

11-23-2016

State v. Fenton Clerk's Record Dckt. 44546

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	SUPREME COURT NO. 44546
)	
v.)	
)	
LARRY GLENN FENTON, JR.,)	
)	
Defendant-Respondent.)	

CLERK'S RECORD

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

BEFORE THE HONORABLE JAY P. GASKILL, DISTRICT JUDGE

Counsel for Appellant

Mr. Lawrence G. Wasden
Attorney General
PO Box 83720
Boise, Idaho 83720-0010

Counsel for Respondent

Mr. Eric D. Frederickson
State Appellate PD
PO Box 2816
Boise, ID 83701

State of Idaho vs. Larry Glenn Fenton Jr

Date	Code	User		Judge
3/2/2016	NCRF	SHELLIE	New Case Filed-Felony	Greg K. Kalbfleisch
	PROS	SHELLIE	Prosecutor Assigned Justin J. Coleman	Greg K. Kalbfleisch
	AFPC	SHELLIE	Affidavit Of Probable Cause	Greg K. Kalbfleisch
	IDPC	SHELLIE	Initial Determination Of Probable Cause	Greg K. Kalbfleisch
	CRCO	SHELLIE	Criminal Complaint	Greg K. Kalbfleisch
	WARI	SHELLIE	Warrant Issued - Arrest Bond amount: 50000.00 Defendant: Fenton, Larry Glenn Jr	Greg K. Kalbfleisch
	XSEA	SHELLIE	Case Sealed	Greg K. Kalbfleisch
	STAT	SHELLIE	Case Status Changed: Inactive	Greg K. Kalbfleisch
3/7/2016	CHJG	MERT	Change Assigned Judge	Magistrate Court Clerks
4/28/2016	WART	TRISH	Warrant Returned Defendant: Fenton, Larry Glenn Jr	Magistrate Court Clerks
	XUNS	TRISH	Case Un-sealed	Magistrate Court Clerks
	STAT	TRISH	Case Status Changed: Pending	Magistrate Court Clerks
	ARRN	TRISH	Arraignment / First Appearance	Magistrate Court Clerks
	NORF	TRISH	Notification Of Rights-felony	Magistrate Court Clerks
	NTHR	TRISH	Notice Of Hearing	Magistrate Court Clerks
	ORPD	TRISH	Defendant: Fenton, Larry Glenn Jr Order Appointing Public Defender Public defender Rick Cuddihy PD 2016	Magistrate Court Clerks
	AFPD	TRISH	Affidavit of Financial Status and Order Appointing Public Defender	Magistrate Court Clerks
	CHJG	TRISH	Change Assigned Judge	Greg K. Kalbfleisch
	HRSC	TRISH	Hearing Scheduled (Preliminary Conference 05/09/2016 01:30 PM)	Greg K. Kalbfleisch
	HRSC	TRISH	Hearing Scheduled (Preliminary Hearing 05/11/2016 01:30 PM)	Greg K. Kalbfleisch
4/29/2016	RQDD	JENNY	Request For Discovery-defendant	Greg K. Kalbfleisch
5/9/2016	HRHD	BDAVENPORT	Hearing result for Preliminary Conference scheduled on 05/09/2016 01:30 PM: Hearing Held	Greg K. Kalbfleisch
	MINE	BDAVENPORT	Minute Entry Hearing type: Preliminary Conference Hearing date: 5/9/2016 Time: 2:17 pm Courtroom: Court reporter: Minutes Clerk: Brittany Davenport Tape Number: 3 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: Justin Coleman	Greg K. Kalbfleisch
5/10/2016	RSDP	JENNY	Response To Request For Discovery-plaintiff	Kent J. Merica
	RQDP	JENNY	Request For Discovery-plaintiff	Kent J. Merica

State of Idaho vs. Larry Glenn Fenton Jr

Date	Code	User	Judge
5/11/2016	MINE	DONNA	Michelle M. Evans
			Minute Entry Hearing type: Preliminary Hearing Hearing date: 05/11/2016 Time: 1:41 pm Courtroom: Court reporter: None Minutes Clerk: Evans Tape Number: ctrm 3 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: Justin Coleman
	CHJG	DONNA	Kent J. Merica
	CONT	DONNA	Kent J. Merica
			Change Assigned Judge Continued (Preliminary Hearing 05/18/2016 01:30 PM)
	HRSC	DONNA	Kent J. Merica
			Hearing Scheduled (Preliminary Conference 05/16/2016 01:30 PM)
	NTHR	DONNA	Kent J. Merica
			Notice Of Hearing
5/13/2016	RSDP	JENNY	Kent J. Merica
			First Supplemental Response To Request For Discovery-plaintiff
5/16/2016	INHD	BEV	Kent J. Merica
			Hearing result for Preliminary Conference scheduled on 05/16/2016 01:30 PM: Interim Hearing Held
	MINE	BEV	Kent J. Merica
			Minute Entry Hearing type: Preliminary Conference Hearing date: 5/16/2016 Time: 2:22 pm Courtroom: Court reporter: Minutes Clerk: BEV Tape Number: ctrm 3 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: Justin Coleman
5/18/2016	MINE	BEV	Carl B. Kerrick
			Minute Entry Hearing type: Preliminary Hearing Hearing date: 5/18/2016 Time: 1:36 pm Courtroom: Court reporter: Minutes Clerk: BEV Tape Number: ctrm 2 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: Justin Coleman
	BOUN	BEV	Kent J. Merica
			Hearing result for Preliminary Hearing scheduled on 05/18/2016 01:30 PM: Bound Over (after Prelim)
	CHJG	BEV	Jay P. Gaskill DJ
	HRSC	BEV	Jay P. Gaskill DJ
			Hearing Scheduled (Arraignment 05/26/2016 01:30 PM)
		BEV	Jay P. Gaskill DJ
			Notice Of Hearing

State of Idaho vs. Larry Glenn Fenton Jr

Date	Code	User		Judge
5/18/2016	ORBO	BEV	Order Binding Over	Carl B. Kerrick
5/19/2016	CONT	TERESA	Continued (Arraignment 05/19/2016 01:30 PM)	Jay P. Gaskill DJ
	INFO	SHELLIE	Information	Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Arraignment Hearing date: 5/19/2016 Time: 1:52 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: April Smith	Jay P. Gaskill DJ
	DCHH	TERESA	Hearing result for Arraignment scheduled on 05/19/2016 01:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages	Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Pretrial Motions 07/14/2016 01:30 PM)	Jay P. Gaskill DJ
5/24/2016	ORDR	TERESA	Order Setting Pretrial Motion Hearing	Jay P. Gaskill DJ
	APPL	TERESA	Application for Transcript of Preliminary Hearing	Jay P. Gaskill DJ
	ORDR	TERESA	Order for Transcript of Preliminary Hearing--TOWLER	Jay P. Gaskill DJ
6/1/2016	TRAN	TERESA	Transcript Filed	Jay P. Gaskill DJ
6/15/2016	MOTN	TERESA	Motion for Extension of Time to File Pretrial Motions	Jay P. Gaskill DJ
	ORDR	TERESA	Order for Extension of Time for Filing Pre Trial Motions--extended to 6-23-16	Jay P. Gaskill DJ
6/24/2016	MOTN	TERESA	Motion to Suppress and Brief in Support	Jay P. Gaskill DJ
7/14/2016	CONT	TERESA	Continued (Pretrial Motions 07/21/2016 01:30 PM)	Jay P. Gaskill DJ
	DCHH	TERESA	District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages	Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Pretrial Motions Hearing date: 7/14/2016 Time: 1:44 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: April Smith	Jay P. Gaskill DJ
7/18/2016	MOTN	TERESA	Motion to Continue--State	Jay P. Gaskill DJ

State of Idaho vs. Larry Glenn Fenton Jr

Date	Code	User		Judge
7/19/2016	ORDR	TERESA	Order to Continue	Jay P. Gaskill DJ
	CONT	TERESA	Continued (Pretrial Motions 08/04/2016 02:30 PM)	Jay P. Gaskill DJ
8/4/2016	MINE	TERESA	Minute Entry Hearing type: Pretrial Motions Hearing date: 8/4/2016 Time: 3:06 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Mackenzie Welch Prosecutor: Justin Coleman	Jay P. Gaskill DJ
	ADVS	TERESA	Hearing result for Pretrial Motions scheduled on 08/04/2016 02:30 PM: Case Taken Under Advisement	Jay P. Gaskill DJ
8/5/2016	MISC	TERESA	Closing Argument---State	Jay P. Gaskill DJ
8/17/2016	OPOR	TERESA	Opinion & Order on Defendant's Motion to Suppress---GRANTED	Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Status Conference 08/18/2016 01:30 PM)	Jay P. Gaskill DJ
		TERESA	Notice Of Hearing	Jay P. Gaskill DJ
8/18/2016	DCHH	TERESA	Hearing result for Status Conference scheduled on 08/18/2016 01:30 PM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages	Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Status Conference 08/25/2016 01:30 PM)	Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 8/18/2016 Time: 1:46 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: Justin Coleman	Jay P. Gaskill DJ
8/25/2016	DCHH	TERESA	Hearing result for Status Conference scheduled on 08/25/2016 01:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages	Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Status Conference 09/01/2016 02:30 PM)	Jay P. Gaskill DJ

State of Idaho vs. Larry Glenn Fenton Jr

Date	Code	User		Judge
8/25/2016	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 8/25/2016 Time: 1:40 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 3 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: April Smith	Jay P. Gaskill DJ
9/1/2016	CONT	TERESA	Continued (Status Conference 09/09/2016 09:00 AM)	Jay P. Gaskill DJ
	DCHH	TERESA	District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages	Jay P. Gaskill DJ
9/2/2016	ORDR	TERESA	Order for Furlough	Jay P. Gaskill DJ
	MOTN	TERESA	Motion for Reconsideration---State	Jay P. Gaskill DJ
9/9/2016	DCHH	TERESA	Hearing result for Status Conference scheduled on 09/09/2016 09:00 AM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages	Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Status Conference Hearing date: 9/9/2016 Time: 9:12 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 3 Defense Attorney: Rick Cuddihy PD 2016 Prosecutor: Justin Coleman	Jay P. Gaskill DJ
9/16/2016	MISC	TERESA	Defendant's Response to State's Motion for Reconsideration	Jay P. Gaskill DJ
9/26/2016	NTAP	BDAVENPORT	Notice Of Appeal	Jay P. Gaskill DJ
	APSC	BDAVENPORT	Appealed To The Supreme Court	Jay P. Gaskill DJ
9/30/2016	OPOR	TERESA	Opinion & Order on State's Motion to Reconsider---DENIED	Jay P. Gaskill DJ
10/7/2016	MOTN	SHELLIE	Motion to Appoint State Appellate Public Defender (D)	Jay P. Gaskill DJ
10/11/2016	ORDR	BDAVENPORT	Order Appointing State Appellate Public Defender	Jay P. Gaskill DJ

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2016 MAR 2 PM 4 02

PATTY O. WEISS
CLERK OF DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. **CR16-01591**

AFFIDAVIT OF PROBABLE CAUSE FOR
WARRANT TO ISSUE PURSUANT TO
I.C.R. 4

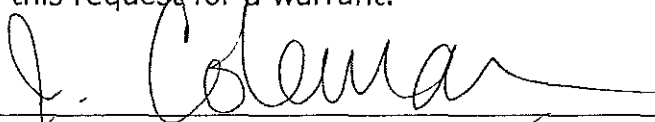
Comes now the undersigned Senior Deputy Prosecutor who on oath deposes
and says:

1. Affiant is the duly qualified Senior Deputy Prosecutor with the Nez
Perce County Prosecutor's Office.

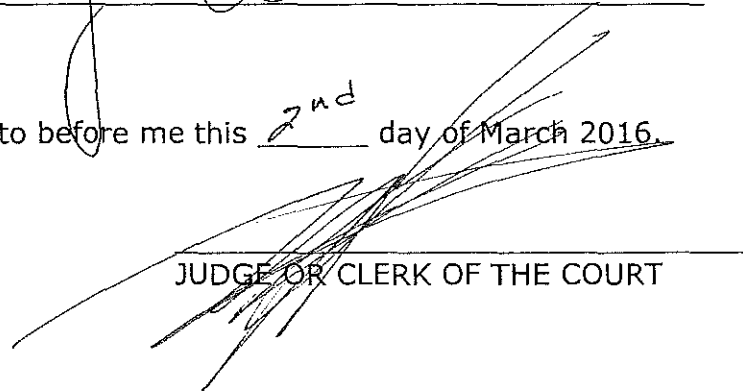
2. Affiant desires that a warrant issue for the arrest of the above-named
defendant for the crime(s) of: **COUNT I - TRAFFICKING IN
METHAMPHETAMINE, I.C. § 37-2732B(a)(4)(C), a felony.**

3. Affiant believes probable cause exists for the issuance of this
requested warrant; your affiant has attached to this Affidavit and incorporates by

reference herein an accurate copy of documents on file with the Lewiston Police Department which form the basis for this request for a warrant.



