

7-7-2016

## State v. Diaz Clerk's Record Dckt. 43870

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,  
  
Plaintiff-Respondent,  
vs.  
  
AMANDA LUCY BELLE DIAZ,  
  
Defendant-Appellant.

Supreme Court Case No. 43870

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE DEBORAH BAIL

STATE APPELLATE PUBLIC DEFENDER  
  
ATTORNEY FOR APPELLANT  
  
BOISE, IDAHO

LAWRENCE G. WASDEN  
  
ATTORNEY FOR RESPONDENT  
  
BOISE, IDAHO

State of Idaho vs. Amanda L B Diaz

Date	Code	User		Judge
5/29/2015	NCRF	PRSCHOKF	New Case Filed - Felony	Magistrate Court Clerk
	PROS	PRSCHOKF	Prosecutor assigned Michael A. Hawkins	Magistrate Court Clerk
	HRSC	TCMCCOSL	Hearing Scheduled (Video Arraignment 05/29/2015 01:30 PM)	James Cawthon
	CRCO	TCMCCOSL	Criminal Complaint	Magistrate Court Clerk
	ARRN	TCCASTAE	Hearing result for Video Arraignment scheduled on 05/29/2015 01:30 PM: Arraignment / First Appearance	Terry McDaniel
	CHGA	TCCASTAE	Judge Change: Administrative	Kevin Swain
	ORPD	TCCASTAE	Order Appointing Public Defender Ada County Public Defender [on the record in open court]	Kevin Swain
	HRSC	TCCASTAE	Hearing Scheduled (Preliminary 06/12/2015 08:30 AM)	Kevin Swain
	BSET	TCCASTAE	BOND SET: at 35000.00 - (118-8004 {F} Driving Under the Influence-(Third or Subsequent Offense))	Kevin Swain
	PTRO	TCCASTAE	Pre Trial Release Order - Supervised	Kevin Swain
	NHPD	MADEFRJM	Notice & Order Of Hearing/appointment Of Pd	Kevin Swain
6/1/2015	MFBR	TCSHANAA	Motion For Bond Reduction	Kevin Swain
	NOHG	TCSHANAA	Notice Of Hearing	Kevin Swain
6/9/2015	MTOC	TCWRIGSA	Motion to Consolidate W/ FE-15-6858	Kevin Swain
6/12/2015	PHHD	TCHOCA	Hearing result for Preliminary scheduled on 06/12/2015 08:30 AM: Preliminary Hearing Held	Kevin Swain
	CHGB	TCHOCA	Change Assigned Judge: Bind Over	Kevin Swain
	HRSC	TCHOCA	Hearing Scheduled (Arraignment 06/22/2015 01:30 PM)	Kevin Swain
	ORDR	TCHOCA	Order To Consolidate with FE-15-06858	Kevin Swain
	COMT	TCHOCA	Commitment	Kevin Swain
	MMNH	TCHOCA	Magistrate Minutes & Notice of Hearing	Kevin Swain
6/16/2015	INFO	TCMARKSA	Information	Deborah Bail
6/18/2015	PROS	PRBRIGCA	Prosecutor assigned Jeffrey S White	Deborah Bail
6/22/2015	DCAR	CCMASTLW	Hearing result for Arraignment scheduled on 06/22/2015 01:30 PM: District Court Arraignment- Court Reporter:Emily Nord Number of Pages:less than 50	Deborah Bail
	HRSC	CCMASTLW	Hearing Scheduled (Entry of Plea 06/29/2015 01:30 PM)	Deborah Bail
6/25/2015	RSDS	TCWRIGSA	State/City Response to Discovery	Deborah Bail
6/29/2015	PLEA	CCVILLTL	A Plea is entered for charge: - NG (118-8004 {F} Driving Under the Influence-(Third or Subsequent Offense))	Deborah Bail

State of Idaho vs. Amanda L B Diaz

Date	Code	User	Judge
6/29/2015	PLEA	CCVILLTL	A Plea is entered for charge: - NG (I18-8001(3) {M} Driving Without Privileges) Deborah Bail
6/30/2015	AINF	TCHARDSL	Amended Information Deborah Bail
	DCHH	TCHARDSL	Hearing result for Entry of Plea scheduled on 06/29/2015 01:30 PM: District Court Hearing Held Court Reporter: N. Julson Number of Transcript Pages for this hearing estimated: less than 100 Deborah Bail
	HRSC	TCHARDSL	Hearing Scheduled (Jury Trial 09/15/2015 09:30 AM) Deborah Bail
	HRSC	TCHARDSL	Hearing Scheduled (Pretrial Conference 08/31/2015 09:30 AM) Deborah Bail
		TCHARDSL	Notice of Trial Setting Deborah Bail
7/17/2015	RSDS	CCMANLHR	State/City Response to Discovery Deborah Bail
	RQDS	CCMANLHR	State/City Request for Discovery Deborah Bail
7/28/2015	MOTN	TCCHRIKE	Motion for Preliminary Hearing Transcript Deborah Bail
7/30/2015	ORDR	CCVILLTL	Order for Preliminary Hearing Transcript Deborah Bail
8/7/2015	NOPT	TCMARKSA	Notice of Preparation of Preliminary Hearing Transcript Deborah Bail
8/17/2015	MOTS	TCMARKSA	Defendant's Motion to Suppress Deborah Bail
	MEMO	TCMARKSA	Memorandum in Support of Defendant's Motion to Suppress Deborah Bail
	NOHG	TCMARKSA	Notice Of Hearing (8-31 9:30A) Deborah Bail
8/19/2015	TRAN	TCMARKSA	Transcript Filed Deborah Bail
8/25/2015	MOTN	TCOLSOMC	Motion for Leave to File Information Part II Deborah Bail
8/26/2015	RSDS	TCWRIGSA	State/City Response to Discovery/ First Addendum Deborah Bail
8/28/2015	RSDS	TCCHRIKE	State/City Response to Discovery / Second Addendum Deborah Bail
8/31/2015	DCHH	CCVILLTL	Hearing result for Pretrial Conference scheduled on 08/31/2015 09:30 AM: District Court Hearing Held Court Reporter: Nicole Julson Number of Transcript Pages for this hearing estimated: less than 100 Deborah Bail
	INFP2	CCVILLTL	Information Part 2 Deborah Bail
9/9/2015	ORDR	CCVILLTL	Order Re: Motion to Suppress Deborah Bail
9/11/2015	MOTN	CCVILLTL	Motion to Vacate and Reset Jury Trial, and Request for Expedited Hearing Deborah Bail
9/15/2015	DCHH	CCVILLTL	Hearing result for Hearing Scheduled scheduled on 09/15/2015 09:30 AM: District Court Hearing Held Court Reporter: Nicole Julson Number of Transcript Pages for this hearing estimated: less than 100 Deborah Bail



State of Idaho vs. Amanda L B Diaz

Date	Code	User	Judge
9/15/2015	HRSC	CCVILLTL	Hearing Scheduled (Pretrial Conference 10/26/2015 09:30 AM)
	HRSC	CCVILLTL	Hearing Scheduled (Jury Trial 11/05/2015 09:30 AM)
		CCVILLTL	Notice of Re-Setting Trial
9/28/2015	MOTN	TCCHRIKE	Defendant's Motion to Exclude DRE
10/23/2015	RSDS	TCSHANAA	State/City Response to Discovery / Third Addendum
	OBJE	TCSHANAA	State's Objection to Motion to Exclude DRE
	MOTN	TCKEENMM	State's Motion in Limine Regarding Admission of Hospital Urinalysis Test
10/26/2015	DCHH	CCVILLTL	Hearing result for Pretrial Conference scheduled on 10/26/2015 09:30 AM: District Court Hearing Held Court Reporter: Nicole Julson Number of Transcript Pages for this hearing estimated: less than 100
	HRSC	CCVILLTL	Hearing Scheduled (Motion in Limine 11/02/2015 09:30 AM)
10/30/2015	RSPN	TCMARKSA	Defendant's Response to State's Motion in Limine
11/2/2015	DCHH	CCVILLTL	Hearing result for Motion in Limine scheduled on 11/02/2015 09:30 AM: District Court Hearing Held Court Reporter: Nicole Julson Number of Transcript Pages for this hearing estimated: less than 100
11/5/2015	DCHH	CCVILLTL	Hearing result for Jury Trial scheduled on 11/05/2015 09:30 AM: District Court Hearing Held Court Reporter: Nicole Julson Number of Transcript Pages for this hearing estimated: more than 500
	JTST	CCVILLTL	Jury Trial Started
11/6/2015	DCHH	CCVILLTL	District Court Hearing Held Court Reporter: Nicole Julson Number of Transcript Pages for this hearing estimated: Jury Trial Day 2 --- more than 500
	PLEA	CCVILLTL	A Plea is entered for charge: - GT (119-2514 Enhancement-Persistent Violator)
	JUIN	CCVILLTL	Jury Instructions Filed
	VERD	CCVILLTL	Verdict Form x 2
	FOGT	CCVILLTL	Found Guilty After Trial - Count I & II
	PSIO1	CCVILLTL	Pre-Sentence Investigation Evaluation Ordered
	HRSC	CCVILLTL	Hearing Scheduled (Sentencing 12/14/2015 03:00 PM)

State of Idaho vs. Amanda L B Diaz

Date	Code	User	Judge
12/14/2015	DCHH	CCVILLTL	Hearing result for Sentencing scheduled on 12/14/2015 03:00 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: less than 100
	FIGT	CCVILLTL	Finding of Guilty (I18-8004 {F} Driving Under the Influence-(Third or Subsequent Offense))
	JAIL	CCVILLTL	Sentenced to Jail or Detention (I18-8004 {F} Driving Under the Influence-(Third or Subsequent Offense)) Confinement terms: Penitentiary determinate: 3 years. Penitentiary indeterminate: 12 years.
	OSDL	CCVILLTL	Order Suspending Drivers License Driver License 1 Years
	FIGT	CCVILLTL	Finding of Guilty (I18-8001(3) {M} Driving Without Privileges)
	JAIL	CCVILLTL	Sentenced to Jail or Detention (I18-8001(3) {M} Driving Without Privileges) Confinement terms: Jail: 90 days. Credited time: 90 days.
	CONC	CCVILLTL	Concurrent Sentencing (I18-8001(3) {M} Driving Without Privileges) Consecutive Sentence: Concurrent with: Count I
	FIGT	CCVILLTL	Finding of Guilty (I19-2514 Enhancement-Persistent Violator)
	STAT	CCVILLTL	STATUS CHANGED: closed pending clerk action
12/18/2015	JCOR	DCDOUGLI	Judgment of Conviction and Order of Retained Jurisdiction
	RJNR	DCDOUGLI	Extended Rider
12/29/2015	STAT	CCMORRPH	STATUS CHANGED (batch process)
1/6/2016	APSC	TCWRIGSA	Appealed To The Supreme Court
	NOTA	TCWRIGSA	NOTICE OF APPEAL
1/8/2016	ORDR	CCVILLTL	Order Appointing State Appellate Public Defender on Direct Appeal
3/29/2016	NOTA	TCSIMOSL	AMENDED NOTICE OF APPEAL
3/31/2016	NOTA	TCSIMOSL	SECOND AMENDED NOTICE OF APPEAL
7/7/2016	NOTC	TCWEGEKE	(3) Notice of Transcript Lodged - Supreme Court No. 43870

MAY 29 2015

CHRISTOPHER D. RICH, Clerk  
By STORMY McCORMACK  
DEPUTY

DR # 15-002583

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

Kari L. Higbee  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

THE STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-FE-2015-0007608

**COMPLAINT**

Diaz's DOB: [REDACTED]  
Diaz's SSN: [REDACTED]

PERSONALLY APPEARED Before me this 29<sup>th</sup> day of May 2015, Kari L. Higbee, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that AMANDA LUCYBELLE DIAZ, on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did commit the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS AND/OR INTOXICATING SUBSTANCES (TWO OR MORE CONVICTIONS WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6) as follows:

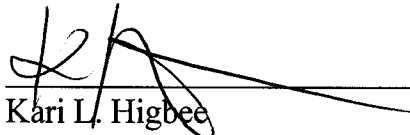
SM

That the Defendant, AMANDA LUCYBELLE DIAZ, on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did drive and/or was in actual physical control of a motor vehicle, to-wit: a gold 2000 Jaguar, on or at Overland Road, while under the influence of drugs and/or intoxicating substances, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 or of a substantially conforming foreign statute within the previous ten years.

PC 5.14.15  
CH

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

**JAN M. BENNETTS**  
Ada County Prosecutor

  
\_\_\_\_\_  
Kari L. Higbee  
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 29 day of May 2015.

  
\_\_\_\_\_  
Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

CASE NO. FE-15-7608

vs Amanda Diaz

CLERK K. Gardner

DATE 05 / 29 / 2015 TIME 10:45

PROSECUTOR: KARI HIGBEE DOUG VARIE

CASE ID HAWLEY BEG. 113713

COURTROOM 204 END 113830

COMPLAINING WITNESS \_\_\_\_\_

INTOX \_\_\_\_\_

JUDGE

STATUS

- BERCZ
- BIETER
- CAWTHON
- COMSTOCK
- ELLIS
- FORTIER
- GARDUNIA
- HARRIGFELD
- HAWLEY
- HICKS
- KIBODEAUX
- \_\_\_\_\_
- \_\_\_\_\_

- MacGREGOR-IRBY
- MANWEILER
- McDANIEL
- MINDER
- OTHS
- REARDON
- SCHMIDT
- STECKEL
- SWAIN
- WATKINS

- STATE SWORN
- PC FOUND dui felony
- COMPLAINT SIGNED
- AMENDED COMPLAINT SIGNED
- AFFIDAVIT SIGNED
- JUDICIAL NOTICE TAKEN
- NO PC FOUND \_\_\_\_\_
- EXONERATE BOND \_\_\_\_\_
- SUMMONS TO BE ISSUED
- WARRANT ISSUED
- BOND SET \$ \_\_\_\_\_
- NO CONTACT

DR# \_\_\_\_\_

- MOTION TO REVOKE OR INCREASE BOND FOR NON-COMPLIANCE W/PT RELEASE CONDITIONS
- SET HEARING AT AR DATE ON MOTION TO REVOKE OR INCREASE BOND
- DISMISS CASE
- IN CUSTODY

COMMENTS

- AGENTS WARRANT w/ JUDGE PV AR set
- OUT OF COUNTY -RULE 5(B) \_\_\_\_\_ COUNTY \_\_\_\_\_ BOND \$ \_\_\_\_\_
- FUGITIVE (STATE) \_\_\_\_\_
- MOTION & ORDER TO CONSOLIDATE W/ \_\_\_\_\_

ADA COUNTY MAGISTRATE MINUTES

Amanda L B Diaz

CR-FE-2015-0007608

DOB

Scheduled Event: Video Arraignment Friday, May 29, 2015 01:30 PM

Judge: James Cawthon

Clerk: dc

Interpreter: \_\_\_\_\_

Prosecuting Agency: AC BC EA GC MC

Pros: A. Kostecka

PD/ Attorney: L. Estess

• 1 118-8004 F Driving Under the Influence-(Third or Subsequent Offense) F

15819 Case Called Defendant: Present Not Present In Custody

Advised of Rights Waived Rights PD Appointed Waived Attorney

Guilty Plea / PV Admit N/G Plea Advise Subsequent Penalty

Bond \$ 36,000.00 ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

PH 6/12/15 @ 8:30  
w/ Swain

Finish ( ) Release Defendant

20148

MAY 29 2015

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

By Christopher D. Rich, Clerk  
Deputy

STATE OF IDAHO, )  
Plaintiff, )  
vs. )  
AMANDA L B DIAZ, )  
Defendant. )

Case No. CR-FE-2015-0007608

**PRETRIAL RELEASE ORDER**  
 Amended

BOND \$ 35,000

The above-named defendant has been ordered, as a condition of bond, to the following:

**ACSO Monitoring** OR  **Unsupervised Conditions of Bond**  
**Ada County Sheriff's Pretrial Services Unit (PSU)**  
**Call by 9:00am next business day**  
**(208) 577-3444**  
7180 Barrister, Boise ID 83704  
Monday through Friday 8:00am to 4:00pm

**Basic Conditions for ALL types of pretrial release:**

- No new crimes
- Attend all court appearances
- No possession or consumption of illegal drugs; may only take medications as prescribed.
- No possession or consumption of **alcohol** or frequenting establishments where alcohol sales are primary source of revenue (**This condition also applies if alcohol monitoring is ordered**)
- No violation of No Contact Order or contact with alleged victim(s) \_\_\_\_\_
- Other: \_\_\_\_\_

**Conditions of ACSO Monitoring**

- Periodic reporting to the PSU as determined by Sheriff's Office Risk Assessment
- Defendant must provide accurate information to the PSU
- Notify PSU of any contact with Law Enforcement
- Defendant must notify the PSU of any and all changes in contact information (address, phone, employment, emergency contact information, etc.)
- Alcohol Monitoring as determined post interview by the PSU to include urinalysis (U.A.), ankle monitor (transdermal), or portable breath test  
  - or Court determined:  UA  Ankle Monitor  Portable Breath Test
  - Ankle monitor required prior to release from custody
- Drug Monitoring via random urinalysis (UA)
- GPS  GPS installation required prior to release from custody
- Other GPS Restrictions: \_\_\_\_\_

**This Section for PSU Use Only**

In-Custody: Y / N RLSD: \_\_\_\_\_ IPRAI: Y / N Score: \_\_\_\_\_  
Supervision Level: A B E I HR  
Charge: \_\_\_\_\_

Defendant is responsible for all associated costs for electronic monitoring or urinalysis fees at the time of testing. Defendant will follow all pretrial program instructions given by PSU, unless self-monitoring. If Defendant fails to comply with any of these terms, the PSU will promptly notify the Court of the alleged violations.

The Court may revoke bond and order Defendant to return to custody for any alleged violations.

Defendant \_\_\_\_\_ Date \_\_\_\_\_ Judge [Signature] Date 5/29/15

*al*

FILED 347  
 AM. \_\_\_\_\_ P.M. \_\_\_\_\_  
 Friday, May 29, 2015  
 CHRISTOPHER D. RICH, CLERK OF THE COURT  
 BY: \_\_\_\_\_  
 DEPUTY CLERK

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

STATE OF IDAHO,  
 Plaintiff.

vs.

Amanda L B Diaz  
 9624 Hoff Dr  
 Garden City, ID 83714

Defendant.

)  
 ) Case No: CR-FE-2015-0007608  
 ) **NOTICE OF APPOINTMENT OF PUBLIC DEFENDER**  
 ) **AND SETTING CASE FOR HEARING**  
 )  Ada  Boise  Eagle  Garden City  Meridian  
 )  
 )

TO: Ada County Public Defender

**YOU ARE HEREBY NOTIFIED** that you are appointed to represent the defendant in this cause, or in the District Court until relieved by court order. The case is continued for:

Preliminary ....Friday, June 12, 2015....08:30 AM  
 Judge: Kevin Swain

**BOND AMOUNT:** \_\_\_\_\_ The Defendant is:  In Custody  Released on Bail  ROR

TO: The above named defendant

**IT HAS BEEN ORDERED BY THIS COURT** that the defendant is to contact the Ada County Public Defender's Office at 200 W. Front Street, Room 1107, Boise, Idaho 83702. Telephone: (208) 287-7400. If the defendant is unable to post bond and obtain his/her release from jail, that the proper authorities allow the defendant to make a phone call to the Ada County Public Defender.

**IT HAS BEEN FURTHER ORDERED:** That the parties, prior to the pre-trial conference, complete and comply with Rule 16 I.C.R. and THAT THE DEFENDANT BE PERSONALLY PRESENT AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL: FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A BENCH WARRANT FOR THE DEFENDANT'S ARREST.

I hereby certify that copies of this Notice were served as follows on this date of Friday, May 29, 2015.

**Defendant:** Mailed \_\_\_\_\_ Hand Delivered  Signature J. Campbell 5391 6/29  
 Clerk / date \_\_\_\_\_ / \_\_\_\_\_ Phone ( ) \_\_\_\_\_

**Prosecutor:** Interdepartmental Mail  Clerk / date SB 6-2-15

**Public Defender:** Interdepartmental Mail  Clerk / date SB 6-2-15

[Signature]  
 Deputy Clerk

Cite Pay Website: <https://www.citepayusa.com/payments>  
Supreme Court Repository: <https://www.idcourts.us>



394  
PN  
6/12  
8:30

ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

JUN 01 2015

CHRISTOPHER D. RICH, Clerk  
By MAURA OLSON  
DEPUTY

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

STATE OF IDAHO,  
Plaintiff

vs.

