down U.S. 12, did you observe any signs  
20 of impaired driving then?

21 **A. No.**

22 **Q.** So when you turned your lights on and your siren,  
23 at that point, there was no suspicion of any sort of  
24 impaired driving?

25 **A. Not the obvious clues. And certainly I've**

1 **stopped impaired drivers for not signalling. But no, he**  
2 **did not fail to maintain his lane or anything obvious**  
3 **that I would initially suspect that that was an impaired**  
4 **driver.**

5 **Q.** Now, when you stopped my client, if I remember  
6 correctly, you've testified here today that you started  
7 to issue a citation?

8 **A. Yes.**

9 **Q.** Do you know what approximate time that was  
10 that -- that you started to issue a citation?

11 **A. Let me see if I can find that for you. I think**  
12 **it was about 12:53 a.m.**

13 **Q.** That's when you started to write the citation?

14 **A. Yes.**

15 **Q.** What would that citation have been for at that  
16 point?

17 **A. I'm actually looking at the wrong citation. Let**  
18 **me get to the insurance citation. It's the same time,**  
19 **12:53 a.m. And that citation was for not providing**  
20 **current proof of liability insurance.**

21 **Q.** Okay. Now, you said there -- you were looking at  
22 the wrong citation. Was there more than one that was  
23 written?

24 **A. Correct.**

25 **Q.** Okay. And the other one that you're referring

1 to, what would that have been a citation for?

2 **A. Possession of drug paraphernalia and possession**  
3 **of the Hydrocodone, Schedule 3 controlled substance.**  
4 **And I think I completed that later at the jail.**

5 **Q.** So that wasn't part of what you were issuing a  
6 citation for at that point?

7 **A. Correct.**

8 **Q.** And if I'm understanding your -- it's your  
9 testimony that the stop occurred at 12:41 a.m.?

10 **A. Yes.**

11 **Q.** And is it also your testimony that you called for  
12 a backup officer for security at 12:47?

13 **A. Yes.**

14 **Q.** Okay. Do you know what time you called -- or you  
15 spoke with a K-9 officer, in this case, Officer Reese?

16 **A. Let me see if I can find that time. I was -- it**  
17 **was about the same time that I began to complete the**  
18 **citation, about 12:53 a.m. While I was in my patrol**  
19 **car, he called me as he was getting ready to respond to**  
20 **ask about the circumstances of my stop.**

21 **Q.** And during that phone conversation with Officer  
22 Reese, he indicated to you that he was just woken up,  
23 correct?

24 **A. Yes.**

25 **Q.** And that he had to get his stuff together,

1 correct?

2 **A. I believe so.**

3 **Q.** And you -- was it your testimony then that

4 Officer Reese began talking with my client at 1:07?

5 **A. He arrived at 1:07, and he deployed his K-9 at**

6 **1:11. So in between that time, he spoke briefly with**

7 **Mr. Neal.**

8 **Q.** So between 12:53 when you say you contacted

9 Officer Reese and 12 -- or excuse me, 1:07 in which he

10 arrived, what specifically were you doing to write that

11 citation?

12 **A. Yeah, I was completing the fields, but I also had**

13 **some conversations.**

14 **Q.** When you say "the fields," are you saying the

15 field sobriety tests?

16 **A. No. The fields within the -- the citation. It's**

17 **an electronic ticket, so the -- the laptop in my car, it**

18 **generates the document. And then I -- I enter the**

19 **information. But in between that, I had two**

20 **conversations with Mr. Neal. And I was also speaking**

21 **with dispatch about the records request.**

22 **Q.** So that I'm understanding, you're saying the

23 fields are an electronic field that's within a computer

24 software program --

25 **A. Correct.**

1 **Q.** -- not field sobriety tests or field test kits?

2 **A. Correct.**

3 **Q.** Now, you've said that you ultimately issued a

4 citation for possession of paraphernalia as well as for

5 the Hydrocodone?

6 **A. Yes.**

7 **Q.** What specifically, in your mind, was the

8 paraphernalia?

9 **A. Primarily the scale that had the white crystal**

10 **residue and the multiple used hypodermic needles. And**

11 **then the -- the tin measuring cup with the black**

12 **residue.**

13 **Q.** So those you considered paraphernalia?

14 **A. Yes.**

15 **Q.** And paraphernalia, isn't the definition of it

16 something that would be used to ingest or smoke or

17 consume a controlled substance?

18 **A. No.**

19 **Q.** So it could be other things then?

20 **A. Yes.**

21 **Q.** Such as a scale, needles --

22 **A. Baggies.**

23 **Q.** -- a tin cup, baggies?

24 **A. Correct.**

25 **Q.** But they're all used -- the ultimate purpose of

1 paraphernalia is in furtherance of consuming a product

2 that's illegal, correct?

3 **A. Well, paraphernalia is a broad term. Drug**

4 **paraphernalia would relate to drugs. You could have**

5 **paraphernalia related to tobacco use or --**

6 **Q.** So --

7 **A. -- any other item.**

8 **Q.** So drug paraphernalia, would you agree then that

9 drug paraphernalia deals directly with the ability to

10 consume an illegal substance?