SUBSCRIBED and SWORN to before me this 2nd day of March 2016.



JUDGE OR CLERK OF THE COURT

Law Supplemental Narrative:

		Supplemental Narratives
Seq Name	Date	Narrative
3 Stormes Joe	11:44:18 02/29/16	

LEWISTON POLICE DEPARTMENT CAP SHEET AND
CASE DISPOSITION SHEET

DATE: 02-29-16

IN CUSTODY: [] YES
 [XX] NO

=====

DEFENDANT:

Name: Larry G. Fenton, Jr.
Address: 802 9th Avenue, #4, Lewiston
Telephone: 208-413-7221; 208-983-3020
Date of Birth: [REDACTED]
Social Security Number: [REDACTED]

=====

LEWISTON POLICE DEPARTMENT CASE NUMBER: 16-L2915

OTHER AGENCIES RELATED CASE NUMBERS:

DATE OF INCIDENT: 02-28-16
TIME OF INCIDENT: 1219 hours

=====

CHARGES:

1. Trafficking Controlled Substances (Methamphetamine)

=====

WITNESSES: (NAME, ADDRESS, PHONE):

1. PO Chris Jensen, 908 Idaho Street, Lewiston; 799-5030

=====

CO-DEFENDANTS:

1. Ashley R. Martin, DOB [REDACTED]

=====

EVIDENCE:

1. Watchguard in car video and audio
2. Photographs
3. State lab report (pending lab results)

===== SUMMARY

(PROBABLE CAUSE): On 02-28-16 at approximately 1219 hours, Ofc. Eylar notified me on the radio that he had located a vehicle which was known to be driven by a subject identified as Joshua Shingleton. Shingleton is known to be a subject who uses narcotics and the vehicle was parked at the 8th Street A&B Foods grocery store. A&B Foods is also known as a location where narcotics are frequently sold. Ofc. Eylar informed me that he was watching the vehicle and observed as it pulled out of the parking lot of A&B Foods. At the same time, a white Pontiac Grand Prix also pulled out and began following the GMC Yukon.

Ofc. Eylar stated that he was following behind both vehicles and both vehicles pulled into the Southway Zip Trip, again at the same time, however remained in their vehicles and did not get out. Ofc. Eylar observed from a distance and I met with him just west of the Southway Zip Trip in a parking lot. Ofc. Eylar explained to me all of the details of what he had seen and stated he was going

to continue watching both vehicles to see what they did and where they went.

The red GMC Yukon is typically seen parked in the driveway at a residence on Country Club Drive, so I informed him I was going to go out towards that residence and await to see the vehicles drove by. As I pulled out of the parking lot and began to travel southbound on Snake River Avenue, Ofc. Eylar advised me over the radio that the white Grand Prix, with the male subject seated inside, had just exited and left the Southway Zip Trip. I was able to do a U turn and get behind the vehicle as it was proceeding northbound on Snake River Avenue. While doing a vehicle registration check through dispatch, dispatch advised me that the vehicle's license plate was not returning in the NCIC system so I initiated a traffic stop on the vehicle in the 200 block of Main Street. As the vehicle made a left hand turn onto 3rd Street from Main Street it did not immediately pull over. After it crossed onto D St. I had to hit my siren twice to signal the driver to pull over. I requested a cover officer be sent to my location and I made contact with the driver who was identified as Larry Fenton, Jr.

Fenton was identified by his Idaho ID card and he also was unable to provide insurance for the vehicle he was driving. I returned to my vehicle to write out citations for Fenton. After after making my second approach to his vehicle as I was handing him his citations he informed me he was on felony probation. I asked him why he had not mentioned that information prior and he told me he was unaware he was supposed to notify law enforcement of his probation status. He told me he simply thought he was supposed to contact his PO if he was contacted by law enforcement.

Prior to me giving him his second copy of his citation I returned to my patrol vehicle and contacted the on call P&P Officer. Chris Jensen was working as the on call officer and I explained the circumstances surrounding the stop to her. Jensen told me the vehicle needed to be searched and advised she was at her office and would be coming to my location shortly. I approached Fenton's vehicle a third time and gave him his other citation. I also handed him back his driver's license and informed him that PO Jensen was coming to speak with him. I then stood by with my cover officer until PO Jensen arrived.

Prior to PO Jensen's arrival I shut down my emergency overhead lights. Once PO Jensen arrived she performed a pat down of Fenton's person and instructed him to sit on the curb. PO Jensen requested my assistance in a search of the vehicle. As we were searching the vehicle Fenton stood back up and began stretching. Despite being ordered to sit down on the curb he took off running in a SE direction. I stayed with the vehicle instead of giving chase and found a black plastic bag that was on the front passenger seat of the vehicle.

Inside of the bag was a large ziplock bag containing large white crystal chunks which based on my training and experience was consistent with methamphetamine. Fenton was able to successfully elude officers and was picked up in a van driven by a female identified as Ashley Martin. After PO Jensen returned to the vehicle, we continued our search and I located inside a black jacket that was on the driver's seat, another bag of a white crystal like substance. These substances were taken to LPD where they were photographed and weighed. The total weight for both bags was one pound one ounce. Substances in both bags were tested with a narcotics identification kit (NIK) and resulted in a presumptive positive for methamphetamine (as indicated by the color change for NIK U).

The car was transported to the Lewiston Police Department indoor storage facility and was placed there for further investigation. PO Jensen advised me she was going to place an Agent's Warrant for Fenton's arrest, however due to

the large amount of methamphetamine as well as Fenton's eluding officers despite be ordered by P&P to remain on scene, I request that the court issue a warrant for trafficking methamphetamine. Fenton will also be given a misdemeanor charge for resisting, evading, obstructing an officer.

RECOMMENDATION: WARRANT
 SUMMONS

OFFICERS/INVESTIGATORS:

- 1. Ofc. Joe Stormes, 431
- 2. Ofc. Nick Eylar, 425
- 3. Ofc. Tom Sparks, 375
- 4. Sgt. Rick Fuentes, 370

PROSECUTOR to POLICE:

DATE:

- Charges filed
- Warrant
- Referred to Juvenile Services
- Prosecution delayed for further investigation
- Prosecution Declined
- Summons

Assigned Prosecutor:

FURTHER INVESTIGATION REQUESTED:

- 1.
- 2.
- 3.

Police Follow-up due by:

PROSECUTION DECLINED: (EXPLANATION)

CASE DISPOSITION:

- Guilty plea as charged
- Guilty plea to other charge:
- Guilty verdict
- Not Guilty verdict
- Other:

"I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct."

03/01/2016
(Date)

J. Storm 431
(Signature)

FILED

2016 MAR 2 PM 4 02

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCEO. WEEKS

CLERK OF THE DIST. COURT

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO.

CR16-01591

Melvin R...

DEPUTY

MAGISTRATE'S FINDING OF
PROBABLE CAUSE FOR
WARRANT OF ARREST

The undersigned Magistrate having examined under oath Senior Deputy Prosecuting Attorney JUSTIN J. COLEMAN, who seeks a warrant of arrest for the above-referenced defendant, and after having examined said officer's Affidavit and the documents attached thereto, and probable cause having been shown, the undersigned Magistrate hereby finds that probable cause exists to believe that an offense has been committed and that the defendant has committed it, and authorizes the issuance of a warrant of arrest against the above-referenced defendant for the crime(s) of: **COUNT I - TRAFFICKING IN METHAMPHETAMINE, I.C. § 37-2732B(a)(4)(C), a felony.**

DATED this 2nd day of March 2016.

[Signature]
MAGISTRATE

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2016 MAR 2 PM 4 02


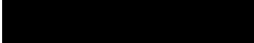
PATTY O. WEEB
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON
D.O.B.: 
S.S.N.: 

Defendant.

CASE NO. **CR16-01591**

COMPLAINT - CRIMINAL

STATE OF I D A H O)
: ss.
County of Nez Perce)

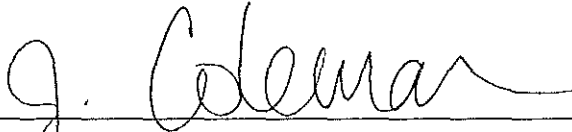
PERSONALLY APPEARED Before me this 2nd day of March 2016, in the County of Nez Perce, JUSTIN J. COLEMAN, who, being first duly sworn, complains and says: that LARRY G. FENTON, did commit the following crime(s):

COUNT I
TRAFFICKING IN METHAMPHETAMINE, I.C. § 37-2732B(a)(4)(C), a felony

That the defendant, LARRY G. FENTON, on or about the 28th day of February 2016, in the County of Nez Perce, State of Idaho, was knowingly in actual and/or constructive possession of four hundred (400) grams or more of Methamphetamine, to-wit: four hundred eighty one (481) grams of Methamphetamine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of Methamphetamine.

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.

Said Complainant therefore prays that LARRY G. FENTON be dealt with according to law.



SUBSCRIBED and SWORN to before me this 2nd day of March 2016.



MAGISTRATE

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. **CR16-01591**

WARRANT OF ARREST

THE STATE OF IDAHO: To any Sheriff, Constable, Marshal or Policeman of the State of Idaho, or the County of Nez Perce, GREETINGS:

A complaint on oath having this day been laid before me by JUSTIN J. COLEMAN, charging that the crime(s) of: **COUNT I - TRAFFICKING IN METHAMPHETAMINE, I.C. § 37-2732B(a)(4)(C), a felony;** has been committed, and accusing the above-named defendant thereof.

YOU ARE THEREFORE COMMANDED, forthwith to arrest the above-named defendant in the daytime and bring said defendant before me at my office at Lewiston, in said County, or in case of my absence or inability to act, before the nearest or most accessible Judge in this County.

HEREIN FAIL NOT, and due return make hereof.

BOND is hereby set at \$ 50,000⁰⁰.

WITNESS my hand at Lewiston, Idaho, on this the 2nd day of March 2016.

GREG KALBFLEISCH

JUDGE

ENDORSEMENT TO ARREST IN NIGHTTIME

YOU ARE FURTHER COMMANDED to arrest LARRY G. FENTON in the day time or night time and bring said defendant before me at my office at Lewiston, in said County, or in case of my absence or inability to act, before the nearest and most accessible Judge in this County.

WITNESS my hand at Lewiston, Idaho, on this the 21st day of March 2016.

GREG KALBFLEISCH

JUDGE

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. **CR16-01581**

WARRANT OF ARREST

FILED
ORIGINAL 43
CLERK OF DISTRICT COURT
Spencer
RECEIVED
HOUR 1039 **A.M.** P.M.
MAR 03 2016
NEZ PERCE COUNTY SHERIFFS OFFICE
LEWISTON, IDAHO 83501
BY: *[Signature]*

THE STATE OF IDAHO: To any Sheriff, Constable, Marshal or Policeman of the State of Idaho, or the County of Nez Perce, GREETINGS:

A complaint on oath having this day been laid before me by JUSTIN J. COLEMAN, charging that the crime(s) of: **COUNT I - TRAFFICKING IN METHAMPHETAMINE, I.C. § 37-2732B(a)(4)(C), a felony;** has been committed, and accusing the above-named defendant thereof.

YOU ARE THEREFORE COMMANDED, forthwith to arrest the above-named defendant in the daytime and bring said defendant before me at my office at Lewiston, in said County, or in case of my absence or inability to act, before the nearest or most accessible Judge in this County.

HEREIN FAIL NOT, and due return make hereof.

BOND is hereby set at \$ 50,000.

WITNESS my hand at Lewiston, Idaho, on this the 2nd day of March 2016.

[Signature]

JUDGE

ENDORSEMENT TO ARREST IN NIGHTTIME

YOU ARE FURTHER COMMANDED to arrest LARRY G. FENTON in the day time or night time and bring said defendant before me at my office at Lewiston, in said County, or in case of my absence or inability to act, before the nearest and most accessible Judge in this County.

WITNESS my hand at Lewiston, Idaho, on this the 2nd day of March 2016.

JUDGE

Deputy Vanessa Malle
D64
Nez Perce County

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

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
 LARRY FENTON)
)
 Defendant,)

NO. CR16-150

NOTIFICATION OF RIGHTS -
FELONY

FILED
2016 APR 28 AM 6 43
PATTY O. WEEKS
CLERK OF THE COURT
[Signature]
DEPUTY

The purpose of the initial appearance is to advise you of your rights and the charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court will appoint one to help you. If you are found guilty or plead guilty, you may be ordered to reimburse Nez Perce County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- You have the right to a preliminary hearing before a judge.
- The purpose of a preliminary hearing is to determine whether probable cause exists to believe you have committed the crime(s) charged. A preliminary hearing is not a trial to decide guilt or innocence.
- You can cross-examine all witnesses who testify against you.
- You can present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If the court finds probable cause exists that you committed the crime(s) charged, or if you waive your preliminary hearing, you will be sent to the District Court for arraignment.

If you have questions about the charge(s), about your rights or the court process, don't hesitate to speak up. It is important that you understand.

Acknowledgement of Rights

I have read this entire document, and I understand these rights as set forth above.