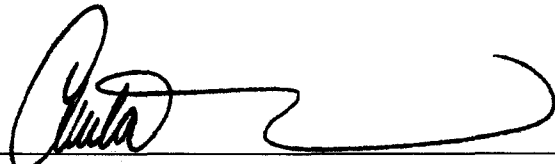
AMANDA L B DIAZ,  
Defendant.

Case No. CR-FE-2015-0007608

MOTION FOR BOND REDUCTION

COMES NOW, AMANDA L B DIAZ, the above-named defendant, by and through counsel ANITA M.E. MOORE, Ada County Public Defender's office, and moves this Court for its ORDER reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied their right to bail.

DATED, Monday, June 01, 2015.



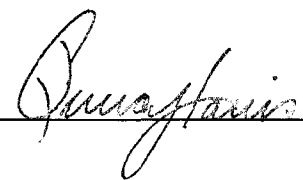
ANITA M.E. MOORE  
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Monday, June 01, 2015, I mailed a true and correct copy of the within instrument to:

MICHAEL A. HAWKINS  
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



MOTION FOR BOND REDUCTION

000012

\$

ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *3:50*

JUN 01 2015

CHRISTOPHER D. RICH, Clerk  
By MAURA OLSON  
DEPUTY

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

STATE OF IDAHO,  
Plaintiff

vs.

AMANDA L B DIAZ,  
Defendant.

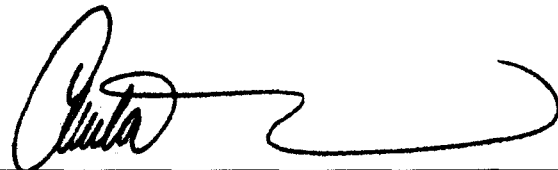
Case No. CR-FE-2015-0007608

NOTICE OF HEARING

TO: THE STATE OF IDAHO, Plaintiff, and to MICHAEL A. HAWKINS:

YOU, AND EACH OF YOU, are hereby notified that the defendant will call for a hearing on MOTION FOR BOND REDUCTION, now on file in the above-entitled matter, on Friday, June 12, 2015, at the hour of 08:30 AM, in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED, Monday, June 01, 2015.



ANITA M.E. MOORE  
Attorney for Defendant

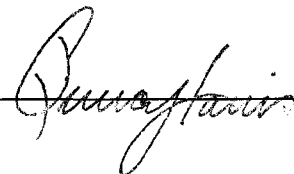
CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Monday, June 01, 2015, I mailed a true and correct copy of the within instrument to:

MICHAEL A. HAWKINS  
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.

NOTICE OF HEARING



000013

5

394  
PH  
6/12  
8:30

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

JUN - 9 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA CHRISTENSEN  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Michael A. Hawkins**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

THE STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant )  
\_\_\_\_\_ )  
)

Case No. **CR-FE-2015-0006858**  
**CR-FE-2015-0007608**

**MOTION TO CONSOLIDATE**

**COMES NOW**, Michael A. Hawkins, Deputy Prosecuting Attorney in and for the State of Idaho, County of Ada, and hereby moves this Honorable Court in the above entitled matter for an Order pursuant to Rule 13 of the Idaho Criminal Rules of Practice and Procedure consolidating criminal case CR-FE-2015-0006858 with criminal case CR-FE-2015-0007608 on the grounds and for the reasons that the facts,

*SW*

evidence and witnesses are the same in each case. An Order of consolidation would save witness and jury time and the expense for a separate and later trial.

DATED this 8 day of June 2015.

JAN M. BENNETTS  
Ada County Prosecuting Attorney



---

Michael A. Hawkins  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of June, 2015, I caused to be served, a true and correct copy of the foregoing Motion to Consolidate upon the individual(s) named below in the manner noted:

**Adam C. Kimball, Ada County Public Defender's Office (CRFE20150006858)**

**Anita Moore, Ada County Public Defender's Office (CRFE20150007608)**

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_

  
\_\_\_\_\_

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>1:31:30 PM</u>	Case Called	<b>Diaz Amanda L B FE-2015-0007608 in-Custody for Prelim HR</b>
<u>1:31:37 PM</u>	States Attorney	Michael Hawkins
<u>1:31:38 PM</u>	Defense Attorney	Anita Moore
<u>1:32:07 PM</u>	Defense Attorney	Waive Formal Reading of Complaint
<u>1:32:14 PM</u>	States Attorney	Motion to Consolidate
<u>1:32:30 PM</u>	Judge	Motion will take up motion to consolidate after hearing
<u>1:32:33 PM</u>	Judge	CT Grants Motion to Exclude Witnesses
<u>1:32:39 PM</u>	States Attorney	<b>Calls SW # 1 Officer Justin Moe /Sworn</b>
<u>1:33:29 PM</u>	States Attorney	DX SW #1
<u>1:33:52 PM</u>	Defense Attorney	Stipulates to officer training and experience for today's hearing only
<u>1:43:00 PM</u>	Defense Attorney	Objection/Hearsay
<u>1:43:01 PM</u>	Judge	Sustained
<u>1:46:03 PM</u>	Defense Attorney	CX SW #1
<u>1:49:35 PM</u>	States Attorney	RDX SW #1
<u>1:49:51 PM</u>	Defense Attorney	No RCX SW #1
<u>1:49:53 PM</u>	Judge	Nothing further witness steps down/Excused
<u>1:50:06 PM</u>	States Attorney	Moves to Admit SE #1
<u>1:50:40 PM</u>	Defense Attorney	Objection
<u>1:51:01 PM</u>	Judge	Overruled/So orders SE #1 Admitted
<u>1:51:27 PM</u>	States Attorney	<b>Calls SW #2 Officer Morgan Carter/Sworn</b>
<u>1:51:59 PM</u>	States Attorney	DX SW #2
<u>1:52:28 PM</u>	Defense Attorney	Stipulates to officer training and experience for today's hearing only
<u>1:58:05 PM</u>	Defense Attorney	Objection/Move to strike
<u>1:58:08 PM</u>	Judge	Overruled
<u>2:00:12 PM</u>	Defense Attorney	CX SW #2
<u>2:00:33 PM</u>	Judge	Nothing further witness steps down/Excused

<u>2:00:42 PM</u>	States Attorney	Moves to Admit SE #2
<u>2:01:01 PM</u>	Defense Attorney	No Objection
<u>2:01:15 PM</u>	Judge	So orders SE #2 Admitted
<u>2:01:23 PM</u>		Submit
<u>2:01:25 PM</u>	Judge	CT finds that the State has proved there is enough evidence to provide probable cause to sign Commitment and bind case over to District Court with Judge Bail on 6/22/2015 @ 1:30 pm for AR and further proceedings
<u>2:03:03 PM</u>	Judge	Signs Order to Consolidate with FE-15-06858
<u>2:03:32 PM</u>	States Attorney	signs for Exhibits
<u>2:03:32 PM</u>		End of Case
<u>2:03:32 PM</u>		

JUN 12 2015

CHRISTOPHER D. RICH, Clerk  
By CINDY HO  
DEPUTY

JAN M. BENNETTS  
Ada County Prosecuting Attorney

Michael A. Hawkins  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

RECEIVED  
JUN - 9 2015  
ADA COUNTY COURT CLERK

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

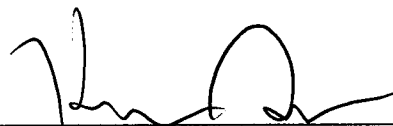
THE STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
AMANDA LUCYBELLE DIAZ )  
)  
Defendant )  
\_\_\_\_\_ )  
)

Case No. CR-FE-2015-0006858  
CR-FE-2015-0007608

ORDER TO CONSOLIDATE

This Motion for Consolidation having come before me and good cause being shown,  
**IT IS HEREBY ORDERED AND THIS DOES ORDER** that the Motion to  
Consolidate be granted.

DATED this 12 day of June, 2015.

  
\_\_\_\_\_  
Judge

*CH*



JUN 12 2015

CHRISTOPHER D. RICH, Clerk  
By CINDY HO  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

Michael A. Hawkins  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-FE-2015-0007608

**COMMITMENT**

Defendant's DOB: [REDACTED]  
Defendant's SSN: [REDACTED]

**THE ABOVE NAMED DEFENDANT, AMANDA LUCYBELLE DIAZ,** having been brought before this Court for a Preliminary Examination on the 12 day of June, 2015, on a charge that the Defendant on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did commit the crimes of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS AND/OR

*CHD*

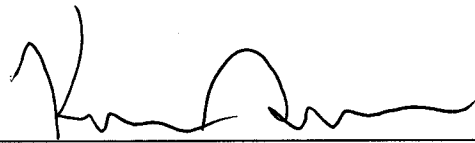
INTOXICATING SUBSTANCES (TWO OR MORE CONVICTIONS WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6) as follows:

That the Defendant, AMANDA LUCYBELLE DIAZ, on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did drive and/or was in actual physical control of a motor vehicle, to-wit: a gold 2000 Jaguar, on or at Overland Road, while under the influence of drugs and/or intoxicating substances, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 or of a substantially conforming foreign statute within the previous ten years.

The Defendant having so appeared and having had/having waived preliminary examination, the Court sitting as a Committing Magistrate finds that the offense charged as set forth has been committed in Ada County, Idaho, and that there is sufficient cause to believe that the Defendant is guilty of committing the offense as charged.

**WHEREFORE, IT IS ORDERED** that the Defendant be held to answer to the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, to the charge herein set forth. Bail is set in the sum of \$ 35,000.

DATED this 12 day of June, 2015.

  
\_\_\_\_\_  
MAGISTRATE

FILED 6-12-15 AT 2:04 .M.  
 CHRISTOPHER D. RICH,  
 CLERK OF THE DISTRICT COURT  
 BY [Signature]  
 Deputy

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. Amanda Diaz )  
 Defendant. )

PRELIMINARY HEARING NOTICE / MINUTE SHEET

Case Number: FE-15-07608  
 Case Called: Swain 91323  
 Ada  Special Hawkins 13130  
 PD / Private MOORE

- Defendant:  Present  Not Present  In Custody  PD Appointed  Waived Attorney  
 Advised of Rights  Waived Rights  In Chambers  Interpreter \_\_\_\_\_  
 Bond \$ 35,000  Pre-Trial Release Order  Motion for Bond Reduction Denied / Granted \_\_\_\_\_  
 Amended Complaint Filed  Complaint Amended by Interlineation  Reading of Complaint Waived  
 State / Defense / Mutual Request for Continuance \_\_\_\_\_  
 State / Defense Objection / No Objection to Continuance \_\_\_\_\_  
 Case continued to \_\_\_\_\_ at \_\_\_\_\_ am/pm for \_\_\_\_\_  
 Defendant Waives Preliminary Hearing  Hearing Held  Commitment Signed  
 Case Bound Over to Judge Bail on 6-22-15 at 1:30 am/pm  
 Case Dismissed after Preliminary Hearing / On State's Motion  Release Defendant, This Case Only

Order  
consolidate w/ FE-15-06858

ADA COUNTY COURTHOUSE, 200 W. FRONT STREET, BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

I hereby certify that copies of this notice were served as follows:

Defendant:  Hand Delivered  Via Counsel Signature [Signature]  
 Defense Atty:  Hand Delivered  Intdept Mail \_\_\_\_\_  
 Prosecutor:  Hand Delivered  Intdept Mail \_\_\_\_\_

By: [Signature]  
 Deputy Clerk

DATED 6/12/15

[Signature]

147  
ARR  
6/22  
1:30

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11 P.M.

JUN 16 2015

CHRISTOPHER D. RICH, Clerk  
By SARA MARKLE  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-FE-2015-0007608

**INFORMATION**

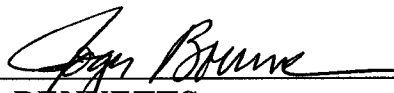
Defendant's DOB: [REDACTED]  
Defendant's SSN: [REDACTED]

**JAN M. BENNETTS**, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that AMANDA LUCYBELLE DIAZ is accused by this Information of the crimes of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS AND/OR INTOXICATING SUBSTANCES (TWO OR MORE CONVICTIONS WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6) which crime was committed as follows:

*sem*

That the Defendant, AMANDA LUCYBELLE DIAZ, on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did drive and/or was in actual physical control of a motor vehicle, to-wit: a gold 2000 Jaguar, on or at Overland Road, while under the influence of drugs and/or intoxicating substances, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 or of a substantially conforming foreign statute within the previous ten years. ?

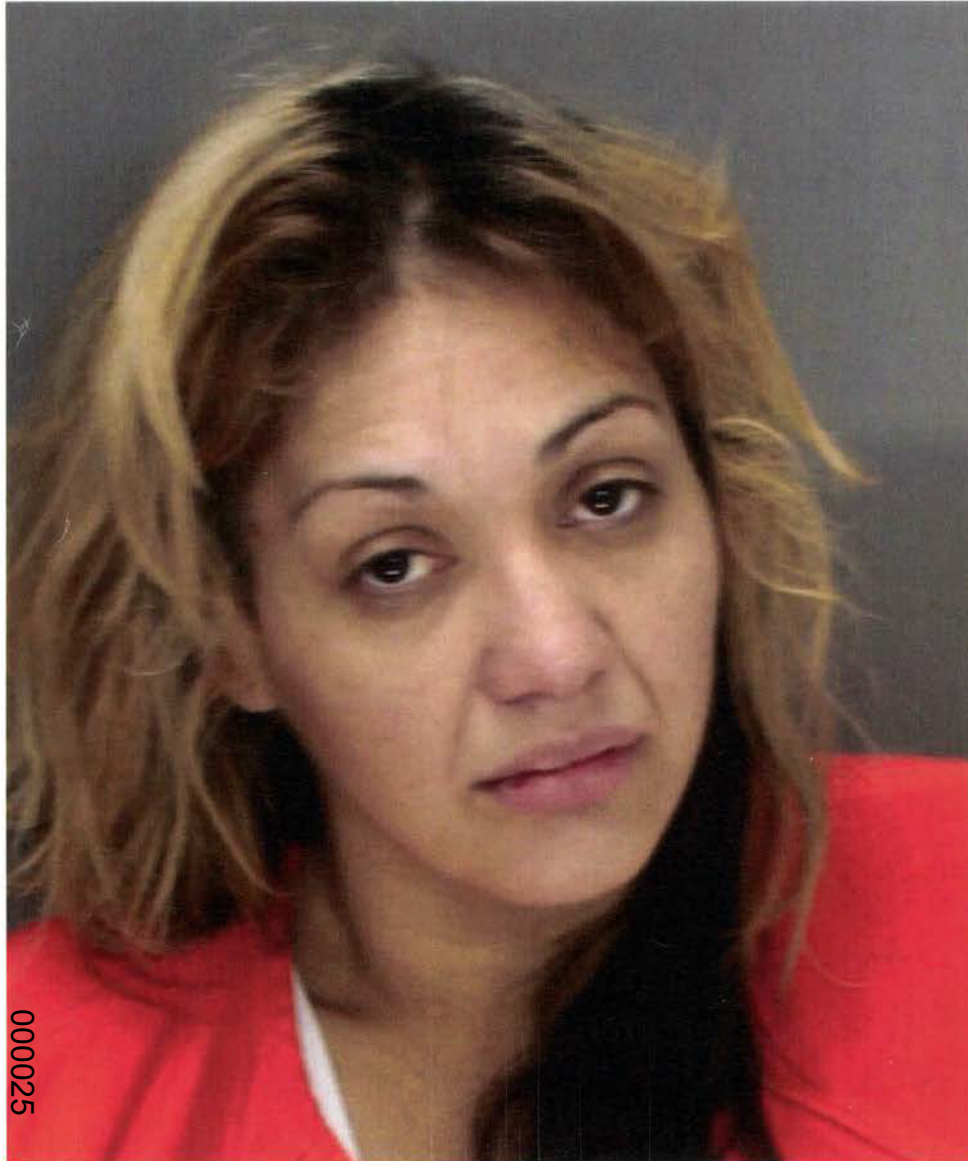
All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

*For*   
\_\_\_\_\_  
**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

Ada County Mugshot - Prosecutor's Office



User: PRSEIBSA



000025

Photo Taken: 2015-05-14 05:58:32

Name: DIAZ, AMANDA LUCY BELLE

Case #: CR-FE-2015-0006858

LE Number: 658170

DOB: [REDACTED]

SSN: [REDACTED]

Height: 503

Weight: 175

Drivers License Number:

Drivers License State:

Sex: F Race: I Eye Color: BRO Hair Color: BRO Facial Hair:

Marks: SHOULDER, RIGHT

Scars:

Tattoos:



Time	Speaker	Note
<u>1:35:27 PM</u>		<b>AMANDA DIAZ CR FE 15 06858/07608 ARRAIGNMENT</b>
<u>1:35:28 PM</u>		Present: Robert Bleazard for the State, Brian Marx for defense, defendant in custody
<u>1:36:49 PM</u>	Defendant	True name.
<u>1:37:01 PM</u>	Court	Advice of maximumj/minimum possible penalties for case 7608.
<u>1:37:40 PM</u>	Marx	Waive formal reading.
<u>1:37:47 PM</u>	Defendant	I understand the charges.
<u>1:37:52 PM</u>	Marx	Not Guilty.
<u>1:37:57 PM</u>	Court	I have an additional file that has no Information in it.
<u>1:38:06 PM</u>	Marx	Re consolidation - both cases stem from the same incident.
<u>1:38:42 PM</u>	Bleazard	The charge in case 6858 should be a DWP.
<u>1:39:32 PM</u>	Court	I can't arraign her on 6858 with no Information.
<u>1:39:44 PM</u>	Marx	We can set for Entry of Plea next week.
<u>1:39:57 PM</u>	Court	I think we should. But if no Information by then, I'll vacate the consolidation.
<u>1:40:34 PM</u>		End of case

147  
Plea  
6/29

FILED  
P.M. 2

JUN 25 2015

CHRISTOPHER D. RICH, Clerk  
by SARA WRIGHT  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

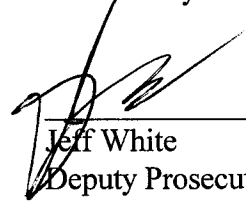
THE STATE OF IDAHO, )  
)  
Plaintiff, )  
vs. )  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
)  
)  
)  
\_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**  
**DISCOVERY**  
**RESPONSE TO COURT**

COMES NOW, Jeff White, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and informs the Court that the State has complied with the Defendant's Request for Discovery.

RESPECTFULLY SUBMITTED this 23 day of June 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

  
\_\_\_\_\_  
Jeff White  
Deputy Prosecuting Attorney

JW



Time	Speaker	Note
<u>02:11:03 PM</u>		<b>CRFE15-6858/15-7608 - State v Amanda Diaz - Arraignment/Entry of Plea - Custody</b>
<u>02:11:42 PM</u>	Judge	Has an information been filed?
<u>02:12:33 PM</u>	State	Yes it has
<u>02:12:40 PM</u>	Public Defender	We've agreed to amend the information to cover both cases into the 7608 case
<u>02:13:08 PM</u>		Understood rights?
<u>02:13:14 PM</u>		Yes
<u>02:13:17 PM</u>	Public Defender	Ask for JT to be set, may have issues w/suppression issues, ask for additional time
<u>02:13:56 PM</u>	Judge	Set for 9/15 @ 9:30, PTC: 8/31 @ 9:30 am, July 17 discovery compliance
<u>02:15:45 PM</u>		end case

JUN 30 2015

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE HARDY  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-FE-2015-0007608
	)	
vs.	)	<b>AMENDED INFORMATION</b>
	)	
AMANDA LUCYBELLE DIAZ,	)	Defendant's DOB: [REDACTED]
	)	Defendant's SSN: [REDACTED]
Defendant.	)	
_____	)	

**JAN M. BENNETTS**, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that AMANDA LUCYBELLE DIAZ is accused by this Information of the crimes of: I. OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS AND/OR INTOXICATING SUBSTANCES (TWO OR MORE CONVICTIONS WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6); and II. DRIVING WITHOUT PRIVILEGES, MISDEMEANOR, I.C. §18-8001(3) which crimes were committed as follows:

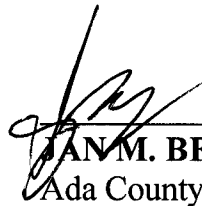
COUNT I

That the Defendant, AMANDA LUCYBELLE DIAZ, on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did drive and/or was in actual physical control of a motor vehicle, to-wit: a gold 2000 Jaguar, on or at Overland Road, while under the influence of drugs and/or intoxicating substances, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 or of a substantially conforming foreign statute within the previous ten years.