11 **A. No.**

12 **Q.** Okay. So then it wasn't paraphernalia?

13 **A. You're saying "consume." And it's not -- it's**

14 **not just consume. Paraphernalia could be anything that**

15 **has to do with -- it could be packaging. It could be**

16 **the transportation. It could be just simply weighing.**

17 **And none of that has to do with consuming, but it has to**

18 **do with a controlled substance.**

19 **Q.** Now, you said you conducted a couple of field

20 test kits on some of the stuff you discovered; is that

21 correct?

22 **A. Yes.**

23 **Q.** Specifically, what was tested -- or let me back

24 up or rephrase. Was the scale tested for -- field

25 tested?

1 **A. No.**

2 **Q.** Was the -- the tin measuring cup, was that ever

3 tested?

4 **A. No.**

5 **Q.** Were the needles ever tested?

6 **A. No. I didn't seize the needles.**

7 **Q.** Oh. Did you ever observe them?

8 **A. I did observe them.**

9 **Q.** Did they, from your observations, appear to have

10 any controlled substances in them?

11 **A. No. There was -- the only residue that I saw was**

12 **a small amount of red liquid, which I believed to be**

13 **blood. Whether or not -- I guess there's a potential**

14 **that there may be some residue of whatever substance had**

15 **been in that needle, but from the safety concern, I did**

16 **not --**

17 **Q.** So there was no --

18 **A. -- pursue that.**

19 **Q.** -- test?

20 **A. No.**

21 **Q.** Did my client ever -- well, did you ever ask my

22 client about why he had those needles?

23 **A. Yes, I did.**

24 **Q.** And what was his explanation? Let me rephrase.

25 Did he tell you that those were his aunt's needles?

- 1 **A. Yes. Can I explain?**  
 2 **Q.** Certainly.  
 3 **A. It was -- he did, but his response was suspicious**  
 4 **because he said, um, my aunt's a diabetic maybe. I**  
 5 **found that odd.**  
 6 **Q.** Now, when you went over the money that was on his  
 7 person -- was it on his person, first of all?  
 8 **A. It was in his wallet.**  
 9 **Q.** But I guess --  
 10 **A. I think that was in his --**  
 11 **Q.** -- was his wallet on his person?  
 12 **A. Yes, I believe so.**  
 13 **Q.** And that money, did you also -- did my client  
 14 explain to you that he had won that at the casino --  
 15 **A. He said --**  
 16 **Q.** -- or one portion of that?  
 17 **A. Yes.**  
 18 **Q.** And did he provide a receipt for \$1200 from the  
 19 casino?  
 20 **A. I found that receipt in the car.**  
 21 **Q.** Okay. So you had no reason to believe that he  
 22 wasn't telling the truth for that \$1200 then, correct?  
 23 **A. I did believe he won that \$1200, as indicated,**  
 24 **eight days prior.**  
 25 **Q.** Now, when you checked the tint on my client's

- 1 vehicle, that was after Officer Reese arrived, correct?  
 2 **A. Yes.**  
 3 **Q.** And the field sobriety tests, for your suspicions  
 4 of a DUI, that was also conducted after -- after Officer  
 5 Reese arrived?  
 6 **A. Yes.**  
 7 **Q.** And the field sobriety tests, wasn't that  
 8 conducted after the search occurred?  
 9 **A. Yes.**  
 10 **Q.** So if I'm understanding the timeline, it's 12:41  
 11 until 1:11 that the search actually occurs, correct?  
 12 That would be a half an hour?  
 13 **A. It was actually a half an hour from the time I**  
 14 **stopped the vehicle to the time Officer Reese deployed**  
 15 **his dog. And then five minutes after that -- excuse me,**  
 16 **that deployment, we searched the vehicle.**  
 17 **Q.** And the tint meter that you used to do your work,  
 18 was that located in your car?  
 19 **A. Yes.**  
 20 **Q.** So you didn't need another patrol vehicle to  
 21 bring one out?  
 22 **A. No.**  
 23 **Q.** Okay. Now -- and maybe this is just a layman's  
 24 question here, but have you seen the video from your  
 25 patrol video of that night?

- 1 **A. Yes.**  
 2 **Q.** And is it accurate to say that the patrol video  
 3 begins on the bridge of U.S. 12?  
 4 **A. Yes.**  
 5 **Q.** And it doesn't actually have any video relating  
 6 to what you allege is the initial failure to signal?  
 7 **A. Correct.**  
 8 **Q.** Why do you think that is that that video isn't in  
 9 there?  
 10 **A. I hadn't activated my camera at that point.**  
 11 **Q.** So is there -- when you activate your video, is  
 12 it -- or activate your lights and siren, is that  
 13 instantaneous then in starting the video?  
 14 **A. No. It prerecords back. I'm not exactly**  
 15 **positive how long. I believe 15 seconds it will kick**  
 16 **back and capture the prior 15 seconds.**  
 17 **Q.** And is there any ability to capture anything  
 18 before that 15 seconds if you don't know it at that  
 19 second?  
 20 **A. Not to my knowledge.**  
 21 **Q.** Are you aware if the Idaho State Police keep any  
 22 sort of statistics on how long traffic stops are taking?  
 23 **A. I don't know.**  
 24 **Q.** So you're never talked with -- or your  
 25 supervisors never approached you and said, this is the