Date 4-27-16

Defendant's Signature *[Signature]*

Notification of Rights - Felony

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

Case Title: State v. Larry G Fenton Jr
Hearing Type: Initial Arraignment
Case #: CR16-1591
Judge: MERICA
Clerk: NUSM
Courtroom #: 2
Date: 4.28.16

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Start Time: 91243
Defendant present With/Without Counsel
 Court advises Defendant of Rights & Charges(s)
 Defendant requests Public Defender & signs Affidavit of Financial Status
 Judge appoints and orders Cuddihy to represent defendant
Bond set \$ 50,000 OR'd _____ No Contact Order entered _____
Next Preliminary Conference date 5-9-16 @ 1:30 pm
Next Preliminary Hearing date 5-11-16 @ 1:30 pm
Other: _____

Recess: 91642

FILED

2016 APR 28 AM 9 40

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY FENTON

Defendant.

) CASE NO. CR16-1552

) AFFIDAVIT OF FINANCIAL STATUS,
) APPLICATION FOR PUBLIC
) DEFENDER, AND ORDER

This application must be filled out **completely** before it can be reviewed for assignment of a public defender. All questions must be answered. NO EXCEPTIONS.

Personal Information

Full Name: Larry Fenton Date of Birth: 6-9-85
Address: _____ Phone #: 416
City: lewiston State: ID Zip: 83501

Income Information

Are you employed? No Yes _____ Where? _____

What is your **gross** income (amount **before** taxes or any other withholdings are taken out)?

Monthly: \$ 0 Bi-weekly: \$ _____ Weekly: \$ _____

What is your **hourly** income? \$ 0 How many hours do you work per week? _____

Married? No Yes _____ Spouse's Name: _____

What is your spouse's **gross** income (amount **before** taxes or any other withholdings are taken)?

Monthly: \$ 0 Bi-weekly: \$ _____ Weekly: \$ _____

Do you have any other sources of income? No Yes _____

If yes, from whom? _____ How much per month? _____

Please list which, if any, of the following public assistance you receive:

- _____ Self Reliance Program Funds _____ SSI or SSDI _____ Food Stamps
- _____ County or General Relief _____ Medicare/Medicaid _____ Cash Assistance
- _____ Other. Please specify: _____

Household Information

Please list each of the following **dependents** which reside in your household and for whom you are financially responsible:

_____ Spouse
2 Children. How many total? _____ Please list age of each child: _____
_____ Other. Please specify relationship: _____

Debts

Please list the following debts you pay **per month**:

Mortgage/Rent: _____ Food: _____ Utilities: _____
Car: _____ Medical: _____ Credit Cards: _____
Loans: _____ Child Support: 350 Other: _____

Assets

Do you own your home? No _____ Yes _____ Equity: _____
Do you rent your home? No _____ Yes _____
Do you live with your parents? No _____ Yes _____

Please list the **approximate value** of the following property you own:

Motor Vehicles: How many? _____ Total Value of All Vehicles: \$ _____
Make and Model of Each Vehicle: _____
Furniture/Appliances/Electronics: \$ _____
Sporting Equipment: \$ _____ Guns: How many? _____ Value: \$ _____
Boats/Recreational Vehicles/Motorcycles/Snowmobiles: \$ _____
Money in savings/checking accounts: \$ _____ Name of Bank: _____
Cash on hand: \$ _____ Stocks/Bonds: \$ _____
Jewelry: \$ _____
Other. Specify: _____ \$ _____

What is the last year you filed an income tax return? _____ Amount of return: \$ _____
Can you borrow money to pay an attorney? No _____ Yes _____ If yes, how much? \$ _____

I HEREBY ACKNOWLEDGE THAT I MAY BE REQUIRED TO REIMBURSE NEZ PERCE COUNTY FOR THE SERVICES OF THE PUBLIC DEFENDER.

I HEREBY CERTIFY THAT ALL OF THE ANSWERS TO THE FOREGOING QUESTIONS ARE UNDER OATH AND SWEAR THAT THE SAME ARE TRUE AND CORRECT. IF I HAVE INTENTIONALLY ANSWERED ANY OF SAID QUESTIONS INCORRECTLY, I MAY BE PROSECUTED FOR PERJURY.

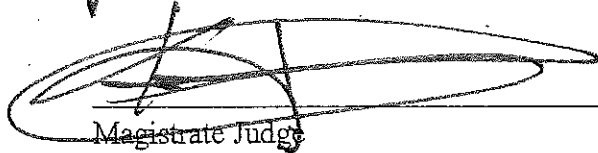
Dated this 4 day of 27, 2016.

Defendant's Signature

ORDER

Based upon the information contained in the Court record and on the above-filed affidavit, the Court hereby X GRANTS DENIES the defendant's application for public defender. Rick Cuddy is hereby appointed as counsel to represent the defendant in the above-entitled case.

Dated this 28th day of April, 2016.


Magistrate Judge

FILED

2016 APR 28 AM 9 40

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

CLERK OF THE DISTRICT COURT
[Signature]

STATE OF IDAHO,

Plaintiff,

vs.

Larry G Penton Jr
Defendant,

CASE NO. CR16-1591

- NOTICE OF PRELIMINARY CONFERENCE
- NOTICE OF PRELIMINARY HEARING
- NOTICE OF SENTENCING
- NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- PRELIMINARY CONFERENCE to begin at 1:30 p.m., on the 9th day of May, 2016.
- PRELIMINARY HEARING to begin at 1:30 p.m., on the 11th day of May, 2016.
- SENTENCING to begin at _____, .m. on the _____ day of _____, 20_____.
- HEARING to begin at _____, .m. on the _____ day of _____, 20_____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 28 day of April, 2016.

BY ORDER OF:

Copy to Prosecuting Attorney

Copy handed to Defendant

Copy mailed to Defendant

Copy mailed/handed/placed in basket to Defendant's Attorney

Mexica
Judge

Nelson
Clerk

Credibility

SCANNED
24

FILED

2016 APR 29 AM 10 45

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

Richard M. Cuddihy, ISB No. 7064
KNOWLTON & MILES, PLLC
Post Office Drawer 717
312 Seventeenth Street
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Fax: (208) 746-0118

Attorneys for Defendant

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

THE STATE OF IDAHO,	)	Case No. CR 16-1591
)	
Plaintiff,)	
	)	REQUEST FOR DISCOVERY
vs.)	
)	
LARRY FENTON, JR,)	
)	
Defendant.)	
_____)	

TO: PROSECUTING ATTORNEY FOR THE COUNTY OF NEZ PERCE, STATE OF IDAHO:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence, and materials:

ONE: Disclose to defense any and all material of information within your possession or control or which may hereafter come into your possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore.

TWO: Permission to the defendant to inspect and copy or photograph any relevant, written, or recorded statements made by the defendant or copies thereof within the possession, custody or control of the state.

THREE: The substance of any relevant, oral statement made by the defendant or copies thereof within the possession, custody or control of the state.

FOUR: Permission of the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant and the substance of any relevant, oral statement made by a co-defendant, whether before or after arrest, in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

FIVE: Furnish to the defendant a copy of the prior criminal record of the defendant, if any.

SIX: Permission of the defendant to inspect and copy or photograph any books, papers, documents, photographs, audio recordings, video recordings, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant.

SEVEN: Permit the defendant 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 the particular case or copies thereof within the possession, custody, or control of the prosecuting attorney.

EIGHT: Provide the defendant with copies of the polaroid's taken as evidence.

NINE: Furnish to the defendant written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with

any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney.

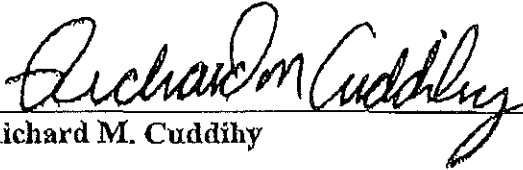
TEN: Furnish to the defendant statements made by the prosecution's witnesses or prosecuting attorney or agents or to any official involved in the investigatory process of the case.

ELEVEN: Furnish to the defendant reports and memoranda made by any police officer or investigator in connection with the investigation or prosecution of the case.

TWELVE: Provide the defendant with the name of the person who called any Law Enforcement agency. The undersigned further requests permission to inspect and copy said information, evidence and materials not required to be furnished within fourteen (14) days from receipt of this notice, or at such other time as counsel may agree.

DATED this 29th day of April, 2016.

KNOWLTON & MILES, PLLC


Richard M. Cuddihy

CERTIFICATE OF DELIVERY

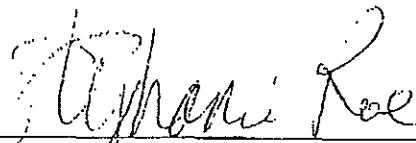
I CERTIFY that on this 29th day of April, 2016, I caused a true and correct copy of the foregoing **Request for Discovery** to be:

- hand delivered by providing a copy to: Valley Messenger Service
- mailed postage prepaid
- certified mail
- faxed

to the following:

**Nez Perce County Prosecutor's Office
Lewiston, Idaho
Fax# 208-790-3080**

KNOWLTON & MILES, PLLC


A member of the firm

DISTRICT COURT JUDICIAL DISTRICT COURT, STATE OF IDAHO
LAND FOR THE COUNTY OF NEZ PERCE
1230 MAIN ST.
LEWISTON, IDAHO 83501

CASE TITLE: **State of Idaho vs. Larry G. Fenton Jr**) JUDGE: Greg K. Kalbfleisch
HEARING TYPE: Preliminary Conference) CLERK: Davenport
PLF ATTY: Justin J. Coleman) Magistrate Courtroom # 3
DEF ATTY: Rick Cuddihy PD 2016) CASE #: **CR-2016-0001591**
Monday, May 09, 2016) TIME: 1:30 PM

BE IN KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

021709 Start

Def present with / without counsel Def not in Custody Def in Custody

Kelleher / Smith / Coleman present for State

State / Def requests continuance of Prelim

Court Orders Prelim Conference continued to: _____ at 1:30 p.m.

Court Orders Prelim Hearing continued to: _____ at 1:30 p.m.

Def waives Prelim – Court binds Def over to District Court

Case set for District Court Arraignment on _____ at _____ Assigned to: _____

Stipulation and Motion to Continue Prelim has been filed.

Def is being considered for:

Mental Health Court / DUI Court / Family Reunification Court

Def previously waived right to speedy prelim

Def waives right to speedy prelim

Defense addresses Court regarding bond.

Preliminary Hearing going forward on Wednesday, 5/11/16 at 1:30 p.m.

021756 End

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N.: 8023

FILED

2016 MAY 10 PM 4 21

PATTY O. WEEKS
CLERK OF DISTRICT COURT
[Signature]
TERRELL

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. CR2016-0001591

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 information, evidence and materials:

1. Books, papers, documents, photographs, tangible objects 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;

2. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular 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. A list of names and addresses of witnesses the defendant intends to call at trial.

4. Please provide the State with a written summary or report of any expert witness testimony that the Defendant intends to introduce pursuant to Idaho Criminal Rules 702, 703 and 705 at trial or hearing in the above-captioned matter. Said summary must describe the expert's opinions, the facts and data for those opinions and the expert's qualifications. This request shall also include any expert opinions regarding mental health pursuant to Idaho Code Section 18-207.

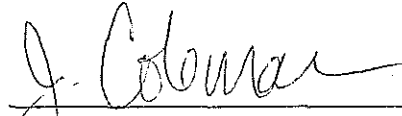
The undersigned further requests permission to inspect and copy said information, within 14 days from the date of this request at the Prosecuting Attorney's Office, Lewiston, Idaho.

REQUEST FOR NOTICE OF DEFENSE OF ALIBI

Pursuant to Idaho Code Section 19-519 and Idaho Criminal Rule 12.1, the Prosecuting Attorney requests that you serve upon his office within ten days of your receipts of this request a written notice of the intention of your client to offer a defense of alibi in the above-referenced matter.

Such notice must state the 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 10th day of May 2016.



JUSTIN J. COLEMAN
Senior Deputy Prosecutor

AFFIDAVIT OF SERVICE

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

- (1) 4 hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Richard M. Cuddihy
KNOWLTON & MILES, PLLC
312 17th Street
P.O. Drawer 717
Lewiston, ID 83501

DATED this 10th day of May 2016.


ERIN D. LEAVITT
Senior Legal Assistant

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N.: 8023

FILED

2016 MAY 10 PM 4 21

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. CR2016-0001591

RESPONSE TO REQUEST FOR
DISCOVERY

TO THE ABOVE-NAMED DEFENDANT AND COUNSEL:

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

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

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

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

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

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

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

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

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

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


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

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

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

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

DATED this 10th day of May 2016.



JUSTIN J. COLEMAN
Senior Deputy Prosecutor

AFFIDAVIT OF SERVICE

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

- (1) ✓ hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Richard M. Cuddihy
KNOWLTON & MILES, PLLC
312 17th Street
P.O. Drawer 717
Lewiston, ID 83501

DATED this 10th day of May 2016.