COUNT II

That the Defendant, AMANDA LUCYBELLE DIAZ, on or about the 13th day of May, 2015, in the County of Ada, State of Idaho, did drive and/or was in actual physical control of a motor vehicle, to-wit: a gold 2000 Jaguar, upon a highway, to-wit: Overland Road, knowing her driving privileges and/or driver's license was suspended in Idaho.

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

  
\_\_\_\_\_  
JAN M. BENNETTS  
Ada County Prosecuting Attorney

for:

FILED Tuesday, June 30, 2015 at 10:03 AM  
CHRISTOPHER D. RICH, CLERK OF THE COURT  
BY: Stephanie Hardy  
Deputy Clerk

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

DEBORAH A. BAIL  
DISTRICT JUDGE

June 30th, 2015

**THE STATE OF IDAHO,**  
Plaintiff,

Case No. CR-FE-2015-0007608

vs.

**AMANDA L B DIAZ,**  
Defendant.

NOTICE OF TRIAL SETTING

**THIS IS YOUR NOTICE OF TRIAL SETTING**

The above-entitled matter has been set for trial before the Court and a jury for:

Pretrial Conference.....Monday, August 31, 2015 @ 09:30 AM  
Judge: Deborah Bail

Jury Trial.....Tuesday, September 15, 2015 @ 09:30 AM  
Judge: Deborah Bail

- ▶ All requested jury instructions must be submitted to the court five (5) days prior to trial.
- ▶ Any motion to exclude a witness who was a victim of the alleged crime must be made two (2) weeks prior to trial.
- ▶ Discovery compliance date is set for July 17, 2015 .
- ▶ Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

- |                              |   |
|------------------------------|---|
| Hon. G. D. Carey             | Justice Gerald Schroeder                    |
| Hon. Dennis Goff             | Hon. Kathryn Sticklen                       |
| Hon. Renae Hoff              | Hon. Linda Trout (mediations only, limited) |
| Hon. Daniel C. Hurlbutt, Jr. | Hon. Darla Williamson                       |
| Hon. James Judd              | Hon. Ronald Wilper                          |
| Hon. D. Duff McKee           | Hon. William Woodland                       |
| Hon. James Morfitt           | <b>All Sitting Fourth District Judges</b>   |

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

**Copies to Counsel:**

ADA COUNTY PROSECUTORS OFFICE

BRIAN C MARX  
ATTORNEY AT LAW  
200 W FRONT ST RM 1107  
BOISE ID 83702

147  
PTC  
8/31  
9:30

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

JUL 17 2015

CHRISTOPHER D. RICH, Clerk  
By SARA WRIGHT  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

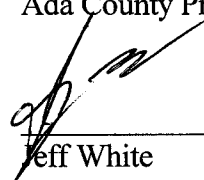
THE STATE OF IDAHO, )  
)  
Plaintiff, )  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
)  
)  
\_\_\_\_\_ )

Case No. CR-FE-2015-0007608  
**DISCOVERY  
RESPONSE TO COURT**

COMES NOW, Jeff White, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and informs the Court that the State has complied with the Defendant's Request for Discovery.

RESPECTFULLY SUBMITTED this 17 day of July 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

  
\_\_\_\_\_  
Jeff White  
Deputy Prosecuting Attorney

hm

JUL 17 2015

CHRISTOPHER D. RICH, Clerk  
By SARA WRIGHT  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 366  
Boise, Id. 83702  
Telephone: (208) 287-7700

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

THE STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**

**REQUEST FOR DISCOVERY**

**TO THE ABOVE NAMED DEFENDANT:**

**PLEASE TAKE NOTICE** that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

- (1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

*HW*

(2) Reports of Examinations and Tests:

The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense Witnesses:

The prosecution requests the defendant to furnish the State with a list of names and addresses of witnesses the defendant intends to call at trial.

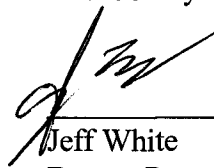
(4) Expert Witnesses:

The prosecution requests the defendant to provide a written summary or report of any testimony that the defense intends to introduce pursuant to Idaho Criminal Rule 16(c)(4), including the facts and data supporting the opinion and the witness's qualifications.

(5) Pursuant to Idaho Code Section 19-519, the State hereby requests that the defendant state in writing within ten (10) days any specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

**DATED** this 17 day of July 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney



---

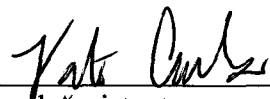
Jeff White  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 17<sup>th</sup> day of July 2015, I caused to be served, a true and correct copy of the foregoing Request for Discovery upon the individual(s) named below in the manner noted:

Brian Marx, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, ID 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By hand delivering copies of the same to defense counsel.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_

  
\_\_\_\_\_  
Legal Assistant



ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

NO. \_\_\_\_\_  
AM. 10:30  
JUL 28 2015  
CHRISTOPHER J. HARRIS, Clerk  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

AMANDA L B DIAZ,

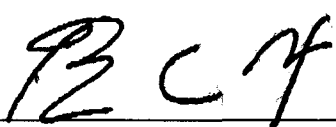
Defendant.

Case No. CR-FE-2015-0007608

MOTION FOR PRELIMINARY  
HEARING TRANSCRIPT

COMES NOW, AMANDA LB DIAZ, the defendant above-named, by and through her counsel BRIAN C. MARX, Ada County Public Defender's office, and moves this Court pursuant to ICR 5.1(d) for an ORDER providing typewritten transcripts of the preliminary hearing proceedings, which were held June 12, 2015 as they are essential and necessary for filing pretrial motions. The defendant, being indigent, also requests that the transcripts be prepared at the cost of Ada County, and as soon as possible.

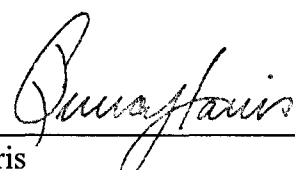
DATED, this 28 day of July 2015.



\_\_\_\_\_  
BRIAN C. MARX  
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 28 day of July 2015, I mailed (served) a true and correct copy of the within instrument to the Ada County Transcript Coordinator:



\_\_\_\_\_  
Quincy K. Harris



ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

RECEIVED  
JUL 28 2015  
Ada County Clerk

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 3:25

JUL 30 2015  
CHRISTOPHER D. RICH, Clerk  
By TARA VILLEREA  
DEPUTY

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

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
AMANDA L B DIAZ,  
  
Defendant.

Case No. CR-FE-2015-0007608

ORDER FOR PRELIMINARY  
HEARING TRANSCRIPT

For good cause appearing, this Court hereby grants the defendant's Motion for Preliminary Hearing Transcript. Pursuant to ICR 5.1(d), a typewritten transcript of the preliminary hearing held June 12, 2015 shall be prepared at the expense of Ada County, and as soon as possible.

SO ORDERED AND DATED, this 30<sup>th</sup> day of July, 2015.

*Deborah A. Bail*

DEBORAH BAIL  
District Judge

TV CC: PA/PT/Trans.

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8131  
9.30  
PTC

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:15 P.M. \_\_\_\_\_

AUG 07 2015

CHRISTOPHER D. RICH, Clerk  
By RAE ANN NIXON  
DEPUTY

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

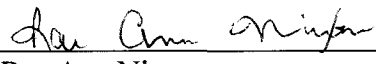
STATE OF IDAHO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CRFE-2015-0007608
	)	
AMANDA L. DIAZ,	)	NOTICE OF PREPARATION
	)	OF PRELIMINARY HEARING
Defendant,	)	TRANSCRIPT
_____	)	

An Order for transcript was filed in the above-entitled matter on July 30, 2015, and a copy of said Order was received by the Transcription Department on August 5, 2015. I certify the estimated cost of preparation of the transcript to be:

Type of Hearing: Preliminary Hearing  
Date of Hearing: June 12, 2015 Judge: Kevin Swain  
37 Pages x \$3.75 = \$138.75

In this case, the Ada County Public Defender's Office has agreed to pay for the cost of the transcript fee upon completion of the transcript.

The Transcription Department will prepare the transcript and file it with the Clerk of the District Court within thirty (30) days (or expedited days) from the date of this notice. The transcriber may make application to the District Judge for an extension of time in which to prepare the transcript.


Date: August 7, 2015  
  
\_\_\_\_\_  
Rae Ann Nixon  
Transcript Coordinator

Sam

CERTIFICATE OF MAILING

I certify that on August 7, 2015, a true and correct copy of the Notice of Preparation of Transcript was forwarded to Defendant's attorney of record, by first class mail, at:

Ada Co. Public Defender  
200 W. Front St. Ste. 1107  
Boise ID 83702  
BRIAN MARX

  
\_\_\_\_\_  
Rae Ann Nixon  
Transcript Coordinator

147  
8/31  
930  
PTC

**ADA COUNTY PUBLIC DEFENDER**  
Attorneys for Defendant

**BRIAN C. MARX, ISB #7694**  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 1038 P.M. \_\_\_\_\_

**AUG 17 2015**

CHRISTOPHER D. RICHT, Clerk  
By SARA MARKLE  
DEPUTY

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


STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CR-FE-2015-7608

**DEFENDANT'S MOTION TO  
SUPPRESS**

COMES NOW, the above-named Defendant, AMANDA DIAZ, by and through her Attorney of Record, the Ada County Public Defender's Office, BRIAN MARX, handling attorney, and hereby moves this Court to suppress all evidence seized as a result of the evidentiary testing.

DATED, this 14<sup>th</sup> day of August 2015.

  
\_\_\_\_\_  
**BRIAN MARX**  
Attorney for Defendant

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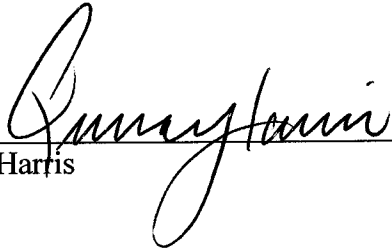
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY, that on this 14 day of August 2015, I mailed a true and correct copy of the foregoing to:

Jeffrey White, Ada County Prosecutor's Office

by:

- Interdepartmental Mail
- Hand Delivery
- U.S. Mail, Postage Prepaid
- Fax

  
\_\_\_\_\_  
Quincy Harris

**ADA COUNTY PUBLIC DEFENDER**  
Attorneys for Defendant

**BRIAN C. MARX, ISB #7694**  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 10:35 P.M. \_\_\_\_\_

**AUG 17 2015**

CHRISTOPHER D. RICH, Clerk  
By SARA MARKLE  
DEPUTY

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

**STATE OF IDAHO,** )  
 )  
 **Plaintiff,** )  
 )  
 vs. )  
 )  
 **AMANDA DIAZ,** )  
 )  
 **Defendant.** )  
 \_\_\_\_\_ )

**Case No. CR-FE-2015-7608**

**MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS**

**COMES NOW**, the above-named Defendant, AMANDA DIAZ, by and through her Attorney of Record, the Ada County Public Defender's Office, BRIAN MARX, handling attorney, and hereby states the following in support of her Motion to Suppress.

On May 13, 2015 law enforcement received a call from a citizen describing a poor driving pattern of a vehicle. Officer Hodges of the Meridian Police Department observed a vehicle with a matching license plate to the plate provided by the calling party and conducted a traffic stop.

Officer Moe of the Meridian Police Department conducted field sobriety tests and arrested Ms. Diaz on suspicion of Driving under the Influence. Ms. Diaz provided breath samples and the test results provided were .000. Officer Moe transported Ms. Diaz to the

*Sum*

Meridian Police Department and Officer Carter of the Meridian Police Department conducted a Drug Recognition Evaluation. Officer Carter alleges Ms. Diaz failed that evaluation. Officers requested Ms. Diaz submit to a urinalysis test. As no female officer was available it was agreed that the urine sample would be provided under the supervision of a female deputy at the Ada County Jail.

While being transported to the Ada County Jail, Ms. Diaz suffered an apparent medical emergency. Officer Moe stopped the patrol car on the way to the jail and requested paramedics. Ms. Diaz was transported to St. Luke's Meridian for evaluation. While at St. Luke's medical personnel inserted a catheter in to Ms. Diaz and obtained a urine sample for testing for the hospital and provided a sample for law enforcement to submit to the Idaho State Police lab for testing. Law enforcement did not obtain a warrant for the insertion of the catheter to obtain a sample for evidentiary testing.

*State v. Wulff 157 Idaho 416 (2014)* addresses voluntary consent and warrantless retrieval of an evidentiary sample. "Requiring that a person submit to a blood alcohol test is a search and seizure under the Fourth Amendment to the United States Constitution and Article 1 Section 17 of the Idaho Constitution." *Wulff 157 Idaho at 418 citing Schmerber v. California, 384 U.S. 757, 767 (1966); State v. Diaz 144 Idaho 300, 302 (2007)*. During Ms. Diaz's stay at the hospital, review of the audio indicates acquiescence to the insertion of the catheter.

"Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment." *Wulff 157 Idaho at 419 citing Coolidge v. New Hampshire 403 U.S. 443, 454-455 (1971); Diaz, 144 Idaho at 302*. "To overcome this presumption of unreasonableness, the search must fall within a well-recognized exception to the warrant requirement." *Coolidge 403 U.S. at 455; Diaz 144 Idaho at 302*. "Exigency and consent are two well recognized exceptions to the

*Audio not submitted to Court*




warrant requirement.” *Kentucky v. King* 131 S.Ct. 1849, (2011); *Diaz* 144 Idaho at 302. No exigency existed in this case and no per se exigency rule exists. “*Missouri v. McNeely* indicates that Idaho cannot use a per se exigency exception to the warrant requirement.” *Wulff* 157 Idaho at 419.

“Irrevocable implied consent operates as a per se rule that cannot fit under the consent exception...Voluntariness has always been analyzed under the totality of the circumstances approach.” *Wulff* 157 Idaho at 422. “Consent is not voluntary if it is the product of duress or coercion, express or implied.” *Wulff* at 422 citing *Schneckloth v. Bustamonte* 412 U.S. 216, 227 (1973). Ms. Diaz asserts that she felt she had no choice but to acquiesce to the insertion of the catheter. She felt that regardless of her desire to not provide a sample via the catheter, one would be inserted and a sample obtain so she ultimately gave in to the demands of law enforcement and hospital staff. Ms. Diaz asserts that the conduct of one of the female hospital staff was causing her flashbacks to prior trauma and that ultimately she agreed with law enforcement to the catheter to negotiate removal of that particular hospital staff. The sample was obtained under duress and pursuant to coercion.

Despite consent initially being given, the totality of the circumstances indicates that the consent was effectively revoked and Ms. Diaz urine was unlawfully seized and tested contrary to law and any results should be suppressed.

DATED, this 14<sup>th</sup> day of August 2015.

  
\_\_\_\_\_  
**BRIAN MARX**  
**Attorney for Defendant**

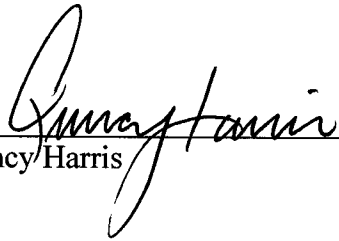
**CERTIFICATE OF MAILING**

I **HEREBY CERTIFY**, that on this 14 day of August 2015, I mailed a true and correct copy of the foregoing to:

Jeffrey White, Ada County Prosecutor's Office

by:

- Interdepartmental Mail
- Hand Delivery
- U.S. Mail, Postage Prepaid
- Fax

  
\_\_\_\_\_  
Quincy Harris

**ADA COUNTY PUBLIC DEFENDER**  
**Attorneys for Defendant**  
**200 West Front Street, Suite 1107**  
**Boise, Idaho 83702**  
**Telephone: (208) 287-7400**  
**Facsimile: (208) 287-7409**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 10:35 P.M. \_\_\_\_\_

**AUG 17 2015**

CHRISTOPHER D. RICH, Clerk  
By SARA MARKLE  
DEPUTY

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

**STATE OF IDAHO,**  
**Plaintiff**  
  
**vs.**  
**AMANDA DIAZ**  
**Defendant.**

**Case No. CR-FE-2015-7608**  
**NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN to all parties that the defendant will call for a hearing on DEFENDANT'S MOTION TO SUPPRESS, now on file in the above-entitled matter, on Monday, August 31, 2015 at 09:30AM in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

**DATED**, this 14<sup>th</sup> day of August 2015

  
\_\_\_\_\_  
**Brian Marx**  
**Attorney for Defendant**

**CERTIFICATE OF MAILING**

**I HEREBY CERTIFY**, that on this 14 day of August 2015, I mailed a true and correct copy of the foregoing to:

Jeffrey White, Ada County Prosecutor's Office

by:

\_\_\_\_\_ Interdepartmental Mail  
 Hand Delivery  
\_\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_\_ Fax

  
\_\_\_\_\_  
Quincy Harris

NOTICE OF HEARING

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NO. \_\_\_\_\_ FILED 4/18  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_  
**AUG 25 2015**  
CHRISTOPHER D. RICH, Clerk  
By MAURA OLSON  
DEPUTY

147  
PTC  
8/31  
9.30

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Phone: 287-7700  
Fax: 287-7709

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

STATE OF IDAHO, )  
)  
Plaintiff, )  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
\_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**  
**MOTION FOR LEAVE TO**  
**FILE INFORMATION**  
**PART II**

**COMES NOW, Jeff White**, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho and moves this Court for its Order for Leave to file an Information, Part II, in the above-matter based on what the State believes is the defendant's prior record as set out below.

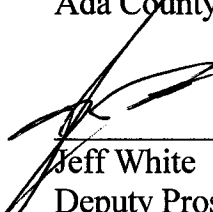
That the defendant, AMANDA LUCYBELLE DIAZ was convicted of the crime of Accessory After the Fact to Forgery, a Felony, and/or was convicted of the crime of Unlawful Possession of a Firearm, a Felony, and/or was convicted of the crime of Burglary, a Felony.

mas

The State's information as to the defendant's prior record is based on a state or national records check.

RESPECTFULLY SUBMITTED this 25 day of August, 2015.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

  
\_\_\_\_\_  
Jeff White  
Deputy Prosecuting Attorney

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of August 2015, I caused to be served, a true and correct copy of the foregoing State's Motion for Leave to File Information Part II upon the individual(s) named below in the manner noted:

Name and address: Brian Marx, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, ID 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By Hand Delivering said document to defense counsel.
- By emailing a copy of said document to defense counsel.
- By depositing copies of the same in the Interdepartmental Mail.

  
\_\_\_\_\_  
Legal Assistant

147  
PLC  
8/31  
930

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 447

AUG 26 2015

CHRISTOPHER D. RICH, Clerk  
By SARA WRIGHT

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 West Front Street, Room 3191  
Boise, ID 83702  
Telephone: (208) 287-7700

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

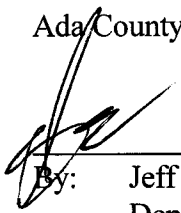
THE STATE OF IDAHO, )  
)  
Plaintiff, )  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
)  
\_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**  
**FIRST ADDENDUM TO**  
**DISCOVERY RESPONSE TO**  
**COURT**

**COMES NOW**, Jeff White, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Addendum to Response to Discovery.

**RESPECTFULLY SUBMITTED** this 26 day of August 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney



By: Jeff White  
Deputy Prosecuting Attorney





Time	Speaker	Note
11:34:55 AM		<b>CRFE15-7608 St v Amanda Diaz PTC&amp;Mo/Suppress&amp;Mo/Info Part II</b>
11:35:02 AM		Defendant present in custody
11:35:03 AM	State Attorney	Jeff White
11:35:04 AM	Public Defender	Brian Marx
11:35:25 AM	State Attorney	Hands the Court Information Part II
11:37:20 AM	Public Defender	no objection to the Information Part II, waives reading
11:37:35 AM	Judge	arraigns the Defendant on the Information Part II
11:39:37 AM	State Attorney	comments re: Motion to Suppress
11:42:08 AM	Public Defender	Responds
11:43:35 AM	Public Defender	Calls Amanda Diaz, sworn, direct examination
11:46:26 AM	State Attorney	Cross examination of the witness - Amanda Diaz
11:49:35 AM	Judge	excuses
11:49:40 AM	Public Defender	The Defense rests
11:49:41 AM	State Attorney	Calls Dustin Moe, sworn, direct examination
11:50:03 AM	State Attorney	Exhibit # 1 is marked and identified; moves to admit exhibit
12:01:08 PM	Public Defender	no objection
12:01:09 PM	Judge	Exhibit # 1 is admitted
12:01:10 PM	Public Defender	Cross-examination of the witness - Dustin Moe
12:06:27 PM	Judge	excuses the witness
12:06:37 PM	Public Defender	Argues Motion to Suppress
12:10:50 PM	State Attorney	Argues in opposition to Motion to Suppress
12:13:23 PM	Public Defender	Responds
12:14:24 PM	Judge	will issue a written decision



NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 10:00 P.M.