- 1 average time of a traffic stop?  
 2 **A. No.**  
 3 **Q.** With regards to your -- your experience as a  
 4 detective in narcotics, as a patrol officer, people that  
 5 are using a controlled substance, when they inject it,  
 6 do they -- would it be fair to say they're injecting it  
 7 into their veins?  
 8 **A. Not always, but more common than not, yes.**  
 9 **Q.** Okay. Is that where you observed my client's  
 10 injection sites?  
 11 **A. There were scabs in -- in multiple different**  
 12 **locations on his arms. So not all, I would say, around**  
 13 **a vein.**  
 14 **Q.** Where would -- where would the other places be  
 15 that you observed that are not in a vein?  
 16 **A. There were miscellaneous on his forearms and**  
 17 **upper bicep. So I didn't believe there was a vein in**  
 18 **every location that I observed a scab.**  
 19 **Q.** Now, going over to what I think you termed the  
 20 "pay owe sheet," is that what you called it?  
 21 **A. Yes.**  
 22 **Q.** Okay. With the pay owe sheet, if you could look  
 23 at what is marked 1D, are you able to look at that?  
 24 **A. 1D?**  
 25 **Q.** "D" as in dog.

- 1 **A. Yes.**  
 2 **Q.** Up at the upper right-hand corner, can you tell  
 3 me what that says?  
 4 **A. It looks like a phone number, 1-800-943-3809**  
 5 **maybe.**  
 6 **Q.** So it -- are you saying it appears to be an 800  
 7 number?  
 8 **A. That's what it appears to me.**  
 9 **Q.** And are you able to read what's below that,  
 10 directly below it?  
 11 **A. It says her. And I can't make out the other**  
 12 **word.**  
 13 **Q.** Are -- are either one of those things indicative  
 14 of a pay owe sheet?  
 15 **A. Phone numbers certainly can be.**  
 16 **Q.** An 800 number?  
 17 **A. Not -- not specifically, no.**  
 18 **Q.** Okay. So those two items wouldn't specifically  
 19 stick out to you as items of a pay owe sheet?  
 20 **A. Correct.**  
 21 **Q.** It would be other things that are located on  
 22 there?  
 23 **A. Yes.**  
 24 **Q.** All right. And do you have 1E as well?  
 25 **A. Yes.**

- 1 **Q.** On that one, are you able to look at the upper  
 2 right-hand corner of the picture? I know it's a bit  
 3 fuzzy, but --  
 4 **A. If you go to 1F, is that still -- that note still**  
 5 **visible?**  
 6 **Q.** Certainly. We can go to 1F. What is there at  
 7 the top right-hand corner to you?  
 8 **A. It appears to be a date.**  
 9 **Q.** Like an appointment or a --  
 10 **A. I don't know. It says 6/10/14 at -- I think**  
 11 **that's 3:00 p.m., possibly.**  
 12 **Q.** Okay. And would it -- and I apologize because my  
 13 copy's a black and white, so I'm having a difficult time  
 14 seeing it. But is there not something above that?  
 15 **A. Above that what?**  
 16 **Q.** Above where it says 6/10 of '14.  
 17 **A. It's -- I think that's a portion of maybe a page**  
 18 **that had been torn off previous.**  
 19 **Q.** Are you able to read what it says at all?  
 20 **A. No. But it does look consistent with maybe**  
 21 **another date.**  
 22 **Q.** Okay.  
 23 **A. Just the way you can see the top of it and the**  
 24 **slashes.**  
 25 **Q.** Okay. Now, you're able to see the rest of that

- 1 1F document, correct?  
 2 **A. Yes.**  
 3 **Q.** What is in the very top middle of it?  
 4 **A. Looks like a 1-800 number.**  
 5 **Q.** Okay. And does it appear to be the same number  
 6 between that and 1E?  
 7 **A. No. It looks like a different number.**  
 8 **Q.** Would you say that it does, though, look like an  
 9 800 number on there?  
 10 **A. Yes.**  
 11 **Q.** Okay. Now, with regards to that, I guess we call  
 12 it 1E and 1F as they're labeled, is this what my client  
 13 was referring to when he said there was a fantasy  
 14 football league he was part of?  
 15 **A. I don't know that we spoke about this notepad. I**  
 16 **know we spoke about the notebook, which would be 1D, I**  
 17 **believe.**  
 18 **Q.** And what did you -- what do you think he meant  
 19 when he said that was referencing a fantasy football  
 20 league? Not what he was actually saying, but what he  
 21 was implying to you?  
 22 **A. I think he implied that the notes on that**  
 23 **notebook involved something to do with a fantasy**  
 24 **football league.**  
 25 **Q.** Would you interpret that to mean that he was