ERIN D. LEAVITT
Senior Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. LARRY G. FENTON
NEZ PERCE COUNTY CASE NO. CR2016-0001591

1. NAME: NICK EYLAR
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

2. NAME: RICHARD G. FUENTES
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

3. NAME: CHRIS JENSEN
ADDRESS: Probation and Parole
908 Idaho Street
Lewiston, Idaho 83501
PHONE: (208) 799-5030x114

4. NAME: REBECCA L. LEHMAN
ADDRESS: 612 3rd Street
Lewiston, Idaho 83501
PHONE: (208) 743-4558

5. NAME: JAMES H. LEHMAN
ADDRESS: 612 3rd Street
Lewiston, Idaho 83501
PHONE: (208) 816-9250

6. NAME: ASHLEY R. MARTIN
ADDRESS: 802 9th Avenue #4
Lewiston, Idaho 83501
PHONE: (208) 816-9924

7. NAME: CHRIS REESE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

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

9. NAME: JOE STORMES
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. LARRY G. FENTON
NEZ PERCE COUNTY CASE NO. CR2016-0001591

1. A copy of any audios and/or videos are available by providing blank CDs or DVDs to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.
2. Lewiston Police Department Cap Sheet and Case Disposition Sheet consisting of three (3) pages. (1-3)
3. Lewiston Police Department LAW Incident Table consisting of three (3) pages. (4-6)
4. Lewiston Police Department Narrative prepared by Joe Stormes consisting of four (4) pages. (7-10)
5. Lewiston Police Department Supplemental Narrative prepared by Robert Massey consisting of two (2) pages. (11-12)
6. Lewiston Police Department Supplemental Narrative prepared by Rick Fuentes consisting of one (1) page. (13)
7. Lewiston Police Department Supplemental Narrative prepared by Tom Sparks consisting of two (2) pages. (14-15)
8. Lewiston Police Department Supplemental Narrative prepared by Nick Eylar consisting of three (3) pages. (16-18)
9. Lewiston Police Department Main Names Table consisting of five (5) pages. (19-23)
10. Criminal History consisting of thirty (30) pages. (24-53)
11. One (1) DVD containing Watchguard videos from Rick Fuentes, Mike Rigney, Tom Sparks and Joe Stormes patrol vehicles; and fifteen (15) photographs.

COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Preliminary Hearing

Hearing date: 05/11/2016

Time: 1:41 pm

Judge: Michelle M. Evans

Courtroom: 3

Court reporter: None

Minutes Clerk: Evans

Tape Number: ctrm 3

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: Justin Coleman

014107

Kelleher, Welch and Fenton Jr. present

State requests continuance

Def waives speedy prelim but wants the prelim set for next week

Court sets prelim conference on 05-16-13 at 1:30 p.m. and the prelim hearing for 05-18-2016 at 1:30 p.m.

014355

FILED

2016 MAY 11 PM 2:02

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

PAUL D. WELCH
CLERK OF DISTRICT COURT
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Fenton

Defendant,

CASE NO. CR-16-1591

- NOTICE OF PRELIMINARY CONFERENCE
- NOTICE OF PRELIMINARY HEARING
- NOTICE OF SENTENCING
- NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

- PRELIMINARY CONFERENCE to begin at 1:30 p.m., on the 16 day of May, 2016.
- PRELIMINARY HEARING to begin at 1:30 p.m., on the 18 day of May, 2016.
- SENTENCING to begin at _____, ____m. on the _____ day of _____, 20_____.
- HEARING to begin at _____, ____m. on the _____ day of _____, 20_____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 11 day of May, 2016.

BY ORDER OF:

M. Evans

Judge

D. Welch
Clerk

- Copy to Prosecuting Attorney
- Copy handed to Defendant
- Copy mailed to Defendant
- Copy mailed/handed/placed in basket to Defendant's Attorney

Welch

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N.: 8023

FILED

2016 MAY 13 PM 12 03

PATTY J. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. CR2016-0001591

**FIRST SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

JUSTIN J. COLEMAN, Senior Deputy Prosecutor for Nez Perce County, Idaho, comes before the Court and pursuant to Defendant's Request for Discovery in the case herein, makes the following first supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

2. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 13th day of May 2016.



JUSTIN J. COLEMAN
Senior Deputy Prosecutor

AFFIDAVIT OF SERVICE

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

- (1) 4 hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Richard M. Cuddihy
KNOWLTON & MILES, PLLC
312 17th Street
P.O. Drawer 717
Lewiston, ID 83501

DATED this 13th day of May 2016.



ERIN D. LEAVITT
Senior Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. LARRY G. FENTON
NEZ PERCE COUNTY CASE NO. CR2016-0001591

1. NAME: NICK EYLAR
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

2. NAME: RICHARD G. FUENTES
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

3. NAME: CHRIS JENSEN
ADDRESS: Probation and Parole
908 Idaho Street
Lewiston, Idaho 83501
PHONE: (208) 799-5030x114

4. NAME: REBECCA L. LEHMAN
ADDRESS: 612 3rd Street
Lewiston, Idaho 83501
PHONE: (208) 816-0796

5. NAME: JAMES H. LEHMAN
ADDRESS: 612 3rd Street
Lewiston, Idaho 83501
PHONE: (208) 816-9250

6. NAME: ASHLEY R. MARTIN
ADDRESS: 802 9th Avenue #4
Lewiston, Idaho 83501
PHONE: (208) 816-9924

7. NAME: CHRIS REESE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

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

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

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

10. NAME: JOE STORMES
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

11. NAME: **NICK KRAKALIA**
ADDRESS: **Lewiston Police Department**
1224 F Street
Lewiston, Idaho 83501
PHONE: **(208) 746-0171**

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. LARRY G. FENTON
NEZ PERCE COUNTY CASE NO. CR2016-0001591

1. A copy of any audios and/or videos are available by providing blank CDs or DVDs to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.
2. Lewiston Police Department Cap Sheet and Case Disposition Sheet consisting of three (3) pages. (1-3)
3. Lewiston Police Department LAW Incident Table consisting of three (3) pages. (4-6)
4. Lewiston Police Department Narrative prepared by Joe Stormes consisting of four (4) pages. (7-10)
5. Lewiston Police Department Supplemental Narrative prepared by Robert Massey consisting of two (2) pages. (11-12)
6. Lewiston Police Department Supplemental Narrative prepared by Rick Fuentes consisting of one (1) page. (13)
7. Lewiston Police Department Supplemental Narrative prepared by Tom Sparks consisting of two (2) pages. (14-15)
8. Lewiston Police Department Supplemental Narrative prepared by Nick Eylar consisting of three (3) pages. (16-18)
9. Lewiston Police Department Main Names Table consisting of five (5) pages. (19-23)
10. Criminal History consisting of thirty (30) pages. (24-53)
11. One (1) DVD containing Watchguard videos from Rick Fuentes, Mike Rigney, Tom Sparks and Joe Stormes patrol vehicles; and fifteen (15) photographs.
12. **Idaho State Police Forensic Services Forensic Controlled Substance Analysis Report consisting of two (2) pages. (54-55)**
13. **Lewiston Police Department Supplemental Narrative prepared by Nick Krakalia dated April 15, 2016, consisting of one (1) page. (56)**

DISTRICT COURT JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF NEZ PERCE
1230 MAIN ST.
LEWISTON, IDAHO 83501

CASE TITLE: State of Idaho vs. Larry G. Fenton Jr) JUDGE: Kent J. Merica
HEARING TYPE: Preliminary Conference) CLERK: Nelson
PLF ATTY: Justin J. Coleman) Magistrate Courtroom # 3
DEF ATTY: Rick Cuddihy PD 2016) CASE #: CR-2016-0001591
Monday, May 16, 2016) TIME: _____

BE IN KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

22201 Start

Def present with / without counsel Def not in Custody Def in Custody

Kelleher / Smith / Coleman present for State

State / Def requests continuance of Prelim

Court Orders Prelim Conference continued to: _____ at 1:30 p.m.

Court Orders Prelim Hearing continued to: _____ at 1:30 p.m.

Def waives Prelim – Court binds Def over to District Court

Case set for District Court Arraignment on _____ at _____ Assigned to: _____

Stipulation and Motion to Continue Prelim has been filed.

Def is being considered for:

Mental Health Court / DUI Court / Family Reunification Court

Def previously waived right to speedy prelim

Def waives right to speedy prelim

Defense addresses Court regarding bond.

Preliminary Hearing going forward on Wednesday, _____ at 1:30 p.m.

Remains set for Wednesday

22238 End

COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Preliminary Hearing

Hearing date: 5/18/2016

Time: 1:36 pm

Judge: Carl B. Kerrick

Courtroom: 2

Minutes Clerk: BEV

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: Justin Coleman

1:36:03 Justin Coleman present for the State
Mackenzie Welch present with defendant

Parties are ready to proceed.

State calls Officer Jay Stormes as a witness – sworn in and examined.

1:39:58 Welch – Objection, hearsay.

1:40:05 State – Not being used for the truth of the matter.

1:40:11 Court – Overruled.

1:40:15 State continues exam.

1:46:22 Welch – Objection, hearsay.

1:46:24 Court – Overruled.

1:46:27 State continues exam.

1:50:06 Welch questions the witness in aid of objection. No objection after questioning.

1:50:17 State continues exam.

1:53:30 State moves to admit exhibit 1.

1:53:35 Welch questions witness in aid of objection. No objection after questioning.

1:54:16 Court – Based on that, State’s exhibit 1 is admitted.

1:54:21 State continues exam.

1:56:33 Welch cross examines.

2:04:41 State re-directs.

2:06:33 Welch – Nothing further.

2:06:36 Officer Stormes steps down and is excused.

2:07:01 State rests.

2:07:08 Welch – No evidence.

2:07:13 State submits.

2:07:23 Defense submits.

2:07:26 Court – Based on the evidence, Court finds probable cause that the offense occurred and defendant committed it. Information has a different amount than the exhibit. State may want to amend information. Defendant is bound over to District Court. Assigned to Judge Gaskill, set for arraignment 5/26/16 at 1:30 pm.

2:09:33 recess

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

STATE OF IDAHO,)
)
Plaintiff,)
)
v.)
)
LARRY G. FENTON,)
)
Defendant.)
_____)

CASE NO. CR 16-1591

ORDER BINDING OVER

FILED
2016 MAY 18 PM 2 26
PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

The undersigned Magistrate having **HEARD** the Preliminary hearing in the above-entitled matter on the 18TH day of May, 2016, and it appearing to me that the offense set forth in the Complaint theretofore filed herein has been committed, and there is sufficient cause to believe the above-named defendant guilty thereof.

I ORDER that said defendant be held to answer the same, and said defendant is hereby bound over to the District Court for trial on the charge of COUNT I: TRAFFICKING IN METHAMPHETAMINE; I.C. § 37-2732B(a)(4)(C); a felony.

DATED this 18th day of May, 2016.


Magistrate

THIS CASE HAS BEEN ASSIGNED TO:

JAY P. GASKILL, DISTRICT JUDGE

Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

2016 MAY 18 PM 2 26

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Case No: CR-2016-0001591

DEPUTY

NOTICE OF HEARING

STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
Larry Glenn Fenton Jr,)
)
Defendant.)

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Arraignment Thursday, May 26, 2016 01:30 PM
Judge: Jay P. Gaskill DJ

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, May 18, 2016.

Defendant: Larry Glenn Fenton Jr
802 9th Ave Apt 4
Lewiston, ID 83501

Mailed _____ Hand Delivered to jail

Private Counsel: Rick Cuddihy PD 2016
P.O. Drawer 717
Lewiston, ID 83501

Mailed _____ Hand Delivered

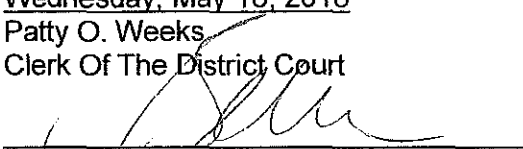
Prosecutor: Justin J. Coleman

Mailed _____ Hand Delivered

Dated: Wednesday, May 18, 2016

Patty O. Weeks
Clerk Of The District Court

By:


Deputy Clerk
DOC22 7/96

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N.: 8023

FILED

2016 MAY 19 AM 11 53

PATTY O. WEEKS
CLERK OF THE DIST. COURT



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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,
D.O.B.: 06/09/1985,
S.S.N.: XXX-XX-1324,

Defendant.

CASE NO. CR2016-0001591

INFORMATION

JUSTIN J. COLEMAN, Senior Deputy Prosecutor, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that LARRY G. FENTON is accused by this Information of the following crime(s):

COUNT I
TRAFFICKING IN METHAMPHETAMINE, I.C. § 37-2732B(a)(4)(C), a felony.

That the Defendant, LARRY G. FENTON, on or about the 28th day of February 2016, in the County of Nez Perce, State of Idaho, was knowingly in actual and/or constructive possession of four hundred (400) grams or more of Methamphetamine, to-wit: four hundred eighty one (481) grams of Methamphetamine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of Methamphetamine.

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.