**AUG 31 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **TARA VILLEREAL**  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise Idaho 83702  
Telephone: (208) 287-7700

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**

**INFORMATION**

**PART II**

DOB [REDACTED]  
SSN [REDACTED]

**JAN M. BENNETTS**, Prosecuting Attorney in and for the County of Ada, State of Idaho, who, in the name of and by the authority of said State, prosecutes in its behalf, in proper person, comes now before the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, and given the Court to understand and to be further informed that, as PART II of the Information on file herein, the Defendant, **AMANDA LUCYBELLE DIAZ**, is a persistent violator of the law, in that the Defendant has heretofore been convicted of the following felonies, to-wit: I. Accessory After the Fact to Forgery, a Felony, in case number CR98-4326, II. Unlawful Possession of a Firearm, a

2

Felony, in case number CR01-3115 and III. Burglary, a Felony, in case number CR-FE-10-0017902.

**I**

That the said Defendant, AMANDA LUCYBELLE DIAZ, on or about the 7th day of July, 1999, was convicted of the crime of Accessory After the Fact to Forgery, a Felony, in the County of Ada, State of Idaho by virtue of that certain Judgment of Conviction made and entered by Honorable Judge Roger Burdick in case number CR98-4326.

**II**


That the said Defendant, AMANDA LUCYBELLE DIAZ, on or about the 18th day of April, 2002, was convicted of the crime of Unlawful Possession of a Firearm, a Felony, in the County of Twin Falls, State of Idaho by virtue of that certain Judgment of Conviction made and entered by Honorable Judge John C. Hohnhorst in case number CR01-3115.

**III**

That the said Defendant, AMANDA LUCYBELLE DIAZ, on or about the 22nd day of April, 2011, was convicted of the crime of Burglary, a Felony, in the County of Ada, State of Idaho by virtue of that certain Judgment of Conviction made and entered by Honorable Judge Patrick H. Owen in case number CR-FE-10-0017902.

**WHEREFORE**, the said Defendant, having been convicted previously of two (2) or more felonies, should be considered a persistent violator of the law, and should be sentenced accordingly pursuant to Idaho Code §19-2514, upon conviction of the charge(s) contained in PART I of the Information.

**DATED** this 26<sup>th</sup> day of August 2015.

*for*   
\_\_\_\_\_  
**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

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

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:55 P.M.

SEP 09 2015

THE STATE OF IDAHO,

Plaintiff,

vs.

AMANDA LUCYBELLE DIAZ,

Defendant.

Case No.: CR FE 2015-0007608

CHRISTOPHER D. RICH, Clerk  
By TARA VILLERREAL  
DEPUTY

ORDER RE: MOTION TO SUPPRESS

The defendant has moved to suppress evidence seized by the State. Evidence was presented to the Court on the motion on August 31, 2015. The Court notes, however, that the audio of the contact with the defendant was not submitted in evidence. There was no challenge to the defendant's initial stop or arrest—the issue in this case is whether the scope of the defendant's consent to submit to a urinalysis test was exceeded when she was forcibly catheterized at a local hospital. The Court's factual findings are as follows:

**I.**

**Factual Findings**

The defendant was stopped on suspicion of Driving Under the Influence. She performed field sobriety tests for Officer Dustin Moe of the Meridian Police Department who determined that there was reason to believe she was operating a motor vehicle under the influence of some substance. She was cooperative when arrested and performed the field sobriety tests as well as a BAC test. The reading on the BAC test was .00/.00 which indicated no presence of alcohol.

cc: PA/PO

Because the officer believed that she was under the influence of something, Diaz was asked if she would consent to a urinalysis test. A separate DRE evaluator was present during Officer Moe's contact, Officer Carter who did his evaluation and also felt Diaz was under the influence of drugs. Diaz was asked to submit to a urinalysis test which she agree to do. The Meridian Police Department had a policy of having a female officer supervise urinalysis tests with female suspects. On the night of the stop, no female officer was available so Officer Moe decided to take Diaz to the Ada County jail for the test. Officer Moe told her that she was under arrest. She became very upset and began yelling and screaming. As he was driving her to the Ada County jail, she continued to be very agitated. She abruptly stopped yelling. Officer Moe said her name several times without any response from her so he pulled over his patrol car. It appeared to him that Diaz had passed out so he called for additional officers and paramedics and tried to revive her himself. She did respond to him and was crying and said that she wanted to kill herself. When the paramedics arrived, they took her by ambulance, accompanied by Officer Brown of the Meridian Police Department in the ambulance, to St. Luke's Meridian where she was asked to provide a urine sample for Officer Moe, using an evidence kit supplied by him to the nurse. Officer Moe asked the hospital staff for help in getting the urine sample. A small amount of urine was provided in a bedpan which was not a sufficient sample. Other officers were also present and shouted at Diaz that she would be catheterized if she didn't give a urine sample and would be forcibly restrained. She screamed that she did not want to be catheterized her, that it was illegal, and that she did not want to undergo it because she had been sexually abused in the past. Hospital staff cut off her clothing, catheterized her and placed the urine in the evidence kit container and gave it to Officer Moe who submitted it to the crime lab. While Diaz would not answer questions asked her by medical staff, there was no testimony at the evidentiary hearing

by any qualified medical person that there was any medical necessity to obtain a urine sample for the police. She was forcibly catheterized and the urine was given to the officer in an evidence container which is not consistent with its use for medical purposes. It is clear from the testimony that hospital staff and the police officers present were working in concert and that Diaz was threatened with being forcibly catheterized to obtain the evidence sample because her voluntary sample was of insufficient quantity.

## II.

### Analysis

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. A warrantless search is presumed to be unreasonable unless one of the exceptions for the warrant requirement is established. Voluntary consent by a person to a search is one of the well-established exceptions to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *State v. Robinson*, 152 Idaho 961, 965, 277 P.3d 408, 412 (Ct. App. 2012). It is the State's burden to establish voluntary consent. *Id.* Where the basis for a search is consent, the search must conform to the limitations placed upon the right granted by the consent. *State v. Ballou*, 145 Idaho 840, 849, 186 P.3d 696, 705 (Ct. App. 2008); *State v. Thorpe*, 141 Idaho 151, 154, 106 P.3d 477, 480 (Ct. App. 2004). The applicable standard for determining the scope of a consent to search is one of "objective reasonableness—'what would the typical reasonable person have understood by the exchange between the officer and the suspect?'" *Florida v. Jimeno*, 500 U.S. 248, 251, 111 S. Ct. 1801, 114 L. Ed. 2d 297 (1991); *Ballou*, 145 Idaho at 849, 186 P.3d at 705. Additionally, a suspect may revoke a voluntary consent previously given. *State v. Thorpe*, 141 Idaho 151, 154, 106 P.3d 477, 480 (Ct. App.

2004).

In this case, Diaz consented to perform field sobriety tests, to perform a BAC test and to a urinalysis test which was to be performed at the Ada County jail. She did not consent to being catheterized to obtain the urine necessary for the urine test nor would any reasonable person assume that consenting to urinating into a container encompassed forced catheterization. The magnitude of the bodily invasion required for catheterization is significantly greater than providing a urine sample. At the hospital, Diaz did provide a voluntary urine sample but it was of insufficient quantity to test. She had not consented to a substantially more invasive procedure—the cutting off of her clothes and forced catheterization. Moreover, her screams that she did not want to be catheterized and that it was “illegal” make it abundantly clear that the scope of her consent had been exceeded. The evidence presented at this hearing did not include any evidence that at any point Diaz “acquiesced” in the catheterization although defense counsel’s brief refers to “acquiescence.” The conduct of the officers at the hospital and the hospital staff who were acting in concert to get the urine for the officer’s evidence kit are more consistent with resignation, if that is what occurred, than consent.

Diaz was subject to a Fourth Amendment waiver because she was on probation. No probation officer was contacted and none participated in any way in connection with this case. The Judgment of Conviction, Suspended Sentence and Order of Probation entered by Judge Owen and filed April 25, 2011 contained the requirement that she waive her Fourth Amendment rights applying to search and seizure and submit to search by “any law enforcement officer of her person...upon request.” Exhibit 2, pg. 4. Likewise, she was required to submit to “tests of blood, breath, saliva or urine or other chemical tests” at the request of her probation officer or any law enforcement officer. *Id.* However, none of the officers involved in the case made any

“request” pursuant to her status as a probationer and, even if they had, it strains credulity to read the consent by a probationer to testing in order to receive probation as including a procedure as invasive as catheterization. As one who has imposed the same conditions on hundreds, if not thousands of probationers, the kind of testing contemplated by the required waivers of probationers of their Fourth Amendment rights and the requirement to consent to normal tests of blood, breath or urine is not so expansive as to include invasive procedures other than normal blood testing. The scope of the court-ordered testing is not that broad.

The State has failed to meet its burden. The law enforcement officers exceeded the scope of the consent which had been given and acted in spite of the plain revocation of the consent. The motion to suppress is granted.

It is so ordered.

Dated this 8<sup>th</sup> day of September, 2015.

A handwritten signature in black ink, appearing to read "Deborah A. Bail". The signature is written in a cursive style and is positioned above a horizontal line.

Deborah A. Bail  
District Judge

SEP 11 2015

CHRISTOPHER D. RICH, Clerk  
By TARA VILLEREA  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 West Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )

**Case No. CR-FE-2015-0007608**

**MOTION TO VACATE AND RESET  
JURY TRIAL, AND REQUEST FOR  
EXPEDITED HEARING**

**COMES NOW**, Jeff White, Deputy Prosecuting Attorney for Ada County, State of Idaho, and moves the above-entitled Court for its Order vacating and resetting the jury trial in this matter that is currently scheduled to begin on Tuesday, September 15, 2015, and for an expedited hearing on this motion, for the following reasons:

- The Information in this case was filed on or about June 16, 2015. Defendant ultimately appeared before this Court on June 29, 2015. At that time, she entered a plea of not guilty and the matter was set for pretrial conference and jury trial. Trial was scheduled to begin on September 15, 2015.
- Defendant, by and through her counsel of record, filed a motion to suppress evidence on August 17, 2015. Defendant requested suppression of certain evidence related to a urine sample collected after her arrest at a hospital.
- Because the motion was filed so close to the trial date, the matter was scheduled to be heard on the existing pretrial conference date of August 31, 2015.

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- The matter was brought up for hearing on that date, and the Court took the issue under advisement.
- On September 9, 2015, less than one week prior to trial, both counsel were provided a copy of an Order granting Defendant's motion.
- While the State does not believe this particular suppression order to be dispositive, it fundamentally alters the character of the State's case and introduces several new evidentiary issues.
- The State has a right to appeal the Order pursuant to I.A.R. 11(c)(7). The determination of whether such appeal is to be taken is a matter that must be decided by the Idaho Attorney General's Office, who is not a party to this action and is unfamiliar with the circumstances of the case. Additional review is required before the State can make a fully informed determination of whether it intends to proceed with an appeal.
- Due to the incredibly short time prior to the currently set trial date, it is not possible to fully review this matter for appeal on the current schedule.
- I.A.R. 14(a) provides that the State has forty-two (42) days from the date the appealable order is entered to file a notice of appeal, although it is highly doubtful the review process will take that long.
- Keeping the current trial date will irreparably prejudice the State's ability to potentially exercise its appellate rights in this matter. If Defendant is convicted at the jury trial, any appeal would be moot. If Defendant is acquitted, the State is barred from further appeals by operation of the Double Jeopardy Clause.
- Defense counsel has also indicated his intention to file a Motion in Limine to request the exclusion of additional evidence based upon the Court's Order; namely the DRE evaluation, based upon what is now a lack of subsequent confirmatory urinalysis test results.
- The State is not and will not be prepared to argue the merits of any such motion prior to the start of the current jury trial. While the suppression of the urinalysis results was not fatal to the State's case, complete exclusion of the DRE evaluation could potentially be fatal.
- The State also has many, many hours of potential audio exhibits from the different officers who are potential witnesses in this case. The primary officer's audio is nearly three hours long, plus three additional audio tracks from other officers.

- There is no dispute between the attorneys in this case that portions of these audio tracks are not admissible and must be redacted. However, the Court's Order suppressing evidence has further altered what must be redacted, and any ruling on Defendant's Motion in Limine would again significantly affect what redactions must be done to these audio tracks.
- Because the audio tracks are so lengthy, it is also a very lengthy process to redact them. Even if there were to be a hearing on the matter on September 14, it is highly unlikely redactions could be completed in time for the currently set jury trial.
- In short, the State is representing at this point that is not prepared to begin a jury trial on September 15, and due to the various evidentiary issues that now exist there is no chance the State will be able to be ready for a jury trial to start September 15.
- This matter was set quickly for jury trial and well within the 180 day time line for speedy trial. By the State's calculation, speedy will not run until approximately December 12, 2014. This allows more than enough time to reset the jury trial, allow time for the various evidentiary and appellate issues to be sorted out, and still fully respect Defendant's right to a speedy trial.
- Defendant is in custody on this matter, but is also being held on a "no bond" probation violation in Ada County Case No. CRFE-10-17902. The allegations of probation violation in that case extend beyond anything to do with this case, so a continuance will not affect her custody status.
- Given the State's inability to proceed on September 15, the State can only think of three options: continue the trial, file an appeal of the suppression order immediately without a full review, or dismiss the felony charge and refile it.
- Dismissal of the charge at this point is not an option the State is willing to consider, as it is likely the current order would become *res judicata* and the State would lose the right to seek appellate review of it.
- The State can represent that the Idaho Attorney General's Office has indicated that it is willing, if necessary, to file an immediate notice of appeal for the purpose of preserving the State's right to appeal the granting of the motion to suppress.
- This is not the preferred option and may well result in additional delays. A more complete review of the instant case and the Court's Order could lead to the determination that the State does not wish to proceed with the appeal. In that event, the appeal would be withdrawn and the case would have to then be reset for another jury trial. Depending on

how long that might take and when the case returned to the Court, it could easily result in a reset trial date that would be set farther out than if the Court were simply to continue it.

- There is ample time in which to continue the trial, allow all parties to exercise their various constitutional and statutory rights, and allow for all remaining appellate and evidentiary issues to be resolved.
- Given the short time now remaining, the State respectfully requests that this motion be set for an expedited hearing, preferably on the Court's 9:30 calendar Monday, September 14, 2015.

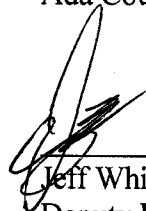
**CONCLUSION**

For the foregoing reasons, the State respectfully requests that the Court grant the following relief:

- Set this motion for an expedited hearing on September 14, 2015, at 9:30, or such other time as is convenient to the Court; and
- Vacate and reset the currently set jury trial to a time convenient to the Court and the parties while respecting the speedy trial rights of the Defendant.

**RESPECTFULLY SUBMITTED** this 11 day of September, 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney



---

Jeff White  
Deputy Prosecuting Attorney

**CERTIFICATE OF MAILING**

I **HEREBY CERTIFY** that on this 11<sup>th</sup> day of September 2015, I caused to be served a true and correct copy of the foregoing documents upon the individual(s) named below in the manner noted: **Brian Marx, Ada County Public Defender, 200 W. Front Street, Boise, ID, 83702.**

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_

  
\_\_\_\_\_  
Legal Assistant

Time	Speaker	Note
<b>09:12:27 AM</b>		<b>CRFE15-7608 St v Amanda Diaz Re-Set Jury Trial</b>
<b>09:12:55 AM</b>	State Attorney	Jeff White
<b>09:12:56 AM</b>	Public Defender	Brian Marx
<b>09:35:43 AM</b>	Judge	Calls case
<b>09:35:53 AM</b>		Defendant is present in custody
<b>09:36:02 AM</b>	Judge	met with counsel in chambers yesterday regarding continuance of trial
<b>09:36:26 AM</b>	Judge	Re-sets Jury Trial - November 5 @ 9:30 am and PTC - October 26 @ 9:30 am. The Court will set Def. Motion in Limine once both sides file their briefs.

FILED  
Tuesday, September 15, 2015 at 02:30 PM  
CHRISTOPHER D. RICH, CLERK OF THE COURT  
BY: *Christopher D. Rich*  
Deputy Clerk

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

DEBORAH A. BAIL  
DISTRICT JUDGE

September 15, 2015

THE STATE OF IDAHO,  
Plaintiff,

Case No. CR-FE-2015-0007608

vs.

AMANDA L B DIAZ,  
Defendant.

NOTICE OF RE-SETTING TRIAL

**THIS IS YOUR NOTICE OF RE-SETTING TRIAL**

The above-entitled matter has been re-set for trial before the Court and a jury for:

Pretrial Conference.....Monday, October 26, 2015 @ 9:30 AM

Jury Trial.....Thursday, November 5, 2015 @ 9:30 AM

- ▶ All requested jury instructions must be submitted to the court five (5) days prior to trial.
- ▶ Any motion to exclude a witness who was a victim of the alleged crime must be made two (2) weeks prior to trial.
- ▶ Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. G. D. Carey  
Hon. Cheri Copsey  
Hon. Dennis Goff  
Hon. Renae Hoff  
Hon. James Judd  
Hon. D. Duff McKee

Hon. Thomas Neville  
Justice Gerald Schroeder  
Hon. Kathryn Sticklen  
Hon. Darla Williamson  
Hon. Ronald Wilper  
**All Sitting Fourth District Judges**

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

**Copies to Counsel:**

ADA COUNTY PROSECUTORS OFFICE

ADA COUNTY PUBLIC DEFENDERS OFFICE

P  
10/14/17  
9:20  
20

FILED  
A.M. 10 40 P.M.

SEP 28 2015

**ADA COUNTY PUBLIC DEFENDER**  
**Attorneys for Defendant**

**BRIAN C. MARX, ISB #7694**  
**Deputy Public Defender**  
**200 West Front Street, Suite 1107**  
**Boise, Idaho 83702**  
**Telephone: (208) 287-7400**  
**Facsimile: (208) 287-7409**

CHRISTOPHER D. RICH, Clerk  
By KATRINA CHRISTENSEN  
DEPUTY

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

**STATE OF IDAHO,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **AMANDA DIAZ,** )  
 )  
 **Defendant.** )  
 )  
 )

**Case No. CR-FE-2015-7608**

**DEFENDANT'S MOTION TO EXCLUDE DRE**

COMES NOW, the above-named Defendant, AMANDA DIAZ, by and through her Attorney of Record, the Ada County Public Defender's Office, BRIAN MARX, handling attorney, and hereby moves this Court to exclude the Drug Recognition Evaluation (DRE) conducted in this case.

This Court heard evidence during a suppression hearing regarding the urinalysis results obtained in this matter. This Court entered an Order suppressing the results obtained from the urinalysis testing. That testing produced a positive result for oxycodone, amphetamine, and methamphetamine. The incident leading to the charges is alleged to have occurred on May 13, 2015. The state has provided Defendant's Board of Pharmacy records for the State of Idaho. Defendant filled a prescription for Oxycodone and Dextroamp-Amphetamine on April 28, 2015.

✓

Idaho State Police Forensic Services does not provide a quantitative value. The quantity found within Defendant as to those two substances could have been for a therapeutic use but that is unknown due to the testing protocols in place.

Officer Morgan Carter of the Meridian Police Department conducted the DRE. He concluded Defendant was under the influence of CNS Depressants, CNS Stimulants, and Narcotic Analgesics. Allowing officers to testify regarding their believed speculation as to substances Defendant has ingested is unduly prejudicial in this matter. Two-thirds of the substances alleged by officers have a valid, medical prescription and cannot be verified by the lab result as being taken outside of prescribed quantities.

The DRE is a two-step test, visual observations and confirmatory urinalysis or blood test. This Court has excluded the confirmatory test. Allowing the state to present evidence regarding the first step of the DRE unduly prejudices the Defendant. This first step should have confirmatory testing to verify and confirm the observations of the officers. Without this confirmatory testing, the officer observations are mere speculation or hunches. This final step is the most important part of a DRE investigation. This final step is not influenced by other factors such as stress, physical disability or preconceived notions of the officers.

Allowing the state to present a partial DRE without the confirmatory testing as valid scientific evidence invites the jury to conclude the Defendant is guilty of driving under the influence without a proper testing protocol being admitted to the jury hearing this matter. The jury would be left with the impression that a valid scientific test occurred when in reality it was only a partial test the jury is hearing about. Were this Court to find that this evidence passes the hurdle required under Idaho Rule of Evidence 403, this testimony and evidence the state purports to admit to the jury does not pass the hurdles required by Idaho Rules of Evidence 701 and 702.