- 1 keeping track of people who may have owed money for a  
 2 fantasy football league?  
 3 **A. I have no idea. I've never been involved in**  
 4 **fantasy football, so I'm not --**  
 5 **Q.** So you didn't inquire --  
 6 **A. -- very familiar.**  
 7 **Q.** -- any deeper than that?  
 8 **A. I did not.**  
 9 **Q.** Now, you also testified here that, in your  
 10 conversations with my client on the way to the jail,  
 11 that he discussed with you his use of controlled  
 12 substances is four or five times a month? Was that your  
 13 testimony?  
 14 **A. Not a month. I said four -- I think that I --**  
 15 **well, let me refer to it so I'm accurate here. I had**  
 16 **asked him if he was using meth four or five times a**  
 17 **week. And he said yes, and then added, or about that**  
 18 **many times every couple weeks.**  
 19 **Q.** So that was you asking him about methamphetamine,  
 20 not him volunteering it?  
 21 **A. Correct.**  
 22 **Q.** Now, when Deputy Bonds called you back to the  
 23 jail -- or were you at the jail?  
 24 **A. I was in the booking area at the jail.**  
 25 **Q.** So when he contacted you about what he located,



1 how many baggies did he say he located?

2 **A. Well, he emptied the sock in front of me, so we**  
3 **observed the contents together.**

4 **Q.** How many baggies were they -- or were there,  
5 excuse me?

6 **A. Three.**

7 **Q.** And how big were they?

8 **A. They were probably a normal -- I think they were**  
9 **a normal sandwich size baggy.**

10 **Q.** Are you talking about the sandwich baggies that  
11 are just a flip fold over, or are we talking ones that  
12 you have to zip to seal?

13 **A. I think that the suspected heroin and meth were**  
14 **each in a -- a sandwich baggy that is not a ziplock**  
15 **style. And then I think that the four pills were in a**  
16 **smaller baggy. I can't recall exactly.**

17 **Q.** In your job with the Idaho State Police, do you  
18 come into contact with heroin on a regular basis?

19 **A. No.**

20 **Q.** Are you -- as a former drug recognition expert,  
21 do you think these were packaged for personal use?

22 **A. No.**

23 **Q.** Why is that?

24 **A. In my experience, personal use heroin, they refer**  
25 **to that as dots, because they're very small -- it**

1 **requires a very small amount for a use. Certainly,**  
2 **almost a quarter ounce of that substance, in my**  
3 **experience, is not consistent with personal use.**

4 **Q.** Now, are you saying that each bag is a dot?

5 **A. Not bag. I'm saying that that's typically what's**  
6 **referred to for a personal use. Someone would buy a dot**  
7 **of heroin because it's a very small amount per use.**

8 **Q.** What would that -- what would that be in  
9 scientific terms as far as what you would -- a weight  
10 or --

11 **A. I don't know that I've ever weighed a dot.**  
12 **Probably maybe a tenth or two-tenths of a gram.**

13 **Q.** So if this were -- in your opinion, if it were  
14 personal use, there would only be a dot, not several in  
15 there?

16 **A. Because of the amount -- because of the small**  
17 **amount for -- that's typically used with -- with a**  
18 **personal amount, almost seven grams is -- is much in**  
19 **excess of that, in my experience.**

20 **Q.** And -- and how are -- what would be a standard  
21 form of sale weight if someone -- well, let me back up.  
22 Have you ever conducted purchase -- like, controlled  
23 buys of heroin?

24 **A. Yes.**

25 **Q.** All right. And in those purchases, what would a

1 standard weight be if you were to quantify it?

2 **A. Depends on the purpose of that transaction,**  
3 **whether the person is buying for personal use or if**  
4 **they're buying for sale.**

5 **Q.** So if they're buying for personal use, what would  
6 be a standard weight?

7 **A. Typically a half a gram or a gram.**

8 **Q.** So more than a bump -- or excuse me, a dot?

9 **A. People also will buy a dot. But it's -- it**  
10 **depends on what their needs are, I guess.**

11 **Q.** But I guess what I'm asking is, personal use  
12 could be more than that one-tenth or two-tenths of a  
13 gram that you said is a dot. A half a gram would be  
14 personal use --

15 **A. Yes.**

16 **Q.** -- what you would consider as well?

17 **A. Yes.**

18 **Q.** Okay. And it's your testimony as -- as a patrol  
19 officer with the ISP and your former experience and  
20 certifications with the State, that people who use  
21 intravenously, inject -- they would inject in more than  
22 just a vein; they -- correct?