JUSTIN J. COLEMAN
Senior Deputy Prosecutor

COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Arraignment

Hearing date: 5/19/2016

Time: 1:52 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: April Smith

- 15217 Defendant present, in custody, with counsel.
- 15312 CR16-01591 State's Information previously filed for the crime of Trafficking in Methamphetamine.
- 15318 Defendant understands the charge.
- 15332 Defendant understands the penalties.
- 15344 Defendant's name, date of birth and social security number are correct.
- 15351 Defendant waives the reading of the Information.
- 15358 Mr. Cuddihy addresses the Court and Defendant will enter a not guilty plea in CR16-1591 and intends to file a motion that will determine the outcome of both matters (probation violation CR13-7217)
- 15546 Mr. Cuddihy to file motions by 6-16-16, response due 6-30-16 and Court will hear motions on 7-14-16 at 1:30 p.m. (CR13-7217 will be set for a status conference).
- 15632 Court recess.

FILED

2016 MAY 24 AM 8:38

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR16-01591
)	
vs.	)	ORDER SETTING PRETRIAL
	)	MOTION HEARING
LARRY G. FENTON, JR.,)	
)	
Defendant.)	
)	

The above-entitled case is hereby scheduled as follows:

All pre-trial motions shall be filed on or before; June 16, 2016;

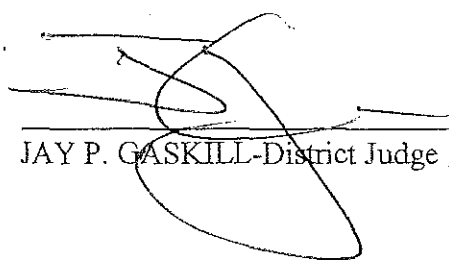
Supporting Briefs due: June 16, 2016;

Responding Briefs due: June 30, 2016;

All pre-trial motions shall be heard at the hour of 1:30 p.m. on Thursday, July 14, 2016, with the defendant personally present at said hearing. If no motions are filed, there will be no hearing on this date.

ORDER SETTING PRETRIAL MOTION 1
HEARING

Dated this 24th day of May, 2016.



JAY P. GASKILL-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SETTING PRETRIAL MOTION HEARING was:

hand delivered via court basket, or

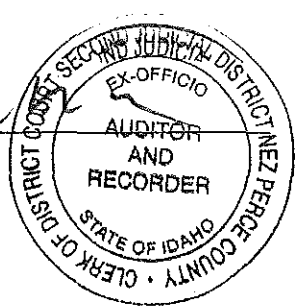
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 24th day of May, 2016, to:

Rick Cuddihy
P O Drawer 717
Lewiston ID 83501

Justin Coleman
P.O. Box 1267
Lewiston, ID 83501

PATTY O. WEEKS, Clerk

By *Patty O. Weeks*
Deputy



KNOWLTON & MILES, PLLC
Post Office Drawer 717
312 Seventeenth Street
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Fax: (208) 746-0118

Attorneys for Defendant

FILED

2016 MAY 24 AM 9 20

PATTY O'WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 v.)
)
 LARRY FENTON,)
)
 Defendant.)
_____)

Case No: CR 16-1591

APPLICATION FOR TRANSCRIPT
OF PRELIMINARY HEARING

COMES NOW, Richard M. Cuddihy, Attorney for the above-named Defendant, and respectfully shows the court as follows:

I.

That Petitioner was appointed on the 28th day of April, 2016, as Attorney for the above-named Defendant and on the 18th day of May, 2016 a Preliminary Hearing was held, after which the Court issued an order binding the Defendant over to District Court.

II.

That thereafter on the 18th day of May, 2016 the Defendant appeared in the District Court and entered a plea of not guilty, and this matter has been set for jury trial.

APPLICATION FOR TRANSCRIPT
OF PRELIMINARY HEARING

III.

That a transcript of the Preliminary Hearing is necessary for Petitioner to properly prepare for cross examination and all further necessary trial preparation.

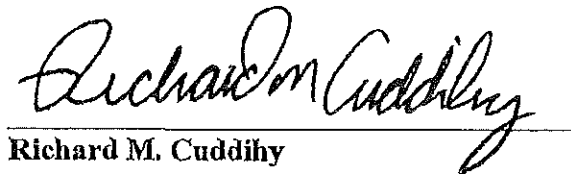
IV.

That said Defendant is indigent and without funds or other resources to pay for the said transcript.

WHEREFORE, Petitioner prays that an Order of the Court be made for preparation of the Preliminary Hearing transcript.

DATED this 24th day of May, 2016.

KNOWLTON & MILES, PLLC


Richard M. Cuddihy

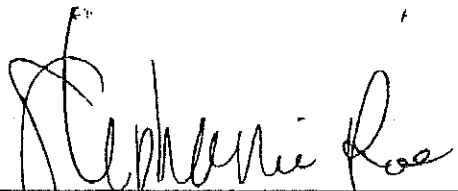
CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 24th day of May, 2016, I caused a true and correct copy of the foregoing **Application for Transcript of Preliminary Hearing** to be:

Faxed

to the following:

**Nez Perce County Prosecuting Attorney
Lewiston, ID 83501
Fax: (208) 799-3080**



A Member of the Firm

CERTIFICATE OF DELIVERY

I **CERTIFY** that on this 24th day of May, 2016, I caused a true and correct copy of the foregoing **Order for Transcript of Preliminary Hearing**:


faxed

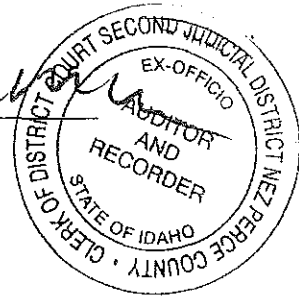
to the following:

Nez Perce County Prosecutor's Office
Lewiston, ID 83501
Fax: (208) 799-3080

Richard M. Cuddihy
KNOWLTON & MILES, PLLC
Lewiston, ID 83501
Fax: (208) 746-0118

CLERK OF THE COURT


Deputy



Richard M. Cuddihy, ISB No. 7064
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Fax: (208) 746-0113

FILED

2016 JUN 15 AM 9 47

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 16-1591
)	
Plaintiff,	)	MOTION FOR EXTENSION
	)	OF TIME TO FILE PRE-TRIAL
v.	)	MOTIONS
)	
LARRY FENTON,)	
)	
Defendant.)	
)	

COMES NOW the Defendant in the above-entitled matter, by and through her Attorney of record, Richard M. Cuddihy of Knowlton & Miles, PLLC, and respectfully requests this Court grant the defense a one (1) week extension to file Pre-Trial Motions as ordered in the Order Setting Jury Trial and Scheduling Proceedings in the above-entitled matter.

DATED this 15th day of June, 2016.

Richard M. Cuddihy
Richard M. Cuddihy

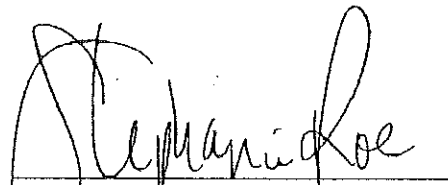
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PJ
6-15-16 c 9:57 AM
62*

MOTION FOR EXTENSION
OF TIME TO FILE PRE-TRIAL
MOTIONS

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of June, 2016, a true and correct copy of the foregoing document was faxed to:

Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, ID 83501
Fax # 208-799-3080


A member of the firm

FILED

2016 JUN 15 PM 3:12

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY
[Signature]

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

STATE OF IDAHO,	)	Case No. CR 16-1591
)	
Plaintiff,	)	ORDER FOR EXTENSION
v.	)	OF TIME FOR FILING
	)	PRE-TRIAL MOTIONS
LARRY FENTON,)	
)	
Defendant.)	
_____)	

THIS MATTER having come before the Court upon the Defendant's Motion for Extension of Time to File Pre-Trial Motions, and it appearing that good cause exists for granting said Motion;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that deadline for filing all Pre-Trial Motions of June 16, 2016 in the above-entitled case, is hereby extended to June 23, 2016.

DATED this 15th day of June, 2016.

[Signature]

JUDGE

ORDER FOR EXTENTION
OF TIME FOR FILING
PRE-TRIAL MOTIONS

CERTIFICATE OF DELIVERY

I CERTIFY that on this 15th day of June, 2016, I caused a true and correct copy of the foregoing **Order for Extension of Time for Filing Pre-Trial Motions** to:

[X] faxed to the following:

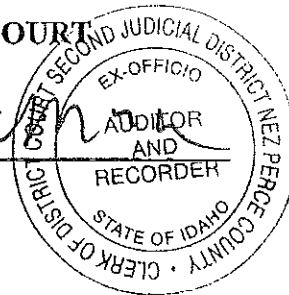
Richard M. Cuddihy
KNOWLTON & MILES, PLLC
312 17th Street
Lewiston, ID 83501
Fax: 208-746-0118

[X] faxed to the following:

Nez Perce County Prosecutor
1221 F Street
Lewiston, ID 83501
Fax: 208-799-3080

CLERK OF THE COURT

[Handwritten Signature]
Deputy



**ORDER FOR EXTENTION
OF TIME FOR FILING
PRE-TRIAL MOTIONS**

Richard M. Cuddihy, ISB No. 7064vv
 KNOWLTON & MILES, PLLC
 312 Seventeenth Street
 Post Office Drawer 717
 Lewiston, Idaho 83501
 Telephone: (208) 746-0103
 Fax: (208) 746-0113

FILED
 2016 JUN 24 PM 4 09

PATTY O. WEEKS
 CLERK OF THE DIST. COURT

[Handwritten signature]

Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR 16-1591
)	
Plaintiff,	)	MOTION TO SUPPRESS AND
v.	)	BRIEF IN SUPPORT
)	
LARRY GLENN FENTON, JR.,)	
)	
Defendant.)	
_____)	

COMES NOW the defendant, by and through his attorney, Richard M. Cuddihy of the law firm of Knowlton & Miles, PLLC, and respectfully requests that the Court suppress all evidence relating to the unlawful seizure and search of Larry Fenton by Officer Storms in Nez Perce County, on February 28, 2016; for the reasons that the search and seizure of Mr. Fenton was conducted in violation of the Idaho Constitution Article 1 § 17, and the U.S. Constitution 4th and 5th Amendments.

ORAL ARGUMENT and leave to adduce testimony is hereby requested.

INTRODUCTION

The defendant was illegally stopped because the facts available to the officer at the time he detained the defendant did not provide a reasonable, articulable suspicion that he had committed, or was about to commit, a crime. Additionally, the defendant was illegally detained

because his detainment occurred after the purpose of the stop had been completed; therefore there was no reason to prolong his detainment by ordering the defendant to remain at the scene for his probation officer to respond. Finally, the defendant's vehicle was illegally searched, as there were no reasonable grounds that would cause one to believe that the defendant had violated a condition of his probation. The evidence acquired as a result of these unconstitutional acts must be suppressed as fruit of the poisonous tree.

FACTS

On or about February 28, 2016, Officer Joseph Stormes was working the daytime patrol shift. (P.H.T. 6, l. 20-24). He began following a vehicle that was being driven by Larry Fenton. (P.H.T. 7, l. 8-9). Although no traffic infractions had occurred, Officer Stormes performed a registration check of Mr. Fenton's license plate number. (P.H.T. 8, l. 9-10; 22, l. 1-3). The dispatcher responded by saying that they did not find a record for that plate number. (P.H.T. 8, l. 13-14). Officer Stormes checked the wrong license plate number the first time, so on the second attempt he asked dispatch to change out a digit to see if that produced a record for that plate number. (P.H.T. 8, l. 16-20; 27, l. 8-10). Dispatch responded that not record was found in the system, which caused Stormes to realize it was because he relayed the wrong number a second time. (P.H.T. 8, l. 20-22; 27, l. 10-11). Rather than correct his mistake and run the actual registration number, Officer Stormes elected to make a traffic stop on the vehicle with no reasonable suspicion and relayed the correct plate number to dispatch. (P.H.T. 9, l. 7-9). Officer Stormes claimed that the purpose of the stop was to investigate why the inaccurate registration information that he and dispatch had run was not showing up in the system. (P.H.T. 9, l. 13-15). Fianlly, dispatch ran the correct license plate number, but never communicated the registration

information to Officer Stormes that the vehicle's registration information came back correctly to Mr. Fenton's vehicle. (P.H.T. 27, l. 8-22).