The Idaho Court of Appeals held in *State v. Stark* 157 Idaho 29 (Ct.App.2013) that the state must not only prove impairment but that the impairment comes from an intoxicating substance. In *Stark* the state presented evidence that the defendant was impaired and had consumed marijuana as evidenced by the metabolite found in his evidentiary sample. The Court in *Stark* found that this was insufficient to uphold a conviction as more was needed. The Idaho Court of Appeals examined this issue further in *State v. Morin* 158 Idaho 622 (Ct.App.2015). *Morin* takes this analysis further and allowed evidence of the metabolite as the state provided sufficient evidence to link the results of evidentiary testing to impairment.

*Stark* and *Morin* should be read to exclude the DRE initial stages from trial in this matter. The state cannot show that the level of impairment is linked to an intoxicating substance. *Stark* and *Morin* would appear to indicate that you cannot have one without the other. You cannot have just a DRE initial observations or just an evidentiary sample. Both parts of the DRE must be completed and available for presentation to the jury. Without a confirmatory sample from evidentiary testing the officer's observations are mere speculation and conjecture and not allowable testimony.

In this case, the presence of valid prescriptions for some of the controlled substances located shows the need to sufficiently corroborate and link the initial observations to some form of testing. Even without an Order granting the Motion to Suppress the state would not be able to sufficiently provide the necessary evidence given the lack of quantitative testing that exists. This corroboration and linkage cannot be accomplished and the initial observations created by the officers should be excluded.

DATED, this 28<sup>th</sup> day of September 2015.

  
\_\_\_\_\_  
**BRIAN MARX**  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY, that on this 28 day of September 2015, I mailed a true and correct copy of the foregoing to:

Jeffrey White, Ada County Prosecutor's Office

by:

- Interdepartmental Mail  
 Hand Delivery  
 U.S. Mail, Postage Prepaid  
 Fax

  
\_\_\_\_\_  
Quincy Harris

OCT 23 2015

CHRISTOPHER D. RICH, Clerk  
By ARIC SHANK  
DEPUTY

147  
PTC  
10/26  
9:30

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 West Front Street, Room 3191  
Boise, ID 83702  
Telephone: (208) 287-7700

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

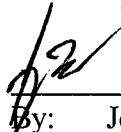
THE STATE OF IDAHO, )  
)  
Plaintiff, )  
vs. )  
)  
AMANDA LUCYBELLE DIAZ, )  
)  
Defendant. )  
)  
\_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**  
**THIRD ADDENDUM TO  
DISCOVERY RESPONSE TO  
COURT**

COMES NOW, Jeff White, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Addendum to Response to Discovery.

**RESPECTFULLY SUBMITTED** this 23rd day of October 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

  
By: Jeff White  
Deputy Prosecuting Attorney

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PTC  
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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

OCT 23 2015

CHRISTOPHER D. RICH, Clerk  
By ARIC SHANK  
DEPUTY

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 West Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**

**STATE'S OBJECTION TO MOTION  
TO EXCLUDE DRE**

**COMES NOW**, Jeff White, Deputy Prosecuting Attorney for Ada County, State of Idaho, does object to Defendant's Motion to Exclude DRE, for the following reasons.

The State's initial objection is that the State believes the motion itself is moot. The basis of Defendant's motion is that the Court suppressed the results of urinalysis testing done on a urine sample obtained from Defendant and sent to the Idaho State Police Forensic Laboratory for testing. Defendant believes that without a confirmatory test of some kind, the DRE's observations are "mere speculation." However, despite the suppression of the ISP lab test, the State still intends to admit the results of an alternate urine test. On the same night while receiving medical treatment at St. Luke's, and alternate urine sample was collected from Defendant by a nurse at the hospital. This sample was collected purely for medical treatment purposes and was tested by the hospital's own lab. The sample was found to be positive for a litany of controlled substances, and the State intends

*[Handwritten mark]*

to rely upon this evidence at trial<sup>1</sup>. Given that there is a confirmatory test supporting the DRE results, Defendant's motion is misplaced.

Even without the confirmatory test results, Defendant's motion should not be granted. The description of the DRE evaluation as simply being "speculation" is incorrect. As Officer Carter (the officer who performed the DRE evaluation) will testify to at trial, in order to be certified as a DRE the officer must undergo several hours of highly specialized training. The entire focus of this training is to enable the officer to determine, based on a battery of standardized tests, the specific intoxicating drug and/or drugs that a suspect is presently under the influence of at any given time. A suspect participating in a DRE evaluation is put through a number of tests (far greater than the three standardized field sobriety tests) while the officer observes the manner in which the suspect's body reacts. Examples of these tests include, but are not limited to:

- Light tests of the suspects pupils to gauge their reactions to light stimuli;
- The modified Romberg test designed to inspect the suspect's ability to estimate the passage of time;
- Vertical and horizontal nystagmus testing;
- Pulse, body temperature, and blood pressure testing; and
- Balance testing such as the one leg stand test.

The results of these tests, combined with the officer's specialized knowledge of how different types of drugs affect the human body, allow the officer to formulate an expert opinion on whether the suspect is presently under the influence of one or more drugs.

Defendant has not cited to a single case in which a DRE evaluation was excluded due to a lack of lab testing to confirm the presence of drugs. The arguments raised by Defendant are not properly addressed to the admissibility of the evaluation itself, but rather go to the weight the jury should attach to such evidence.

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<sup>1</sup> The State is currently in the process of drafting a Motion in Limine on this issue, supported by affidavits in the form of an offer of proof. The motion will be filed once the supporting documents have been received.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that the Court deny the motion.

**RESPECTFULLY SUBMITTED** this 23 day of October, 2015.

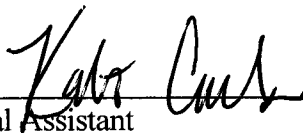
**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

  
\_\_\_\_\_  
Jeff White  
Deputy Prosecuting Attorney

**CERTIFICATE OF MAILING**

I **HEREBY CERTIFY** that on this 23<sup>rd</sup> day of October 2015, I caused to be served a true and correct copy of the foregoing documents upon the individual(s) named below in the manner noted: **Brian Marx, Ada County Public Defender, 200 W. Front Street, Boise, ID, 83702.**

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_

  
\_\_\_\_\_  
Legal Assistant

OCT 23 2015

CHRISTOPHER D. RICH, Clerk  
By MEG KEENAN  
DEPUTY

147

PTC

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

10/26

**Jeff White**  
Deputy Prosecuting Attorney  
200 West Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

9:30

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**Case No. CR-FE-2015-0007608**

**STATE'S MOTION IN LIMINE  
REGARDING ADMISSION OF  
HOSPITAL URINALYSIS TEST**

**COMES NOW**, Jeff White, Deputy Prosecuting Attorney for Ada County, State of Idaho, and moves this Court for a pretrial determination that the State will be allowed to admit the results of a urine sample test completed by St. Luke's Medical Center lab personnel at the trial in this matter, subject to the State laying the necessary foundation at trial.

By way of offer of proof, the State relies on the affidavits of Lyndsy Kinghorn, Contessa Johnson, and Gary Dawson which have been filed concurrently with this motion. In summary, Ms. Diaz was taken to the St. Luke's Medical Center facility on Eagle Road in Meridian by the Meridian Police Department on the night of the DUI arrest that is the subject of this case. While at the hospital, and as a part of her medical treatment, her treating physician (Dr. Kessler) ordered a urinalysis test for the presence of drugs. The sample was collected by RN Lyndsy Kinghorn using a temporary, "in and out" catheter. This urine sample was promptly delivered to the lab using a secure pneumatic tube system, where it was tested by Contessa Johnson using an immunoassay test that is

MA

a generally accepted and reliable drug testing method. The sample returned a positive result for several different controlled substances.


While the Court did previously suppress the test results from a different urine sample collected at the request of law enforcement, the urine sample that is the subject of this motion is not subject to that order. St. Luke's medical personnel conducted this testing on their own, for their own medical purposes, and without regard to law enforcement. As there is no "state action" related to the collection or testing of this sample, it is not subject to suppression. *See Exhibit A*, a recent decision from a District Court case in Jerome County, offered by the State as persuasive authority in this matter.

**CONCLUSION**

Based upon the State's offer of proof, the State respectfully requests that the Court grant this motion and allow the use of the hospital urinalysis test, subject to the State being able to establish the requisite foundation for its admission at trial.

**RESPECTFULLY SUBMITTED** this 23 day of October, 2015.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney



---

Jeff White  
Deputy Prosecuting Attorney



File

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2015 JUN 12 PM 12:43

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

*Michelle Emerson*

BY \_\_\_\_\_  
DEPUTY

STATE OF IDAHO, )  
)  
Plaintiff, )  
)  
vs. )  
)  
BERNADETTE NELSON, )  
)  
Defendants. )

Case No. CR-2014-1468

**MEMORANDUM DECISION RE: DEFENDANT'S MOTION IN LIMINE TO EXCLUDE HOSPITAL BAC TEST RESULTS**

On June 8, 2015 the Court heard the defendant's Motion In Limine to exclude the defendant's BAC test results obtained from St. Luke's Medical Center. The State was represented by Deputy Prosecutor, Sandra Scott and the defendant, who was not present, was represented by Jerome County Public Defender, Stacey DePew. The Court having considered the briefs of the parties and arguments of Counsel, took the matter under advisement for a written decision

**I.**

**FACUTAL AND PROCEDURAL BACKGROUND**

On Monday, March 31, 2014 at approximately 11:30 a.m. Trooper Bingham responded to a two vehicle crash with injuries on I-84 between Jerome's East and West exit. EMT personnel

STATE'S EXHIBIT  
000076

and other County Sheriff's Deputies were on scene at the time Trooper Bingham arrived though EMT personnel had already transported the defendant, Bernadette Nelson (Nelson), to St. Luke's Magic Valley Hospital in Twin Falls for medical attention. A Sheriff's Deputy informed him that EMTs reported that the driver of one of the vehicles, the defendant, smelled of alcohol.

After Nelson arrived at St. Luke's a phlebotomist took multiple samples of the defendant's blood, first collecting evidentiary samples for ISP and then samples for the hospital's purposes for medical treatment of the defendant.<sup>1</sup>

The defendant has been charged with the felony offense of Aggravated Driving Under the Influence of Alcohol.

## II.

### MOTION IN LIMINE STANDARD

"A motion in limine is a request for a ruling on the admissibility of evidence, made in advance of the offer of the evidence and outside the presence of the jury." Lewis, IDAHO TRIAL HANDBOOK § 3:2 (2d ed. 2005). The court's ruling on a motion in limine "enables counsel on both sides to make strategic decisions before trial concerning the content and order of evidence to be presented." *Davidson v Beco Corp.*, 112 Idaho 560, 733 P.2d 781 (Ct. App. 1986).

The admissibility of expert testimony is a matter of discretion for the trial court. *State v Hopkins*, 113 Idaho 679, 680, 747 P.2d 88, 90 (1987). First, the trial court in the exercise of its discretion must determine if the expert is qualified to express an opinion on the subject matter to which he will be testifying. *Id.*, 747 P.2d at 90. Secondly, if the expert is "qualified", then the court in the exercise of its discretion "...must determine whether such expert opinion testimony will assist the trier of fact in understanding the evidence." *Id.*, 747 P.2d at 90. The court must

---

<sup>1</sup> This Court previously suppressed the BAC test results obtained from the ISP blood samples based on a warrantless seizure in violation of the 4<sup>th</sup> Amendment. The State now seeks to use the hospital BAC testing in its case-in-chief.

also find that the proposed expert testimony is "competent and relevant." *Id.*, 747 P 2d at 90. Expert testimony which has no factual support or is otherwise speculative is not competent nor is it relevant and would therefore not be admissible.

### III.

#### ANALYSIS

The issue presented to this Court by the defendant is whether her BAC test results performed by St. Luke's are admissible at trial. There is no dispute that St. Luke's performed a test on the defendant's blood for alcohol.<sup>2</sup> The test conducted was not of the defendant's "whole blood" and was only a serum blood test. The State concedes that St. Luke's has not been certified or approved by the Idaho State Police (ISP) to conduct such testing and that St. Luke's did not use a testing method approved by ISP. It is for these reasons the defendant seeks to exclude the BAC test results. The State however argues that failure to comply with the statutory or administrative testing procedures does not preclude the admissibility of the BAC test results so long as the State can provide adequate foundation and reliability of the testing procedure through expert testimony.

I.C. § 18-8004(4) provides as follows:

(4) For purposes of this chapter, an evidentiary test for alcohol concentration shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of

<sup>2</sup> The test results and the testing method have not been provided to the Court.

producing a witness to establish the reliability of the testing procedure for examination.

The provisions of I.C. § 18-8004(4) provides that an evidentiary blood test for alcohol concentration "...shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood,..." This Court has been provided with no information as to the "formula" utilized by St. Luke's in determining the defendant's BAC.

The defendant argues that the BAC test results are not admissible and should be excluded since: (1) the Court previously suppressed the ISP blood test results; (2) St. Luke's is not a laboratory approved by ISP; and (3) the method used to test the defendant's blood is not approved by ISP. As bases for a *per se* exclusion, this Court disagrees.

The Court of Appeals in *State v. Charan*, 132 Idaho 341, 971 P.2d 1165 (Ct. App. 1999) focused on the admissibility of a breath test in the face of evidence of noncompliance with some of the test procedures. It stated in relevant part:

This Court has previously rejected the argument, now advanced by Charan, that stringent adherence to the administrative agency's directions for test procedures is the *sine qua non* for admission of tests governed by I.C. § 18-8004(4). In *State v. Bell*, 115 Idaho 36, 38, 764 P.2d 113, 115 (Ct.App.1988), we observed that § 18-8004(4) does not expressly condition the validity or admissibility of test results on compliance with the test regulations adopted by the administrative agency. (footnote omitted). In the absence of an express exclusionary provision in the statute, we declined to hold that the statute requires exclusion of a test result whenever compliance with the agency's testing requirements is not shown. Rather, we held that "to admit the test result the state must provide adequate foundation evidence consisting *either* of expert testimony *or* a showing that the test was administered in conformity with the applicable test procedure." *Id.* at 39-40, 764 P.2d at 116-117.

*Id.* at 343, 971 P.2d at 1167. The Court found that "expert testimony regarding the reliability of the test presented an adequate foundation for its admission into evidence." *Id.*, 971 P.2d at 1167. *see also, State v. Healy*, 151 Idaho 734, 736-37, 264 P.3d 75, 77-78 (Ct. App. 2011). In this case neither the State nor the defendant presented any evidence to the Court as to the testing method

utilized by St. Luke's to determine the BAC of the defendant. It is the burden of the State to provide evidence as to the reliability of the testing method used by St. Luke's in order to lay a proper foundation for the admissibility of the BAC test results at trial.

The analysis in *Charan* is not limited to breath tests. In *State v. Uhly*, 121 Idaho 1020, 829 P.2d 1369 (Ct. App. 1992) the Court of Appeals held that an "appropriate foundation for [blood] test results is a preliminary question of admissibility..." The evidence at trial established that the hospital that conducted the blood test was licensed to conduct such tests and that the method used to conduct the tests was the same as used by the Department of Law Enforcement. The court again reaffirmed that foundation may be established "by showing that the test was administered in conformity with applicable test procedures or by expert testimony." *Id.* at 1022, 829 P 2d at 1371.

Finally, while a blood alcohol test must be expressed in terms of whole blood, arrival at that expression may be based on a conversion factor from blood serum. In *State v. Koch*, 115 Idaho 176, 765 P.2d 687 (Ct. App. 1989), the defendant challenged the admissibility of hospital blood test results which were the result of the testing of serum blood and not whole blood. The Court of Appeals stated:

"...Thus although the blood alcohol test must yield a result that can be expressed in terms of whole blood, nothing in the statute or regulation prohibits testing blood serum. Here, the serum was tested and the numerical result (.195 percent) was set forth with a conversion factor for whole blood, allowing the trier of fact to determine that the whole blood figure was approximately .16 percent. We hold that this methodology was permissible."

*Id.* 115 Idaho at 179, 765 P 2d at 687.

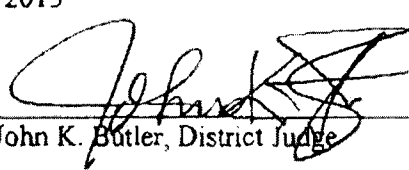
The sole basis for the defendant's motion in limine is that the State cannot show compliance with the administrative requirements for the testing of blood, i.e. that the hospital is

approved by ISP or the method used to test the blood was approved by ISP. However, the key to admissibility from a foundational perspective is (1) the chain of custody; (2) the formula used in the testing process, and (3) the reliability of the testing procedure or method used by St. Luke's. *See also, State v. Gilpin*, 132 Idaho 643, 977 P.2d 905 (Ct. App. 1999). It will be the burden at trial for the State to prove whatever testing procedure or method used by the hospital that such method is reliable. This Court has no evidence that the testing method is or is not reliable.

For the reasons set forth, above the motion in limine to exclude blood test results is DENIED, subject to the State being able to establish the requisite foundation for the admission of the BAC results.

IT IS SO ORDERED

DATED this 12 day of June, 2015

  
John K. Butler, District Judge



CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 12 day of June, 2015 a true and correct copy of the foregoing MEMORANDUM DECISION RE: DEFENDANT'S MOTION IN LIMINE TO EXCLUDE HOSPITAL BAC TEST RESULTS was mailed, postage paid, and/or hand-delivered to the following persons:

Jerome County Prosecutor  
Sandra Scott, Deputy Prosecutor

Jerome County Public Defender  
Stacey DePew



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



St. Luke's Magic Valley Medical Center  
Chemistry Department  
801 Pole Line Rd W  
Twin Falls, ID 83301

June 9, 2015

#### DETERMINATION OF PERFORMANCE ACCURACY for THE ORTHO VITROS ANALYZER

This laboratory is governed and accredited by CAP (College of American Pathologists) who has been licensed by CMS (Centers for Medicare & Medicaid Services) to regulate and enforce CLIA (Clinical Laboratory Improvements Amendment) which was a law enacted by Congress in 1988. This law was established to ensure standard and quality practices for all U.S. laboratories, and requires laboratories to meet hundreds of quality requirements. Some of the federally regulated mandates include:

- COM 30600 *Appropriate maintenance and function checks are performed and documented for all instruments and equipment.*
- COM.30625 *Tolerance limits for acceptable function are documented for specific instruments or equipment, with documented corrective action when the limits are exceeded.*
- COM.04050 *There is a system in operation to detect... unusual laboratory results...* In our laboratory we have computerized "traps" which cause any unusual or problematic results to be held for review & action. An example trap would be any result with ">."

We have a biennial inspection in which we are audited for compliance to these regulations.

Verification of instrument performance must be substantiated every day of patient testing, prior to the analysis of any patient samples. Evaluation of instrument performance takes place daily, weekly and is ongoing at all times:

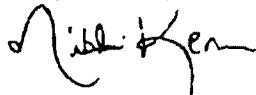
1. Instrument maintenance is performed daily, which involves reagent stocking & instrument cleaning. Audrey Howell performed this on 3-31-14
2. An extensive check of all instrument functions is made by the instrument during the Start Up routine. This involves checking all critical instrument functions. If any element of the check fails, the instrument shuts down operation, and will not analyze samples until problem resolution. This check passed on 3-31-14 and no problems occurred.
3. At least two levels of quality control materials are run daily for ethanol and the results must fall within 2 standard deviations to be acceptable. Alcohol QC was performed on 3-31-14 by Audrey Howell and results were acceptable
4. Quality control performance is monitored & approved by the Chemistry Coordinator weekly, and also monthly by the St Luke's Health System Coordinator and the Chemistry Medical Director, our pathologist Dr. Jane Bennett
5. All calibrations for alcohol were performed as required. The required frequency for alcohol calibration is every 6 months. The most recent alcohol calibration prior to 3-31-14 was performed on 2-24-14 by Audrey Howell. Quality control results for this calibration were acceptable
6. Per CLIA, we are required to participate in a proficiency survey. Three times per year unknown samples are sent to this laboratory and must be run just as a patient. The results



are sent to CAP, evaluated and compared to over 500 laboratories across the nation. The results must be within 3 standard deviations. All unsatisfactory scores are reported to CMS (see attached report for AL2, ethanol) and 3 unsatisfactory scores will result in closure of the laboratory.