23 **A. Usually they start in a vein. That's the common**  
24 **place. But over repeated use, veins often become**  
25 **destroyed or no longer accessible or available. And**

1 **I've seen people inject into other locations. In our**  
2 **conversation, Mr. Neal told me that he injected into his**  
3 **muscles and other places in his body.**

4 MR. HURN: No further questions, Your Honor.

5 THE COURT: Any redirect -- redirect  
6 examination?

7 MS. SMITH: No, Your Honor.

8 THE COURT: You may step down, sir. Thank  
9 you.

10 THE WITNESS: Thank you, Your Honor.

11 MS. SMITH: State calls Brian Bonds.  
12 May -- may this witness be excused?

13 THE COURT: Any objection, Mr. Hurn?

14 MR. HURN: No objection, Your Honor.

15 THE COURT: You're free to go. Thank you.

16 Sir, if you'd come forward and raise your  
17 right hand, please.

18 BRIAN BONDS,

19 a witness of lawful age, having been first duly sworn to  
20 tell the truth, the whole truth and nothing but the  
21 truth, was thereupon called as a witness on behalf of  
22 the State and testified upon his oath as follows:

23 THE COURT: Have a seat there. Thank you.

24

25

## DIRECT EXAMINATION

1  
2 BY MS. SMITH:  
3 Q. If you could please state your name and spell  
4 your last name.  
5 A. **Brian Bonds, B-O-N-D-S.**  
6 Q. Are you currently employed?  
7 A. **Yes, ma'am.**  
8 Q. Where do you work?  
9 A. **Work for the Nez Perce County Sheriff's Office,**  
10 **the Adult Detention Center.**  
11 Q. How long have you worked in the detention center?  
12 A. **Over seven years. Almost eight years.**  
13 Q. Okay. And are you -- what are your duties at the  
14 detention center?  
15 A. **Currently, I'm a corporal. I supervise one of**  
16 **the two graveyard shifts.**  
17 Q. Okay. And do you also participate in the -- in  
18 booking prisoners in?  
19 A. **Absolutely, yes.**  
20 Q. Were you working on the morning of April 24th of  
21 2014?  
22 A. **Yes, ma'am.**  
23 Q. And did Trooper -- Sergeant Yount bring in a  
24 person by the name of Brian Neal?  
25 A. **Yes, ma'am.**

1 Q. And did you assist in booking that person into  
2 jail?  
3 A. **Yes.**  
4 Q. Okay. And what happened when Sergeant Yount  
5 brought that prisoner in?  
6 A. **Sergeant Yount arrived, and I went and met the**  
7 **defendant, Mr. Neal, in the pre-booking area where we do**  
8 **a search before they actually enter the booking area. I**  
9 **asked him who he was. He mentioned his name was Brian**  
10 **Neal. I asked Trooper -- Sergeant Yount what he was**  
11 **here for. He said -- he said he was going to book him**  
12 **in on a paraphernalia charge.**  
13 **At that time, Sergeant Yount asked if I could**  
14 **actually do a strip search also on this gentleman. I**  
15 **said that was within the parameters of our county**  
16 **policies and manuals due to it being associated with a**  
17 **drug charge. So I finished a cursory search at that**  
18 **point on Mr. Neal and took him into the booking area.**  
19 **There, I did a complete pat search on him, unhooked --**  
20 **unhooked him from his handcuffs, gave him some shoes to**  
21 **wear and then escorted him into what we call dressing**  
22 **one area.**  
23 **I advised one of my other deputies, Deputy**  
24 **Kaltenbaugh, to move to the window area, which is on the**  
25 **opposite side of the room. I followed Mr. Neal into**

1 **dressing one and secured the door -- door there so that**  
2 **he would be out of the view of everybody else due to**  
3 **this strip search that was going to be happening. I**  
4 **advised Mr. Neal the procedures that were going to be**  
5 **happening, and he understood what was going on.**  
6 **Mr. Neal took off his shirt. I examined it.**  
7 **Found nothing. Took off his black slacks. I examined**  
8 **them. Found nothing. He then removed his underwear.**  
9 **They were black underwear. And at that point, I noticed**  
10 **that there was a -- a black sock that was disclosed**  
11 **within those -- those briefs.**  
12 **At that point, I asked Mr. Neal what that was.**  
13 **He said he didn't know what it was. I felt inside that**  
14 **black sock. There was a hard object. I asked Mr. Neal**  
15 **what the hard object was inside the black sock. He said**  
16 **he didn't know what it was.**  
17 **And at that point, we were pretty much done with**  
18 **the actual search, itself, seeing that there was no**  
19 **other contraband on his unclothed person. I asked**  
20 **Deputy Kaltenbaugh to grab some clothing, gave the**  
21 **clothing to Mr. Neal, secured him back into the dressing**  
22 **room one by himself. He got dressed, and I exited the**  
23 **room and went and informed Sergeant Yount what I had**  
24 **found.**  
25 **At that point, we opened up the black sock,**