Officer Stormes obtained Mr. Fenton's registration card, compared the card with the license plate and vin number, and discovered that they all correctly matched. (P.H.T. 10, l. 21-25). Officer Stormes then communicated with dispatch regarding Mr. Fenton's prior citations for insurance-related issues. (P.H.T. 11, l. 18-21). Officer Stormes cited Mr. Fenton for failing to purchase a driver's license and failing to provide proof of insurance. (P.H.T. 12, l. 2-4). As he was handed his citation, Mr. Fenton informed Officer Stormes that he was on probation. (P.H.T. 12, l. 5-8). Officer Stormes then contacted the on-call Probation and Parole officer to let them know the situation and "just advised them." (P.H.T. 12, l. 12-15). The probation officer, Chris Jensen, told Officer Stormes that she would be coming to the traffic stop and that she wanted to search the vehicle. (P.H.T. 12, l. 24-25; 13, l. 1). Officer Stormes gave all of Mr. Fenton's information back to him and completed the purpose of the stop. (P.H.T. 13, l. 4-6; 20, l. 4-10). Officer Stormes informed Mr. Fenton that Ms. Jensen would be coming to the traffic stop because she wanted to speak with him and that she wanted him to stand by, indicating to Mr. Fenton he was not free to go and was to remain on the scene. (P.H.T. 13, l. 4-8; 24, l. 13-15). Officer Sparks also on scene stood alongside Officer Stormes, next to Mr. Fenton's vehicle. (P.H.T. 25, l. 5-12). As soon as Ms. Jensen arrived, she immediately suggested that Mr. Fenton be handcuffed. (P.H.T. 13, l. 14-17).

Ms. Jensen and Officer Stormes proceeded to search the vehicle, while Officer Sparks was standing nearby. (P.H.T. 13, l. 20-23). The search of Mr. Fenton's vehicle did end up producing illegal drugs, for which he was subsequently arrested. (P.H.T. 15, l. 9-16).

BURDEN

Upon a motion to suppress, where an investigative stop results in the seizure of evidence, the State carries the burden of proving that the officer's actions were reasonable. *State v. Haworth*, 106 Idaho 405, 406 (1984). The State must meet its burden of proof as to the reasonableness of the original detention and of any subsequent extension. *State v. Aguirre*, 141 Idaho 560, 562, 112 P.3d 848, 850 (Ct. App. 2005).

Evidence obtained by an invalid investigatory seizure is inadmissible in court. *Dunaway v. N.Y.*, 442 U.S. 200, at 218-219 (1979). "Any evidence seized pursuant to an unlawful stop or an unreasonable detention is 'fruit of the poisonous tree' and is, therefore, inadmissible." *Bordeaux*, 217 P.3d at 6.

ANALYSIS

The Fourth Amendment protects the right of persons to be free from unreasonable searches and seizures. U.S. Const. amend. IV. According to the U.S. Supreme Court, "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 9 (1968). Officer Stormes unlawfully stopped Mr. Fenton because there was no reasonable suspicion present that would justify such action. Mr. Fenton was also unlawfully detained and handcuffed by Officer Stormes after the stop had concluded, when Mr. Fenton should have been free to leave. Lastly, both Officer Stormes and Officer Jensen unlawfully and unreasonably searched Mr. Fenton's vehicle, as there was no reasonable grounds for doing so. For the reasons stated above, the evidence found during the search of Mr. Fenton's car should be suppressed.

There was no reasonable suspicion present to justify the stop of Mr. Fenton.

The stop of Mr. Fenton's vehicle was unlawful because there was no reasonable suspicion present to justify such action. A traffic stop constitutes "a seizure within the meaning of the Fourth Amendment," and "is constitutional if it is either based upon probable cause to believe a traffic violation has occurred or justified by reasonable suspicion." *United States v. Spoerke*, 568 F.3d 1236, 1248 (11th Cir.2009). When a police officer stops a vehicle for investigative purposes, the Fourth Amendment is not violated if the officer has a "reasonable and objective basis for suspecting that the vehicle or an occupant is involved in criminal activity." *State v. Cerino*, 141 Idaho 736, 737 (Ct. App. 2005) (citing *Delaware v. Prouse*, 440 U.S. 648, 663; *State v. Van Dorne*, 139 Idaho 961, 963 (Ct. App. 2004); *State v. Sevy*, 129 Idaho 613, 615 (Ct. App. 1997)). More succinctly, the officer must have "reasonable articulable suspicion that a person has committed, or is about to commit, a crime." *State v. Morgan*, 294 P.3d 1121, 1125 (2013).

This test is based upon the "totality of the circumstances known to the officer at or before the time of the stop." *Id.* Although the required information leading to formation of reasonable suspicion is less than that required to form probable cause, it still must be "more than speculation or instinct on the part of the officer." *State v. Kimball*, 141 Idaho 489, 491 (Ct. App. 2005). "There must be 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.'" *Cerino*, 141 Idaho at 738 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

Reasonable suspicion of criminal activity so as to justify stop must be based on specific, articulable facts and the rational inferences that can be drawn from those facts; reasonable suspicion requires more than a mere hunch or inchoate and unparticularized suspicion. *Morgan*,

294 P.3d at 1124. In *Morgan*, the officer stopped a vehicle driving without a front license plate, which would be illegal if the vehicle was registered in Idaho. *Id.* at 1123. However, the vehicle was registered in a different state, therefore making the stop unlawful. *Id.* The court held that the officer did not have reasonable suspicion to believe that defendant violated car registration statute, so as to justify stop of defendant. *Id.* at 1125.

In this case, there was no reasonable or objective basis for suspecting that Mr. Fenton was involved in criminal activity. In *Morgan*, the officer did not have reasonable suspicion to believe that defendant violated the state's registration statute, so as to justify a traffic stop of the defendant. Here, Officer Stormes similarly did not have reasonable suspicion that would justify the stopping of Mr. Fenton, as the registration did not come back as invalid or mismatched with the license plate number; the registration did not come back at all, which should have been a clear indication that the number was entered incorrectly. The first time Mr. Fenton's license plate number was ran, Officer Stormes told dispatch the incorrect number, so no record of the registration came up. The second time Mr. Fenton's license plate number was ran, either dispatch ran the wrong number or Officer Stormes, once again, told dispatch the incorrect number. At that point, Officer Stormes made the decision to unlawfully stop the vehicle for no other purpose than to investigate why Mr. Fenton's registration information was not showing up in the system. Meanwhile, on the third attempt, the license plate number was ran correctly and produced registration that matched with the plate number. This is where the stop should have immediately ended, as there was absolutely no reason to initiate that stop in the first place. However, Officer Stormes proceeded with the stop, and subsequently issued Mr. Fenton two citations.

There was no reasonable, articulable suspicion of criminal activity so as to justify the stop. Officer Stormes pulled Mr. Fenton's vehicle over solely based upon the fact that the license plate number was incorrectly ran through dispatch, at the fault of both Officer Stormes and the dispatcher. Therefore, the stop of Mr. Fenton was unlawful.

Mr. Fenton's detention by Officer Stormes was unlawful.

Mr. Fenton's detention by Officer Stormes was unlawful, because the stop was unreasonably and unjustifiably extended. Officer Stormes purposefully withheld information from Mr. Fenton that the probation officer, Ms. Jensen, intended to search the vehicle, as well as his person; he only told Mr. Fenton that she wanted to speak with him, and that she wanted him to "stand by." This caused Mr. Fenton to feel as if he had to remain with the officers. Additionally, Officer Stormes failed to inform Mr. Fenton that he was free to leave.

Once the purpose of a valid traffic stop has been completed and an officer's initial suspicions have been verified or dispelled, the detention must end unless there is additional reasonable suspicion supported by articulable facts. *United States v. Estrada*, 459 F.3d 627, 631 (5th Cir.2006); *United States v. Jackson*, 517 F. Supp. 2d 859, 862 (W.D. La. 2007). In *Jackson*, the government failed to show a sufficient, reasonable suspicion to prolong the defendant's traffic stop. *Id.* at 863. The court held that there were insufficient reasons for suspicion to continue once the defendant's identification cleared. *Id.* A constitutional violation occurred when the detention continued past that point. *Id.* A person is "seized" within the meaning of Fourth Amendment only when by means of physical force or show of authority his freedom of movement is restrained. *United States v. Mendenhall*, 446 U.S. 544 (1980). Additionally, if a reasonable person believes that he is not free to leave, in view of all the surrounding circumstances, it effectively constitutes a seizure under the Fourth Amendment. *Florida v.*

Royer, 460 U.S. 491, 502 (1983). In *Royer*, the officers asked the defendant to follow them to a room without indicating in any way that he was free to leave, which effectively constituted a seizure. *Id.* at 501. The Court held that the police exceeded the limits of the investigative stop. *Id.* at 501.

Officer Stormes did not have reasonable suspicion to continue detaining Mr. Fenton after handing back his ID card and registration card. There was nothing inherently suspicious about Mr. Fenton's statement that he was on probation that would have warranted renewed detention after initial traffic stop. Similar to *Royer*, where the defendant felt like he had to abide by the officer's instructions, here Mr. Fenton felt as though he had to remain with the officers until Officer Jensen arrived. And understandably so, especially since both officers stood only a few feet away from Mr. Fenton the entire time, until Officer Jensen arrived, which likely caused him to feel extremely intimidated and frightened. Additionally, upon Officer Jensen arriving on scene, and before the search began, Mr. Fenton was subsequently handcuffed.

In this situation, a reasonable person would not have felt free to leave. Therefore, the continued detainment of Mr. Fenton by Officer Stormes was unlawful.

The search of Mr. Fenton's vehicle was unreasonable.

The Fourth Amendment of the United States Constitution and Art. I, Section 17 of the Idaho Constitution forbid unreasonable searches. A warrantless search is per se unreasonable and the fruits of that search are suppressible, unless the search falls within certain specific and well-delineated exceptions. *State v. Harwood*, 495 P.2d 160, 162 (1972).

"The exceptions to searches conducted outside the judicial process without a warrant include the following, (See generally: *Wheeler v. Goodman*, 330 F.Supp. 1356 (W.D.N.C.1971)): (a) Search incident to and following a lawful arrest, but only of the suspect's person and of areas within his immediate reach or physical control necessary to protect police against hidden weapons, destruction of the evidence or fruits of the crime, etc. *Chimel v. California*, supra; *Von Cleef v. New*

Jersey, 395 U.S. 814, 89 S.Ct. 2051, 23 L.Ed.2d 728 (1969). (b) Search of a vehicle upon probable cause to believe that the vehicle contains articles that the officers are entitled to seize and where the ease and probability of mobility for escape or destruction of the evidence is clear. *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). (c) Consent searches where such consent is knowing and voluntary. *Johnson v. United States*, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (1948); *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968). (d) Search, with probable cause, for and in hot pursuit of a fleeing and dangerous felony suspect. *Warden Maryland Penitentiary v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967). (e) Search of abandoned real estate or personal property. *Abel v. United States*, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960). (f) A search under urgent necessity (a medical emergency or screams from within a dwelling). *United States v. Barone*, 330 F.2d 543 (2d. Cir. 1964), cert. denied, 377 U.S. 1004, 84 S.Ct. 1940, 12 L.Ed.2d 1053 (1964). (g) Search pursuant to custodial prerogative (as in a vehicle held for forfeiture). *Cooper v. California*, 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967). (h) Search, with probable cause, necessary to prevent loss or destruction of the thing to be seized. *United States v. Barone*, supra; *Johnson v. United States*, supra." *Quoting Harwood*, 495 P.2d at 163.

Additionally, the Idaho Court of Appeals has held that searches conducted pursuant to the administration of probation are an exception to the warrant restriction. *State v. Vega*, 718 P.2d 598, 600 (Ct. App. 1986); *See State v. Pinson*, 657 P.2d 1095 (Ct.App.1983). However, the state must show that any such warrantless search conducted by the parole officer is reasonable. *Vega* at 600. A parole officer may make a warrantless search of a parolee and his residence if the officer has reasonable grounds to believe that the parolee has violated some probation condition, and the search is reasonably related to disclosure or confirmation of that violation. *Pinson* at 1101. A probation officer may also enlist the aid of the police when conducting a justified search. *Id.* However, it is impermissible for the police to use parole officers in lieu of a warrant to search, when conducting a criminal investigation. *Vega* at 601.

In our case, the search of Mr. Fenton's car was unreasonable because neither the parole officer, nor the police officer, had reasonable grounds to believe that Mr. Fenton has violated a condition of his probation. The related events occurred as follows: First, Mr. Fenton, wanting to

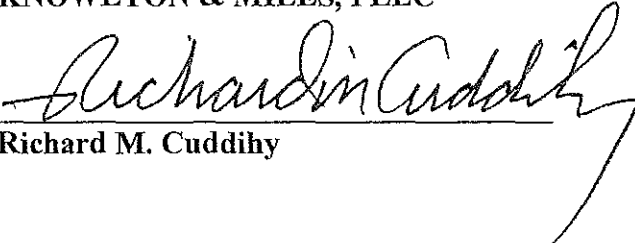
cover all of his bases, informed Officer Stormes as the stop was concluding that he was on probation. Then, Officer Stormes contacted the on-call probation officer to inform her that he just pulled Mr. Fenton over and issued him two citations. She said that she was on her way to the scene and wanted to search Mr. Fenton's vehicle. Officer Stormes informed Mr. Fenton that the Officer Jensen wanted to speak with him, but failed to inform him that she planned on searching the vehicle. Lastly, after indicating that he was not free to leave, based on reasons stated earlier, Officer Stormes, along with Officer Jensen, handcuffed Mr. Fenton and began searching his person and vehicle. Up until that point, no issues had arisen that would have given Officer Stormes reason to believe that Mr. Fenton violated a condition of his probation. Officer Jensen also did not have reasonable grounds to believe that Mr. Fenton violated some probation condition; she only knew that he had received two minor citations – citations that occurred as a result of an unlawful stop. Thus, the search was not reasonably related to the confirmation of that violation, as there was nothing to confirm. Therefore, the search of Mr. Fenton's vehicle by Officer Stormes and Ms. Jensen was not only unreasonable, but also unlawful.