- 7 The instrument has an extensive self-monitoring system including sensors & pressure monitors. Whenever any problem occurs, the analyzer goes into "NOT READY" mode and no testing can be performed until repairs take place. When this happens a service engineer is consulted by phone, and dispatched to our site to execute repairs. No repairs were required for the week of 3-31-14. Our service engineer is Andy Apple (406-274-0913.)
8. The instrument also has "E-CONNECTIVITY" whereby all transient and minor error messages are monitored by Ortho personnel in New York. When recurring messages are noticed, we are called and asked to take action which will prevent any instrument malfunctions in advance.
- 9 The sample run on Bernadette Nelson for 3-31-14 gave an initial result of  $> 0.300$  g/dL. The analyzer linearity range is 0.010 - 0.300 g/dL. The analyzer will not report results outside of these allowable limits. Because the initial result was higher than the reportable range, the analyzer performed a two-fold dilution and a second analysis. The result from the second analysis was 0.326 g/dL, agreeing with the first high result. (Sample was run by Audrey Howell.)
- 10 The Total Allowable Error limit for alcohol is 25%. This limit is also established and governed by CLIA. The TAE is the amount of variance which is acceptable when a sample is analyzed on different equipment, or performed by different methods. For this particular sample, a result of 0.326 g/dL on the Vitros analyzer should yield a result between 0.244 and 0.407 by a different method.  
[for a downloadable table of CLIA TAE's go to [datainnovations.com](http://datainnovations.com) >PRODUCTS>EP EVALUATOR> ALLOWABLE TOTAL ERROR TABLE>TOXICOLOGY.]
- 11 For medical purposes, all results are run & reported based on a serum sample. A whole blood equivalent is determined as:  
 $0.326 / 1.14 = 0.286$  g/d
12. Based on all of the foregoing information, in my opinion the instrument was in good working condition on 3-31-14 and the results provided for Bernadette Nelson were accurate.

Report prepared by:



Nikki Kern, MT(ASCP)

Acting Chemistry Technical Coordinator on March & April 2014

Dated: 6-9-15

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMANDA LUCYBELLE DIAZ, )  
 )  
 Defendant. )

Case No. CR-FE-2015-0007608

**AFFIDAVIT OF LYNSY  
KINGHORN**


STATE OF IDAHO )  
 ) ss:  
County of Ada )

Lyndsy Kinghorn, being first duly sworn, deposes and says:

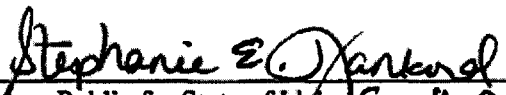
- 1) I am a licensed Registered Nurse within the State of Idaho. I am currently employed as a nurse at St. Luke's Regional Medical Center.
- 2) On May 14, 2015 at approximately 2:30am, I was working as a nurse in the Chest Pain Center of the Emergency Department at the St. Luke's Meridian Medical Center located at 520 S. Eagle Road, Meridian, ID.
- 3) Sometime around then, a patient named Amanda Diaz was brought into the emergency room by law enforcement.

- 4) Ms. Diaz's treating physician, Dr. Kessler, ordered that a urinalysis test be conducted as a part of her medical treatment. His Order included a urine dip, a urine pregnancy test and a urine drug screen.
- 5) A male nurse was assigned to Ms. Diaz. To assist him, I collected the urine sample from Ms. Diaz utilizing an in-and-out catheter method. It is my standard practice to first inform the patient of any procedure and gain verbal consent before proceeding. In this case, I briefly inserted the catheter, extracted the small amount of urine needed by the hospital, and removed the catheter from the patient.
- 6) Once collected, I confirmed the patient's name and date of birth, initialed, and noted the date and time on the patient label. I then took the urine sample to the "dirty utility room" and performed the urine dip and urine pregnancy test. I then re-sealed the container and routed it to the lab via the pneumatic tube system for the urine drug screen analysis.
- 7) The sample that I collected from Ms. Diaz in the early morning hours of May 14, 2015, and routed to our hospital lab was done for medical purposes only.
- 8) During my personal interactions with Ms. Diaz, she was cooperative with me. No force was used to collect the sample or insert the catheter.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
 \_\_\_\_\_  
 By: Lyndsy Kinghorn

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of October, 2015.

  
 Notary Public for State of ~~Idaho~~ South Dakota  
 Residing at Rapid City ~~Idaho~~ South Dakota  
 Commission expires 3/8/2016

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

STATE OF IDAHO,	)	
	)	<b>Case No. CR-FE-2015-0007608</b>
Plaintiff,	)	
	)	<b>AFFIDAVIT OF CONTESSA</b>
vs.	)	<b>JOHNSON</b>
	)	
AMANDA LUCYBELLE DIAZ,	)	
	)	
Defendant.	)	
_____	)	

STATE OF IDAHO            )  
                                  ) ss:  
County of Ada            )


Contessa Johnson, being first duly sworn, deposes and says:

- 1) I am a currently employed as a clinical laboratory scientist (“CLS”) at St. Luke’s Regional Medical Center.
- 2) I hold a Bachelors Degree in Clinical Laboratory Science from Idaho State University. Since graduation, I have worked continuously as a CLS.
- 3) Part of my job responsibilities as a (“CLS”) is to test urine samples collected by nurses from patients at the hospital. This includes tests on samples for the detection of alcohol and drugs.
- 4) I am familiar with hospital policies and procedures dealing with the collection, handling, and testing of urine samples.

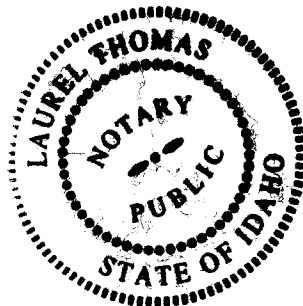
- 5) After collecting a urine sample from a patient, our nurses are required to label the sterile urine collection cup with the personal identifying information from the patient in question, seal them, place them into a sealed biohazard bag, and then place the entire bag into a transport container. The transport container is then placed into a pneumatic tube that will route the transport container directly to the lab for testing.
- 6) Once the container arrives in the lab for testing, it is removed from the biohazard bag, catalogued into our computer system, and then given to a CLS to complete whatever testing has been ordered.
- 7) If a urine sample is to be tested for the presence of controlled substances, then the CLS would utilize the Metatox Station for testing.
- 8) To run the test, the CLS must pipette a small amount of urine from the patient sample into 4 separate wells on the station. Urine in these wells is tested by the instrument to see if controlled substances are present in the urine.
- 9) The instrument assays the samples using a one-step, competitive membrane-based immunochromatographic test device. Inside the device, chemically labelled drug conjugates compete for the limited antibody binding sites with drugs that may be present in the urine specimen.
- 10) In a negative reaction, the antibody colloidal gold solution migrates along the strip and binds to the drug conjugate immobilized on the membrane. This binding creates a line which the reader detects as a negative reaction.
- 11) If a drug is present in the sample, the antibody colloidal gold solution binds to the drug in the urine and cannot bind to the drug conjugate on the membrane. In this case, no line is produced and the reader detects this as a positive reaction.
- 12) Once the samples have been analyzed for any positive or negative reactions, the instrument returns a print-out strip with all results on it for the drugs it tests for. The CLS performing the testing is responsible for inputting the results from the strip into the computer system so that they will be present in the patient's medical records.
- 13) Our protocols require a second CLS to also verify the accurate entry of the urine test results from the strip into the patient records.
- 14) This system of testing is generally accepted as reliable and accurate to a degree necessary to allow medical professionals to make critical decisions for patient care based upon them.

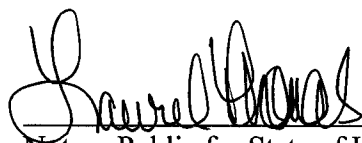
- 15) The St. Luke's lab is accredited by JACHO.
- 16) On May 14, 2015 at approximately 3:50am, I was working in the medical lab at the St. Luke's Meridian Medical center located at 520 S. Eagle Road, Meridian, ID.
- 17) Sometime around then, a patient named Amanda Diaz was brought into the emergency room by law enforcement. I was not present when Ms. Diaz arrived at the hospital and had no personal interaction with her.
- 18) In my position as a CLS, I have access to Ms. Diaz' patient care records and have reviewed them.
- 19) According to Ms. Diaz' medical records, a urine sample was collected from Ms. Diaz by RN Lyndsy Kinghorn and sent to the lab to be tested for the presence of controlled substances.
- 20) I was working in the lab at the time the sample came in, and according to our records I was the CLS who performed the requested testing on the urine sample belonging to the patient.
- 21) I would have followed all of the procedures discussed above in testing the sample for the presence of controlled substances, and also in further inputting those results into Ms. Diaz' patient records.
- 22) The urine sample collected from Ms. Diaz tested positive for methamphetamines, opiates, amphetamine, methadone, and oxycodone.

**FURTHER YOUR AFFIANT SAYETH NAUGHT.**

  
By: Contessa Johnson

SUBSCRIBED AND SWORN to before me this 23 day of October, 2015.



  
Notary Public for State of Idaho  
Residing at BOISE, Idaho  
Commission expires 8-8-2019

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

**Jeff White**  
Deputy Prosecuting Attorney  
200 W. Front Street Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

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

STATE OF IDAHO,	)	
	)	<b>Case No. CR-FE-2015-0007608</b>
Plaintiff,	)	
	)	<b>AFFIDAVIT OF GARY DAWSON</b>
vs.	)	
	)	
AMANDA LUCYBELLE DIAZ,	)	
	)	
Defendant.	)	
_____	)	

STATE OF IDAHO            )  
                                  ) ss:  
County of Ada             )

Gary Dawson, being first duly sworn, deposes and says:

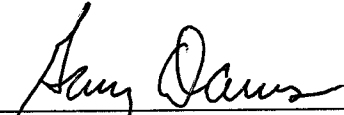
- 1) I have a PhD in Pharmacology, have worked in direct patient care (general medical and psychiatric), conducted research and published in the discipline of drug metabolism and the effects of drugs and alcohol on the human body.
- 2) I have consulted on more than 300 civil and criminal cases involving allegations of driving under the influence of alcohol and/or drugs in Idaho and surrounding states. I have testified as an expert more than 100 times in various District Court proceedings regarding the operation and procedures for both the breath testing instruments approved for use in Idaho. I frequently provide expert consultation and testimony in matters dealing with alcohol and drug absorption, distribution, metabolism and elimination and

related effects on the human body. I have been recognized as an expert by most District Courts in Idaho and the Idaho Supreme Court.

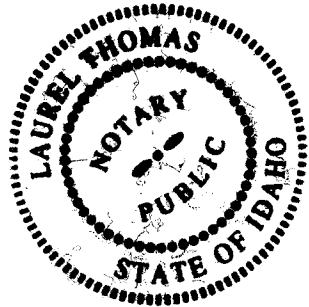
- 3) Through my work experience, research, and education, I have experience with the use of various different types of tests that are used for the detection of controlled substances, such as gas chromatography, mass spectroscopy, and immunoassay testing.
- 4) In preparation for this affidavit, I have reviewed medical records for Defendant Amanda Diaz from St. Luke's Medical Center on May 14, 2015, and also have reviewed the affidavits of Lyndsy Kinghorn and Contessa Johnson. I have also reviewed police reports from the night of the incident.
- 5) Based upon a review of the medical records and affidavits, it is apparent that the type of urine testing used by the St. Luke's lab to test the urine sample of Amanda Diaz is a type of immunoassay testing.
- 6) This type of urine drug testing is a common, standard, and well-accepted practice in emergency medicine to assist with the diagnosis and treatment planning for either unresponsive patients and/or patients who may be unreliable historical reporters.
- 7) In my own practice, I have personally relied upon this type of urine drug screening to make treatment decisions for patients.
- 8) Immunoassay testing is generally considered to be a reliable qualitative, but not quantitative, way to test for the presence of drugs in a patient's system.
- 9) As a "qualitative" test, it is meant that this type of testing can reliably reveal that a particular type of drug is present in the tested sample. However, it cannot determine the specific amount of the substance present, beyond simply stating that the amount of the substance exceeded the "cutoff" limit for that testing.
- 10) In reviewing the police reports from the Meridian Police Department, I noted that Diaz made statements that she has prescriptions for oxycodone and Adderall (amphetamine/dextroamphetamine).
- 11) According to her medical records, her urine sample returned a positive result in the hospital's immunoassay test for both amphetamine and oxycodone. Diaz's statements that she has prescriptions for those two drugs support the reliability of the urine test results.

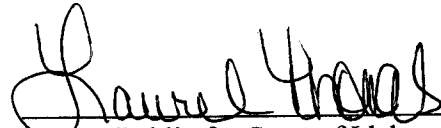


FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
By: Gary Dawson

SUBSCRIBED AND SWORN to before me this 23 day of October, 2015.



  
Notary Public for State of Idaho  
Residing at BOISE, Idaho  
Commission expires 8-8-2019

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of October 2015, I caused to be served a true and correct copy of the foregoing documents upon the individual(s) named below in the manner noted: **Brian Marx, Ada County Public Defender, 200 W. Front Street, Boise, ID, 83702.**

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: \_\_\_\_\_

  
\_\_\_\_\_  
Legal Assistant

Time	Speaker	Note
09:32:46 AM		CRFE15-7608 St v Amanda Diaz Pre-Trial Conference
09:32:49 AM		Defendant present in custody
09:32:51 AM	State Attorney	Heather Reilly
09:32:52 AM	Public Defender	Brian Marx
09:33:29 AM	Judge	Addresses counsel re: State's Motion in Limine
09:35:58 AM	State Attorney	comments
09:36:47 AM	Judge	Sets Motion in Limine for November 2 @ 9:30 am

147  
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9:30  
NS

A.M. 1030 FILED P.M.

**ADA COUNTY PUBLIC DEFENDER**  
**Attorneys for Defendant**

**BRIAN C. MARX, ISB #7694**  
**Deputy Public Defender**  
**200 West Front Street, Suite 1107**  
**Boise, Idaho 83702**  
**Telephone: (208) 287-7400**  
**Facsimile: (208) 287-7409**

**OCT 30 2015**

**CHRISTOPHER D. RICH, Clerk**  
**By SARA WRIGHT**  
**DEPUTY**

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

**STATE OF IDAHO,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **AMANDA DIAZ,** )  
 )  
 **Defendant.** )  
 \_\_\_\_\_ )

**Case No. CR-FE-2015-7608**

**DEFENDANT'S RESPONSE TO**  
**STATE'S MOTION IN LIMINE**

**COMES NOW**, the above-named Defendant, AMANDA DIAZ, by and through her Attorney of Record, the Ada County Public Defender's Office, BRIAN MARX, handling attorney, and hereby responds as follows to the State's Motion in Limine.

The state has requested via its motion to present evidence and testimony regarding the hospital urinalysis taken in this case. Defendant would object to this request and ask that this Court prohibit such evidence and testimony from being presented.

In support of its motion the state attaches several affidavits. These affidavits provide conflicting evidence regarding the proper procedures and whether such procedures were followed. The affidavit of Contessa Johnson at point 5 states that after collection of the sample, the nurse taking the sample, seals the sample, places in a biohazard bag and places the sample in

*Je.*

a transport container. It does not provide for the conduct of Lyndsy Kinghorn described in Kinghorn's affidavit at point 6 to take the sample to a "dirty utility room", conduct testing and then reseal the sample prior to loading in the biohazard bag and sending via the transport container to the lab.


Further, of concern regarding Ms. Kinghorn is the accuracy of her recollection. It largely appears via the testimony of Officer Moe's recollection and presumptions the night of the incident as well as the recollection of the defendant that Ms. Kinghorn participated in the taking of the law enforcement urinalysis sample. It is defense counsel's understanding that she has denied this conduct to the handling prosecutor, however, the fact that all evidence points to her participation calls in to question the accurate following of the proper protocols as laid out by Contessa Johnson's affidavit as well as Kinghorn's ability to accurately recall the events that transpired.

Gary Dawson per affidavit alleges that there is reliability in the sample tested by Contessa Johnson because it contains two substances that the defendant is legally prescribed to take. The hospital results also indicate the presence of methadone. (Points 10 and 11 of his affidavit). Defendant's hospital records indicate an allergy note for Methadone. It is unlikely that her sample would have tested positive for a substance in which defendant has an allergy.

Defendant's hospital records state in two locations that the test is a preliminary/presumptive finding. This would appear to indicate that there is some level of unreliability in these tests and should not be seen as foundationally sound for admission at the jury trial.

Defendant requests this Court exclude any all evidence and testimony regarding the sample taken and tested at the hospital.

DATED, this 2<sup>nd</sup> day of October 2015.

  
\_\_\_\_\_  
**BRIAN MARX**  
Attorney for Defendant

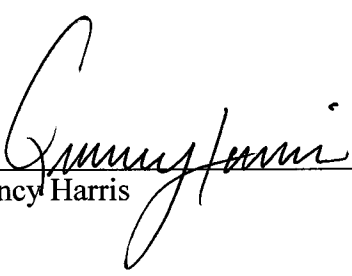
**CERTIFICATE OF MAILING**

I HEREBY CERTIFY, that on this 30 day of October 2015, I mailed a true and correct copy of the foregoing to:

Jeffrey White Ada County Prosecutor's Office

by:

- Interdepartmental Mail
- Hand Delivery
- U.S. Mail, Postage Prepaid
- Fax

  
\_\_\_\_\_  
Quincy Harris

Time	Speaker	Note
10:13:56 AM		CRFE15-7608 St v Amanda Diaz Motion in Limine
10:14:10 AM		Defendant present in custody
10:14:12 AM	State Attorney	Jeff White
10:14:13 AM	Public Defender	Brian Marx
10:14:43 AM	State Attorney	Argues Motion in Limine
10:23:44 AM	Public Defender	Argues in opposition to Motion in Limine
10:26:04 AM	State Attorney	Responds
10:28:24 AM	Judge	Grants the Motion in Limine but will require a detailed offer of proof outside the presence of the jury

Time	Speaker	Note
08:51:29 AM		CRFE15-7608 St v Amanda Diaz Jury Trial - Day 1
08:58:31 AM		Defendant present in custody
08:58:38 AM	State Attorney	Jeff White
08:58:38 AM	Public Defender	Brian Marx
09:38:12 AM	Judge	Calls case
09:38:19 AM	Public Defender	Argues Motion to Exclude DRE (Drug Recognition Expert)
09:39:07 AM	State Attorney	Argues in opposition to Motion to Exclude DRE
09:41:58 AM	Public Defender	Responds
09:42:44 AM	State Attorney	Responds
09:43:33 AM	Judge	Denies the Motion to Exclude DRE
09:46:29 AM	Judge	instructs counsel
09:47:15 AM		Court recesses
09:53:25 AM		Court resumes
09:53:30 AM		the prospective jury is present
09:54:12 AM	Clerk	Calls roll
09:57:16 AM	Clerk	Swears in the prospective jury panel
09:58:00 AM	Judge	Voir dres the prospective jury panel
10:08:18 AM	Clerk	Draws twenty-seven names
10:23:04 AM	State Attorney	Voir dres the prospective jury panel
10:47:24 AM	State Attorney	passes the panel for cause
10:47:37 AM	Public Defender	Moves to excuse Juror # 627 for cause
10:48:11 AM	Judge	Submits to the Court
10:48:13 AM	Judge	Juror # 627 is excused by the Court for cause
11:13:03 AM	Public Defender	passes the panel for cause
11:13:17 AM		counsel exercise their peremptory challenges
11:27:36 AM	Judge	Seats the trial jury
11:29:56 AM	Judge	Thanks and excuses the remaining jury panel
11:31:59 AM	Judge	admonishes the jury
11:32:43 AM		Court recesses
11:45:42 AM		Court resumes
11:45:47 AM		the jury is present
11:46:01 AM	Clerk	Swears in the trial jury
11:46:23 AM	Judge	Reads the Amended Information
11:49:28 AM	Judge	Reads preliminary jury instructions
11:59:08 AM	Judge	admonishes the jury
12:00:06 PM		Court recesses
01:50:05 PM		Court resumes
01:50:09 PM		the jury is not present