1 **emptied it onto the floor of the booking area and found**  
2 **that there was three objects inside the -- hidden inside**  
3 **the black sock. They were all baggy-type objects.**  
4 Q. And what -- the three baggy-type objects, what  
5 did you do with them?  
6 A. **Well, I left them on the floor for just a few**  
7 **minutes. I had Deputy Kaltenbaugh take pictures of what**  
8 **we had found from the black sock. And then we tried to**  
9 **ascertain what was in the -- in the baggies at that**  
10 **point.**  
11 **It was very easy for us to ascertain what was in**  
12 **one of the baggies. They were yellow -- there was four**  
13 **yellow pills in one of the baggies that were stamped**  
14 **with the letter "V" and the numbers 3601, I believe they**  
15 **were. I advised Mr. -- Deputy Kaltenbaugh to log into**  
16 **the pill identifier website to help us identify what the**  
17 **objects were. We did identify them as a combination**  
18 **medication, Acetaminophen/Hydrocodone, a scheduled**  
19 **narcotic.**  
20 **The second baggy, it appeared to be a black**  
21 **liquid resin-type substance inside the baggy. It**  
22 **appeared to be possible narcotic. I wasn't positive at**  
23 **the time. I didn't have a test kit with us. Sergeant**  
24 **Yount did suggest there was a possibility it appeared to**  
25 **be a heroin-type product. That wasn't made positive**

1 until, more likely, Sergeant Yount's test with the  
2 laboratory.

3 Q. And then in the --

4 A. The third -- the third object was the same baggy  
5 type. Inside that was a hard crystalline rock-like  
6 substance. It was about two inches long, a half inch  
7 around, and it was solid. And from years of experience  
8 and training, that appeared to be what could possibly be  
9 methamphetamine.

10 Deputy Kaltenbaugh took the pictures, downloaded  
11 them to the file, and I turned the -- those pieces of  
12 evidence over to Sergeant Yount at that point.

13 Q. Okay. Thank you.

14 MS. SMITH: I have no further questions.

15 THE COURT: Cross-examination?

16 MR. HURN: Yes, Your Honor, just briefly.

17 CROSS EXAMINATION

18 BY MR. HURN:

19 Q. So you said the search of my client occurred in  
20 search dressing room one?

21 A. That's correct.

22 Q. Did you conduct any search of that dressing room  
23 one before my client entered that room?

24 A. It -- it appeared to be very empty, yes, at the  
25 time that we entered -- entered the room, yes.

1 Q. Okay. So when you say it appeared to be empty,  
2 I'm not familiar with the room. So are you saying --

3 A. There's --

4 Q. -- is there anything inside the room?

5 A. There's a toilet.

6 Q. Is there anything else?

7 A. No.

8 Q. A bench, a shelf, anything at all?

9 A. There's an empty room. There's a shower. It's  
10 around the corner. But there's -- the only object  
11 that's actually in the room, itself, is a toilet and a  
12 sink, yeah. It's all one unit.

13 Q. And in that dressing room one, when my client was  
14 in there, did you directly observe him the entire time,  
15 or was there another officer?

16 A. There was another officer. I was behind the  
17 closed door on the west side. Deputy Kaltenbaugh was on  
18 the opposite side, on the outside of the east window,  
19 which has a window closure also. He did view the  
20 objects and the search, itself, yes.

21 Q. So if I'm understanding correctly, are you saying  
22 that while my client's in there, you're at one end of  
23 the room, and Kaltenbaugh is outside the room, but able  
24 to see the other end?

25 A. That's correct, with Mr. Neal between us.

1 Q. Okay. And so was that both of you at all times  
2 when he was in there?

3 A. Yes, sir. That's --

4 MR. HURN: No further questions.

5 THE WITNESS: Okay.

6 THE COURT: Redirect examination?

7 MS. SMITH: No, Your Honor.

8 THE COURT: You may step down. Thank you.

9 MS. SMITH: May this witness be excused?

10 THE COURT: Any objection, Mr. Hurn?

11 MR. HURN: No objection, Your Honor.

12 THE COURT: You're free to go. Thank you.

13 MS. SMITH: Thank you.

14 No additional witnesses, Your Honor. The  
15 State rests.

16 THE COURT: Mr. Hurn?

17 MR. HURN: No witnesses, Your Honor.

18 THE COURT: Any argument, Ms. Smith?

19 MS. SMITH: No, Your Honor. The State  
20 submits.

21 THE COURT: Mr. Hurn?

22 MR. HURN: Your Honor, we would argue, in  
23 this particular instance, I believe that Mr. Neal's  
24 seizure of his person was unreasonably long to conduct  
25 what the officer needed to do, which was -- it was an

1 investigation regarding these violations for failing to  
2 signal, failing to maintain a five-second signal on a  
3 controlled access highway and a tint violation  
4 specifically. And that, if you look at the timeline, he  
5 pulls over Mr. Neal at 12:41. The search from the K-9  
6 doesn't begin until a half an hour later.

7 In between then, the timeline is from 12:41  
8 to 12:53 -- or excuse me, 12:53, almost 12 minutes into  
9 the investigation, when he says he begins writing a  
10 citation for no insurance. The officer then requests a  
11 K-9 officer, in this case, Officer Reese. Another  
12 14 minutes goes by before there's any contact at 1:07  
13 from Officer Reese.