CONCLUSION

Any evidence seized pursuant to the unlawful stop, the unreasonable detention, and the illegal and unlawful search is 'fruit of the poisonous tree' and is, therefore, inadmissible. Thus, the evidence found as a result of the unlawful search should be suppressed.

DATED this 24th day of June, 2016.

KNOWLTON & MILES, PLLC


Richard M. Cuddihy

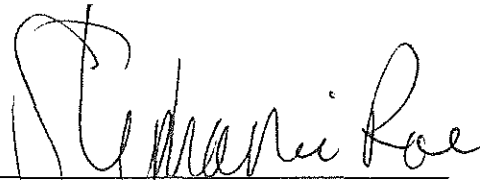
CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 24th day of June, 2016, I caused a true and correct copy of the foregoing to be:

faxed

to the following:

**Nez Perce County Prosecuting Attorney
Lewiston, Idaho 83501
Fax: 208-799-3080**


A Member of the Firm

MAY 18, 2016

1:36 P.M.

PROCEEDINGS

MR. COLEMAN: Next if we could take up State of Idaho versus Larry Fenton, CR16-1591. Mr. Fenton is present. He's currently being represented by Ms. Welch. The State is ready to proceed on this prelim.

THE COURT: And are you as well, Ms. Mackenzie -- Ms. Welch, I mean?

MS. WELCH: Yes, Your Honor.

THE COURT: Okay. Based on that then, Mr. Coleman, you may call your first witness on behalf of the State.

MR. COLEMAN: Thank you, Your Honor. State calls Officer Joe Stormes.

THE COURT: Sir, if you'd like to come forward, you'll need to raise your right hand and be sworn. You can then have a seat in the witness stand.

JOSEPH STORMES,

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

THE COURT: All right. You can have a seat

1 there.

2 And, Mr. Coleman, you may inquire.

3 MR. COLEMAN: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. COLEMAN:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Could you please state your name and spell your last for the record?

9 A. **Joseph Stormes. It's S-T-O-R-M-E-S.**

10 Q. And what's your current occupation?

11 A. **I'm employed with the Lewiston Police Department as a patrol officer.**

12 Q. How long have you been doing that?

13 A. **Since October of 2015.**

14 Q. Are you certified to be a police officer in the state of Idaho?

15 A. **Yes.**

16 Q. What certifications do you hold?

17 A. **Basic.**

18 Q. You've attended POST and all that comes along with that?

19 A. **I've been certified through the -- my academy was in New Mexico, but through all the paperwork, I've been certified here in New -- or Idaho.**

1 Q. Okay. So you had prior law enforcement experience before --

2 A. **I did.**

3 Q. -- working in Lewiston?

4 A. **Yes, sir.**

5 Q. What did you do before that?

6 A. **I was a patrol officer in Bosque Farms, New Mexico.**

7 Q. How long did you do that?

8 A. **Two-and-a-half years.**

9 Q. As a part of your training and experience, have you been trained how to recognize controlled substances?

10 A. **Yes.**

11 Q. What kind of training have you had as regards to that?

12 A. **I've had a narcotics class in the academy in which various types of narcotics were brought into the class and we were shown those narcotics and what they look like. And also through my experience on the job.**

13 Q. Were you working in your current capacity on February 28th of this year?

14 A. **Yes.**

15 Q. Do you recall what shift you were working?

16 A. **I was working day shift patrol.**

17 Q. What hours does that cover?

18 A. **It covers 7:00 a.m. to 4:00 p.m.**

19 Q. On that day while you were on -- when you were on patrol, did you ever stop a vehicle driven by a Mr. Larry Fenton?

20 A. **Yes, I did.**

21 Q. Can you describe how that came about?

22 A. **I was driving on Snake River Avenue heading northbound, and I observed Mr. Fenton and his Pontiac Grand Prix.**

23 Q. What did the Pontiac Grand Prix look like?

24 A. **It was a white four-door sedan.**

25 Q. And you said -- what street did you say that was on?

26 A. **Snake River Avenue.**

27 Q. And was that in Nez Perce County and the state of Idaho?

28 A. **Yes.**

29 Q. What -- what did you do next when you observed that vehicle?

30 A. **Once I observed the vehicle traveling northbound, I completed a registration check through my dispatch. And my dispatchers advised me that the --**

31 MS. WELCH: Objection. Hearsay.

32 THE COURT: Mr. Coleman?

33 MR. COLEMAN: Your Honor, this isn't being

1 shown -- this isn't being used to show the truth of the
2 matter. It's just being used to show the effect it had
3 on this listener, what he did next with regards to the
4 stop.

5 THE COURT: I'll overrule the objection on
6 that basis.

7 BY MR. COLEMAN:

8 Q. Go ahead.

9 A. I completed a registration check through my
10 dispatcher, and they told me that the registration did
11 not return.

12 Q. What does that mean?

13 A. It means they were not finding a record coming
14 back in the computer system.

15 Q. Okay. So what did you do next?

16 A. I tried changing one of the digits on the license
17 plate. I thought I might have mistaken the letter eight
18 for the -- excuse me, the number eight for the letter
19 "B." So I asked dispatch to change that digit and see
20 if it had any record that would return, and dispatch
21 still told me that they did not have a record coming
22 back in the system.

23 Q. Have you experienced this before where there's
24 been no record return even though you're reading the
25 license plate number?

1 A. Yes.

2 Q. And in the past, has that -- well, scratch that.
3 So when you redid the numbers just to clarify it and
4 there was no record return, what did you do next?

5 A. Once I got behind the vehicle, I told my
6 dispatch -- when I say "behind the vehicle," I got
7 closer to the vehicle. I told my dispatch that I was
8 going to make a traffic stop on that vehicle. I read
9 the plate off a third time to them. And then as we got
10 close to the intersection of Third Street and Main
11 Street, I turned on my overhead emergency lights and
12 initiated the traffic stop.

13 Q. And what was the purpose of the stop?

14 A. To investigate the issue of the registration not
15 coming back in the system.

16 Q. Did the vehicle stop?

17 A. Yes, the vehicle did end up stopping at the
18 intersection of Third Street and Capitol.

19 Q. And that's still in Nez Perce County, state of
20 Idaho?

21 A. Yes.

22 Q. Were you able to identify the individual driving
23 the vehicle?

24 A. Yes, I did.

25 Q. How did you do that?

1 A. I asked him for his driver's license, and he
2 provided me with an Idaho identification card.

3 Q. Who was it?

4 A. It was Larry Fenton, Jr.

5 Q. Do you see Larry Fenton in the courtroom today?

6 A. Yes, sir.

7 Q. Can you point to him and describe what he's
8 wearing?

9 A. He's in the striped jumpsuit sitting next to
10 defense counsel.

11 Q. Okay. So what did you do next in regards to the
12 investigation you were conducting at that time?

13 A. So after I obtained Mr. Fenton's ID card, I
14 advised him of the reason for the stop. I also
15 requested his insurance and registration information
16 such as a registration card.

17 Q. Did he provide those to you?

18 A. He provided me the registration card. However,
19 he did not provide me current proof of insurance.

20 Q. And what happened?

21 A. So then I began to compare the registration card
22 with the license plate and also the VIN on the car to
23 make sure that they all matched. And all the numbers
24 did match and they were correct, indicating that this
25 was the correct car to the license plate and the VIN.

1 Q. Have you ever experienced something like that
2 happening before?

3 A. Yes, I have.

4 Q. Typically, what does that indicate?

5 A. Sometimes when a car is registered on, let's say,
6 for instance, as an example, a Friday and the person is
7 stopped on a Saturday, there may not be enough time for
8 all the documentation and paperwork to make its way
9 through the system to indicate that the license plate is
10 currently up to date and registered to the car.

11 Q. Okay. So now at this point, you've indicated he
12 didn't have insurance for the vehicle?

13 A. Or he didn't have it with him --

14 Q. Okay.

15 A. -- is what he indicated.

16 Q. So what did you do with that information?

17 A. So I went back to my car and began to write out
18 citations. And I also asked my dispatch if Mr. Fenton
19 has had any prior citations for insurance-related
20 issues. And dispatch informed me that he had prior been
21 suspended for having insurance citations. And then I
22 completed writing my citations.

23 Q. Okay. Then what happened after that?

24 A. After I finished writing my citations and talking
25 to my dispatch, I went back to Mr. Fenton at his car.

1 And, again, I told him why I had stopped him, handed him
2 back his information, told him I was going to be issuing
3 citations for failing to purchase a driver's license and
4 also failing to provide proof of insurance. As I wrote
5 out -- or as I was giving him the first citation and he
6 was talking to me, he told me that he was on probation,
7 which he had not stated at any point prior to that in my
8 contact with him.

9 Q. And how does that change the nature of the
10 investigation for you at that point, or what do you do
11 with that information?

12 A. Well, what I did with the information is I went
13 back to my car. I contacted the on-call Probation and
14 Parole officer to let them know the totality of the
15 circumstances, what had happened, and just advised them.

16 Q. And what happened next?

17 A. So as I finished -- I was starting to complete my
18 conversation with the on-call Probation and Parole
19 officer Chris Jensen. She told me that she was at her
20 office --

21 MS. WELCH: Objection. Hearsay.

22 THE COURT: I'm going to overrule the
23 objection.

24 THE WITNESS: She told me she was at her
25 office and would be coming to the traffic stop and that

1 she wanted to search the vehicle.

2 BY MR. COLEMAN:

3 Q. Did you make Mr. Fenton aware of this?

4 A. Yes. I told him, after I gave him his citation,
5 his second citation, and also all of his information
6 back, his driver's license, I told him that Chris Jensen
7 was going to be coming to the traffic stop because she
8 wanted to speak with him.

9 Q. Did Ms. Jensen ever arrive?

10 A. Yes, she did.

11 Q. What happened after she arrived?

12 A. When she arrived, I, again, reiterated to her the
13 reason for my stopping Mr. Fenton and also observations
14 that had been observed. And then she told me that,
15 again, she wanted to search the vehicle and she wanted
16 to search his person for officer safety, and also
17 suggested that we should handcuff Mr. Fenton.

18 Q. And did -- did you guys then complete a search of
19 the vehicle?

20 A. Yes, a search of the vehicle began to be
21 conducted by myself and Chris Jensen. And Officer Tom
22 Sparks was standing by as a back-up officer. And he was
23 at the traffic stop as well.

24 Q. Is it common for you, as a patrol officer, to
25 assist Probation in searches of this nature?

1 A. Yes. If they request us to help them, then yes.

2 Q. And had you been requested to help in this
3 situation?

4 A. Yes.

5 Q. Is Ms. Jensen a felony probation officer?

6 A. Yes, she is.

7 Q. So describe how the search of the vehicle went.

8 A. So the search of the vehicle, I -- after Chris
9 Jensen had finished searching Mr. Fenton, he was told to
10 have a seat on the curb. I walked to the passenger door
11 of the vehicle and Chris Jensen walked to the driver's
12 door of the vehicle, and we opened them up and began our
13 search. Just a few seconds into the search, I located
14 on the driver's seat a black plastic bag. And as I had
15 my hands on the bag, I looked over to where Mr. Fenton
16 had been sitting, and I observed that he was now
17 standing back on his feet.

18 Q. And what did you do?

19 A. I told Mr. Fenton to sit back down, at which time
20 he took off running.

21 Q. Did you complete your search of the vehicle?

22 A. Yes. It was completed, and there was another bag
23 in addition to the one I located that had a white
24 crystal --

25 MS. WELCH: Object. May I ask a question in

1 aid of objection?

2 THE COURT: You may.

3 MS. WELCH: This other bag that you just
4 referred to, did you locate that?

5 THE WITNESS: I located the other bag.

6 MS. WELCH: No objection.

7 THE COURT: All right.

8 BY MR. COLEMAN:

9 Q. So what did you find in -- well, first of all,
10 the second bag, where did you find that one?

11 A. That was in the black jacket pocket that was on
12 the driver's seat where Mr. Fenton had been sitting.

13 Q. And where specifically was the first bag you
14 described located?

15 A. That was on the passenger seat, in the front
16 passenger seat of the vehicle.

17 Q. Passenger seat. I think you had previously
18 testified that it was located on the driver's seat, but
19 that's not where you found it?

20 A. There was two different bags.

21 Q. Yeah.

22 A. There was the first one I found, which was in a
23 black plastic bag on the front passenger seat. After
24 Mr. Fenton had left the scene and we came back to
25 complete the search of the vehicle, there was another

1 A. I cited him for the failure to purchase a
2 driver's license and also failing to provide proof of
3 insurance.

4 Q. And had the investigation with regards to the
5 traffic stop that you were conducting concluded at that
6 point?

7 A. Yes. I had handed him back all of his driver's
8 license information, registration card, and also his
9 citations. And I had shut off my emergency overhead
10 lights.