<u>01:50:11 PM</u>	State Attorney	Has demonstrative exhibits that the Defense objects to
<u>01:50:55 PM</u>	Public Defender	no objection to part of the exhibit
<u>01:51:21 PM</u>	Judge	will allow the first exhibit but not the second exhibit. Objection is sustained to the second exhibit.
<u>01:53:18 PM</u>		the jury is now present
<u>01:53:50 PM</u>	State Attorney	Opening statement
<u>02:00:13 PM</u>	Public Defender	Opening statement
<u>02:02:47 PM</u>	State Attorney	Calls Mollie Stevens, sworn, direct examination
<u>02:09:47 PM</u>	Public Defender	Cross-examination of the witness - Mollie Stevens
<u>02:11:43 PM</u>	Judge	excuses the witness
<u>02:11:44 PM</u>	State Attorney	Calls Terry Hodges, sworn, direct examination
<u>02:18:14 PM</u>	Public Defender	Cross-examination of the witness - Terry Hodges
<u>02:20:11 PM</u>	Judge	excuses the witness
<u>02:20:16 PM</u>	State Attorney	Calls Dustin Moe, sworn, direct examination
<u>02:27:42 PM</u>	State Attorney	Exhibit # 1 previously marked is identified
<u>02:28:04 PM</u>	State Attorney	Moves to admit Exhibit # 1
<u>02:28:10 PM</u>	Public Defender	No objection
<u>02:28:13 PM</u>	State Attorney	Exhibit # 1 is admitted
<u>03:36:24 PM</u>		admonishes the jury
<u>03:36:28 PM</u>		Court recesses
<u>03:54:31 PM</u>		Court resumes
<u>03:54:38 PM</u>		the jury is present
<u>03:54:54 PM</u>	State Attorney	continues direct examination of the witness - Dustin Moe
<u>03:57:00 PM</u>	Public Defender	Cross-examination of the witness - Dustin Moe
<u>04:01:34 PM</u>	State Attorney	Objection - relevance
<u>04:01:36 PM</u>	Judge	Objection is overruled
<u>04:01:49 PM</u>	State Attorney	Re-direct examination of the witness - Dustin Moe
<u>04:03:12 PM</u>	Public Defender	Re-cross examination of the witness - Dustin Moe
<u>04:03:52 PM</u>	Judge	excuses the witness
<u>04:03:59 PM</u>	State Attorney	Calls Morgan Carter, sworn, direct examination
<u>04:54:05 PM</u>		side-bar
<u>04:54:41 PM</u>	Judge	admonishes the jury
<u>04:55:12 PM</u>		Court recesses

Time	Speaker	Note
08:44:50 AM		<b>CRFE15-7608 St v Amanda Diaz Jury Trial - Day 2</b>
08:45:08 AM		Defendant present in custody
08:45:15 AM	State Attorney	Jeff White
08:45:17 AM	Public Defender	Brian Marx
09:50:21 AM	Judge	Calls case
09:50:43 AM	State Attorney	Re-calls Morgan Carter, previously sworn, direct examination
10:08:09 AM	Public Defender	Objection - foundation
10:08:26 AM	Judge	Objection is overruled
10:11:12 AM	State Attorney	Exhibit # 2 previously marked is identified
10:11:14 AM	State Attorney	Moves to admit Exhibit # 2
10:11:17 AM	Public Defender	No objection
10:11:20 AM	Judge	Exhibit # 2 is admitted
10:45:42 AM		admonishes the jury
10:45:45 AM		Court recesses
11:02:57 AM		Court resumes
11:03:05 AM		the jury is present
11:03:12 AM	State Attorney	continues direct examination of the witness - Morgan Carter
11:44:29 AM	Public Defender	Cross-examination of the witness - Morgan Carter
11:45:47 AM	State Attorney	Objection - has not been established
11:45:48 AM	Judge	Objection is overruled
11:52:47 AM	State Attorney	Re-direct examination of the witness - Morgan Carter
11:53:21 AM	Judge	excuses the witness
11:53:33 AM	Judge	admonishes the jury
11:53:39 AM		Court recesses.
01:39:09 PM		Court resumes
01:39:14 PM		the jury is not present
01:39:39 PM	Judge	comments re: offer of proof
01:40:12 PM	State Attorney	Offer of proof re: hospital urine sample
01:41:57 PM	State Attorney	Calls Lyndsy Kinghorn, sworn, direct examination
01:47:11 PM	Public Defender	Cross-examination of the witness - Lyndsy Kinghorn
01:48:00 PM	State Attorney	Calls Contessa Johnson, sworn, direct examination
01:56:09 PM	Public Defender	Cross-examination of the witness - Contessa Johnson
01:56:10 PM	State Attorney	Re-direct examination of the witness - Contessa Johnson
01:56:48 PM	Public Defender	Argues in opposition to testimony re: hospital urine sample
01:58:05 PM	State Attorney	Responds

02:01:11 PM	Judge	Denies the Motion to exclude the hospital urine sample
02:02:19 PM		the jury is now present
02:02:52 PM	State Attorney	Re-calls Lyndsy Kinghorn, previously sworn, direct examination
02:10:12 PM	Public Defender	Cross-examination of the witness - Lyndsy Kinghorn
02:11:32 PM	State Attorney	Re-direct examination of the witness - Lyndsy Kinghorn
02:12:18 PM	Judge	excuses the witness
02:12:23 PM	State Attorney	Re-calls Contessa Johnson, previously sworn, direct examination
02:19:53 PM	State Attorney	Exhibit # 3 previously marked is identified
02:21:01 PM	State Attorney	Moves to admit Exhibit # 3
02:21:04 PM	Public Defender	No objection
02:21:15 PM	Judge	Exhibit # 3 is admitted
02:24:33 PM	Judge	excuses the witness
02:24:38 PM	State Attorney	The State rests
02:24:43 PM	Judge	admonishes and excuses the jury
02:25:26 PM	Judge	Advises the Defendant of her rights regarding her own testimony
02:26:45 PM	Defendant	will not testify
02:27:30 PM		Court recesses
02:45:00 PM		Court resumes
02:45:05 PM		the jury is present
02:45:26 PM	Judge	Reads the Jury Instructions
02:56:54 PM	State Attorney	Closing argument
03:12:00 PM	Public Defender	Closing argument
03:26:08 PM	State Attorney	Final argument
03:39:37 PM	Clerk	Swears in the Bailiff
03:40:01 PM	Judge	draws the alternate juror
03:40:45 PM		Jury goes out for deliberation
04:29:09 PM		Court resumes
04:29:12 PM		the jury is present and they have reached a verdict
04:29:32 PM	Judge	Reads the Verdict
04:29:55 PM		Defendant is found guilty on Count I
04:30:02 PM		Defendant is found not guilty on Count II
04:30:27 PM	Judge	polls the jury
04:31:08 PM		Jury is excused
04:31:40 PM	Public Defender	Defendant will admit to two prior dui convictions
04:32:24 PM	Clerk	swears in the Defendant and the Court questions Defendant regarding admissions
04:32:54 PM	Defendant	admits to two prior dui convictions in the last 10 years
04:34:41 PM	Judge	accepts the admission
04:36:34 PM	Defendant	admits to the Information Part II

<b>04:37:59 PM</b>	Judge	accepts the admission to the Information Part II
<b>04:38:49 PM</b>		the jury is now present
<b>04:40:54 PM</b>	Judge	Thanks and excuses the jury
<b>04:40:59 PM</b>		Orders a PSI and sets this matter for Sentencing - December 14 @ 3:00 pm

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

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5:00

NOV 06 2015

CHRISTOPHER D. RICH, Clerk  
By TARA VILLEREA  
DEPUTY

THE STATE OF IDAHO, )  
 )  
Plaintiff, )  
vs. )  
 )  
AMANDA DIAZ, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CR-FE-2015-0007608

JURY INSTRUCTIONS

THE HONORABLE DEBORAH A. BAIL  
DISTRICT JUDGE  
PRESIDING

7

INSTRUCTION NO. 1

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

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.

You have now heard all the evidence in the case. My duty is to instruct you as to the law. It is your duty to determine if the state has proven the charge against the defendant beyond a reasonable doubt. You must follow all the rules as I explain them to you in these instructions. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 1A

It is a constitutional right of a defendant in a criminal trial that he or she may not be compelled to testify. Thus, the decision as to whether he or she should testify is left to the defendant, acting with the advice and assistance of his or her attorney. You must not draw any inference of guilt from the fact that he or she does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 2

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.



INSTRUCTION NO. 3

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

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence.

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

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

INSTRUCTION NO. 4

The key part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

As you weigh the testimony, you can ask yourselves questions:

(A) Was the witness able to clearly see or hear the events? Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

(B) How good was the witness's memory?

(C) Was there anything else that may have interfered with the witness's ability to perceive or remember the events?

(D) How did the witness act while testifying? Did the witness appear honest or not?

(E) Did the witness have any relationship to the state or the defendant, or anything to gain or lose from the case, that might influence the witness's testimony? Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

(F) How believable the witness's testimony was in light of all the other evidence? Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

INSTRUCTION NO. 5

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.

INSTRUCTION NO 6

Evidence may be either direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. Each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

Direct evidence is evidence that directly proves a fact, like testimony from a witness who saw or heard something. Circumstantial evidence is evidence that indirectly proves the fact, by proving one or more facts from which the fact at issue may be inferred. For example, if you see it snowing, you have direct evidence that it has snowed. If you go to bed and wake up and see the ground covered with snow, you have circumstantial evidence that it has snowed even though you did not watch it happen.

INSTRUCTION NO. 7

In order for the defendant to be guilty of Operating A Motor Vehicle While Under the Influence, Count One, the state must prove each of the following:

1. On or about May 13, 2015
2. in the state of Idaho
3. the defendant AMANDA DIAZ drove
4. a motor vehicle
5. upon a highway, street or bridge or upon public or private property open to the public,
6. while under the influence of drugs or an intoxicating substance.

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

INSTRUCTION NO. 8

It is not a defense to the charge of Operating a Motor Vehicle Under the Influence of any drug or a combination of alcohol and any drug that the person charged is or has been entitled to use such drug under the laws of this state.

INSTRUCTION NO. 9

To prove that someone was under the influence of drugs or any intoxicating substance, it is not necessary that any particular degree or state of intoxication be shown. Rather, the state must show that the defendant had used enough of any drug(s) or intoxicating substance(s) to influence or affect the defendant's ability to drive the motor vehicle.



INSTRUCTION NO. 10

In order for the defendant to be guilty of Driving without Privileges, Count Two, the state must prove each of the following:

1. On or about May 13, 2015
2. in the state of Idaho
3. the defendant AMANDA DIAZ drove
4. a motor vehicle
5. upon a highway
6. while the defendant's driver's license, driving privileges or permit to drive was
7. revoked, disqualified or suspended in any state or jurisdiction, and
8. the defendant had knowledge of such revocation, disqualification or suspension.

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

INSTRUCTION NO. 11

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

INSTRUCTION NO. 12

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

INSTRUCTION NO. 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 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. You should feel free to re-examine your own views and change your opinion if you are convinced by your discussion with your fellow jurors that your original opinion was incorrect based upon the evidence that you as jurors saw and heard during the trial.

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.

INSTRUCTION NO. 4

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberations, you are never to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

INSTRUCTION NO. 15

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question. Nothing is more important than jurors approaching deliberations in a careful, respectful way. Listen to each other. Share your views with each other. You and you alone are the judges of the facts.

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

DATED This 6<sup>th</sup> day of November, 2015.

  
DEBORAH A. BAIL  
District Judge

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

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5:00

NOV 06 2015

CHRISTOPHER D. RICH, Clerk  
By TARA VILLEREAL  
DEPUTY

THE STATE OF IDAHO, )  
 )  
Plaintiff, )  
vs. )  
 )  
AMANDA DIAZ, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. Case No. CR-FE-2015-0007608

VERDICT

As to the offense of Operating a Motor Vehicle Under the Influence, Count One, we, the jury, find the Defendant, AMANDA DIAZ:

GUILTY

NOT GUILTY

11-6-15  
DATE

Steven Bahr  
PRESIDING JUROR

TV

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

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5:00

NOV 06 2015

CHRISTOPHER D. RICH, Clerk  
By TARA VILLEREA  
DEPUTY

THE STATE OF IDAHO, )  
 )  
Plaintiff, )  
vs. )  
 )  
AMANDA DIAZ, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. Case No. CR-FE-2015-0007608

VERDICT

As to the offense of DRIVING WITHOUT PRIVILEGES, Count Two, we, the jury, find  
the Defendant, AMANDA DIAZ:

GUILTY  \_\_\_\_\_

NOT GUILTY \_\_\_\_\_

11-6-15  
DATE

*Steven Baker*  
PRESIDING JUROR

N



Time	Speaker	Note
03:48:16 PM		<b>CRFE15-7608 St v Amanda Diaz Sentencing</b>
03:48:30 PM		Defendant present in custody
03:48:33 PM	State Attorney	Jeff White
03:48:34 PM	Public Defender	Brian Marx
03:48:54 PM	State Attorney	Recommends 5 + 10
03:53:56 PM	Public Defender	Recommends 3 + 7, Rider
03:56:48 PM	Defendant	Makes a statement
04:00:21 PM	Judge	Imposes Sentence: Count I - 3 + 12, enhanced by the Persistent Violator charge and 1 year absolute DL suspension
04:00:33 PM		Count II - 90 days ACJ w/ 90 days CTS, concurrent - no court costs
04:04:11 PM		The Court recommends substance abuse treatment during incarceration
04:06:28 PM		Advises the defendant he/she has 42 days to appeal

*Rider  
rec. Extended  
Rider*



1 any legal cause to show why judgment should not be pronounced against her, and no  
2 sufficient cause to the contrary having been shown or appearing to the Court;

3  
4 IT IS FURTHER ADJUDGED that the Defendant is sentenced, pursuant to Idaho  
5 Code §19-2513, to the custody of the Idaho State Board of Correction, to be held and  
6 incarcerated by said Board in a suitable place for a period of time as follows:

7  
8 **COUNT I:** For a minimum fixed and determinate period of confinement of three (3)  
9 years; with the fixed minimum period followed by an indeterminate period of custody of up  
10 to twelve (12) years, for a total term not to exceed fifteen (15) years, as enhanced by the  
11 persistent violator charge.  
12

13 **The Court retains jurisdiction for up to 365 days under Idaho Code §19-2601(4).**  
14 **The Court specifically recommends the Extended Rider.**

15  
16 IT IS FURTHER ORDERED that, upon release from incarceration, Defendant's  
17 driving privileges are absolutely suspended for a period of one (1) year. DURING THIS  
18 TIME PERIOD, DEFENDANT MAY NOT DRIVE AT ALL FOR ANY REASON  
19 WHATSOEVER.  
20

21 **COUNT II (Misdemeanor):** Defendant shall serve ninety (90) days in the Ada  
22 County Jail, with credit for time served of ninety (90) days, to run concurrently with Count I.  
23  
24 The Court specifically orders no Court costs.

25 Pursuant to Idaho Code §18-309, the Defendant shall be given credit for the time  
26 already served in this case in the amount of two hundred one (201) days.  
27

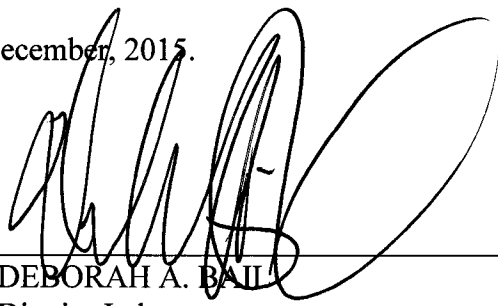
28 **The Court specifically recommends that the Defendant participate in Substance**  
29 **Abuse treatment while incarcerated.**

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IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Sheriff of Ada County, Idaho, for delivery forthwith to the custody of the Idaho State Board of Correction at the Idaho State Penitentiary or other facility within the state designated by the State Board of Correction.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this Judgment and Commitment to the said Sheriff, which shall serve as the commitment of the Defendant.

Done in open Court this 14<sup>th</sup> day of December, 2015.



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DEBORAH A. BAIL  
District Judge

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of December, 2015, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR  
VIA — EMAIL

ADA COUNTY PUBLIC DEFENDER  
VIA — EMAIL

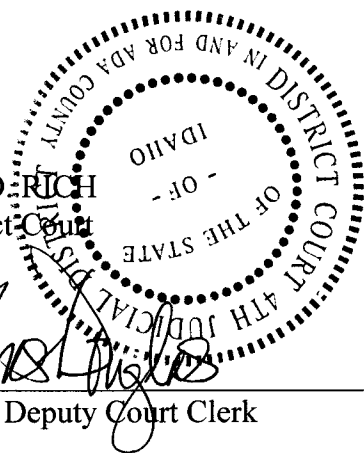
ADA COUNTY JAIL  
VIA — EMAIL

DEPARTMENT OF CORRECTION  
CENTRAL RECORDS  
VIA — EMAIL

PROBATION & PAROLE-PSI DEPARTMENT  
VIA — EMAIL

DEPARTMENT OF TRANSPORTATION  
ATTN: DRIVER'S SERVICES  
VIA — EMAIL

CHRISTOPHER D. RICH  
Clerk of the District Court

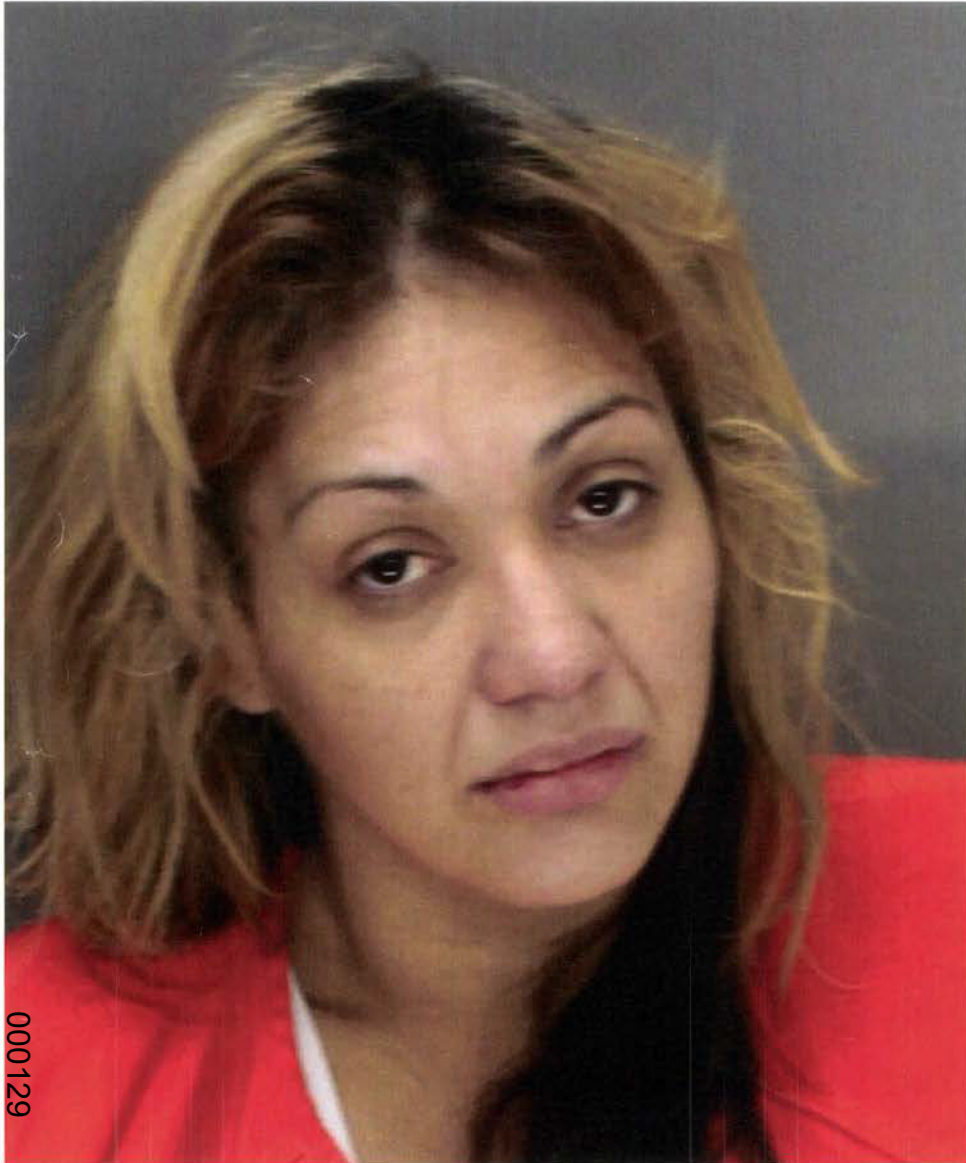


By: [Signature]  
Deputy Court Clerk

Ada County Mugshot - Prosecutor's Office



User: PRSEIBSA



000129

Photo Taken: 2015-05-14 05:58:32

Name: DIAZ, AMANDA LUCY BELLE

Case #: CR-FE-2015-0006858

LE Number: 658170

DOB: [REDACTED]

SSN: [REDACTED]

Height: 505

Weight: 175

Drivers License Number:

Drivers License State:

Sex: F Race: I Eye Color: BRO Hair Color: BRO Facial Hair:

Marks: SHOULDER, RIGHT

Scars:

Tattoos:

147

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

JAN - 6 2016

CHRISTOPHER D. RICH, Clerk  
By SARA WRIGHT  
DEPUTY

ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant-Appellant

BRIAN C. MARX, ISB #7694  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

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

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

AMANDA DIAZ,

Defendant-Appellant.