14 Now, during that time, Mr. -- or excuse me,  
15 Sergeant Yount does not conduct a tint meter search  
16 until after he gets there. Certainly, he already knew  
17 the violations for the failure to signal and the failure  
18 to signal for five seconds. So there wasn't a further  
19 investigation needed. His own observations were enough  
20 at that point to write a ticket if he so chose to do so.

21 So in that time period, there's no tickets  
22 being written, no citations being issued. And, in fact,  
23 it's a full 18 minutes after he calls the officer that a  
24 K-9 actually -- a K-9 search actually occurs with  
25 Officer Reese.

1 You heard testimony from Mr. Yount -- or  
2 from Sergeant Yount that when he contacted Trooper -- or  
3 excuse me, Officer Reese, the K-9 officer, at 12:53,  
4 that Reese indicated to him that he was just woken up  
5 and that he needed to get ready.

6 It's our belief, Your Honor, that Trooper  
7 Yount extended that search -- or that seizure  
8 unreasonably long to allow Officer Reese to come down  
9 and conduct that. As you've heard from Trooper Yount --  
10 or excuse me, Sergeant Yount, his suspicions when he  
11 made the initial contact with my client was that he was  
12 on something, not that he was selling something or  
13 containing any contraband items, just that he was  
14 concerned that he was under the influence.

15 When did that field sobriety test occur?  
16 After the search occurred. That's the first time he  
17 attempts to make any inquiries further into whether or  
18 not my client is under the influence and driving under  
19 the influence, the reasonable suspicion that he has of  
20 illegality. That's after the search which occurs a full  
21 half hour after the pulling over of my client and almost  
22 18 minutes after the officer's requested to come down.

23 So it is our position that it -- that my  
24 client's rights have been constitutionally violated and  
25 that there should be a dismissal of this case based on

1 that, as the evidence obtained was in violation and,  
2 therefore, is fruit of the poisonous tree.

3 THE COURT: Thank you, Mr. Hurn.  
4 Anything, Ms. Smith?

5 MS. SMITH: Just based on the timeline, Your  
6 Honor. Trooper Yount testified that between the time of  
7 the stop and between -- and when the -- Officer Reese  
8 arrived on scene, he began filling out the citation. He  
9 had to recontact the defendant to confirm his address.  
10 He was speaking with dispatch to find out more  
11 information about his criminal history and whether he  
12 was on probation. And he had also called and was  
13 waiting for a backup officer to arrive.

14 So doing all those things during that very  
15 short time period, the State would submit is not an  
16 unreasonable delay. That is a normal time for a traffic  
17 stop to occur in, and that the State requests the Court  
18 bind the defendant over on both charges, Your Honor.

19 THE COURT: All right. Thank you.

20 Well, I think both sides know that if there  
21 are suppressible issues, unless it's clearly  
22 suppressible, it's not going to happen at the  
23 preliminary hearing. It's supposed to be brought into  
24 the District Court. And certainly, Mr. Hurn, you can --  
25 you can explore that possibility in the District Court,

1 because I can't make a finding at this point that it's  
2 so clearly unreasonable that it violates your client's  
3 constitutional rights. So for that reason, I'm not  
4 going to grant your -- your motion.

5 But I think the testimony indicated that  
6 Sergeant Yount was on patrol on this particular day;  
7 that he had stopped a different vehicle and saw a  
8 vehicle that ultimately turned out to be a vehicle your  
9 client was driving, Mr. Hurn, at a gas pump with no gas  
10 nozzle in there. It had been sitting there for some  
11 time. He subsequently saw this vehicle later on,  
12 observed it not use its blinker as it merged onto U.S.  
13 12 off of 128, I think is what his testimony was.

14 He also made some observations about how  
15 dark the windows were, thought that they were darker  
16 than the law would allow and that he followed this  
17 vehicle for a period of time across the bridge towards  
18 Lewiston, and that he made a lane change and a signal,  
19 according to his testimony, for about one second.

20 He subsequently pulled this vehicle over,  
21 had some contact with your client, made some initial  
22 observations about him; that he was sweating. He was  
23 fidgety, or his leg was bouncing around. He had  
24 difficulty sitting still. His speech was rapid and  
25 quick. He also observed that it was about 45 degrees

1 outside. He had some discussions with him about some  
2 anxiety and some anxiety disorders your client may have  
3 had.

4 Based upon those observations, his testimony  
5 was he thought he might have been impaired, again,  
6 because he was sweating, tense, a bouncing leg, avoided  
7 eye contact, rapid speech, difficulty sitting still.  
8 Sometimes he stammered and sometimes he asked -- he  
9 answered the questions very quickly.

10 He subsequently called a backup officer to  
11 help him. The time of the stop, I think, was about  
12 12:41, according to the testimony. Requested backup, I  
13 think, about 12:47. And backup arrived, I think he  
14 indicated, about 12:52. During all this time, he kind  
15 of had recontacted your client, was having some  
16 discussions with him about various things, observed some  
17 scabs on his arms that looked like injection marks.

18 He then was going to issue him a citation,  
19 began writing him a citation. He had previously  
20 contacted dispatch about having a drug dog come out.  
21 And he indicated that Officer Reese with the Lewiston  
22 Police Department arrived, I think, about 1:07. He had  
23 a conversation -- Officer Reese had a conversation with  
24 your client. And then I believe his testimony was that  
25 he began the search about 1:11, if I understand his

1 testimony -- or I recall his testimony.  
 2 During that time, he used his -- I guess  
 3 it's called a tintometer, and observed that the tint on  
 4 the windows was -- I don't know if it was over or under  
 5 the legal limit. I think it's probably over the legal  
 6 limit because, although with percentages, it gets kind  
 7 of weird, because I think he said on some of the  
 8 windows, the legal limit's 35 percent; tint was  
 9 17 percent, which means it's not letting enough light  
 10 through. So I guess it would be a violation of the law.

11 He indicated that Officer Reese told him --  
 12 or observed that the drug dog alerted on the vehicle.  
 13 They searched the vehicle. They found a digital scale  
 14 with a white crystalline substance, a couple of cell  
 15 phones, a kind of measuring cup with black residue in  
 16 it, some used hypodermic needles on the floor. Searched  
 17 the trunk, found a backpack, some more needles, a  
 18 laptop, notebook. In the notebook, he saw what he  
 19 believed, based upon his training and experience, could  
 20 have been a drug ledger with some names, some initials  
 21 and some numbers off to the side.

22 He then found a notepad in the passenger  
 23 area of the vehicle, the same type of deal. And I think  
 24 those are shown in State's exhibits that have been  
 25 admitted on the photographs. Based upon that, he was

1 going to issue him a citation and arrest him for  
 2 paraphernalia. Somewhere in there, he did have him  
 3 perform some field sobriety evaluations. Based upon his  
 4 opinion, didn't believe he was impaired to the point  
 5 where he couldn't drive an automobile.

6 He was arrested for the drug paraphernalia,  
 7 taken to the Nez Perce County Detention Center.  
 8 Corporal Bonds indicated that he did a search of him,  
 9 found a black sock in his underwear area. In that black  
 10 sock was what turned out to be a baggy of, according to  
 11 State's Exhibit 2, heroin, about 6.9 grams of it. And  
 12 also in that baggy was a crystalline substance, which  
 13 turned out to be methamphetamine based upon State's  
 14 Exhibit 2, about 10.92 grams of that.

15 He also had about \$1200 cash on him. He did  
 16 find -- indicated he did find a receipt for that \$1200  
 17 from the casino, which was about eight days earlier.

18 According to Sergeant Yount, based upon his  
 19 training and experience, with the scale, the  
 20 methamphetamine, what he believed to be a drug ledger,  
 21 the money, that that could be possession of  
 22 methamphetamine with intent to deliver. He also had, I  
 23 think, significant conversations with him regarding  
 24 methamphetamine use, whether or not he had any  
 25 methamphetamine. Your client indicated that

1 methamphetamine was cheap over in the Tri-Cities.  
 2 So based upon that, I'm going to bind him  
 3 over on Count 2, which is possession of a controlled  
 4 substance with intent to deliver.

5 As far as the trafficking in heroin, as I  
 6 indicated, that was also found on your client's person.  
 7 And that was clearly over the two grams that's required  
 8 based upon how the State chose to charge this matter.  
 9 So based upon the totality of the evidence, I am going  
 10 to bind him over also on Count 1, which is the  
 11 trafficking in heroin.

12 Any problem with next Wednesday, Mr. Hurn?  
 13 MR. HURN: No, Your Honor.

14 THE COURT: All right. We'll set it for  
 15 arraignment in front of Judge Brudie next Wednesday,  
 16 which is going to be the 21st -- the 21st of May at  
 17 9:00.

18 And, Mr. Neal, Mr. Hurn will give you notice  
 19 of that date and time. That's the next time you need to  
 20 be back in court.

21 Anything else, Ms. Smith?

22 MS. SMITH: No, Your Honor.

23 THE COURT: Mr. Hurn?

24 MR. HURN: No.

25 THE COURT: All right. Thank you.

1 MS. SMITH: Thank you.

2 (COURT IN RECESS.)

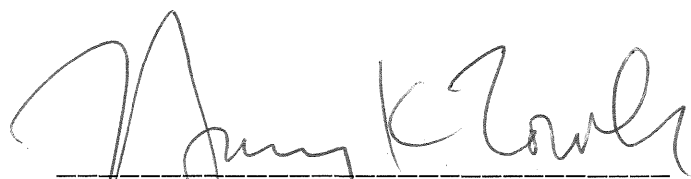
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CERTIFICATE

I, Nancy K. Towler, C.S.R., certify that I transcribed into the foregoing record the proceedings in the above-entitled cause, and that the said transcript is a full, true and correct copy of the above-entitled cause to the best of my ability, held in Lewiston, Idaho, on May 14, 2014.

Dated this 27th day of May, 2014.



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NANCY K. TOWLER, C.S.R.  
Certified Shorthand Reporter  
Second Judicial District  
of the State of Idaho  
IDAHO C.S.R. NO. 623