Case No. CR-FE-2015-0007608

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE CLERK  
OF THE ABOVE-ENTITLED COURT.

**NOTICE IS HEREBY GIVEN THAT:**

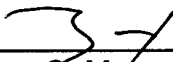
- 1) The above-named Appellant appeals against the above-named respondent to the Idaho Supreme Court from the final decision and order entered against her in the above-entitled action on December 14, 2015, the Honorable Deborah A. Bail, District Judge presiding.
- 2) That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under, and pursuant to, IAR 11(c)(1-10).
- 3) A preliminary statement of the issues on appeal, which the Appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal is:
  - a) Did the district court err in allowing evidence regarding hospital testing?
- 4) There is a portion of the record that is sealed. That portion of the record that is sealed is the pre-sentence investigation report (PSI).

*SW*

- 5) Reporter's Transcript. The Appellant requests the preparation of the entire reporter's standard transcript as defined by IAR 25(d). The Appellant also requests the preparation of the additional portions of the reporter's transcript:
  - a) Arraignment hearing held June 22, 2015 (Court Reporter: Emily Nord. Estimated pages: 50).
  - b) Entry of Plea hearing held June 29, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100
  - c) Pretrial Conference hearing held August 31, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100
  - d) Hearing held September 15, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100
  - e) Pretrial Conference hearing held October 26, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100
  - f) Hearing result for Motion in Limine held November 2, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100
  - g) Jury Trial hearing held November 5, 2015 (Court Reporter: Nicole Julson. Estimated pages: 500
  - h) District Court hearing: Day Two, held November 6, 2015 (Court Reporter: Nicole Julson. Estimated pages: 500
  - i) Sentencing hearing held December 14, 2015 (Court Reporter: Kim Madsen. Estimated pages: 100
- 6) Clerk's Record. The Appellant requests the standard clerk's record pursuant to IAR 28(b)(2). In addition to those documents automatically included under IAR 28(b)(2), Appellant also requests that any exhibits, including but not limited to letters or victim impact statements, addenda to the PSI, or other items offered at the sentencing hearing be included in the Clerk's Record.
- 7) I certify:
  - a) That a copy of this Notice of Appeal has been served on the Court Reporter(s) mentioned in paragraph 5 above.
  - b) That the Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is indigent. (I.C. §§ 31-3220, 31-3220A, IAR 24(e)).
  - c) That there is no appellate filing fee since this is an appeal in a criminal case (I.C. §§ 31-3220, 31-3220A, IAR 23(a)(8)).
  - d) Ada County will be responsible for paying for the reporter's transcript, as the client is indigent (I.C. §§ 31-3220, 31-3220A, IAR 24(e)).
  - e) That service has been made upon all parties required to be served pursuant to IAR 20.



DATED this 6<sup>th</sup> day of January 2016.

  
\_\_\_\_\_  
Brian C. Marx  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY, that on this 6<sup>th</sup> day of January 2016, I mailed (served) a true and correct copy of the within instrument to:

Idaho Attorney General  
Criminal Division  
PO Box 2816  
Boise, ID 83701-2860

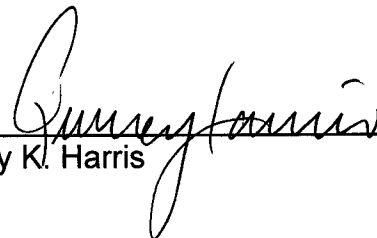
Idaho Appellate Public Defender  
PO Box 2816  
Boise, ID 83701-2860

Nicole Julson  
Court Reporter  
Interdepartmental Mail

Kim Madsen  
Court Reporter  
Interdepartmental Mail

Emily Nord  
Court Reporter  
Interdepartmental Mail

Jeffrey S. White  
Ada County Prosecutor's Office  
Interdepartmental Mail

  
\_\_\_\_\_  
Quincy K. Harris

ADA COUNTY PUBLIC DEFENDER  
Attorneys for Defendant-Appellant

BRIAN C. MARX, ISB #7694  
Deputy Public Defender  
200 West Front Street, Suite 1107  
Boise, Idaho 83702  
Telephone: (208) 287-7400  
Facsimile: (208) 287-7409

RECEIVED

JAN - 6 2016

ADA COUNTY COURT CLERK

JAN 08 2016

CHRISTOPHER D. RICH, Clerk  
By TARA VILLEREA  
DEPUTY

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

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

AMANDA DIAZ,

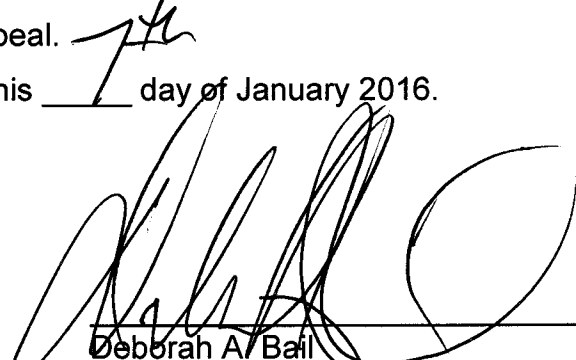
Defendant-Appellant.

Case No. CR-FE-2015-0007608

ORDER APPOINTING STATE  
APPELLATE PUBLIC DEFENDER ON  
DIRECT APPEAL

Defendant has elected to pursue a direct appeal in the above-entitled matter. Defendant being indigent and having heretofore been represented by the Ada County Public Defender's office in the District Court, the Court finds that, under these circumstances, appointment of appellate counsel is justified. The Idaho State Appellate Public Defender shall be appointed to represent the above-named Defendant in all matters pertaining to the direct appeal.

SO ORDERED AND DATED this 7<sup>th</sup> day of January 2016.

  
Deborah A. Ball  
District Judge

TV CC. PR/PD/SAPD

FILED  
P.M. 428

SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

MAR 29 2016

CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

ORIGINAL

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

STATE OF IDAHO,  
  
Plaintiff-Respondent,  
  
v.  
  
AMANDA LUCY BELLE DIAZ,  
  
Defendant-Appellant.

CASE NO. CR 2015-7608  
  
S.C. DOCKET NO. 43780  
  
AMENDED  
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, ADA COUNTY PROSECUTOR, JAN M. BENNETTS, 200 WEST FRONT STREET, BOISE, ID 83702, STATEHOUSE MAIL, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the ~~final decision and order~~ Judgment of Conviction and Order of Retained Jurisdiction entered in the above-entitled action on the 44<sup>th</sup> 18<sup>th</sup> day of December, 2015, the Honorable Deborah A. Bail, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in allowing evidence regarding hospital testing?

(b) Did the district court err in failing to grant the appellant's motion to suppress?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) ~~Arraignment hearing held June 22, 2015 (Court Reporter: Emily Nord. Estimated pages: 50).~~

(b) ~~Entry of Plea hearing held June 29, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100).~~

(c) Pretrial Conference hearing held August 31, 2015 (Court Reporter: Nicole Julson. Estimated less than pages: 100).

(d) ~~Hearing held September 15, 2015 (Court Reporter: Nicole Julson. Estimated less than 100 pages).~~

(e) ~~Pretrial Conference hearing held October 26, 2015 (Court Reporter: Nicole Julson. Estimated 100).~~

(f) ~~Hearing result for Motion in Limine~~ hearing held November 2, 2015 (Court Reporter: Nicole Julson. Estimated less than 100 pages).

(g) Jury Trial held November 5, 2015, to include the voir dire, opening statements, closing arguments, jury instruction conferences, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: Nicole Julson. Estimated more than 500 pages).

(h) District Court hearing: Day Two, held November 6, 2015 to include the voir dire, opening statements, closing arguments, jury instruction conferences, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: Nicole Julson. Estimated more than 500 pages).

(i) Sentencing Hearing held December 14, 2015 (Court Reporter: Kim Madsen. Estimated less than 100 pages).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2) and all exhibits, recordings, and documents per I.A.R. 31. The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2) and I.A.R. 31:

(a) Memorandum in Support of Defendant's Motion to Suppress filed August 17, 2015;

(b) State's Objection to Motion to Exclude DRE filed October 23, 2015;

- (c) Defendant's Response to State's Motion in Limine filed October 30, 2015;
- (d) Jury Instructions filed November 6, 2015;
- (e) All proposed and given jury instructions;
- (f) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the motion to suppress and motion in limine, filed or lodged, by the state, appellant or the court; and
- (g) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing. Except that any pictures or depictions of child pornography necessary to the appeal need not be sent, but may be sought later by motion to the Idaho Supreme Court.

7. I certify:


- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Nicole Julson and Kim Madson;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

(d) That arrangements have been made with Ada County who will be responsible for paying for the reporter's transcript, as the client is indigent,

I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and

(e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 29<sup>th</sup> day of March, 2016.

  
for SARA B. THOMAS  
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 29<sup>th</sup> day of March, 2016, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

BRIAN C MARX  
ADA COUNTY PUBLIC DEFENDER  
200 W FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

NICOLE JULSON  
COURT REPORTER  
200 W FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

JAN M BENNETTS  
ADA COUNTY PROSECUTOR  
200 WEST FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010  
Hand delivered to Attorney General's mailbox at Supreme Court



MARY ANN LARA  
Administrative Assistant

SBT/mal



SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED \_\_\_\_\_ P.M. \_\_\_\_\_

MAR 31 2016

CHRISTOPHER D. RICH, Clerk  
By SUZANNE SIMON  
DEPUTY

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

ORIGINAL

STATE OF IDAHO, )

Plaintiff-Respondent, )

v. )

AMANDA LUCY BELLE DIAZ, )

Defendant-Appellant. )

CASE NO. CR 2015-7608

S.C. DOCKET NO. 43780

SECOND AMENDED  
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, ADA COUNTY PROSECUTOR, JAN M. BENNETTS, 200 WEST FRONT STREET, BOISE, ID 83702, STATEHOUSE MAIL, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the ~~final decision and order~~ Judgment of Conviction and Order of Retained Jurisdiction entered in the above-entitled action on the 44<sup>th</sup> 18<sup>th</sup> day of December, 2015, the Honorable Deborah A. Bail, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in allowing evidence regarding hospital testing?

(b) Did the district court err in failing to grant the appellant's motion to suppress?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) ~~Arraignment hearing held June 22, 2015 (Court Reporter: Emily Nord. Estimated pages: 50).~~

(b) ~~Entry of Plea hearing held June 29, 2015 (Court Reporter: Nicole Julson. Estimated pages: 100).~~

(c) Pretrial Conference hearing held August 31, 2015 (Court Reporter: Nicole Julson. Estimated less than pages: 100).

(d) ~~Hearing held September 15, 2015 (Court Reporter: Nicole Julson. Estimated less than 100 pages).~~

(e) ~~Pretrial Conference hearing held October 26, 2015 (Court Reporter: Nicole Julson. Estimated 100).~~

(f) ~~Hearing result for Motion in Limine hearing held November 2, 2015 (Court Reporter: Nicole Julson. Estimated less than 100 pages).~~

(g) Jury Trial held November 5, 2015, to include the voir dire, opening statements, closing arguments, jury instruction conferences, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: Nicole Julson. Estimated more than 500 pages).

(h) District Court hearing: Day Two, held November 6, 2015 to include the voir dire, opening statements, closing arguments, jury instruction conferences, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: Nicole Julson. Estimated more than 500 pages).

(i) Sentencing Hearing held December 14, 2015 (Court Reporter: Kim Madsen. Estimated less than 100 pages).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2) and all exhibits, recordings, and documents per I.A.R. 31. The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2) and I.A.R. 31:

(a) Memorandum in Support of Defendant's Motion to Suppress filed August 17, 2015;

(b) State's Objection to Motion to Exclude DRE filed October 23, 2015;

- (c) Defendant's Response to State's Motion in Limine filed October 30, 2015;
- (d) Jury Instructions filed November 6, 2015;
- (e) All proposed and given jury instructions;
- (f) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the motion to suppress and motion in limine, filed or lodged, by the state, appellant or the court; and
- (g) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing. Except that any pictures or depictions of child pornography necessary to the appeal need not be sent, but may be sought later by motion to the Idaho Supreme Court.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Nicole Julson and Kim Madsen;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

(d) That arrangements have been made with Ada County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and

(e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 30<sup>th</sup> day of March, 2016.



---

SARA B. THOMAS  
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 31<sup>st</sup> day of March, 2016, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

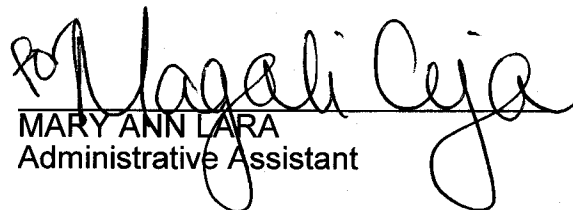
BRIAN C MARX  
ADA COUNTY PUBLIC DEFENDER  
200 W FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

NICOLE JULSON  
COURT REPORTER  
200 W FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

KIM MADSEN  
COURT REPORTER  
200 W FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

JAN M BENNETTS  
ADA COUNTY PROSECUTOR  
200 WEST FRONT STREET  
BOISE ID 83702  
STATEHOUSE MAIL

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010  
Hand delivered to Attorney General's mailbox at Supreme Court

  
MARY ANN LARA  
Administrative Assistant

To: Stephen W. Kenyon - Sctfilings@idcourts.net

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, )  
 vs. ) Docket No. 43870  
 AMANDA DIAZ )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

NO. \_\_\_\_\_  
 A.M. \_\_\_\_\_ FILED P.M. 9:19

JUL 07 2016  
 CHRISTOPHER D. RICH, Clerk  
 By KELLE WEGENER  
 DEPUTY

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on January 27, 2016, pursuant to Court order, a transcript of the proceedings before the Hon. Darla S. Williamson, on June 22, 2015, (7 pages in length) was lodged with the District Court Clerk of Ada County in the Fourth Judicial District for inclusion in the above-entitled appeal.

*Teresa Salman*  
 TERESA SALMAN  
 M&M COURT REPORTING

KW

1 TO: CLERK OF THE COURT  
 2 IDAHO SUPREME COURT  
 3 451 WEST STATE STREET  
 4 BOISE, IDAHO 83702

NO. \_\_\_\_\_ FILED P.M. 9:19  
 A.M. \_\_\_\_\_  
**JUL 07 2016**  
 CHRISTOPHER D. RICH, Clerk  
 By KELLE WEGENER  
 DEPUTY

6 STATE OF IDAHO, )  
 ) Supreme Court  
 7 Plaintiff-Respondent, ) No. 43870  
 )  
 8 v. )  
 ) Case No. CR-2015-7608  
 9 AMANDA LUCY BELLE DIAZ, )  
 )  
 10 Defendant-Appellant. )  
 )

12 **NOTICE OF SUPPLEMENTAL TRANSCRIPT LODGED**

13 Notice is hereby given that on July 6, 2016, I  
 14 filed a transcript of 404 pages in length for the  
 15 above-referenced appeal with the District Court  
 16 Clerk of the County of Ada in the Fourth Judicial  
 17 District.

18   
 19 Nicole L. Julson

20 7-6-16.  
 21 Date

23 **HEARINGS:** 8/31/15, 11/5/15 and 11/6/15.  
 24 **PDF SENT** 6/30/16 and 7/6/16.

KW



NO. \_\_\_\_\_ FILED 9:19  
A.M. \_\_\_\_\_ P.M.

JUL 07 2016

CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

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TO: Clerk of the Court  
Idaho Supreme Court  
451 West State Street  
Boise, Idaho 83720

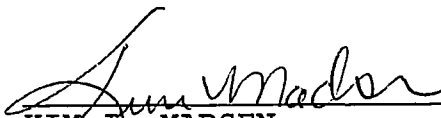
( SC No. 43870  
(  
(  
( STATE  
(  
( vs.  
(  
( DIAZ

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on March 16, 2015, I lodged a appeal transcript of 20 pages in length in the above-referenced appeal with the District Court Clerk of the County of Ada in the 4th Judicial District.

This transcript contains hearings held on

.....December 14, 2015, Sentencing

  
KIM I. MADSEN  
Ada County Courthouse  
200 West Front Street  
Boise, Idaho 83702  
(208) 287-7583

KW

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

STATE OF IDAHO,  
  
Plaintiff-Respondent,  
vs.  
  
AMANDA LUCY BELLE DIAZ,  
  
Defendant-Appellant.

Supreme Court Case No. 43870

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Presentence Investigation Report.

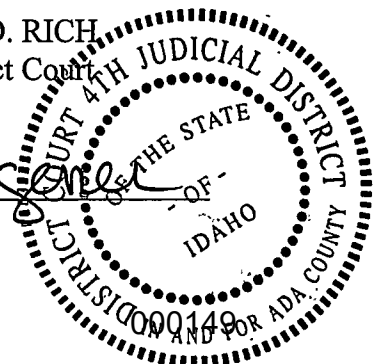
I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Preliminary Hearing held June 12, 2015, Boise, Idaho, filed August 19, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7th day of July, 2016.

CHRISTOPHER D. RICH  
Clerk of the District Court

By   
Deputy Clerk



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

HONORABLE DEBORAH BAIL

Clerk: Tara Villereal

Court Reporter: Nicole Julson

August 31, 2015

THE STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AMANDA L B DIAZ, )  
 )  
Defendant. )

Case No. CR-FE-2015-0007608

EXHIBIT LIST  
Motion to Suppress

Counsel for State: Jeffrey White

Counsel for Defendant: Brian Marx

**STATE'S EXHIBITS / EVIDENCE**

**Admitted**

**Date Admit**

		<b>Admitted</b>	<b>Date Admit</b>
1.	Judgment of Conviction & Order of Probation	Admit	08/31/15

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

HONORABLE DEBORAH A. BAIL

November 6, 2015

Clerk: Tara Villereal

Court Reporter: Nicole Julson

THE STATE OF IDAHO, )

Plaintiff, )

vs. )

AMANDA L B DIAZ, )

Defendant. )

Case No. CR-FE-2015-0007608

EXHIBIT LIST  
JURY TRIAL

Counsel for State: Jeffrey White

Counsel for Defendant: Brian Marx

**STATE'S EXHIBITS / EVIDENCE**

**Status**

**Date**

		Status	Date
1.	CD – Audio of Police Stop (Moe)	Admitted	11/05/15
2.	CD – Audio of Police Interview (Carter)	Admitted	11/06/15
3.	St. Luke's Pathology Report	Admitted	11/06/15

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

STATE OF IDAHO,  
  
Plaintiff-Respondent,  
vs.  
  
AMANDA LUCY BELLE DIAZ,  
  
Defendant-Appellant.

Supreme Court Case No. 43870

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

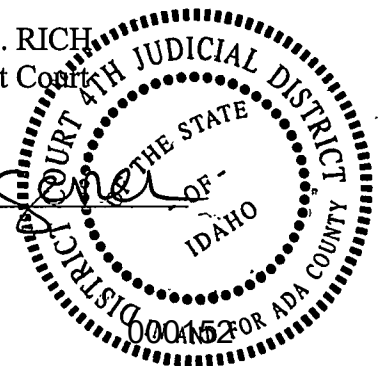
STATE APPELLATE PUBLIC DEFENDER  
  
ATTORNEY FOR APPELLANT  
  
BOISE, IDAHO

LAWRENCE G. WASDEN  
  
ATTORNEY FOR RESPONDENT  
  
BOISE, IDAHO

Date of Service: JUL 07 2016

CHRISTOPHER D. RICH  
Clerk of the District Court

By *L. Wasden*  
Deputy Clerk



CERTIFICATE OF SERVICE

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

STATE OF IDAHO,  
  
Plaintiff-Respondent,  
vs.  
  
AMANDA LUCY BELLE DIAZ,  
  
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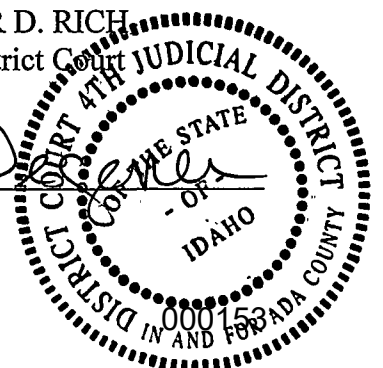
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 29th day of March, 2016.

CHRISTOPHER D. RICH  
Clerk of the District Court

By *Christopher D. Rich*  
Deputy Clerk



CERTIFICATE TO RECORD