11 Q. So you were just waiting for the probation
12 officer to respond at that point?

13 A. Yes.

14 Q. And you had indicated to him that she intended to
15 come and talk to him?

16 A. Yes.

17 MR. COLEMAN: I have no further questions.

18 THE COURT: Ms. Welch?

19 MS. WELCH: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. WELCH:

22 Q. Prior to stopping Mr. Fenton, you were in
23 communication with several other officers; is that
24 correct?

25 A. With one other officer.

1 Q. Okay. And who was that?

2 A. Officer Nick Eylar.

3 Q. Okay. And what vehicle were you watching?

4 A. Which -- which vehicle was I watching?

5 Q. Correct.

6 A. I saw a couple vehicles, but I wasn't watching
7 any particular vehicle.

8 Q. Okay.

9 A. As I left the area where I had been speaking with
10 Officer Eylar, I looked over at the gas pumps, and I
11 could see a male subject sitting in a white Pontiac
12 Grand Prix at the gas pumps at Southway Zip Trip. And
13 then I pulled out and I left.

14 Q. Okay. So you pulled out and started following
15 the Pontiac -- Pontiac Grand Prix?

16 A. I pulled out and began heading northbound -- or
17 excuse me, southbound on Snake River Avenue. Then I was
18 advised by Officer Eylar that at the same time I had
19 pulled out and cleared the roundabout on Snake River
20 Avenue, that the vehicle had pulled out and was now
21 going -- coming towards the roundabout. So I pulled a
22 U-turn and saw the white Pontiac Grand Prix go through
23 the roundabout and start heading northbound on Snake
24 River Avenue -- Snake River Avenue. And that's when I
25 got behind him.

1 Q. Okay. Did you notice any traffic infractions at
2 that point?

3 A. At that point, no.

4 Q. Okay. So you got behind the vehicle and called
5 in the license plate to dispatch as Idaho plate 180728?

6 A. Correct.

7 Q. And you thought that the dispatcher knew that you
8 were referring to a local license plate?

9 A. Correct.

10 Q. And, in fact, the vehicle -- or the registration
11 that was ran was I-180728?

12 A. That's what the dispatcher had later told me she
13 thought that was the plate that was run. So that's how
14 she ran it in the computer system.

15 Q. And so that was the reason that the vehicle
16 registration information did not come back as valid?

17 A. Correct.

18 Q. And so you pulled over the vehicle based upon the
19 license plate number having been ran through dispatch
20 incorrectly?

21 A. Correct.

22 Q. Okay. And so you stopped the vehicle based upon
23 that and ended up contacting the driver, who you
24 identified was Larry Fenton?

25 A. Correct.

1 Q. And you asked him for his registration and
2 insurance?

3 A. Correct.

4 Q. Went back to your car?

5 A. Correct.

6 Q. And at that time, did you determine that you were
7 going to cite Mr. Fenton for failure to purchase a
8 driver's license and failure to provide proof of
9 insurance?

10 A. Yes.

11 Q. Okay. Did you write out the citations at that
12 point?

13 A. I went back and looked at his license plate and
14 looked at the registration sticker to make sure that
15 those matched.

16 Q. Okay.

17 A. But yes, I went back and wrote the -- the
18 citations for that.

19 Q. Okay. And then you handed him the citations?

20 A. I handed him one citation.

21 Q. Okay. Which citation was that?

22 A. I don't recall. It was one of the ones I had
23 written out. There was two.

24 Q. Okay. And then you went back to your car and
25 called Probation and Parole?

1 A. After he told me that he was on probation, yes.

2 I didn't give him his second citation back. I went back
3 to my car and I called Probation and Parole.

4 Q. Okay. And do you recall what time you called
5 Probation and Parole at?

6 A. I don't.

7 Q. Okay. And so after you talked to Probation and
8 Parole, you went back and gave him your second citation?

9 A. Yes.

10 Q. And at that point, you said -- then you told him
11 you were going to hold him after that until Chris Jensen
12 arrived on scene?

13 A. No. I told him that Chris Jensen from Probation
14 and Parole was coming to speak with him and that she
15 wanted him to stand by.

16 Q. Okay. And so you held him there with you?

17 A. No.

18 Q. He wasn't outside the car at that time?

19 A. No. He was inside his car.

20 Q. Okay. And where were you?

21 A. I was standing just a few feet away with my
22 partner.

23 Q. Okay. And so was he free to leave?

24 A. Yes. Had he left, there wasn't anything I could
25 have done to stop him. My traffic stop was concluded.

1 Q. And so how long was it before Jensen -- Chris
2 Jensen arrived on scene?

3 A. I don't know. I could only give a guesstimation,
4 but I don't know.

5 Q. You said Tom Sparks was on scene as a cover
6 officer?

7 A. Yes.

8 Q. Where was he at at this time?

9 A. He was standing next to me.

10 Q. So next to the vehicle? By the vehicle?

11 A. Yeah, a few feet from the vehicle standing next
12 to me.

13 Q. You said you don't recall how long it was before
14 Chris Jensen showed up?

15 A. I don't know an exact time period, no.

16 Q. So when she showed up, was Mr. Fenton removed
17 from the vehicle?

18 A. Yes. She told him to step out of the vehicle.

19 Q. And you said that you collected the evidence and
20 sent it to the lab. Can you tell me which lab item
21 number corresponds with the two different items that you
22 located in the vehicle?

23 A. I'm sorry, could you repeat the question? I
24 don't understand what you're asking.

25 Q. The lab item number on State's Exhibit 1?

1 A. Uh-huh.

2 Q. Can you tell me which lab item number corresponds
3 with the two different packages that were found in the
4 vehicle?

5 A. I can't. I can only tell you what's on the
6 report here.

7 Q. And did you have the black plastic sack or any of
8 the packages tested for fingerprints?

9 A. I requested that they be tested for fingerprints,
10 and I don't know if that was ever done.

11 Q. Who did this vehicle belong to?

12 A. This vehicle was registered to another couple.

13 Q. Okay. So it wasn't registered to Mr. Fenton?

14 A. No, it wasn't.

15 Q. Did he inform you that he was purchasing it?

16 A. Yes. He informed me he was in the process of
17 purchasing the vehicle.

18 MS. WELCH: I don't believe I have any
19 further questions.

20 THE COURT: Anything in light of that?

21 MR. COLEMAN: Just a couple of things, Your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. COLEMAN:

25 Q. With regards to the license plate number, did you

1 know at the time that you made the stop that dispatch
2 had entered the number wrong?

3 A. No.

4 Q. When did you find out the reason why it was
5 returning as no registration?

6 A. After I got back to the station, I was able to
7 listen to the audio recording of the radio traffic
8 between myself and dispatch. And that's when it was
9 confirmed that I had run the plate wrong initially with
10 the digits messed up. And then the second time, again,
11 it was run wrong.

12 The third time when I actually told dispatch what
13 plate I was going to be out with, I actually spelled it
14 out correctly, gave it to them correctly. However,
15 throughout the entire time of the stop, they never
16 informed me that they had gotten a return back on, I
17 believe, the third time that I ran it.

18 Q. You don't know if they ran it the third time or
19 not at that point?

20 A. I was told later they had run it and had gotten a
21 return, but they didn't tell me they had gotten a return
22 while I was on my stop.

23 Q. You had already made the stop by that point?

24 A. Right. I had already made the stop, and
25 everything had been concluded before -- I found out

COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Pretrial Motions

Hearing date: 7/14/2016

Time: 1:44 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: April Smith

- 14416 Defendant present, in custody, with counsel.
- 14434 Mr. Cuddihy addresses the Court and the State's witness is not available today and parties are requesting 1 week continuance.
- 14453 Court continues this matter until 7-21-16 at 1:30 p.m.
- 14507 Court recess.

ORIGINAL

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N.: 8023

FILED

2016 JUL 18 PM 4 20

PATTY O. WEDDES
CLERK OF THE DISTRICT COURT
[Signature]
LEWISTON, IDAHO

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. CR2016-0001591

MOTION TO CONTINUE

JUSTIN J. COLEMAN, Senior Deputy Prosecutor for Nez Perce County, State of Idaho, comes before the Court and moves that the **Pretrial Motion Hearing** which was scheduled for July 21, 2016, at 1:30 P.M., be rescheduled for a time that is convenient for all parties.

This Motion is being made based upon a key witness for the State being unavailable and will not return until July 28, 2016.

DATED this 18th day of July 2016.

[Signature]
JUSTIN J. COLEMAN
Senior Deputy Prosecutor

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing MOTION TO CONTINUE was

- (1) 1 hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Richard M. Cuddihy
KNOWLTON & MILES, PLLC
312 17th Street
P.O. Drawer 717
Lewiston, ID 83501

DATED this 18th day of July 2016.


ERIN D. LEAVITT
Senior Legal Assistant

FILED

2016 JUL 19 AM 8: 53

ORIGINAL

LARRY G. FENTON
CLERK OF THE DISTRICT COURT
DUI/DWI

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. CR2016-0001591

ORDER TO CONTINUE

Having read and considered the foregoing Motion to Continue, and being fully advised in this matter,

IT IS HEREBY ORDERED that the **Pretrial Motion Hearing** which was scheduled for July 21, 2016, at 1:30 P.M. be rescheduled for the 4th day of August, 2016, at the hour of 2:30 p.M.

DATED this 19th day of July 2016.



JUDGE

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing, ORDER TO CONTINUE, was

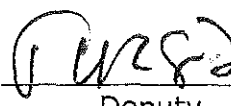
- (1) _____ hand delivered, or
- (2) hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States mail, addressed to the following:

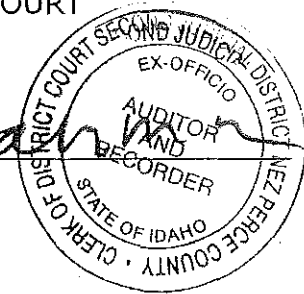
Prosecutor's Office
P. O. Box 1267
Lewiston, ID 83501

Richard M. Cuddihy
KNOWLTON & MILES, PLLC
312 17th Street
P.O. Drawer 717
Lewiston, ID 83501

DATED this 19th day of July 2016.

CLERK OF THE COURT


Deputy



COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Pretrial Motions

Hearing date: 8/4/2016

Time: 3:06 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Mackenzie Welch

Prosecutor: Justin Coleman

- 30625 Defendant present, in custody, with counsel.
- 30658 Ms. Welch addresses the Court re: oral correction to brief page 4.
- 30844 Mr. Coleman addresses the Court re: stipulation to admission probation agreement.
- 30916 Ms. Welch has no objection and stipulates to admission probation agreement.
- 30937 Mr. Coleman calls Officer Nicholas Eylar, Sworn, Mr. Coleman begins direct examination.
- 31539 Ms. Welch begins cross examination Officer Nicholas Eylar.
- 31858 Witness steps down.
- 31906 Mr. Coleman calls Officer Joseph Stormes, sworn, Mr. Coleman begins direct examination.
-
- 33748 Ms. Welch begins cross examination Officer Joseph Stormes.
- 34350 Mr. Coleman begins redirect Officer Joseph Stormes.
- 34419 Witness steps down.
- 34435 Mr. Coleman requests he be able to file written closing argument and attach the stipulated probation agreement.

34450 Court will allow Mr. Coleman to file written closing and will take matter under advisement.

34454 Court recess.

ORIGINAL

FILED

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

2016 AUG -5 PM 2:01

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N.: 8023

PATTY O. WEEBS
CLERK OF THE DISTRICT COURT
Patty O. Weebs

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

STATE OF IDAHO,

CASE NO. CR2016-0001591

Plaintiff,

CLOSING ARGUMENT

vs.

LARRY GLENN FENTON, JR.,

Defendant.

JUSTIN J. COLEMAN, Senior Deputy Prosecutor for Nez Perce County, State of Idaho, comes before this Court and hereby provides the following Argument in Opposition to Defendant's Motion to Suppress.

STATEMENT OF FACTS

On April 24, 2014, Larry Fenton (hereinafter Defendant) was found guilty of POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, a felony, committed on or about September 23, 2013, and was sentenced to the custody of the IDAHO STATE BOARD OF CORRECTIONS in Nez Perce County Case No. CR2013-0007217. On March 16, 2015, the Court suspended the remainder of Defendant's sentence and placed the Defendant on probation for five (5) years beginning April 24, 2014. The Order Suspending Sentence and Order of Probation was signed and

initialed by the Defendant on April 20, 2015. The Defendant also signed and initialed the Idaho Department of Correction Standard Agreement of Supervision on April 20, 2015. The Defendant's probation agreement is attached as stipulated to by the parties and marked as Exhibit A.

On February 28, 2016, Officer Joseph Stormes of the Lewiston Police Department was working day shift patrol. Transcript of Preliminary Hearing (hereinafter "Tr.") at p. 6, l. 24. Officer Stormes testified at the evidentiary hearing on August 4, 2016, before this Court, that during his patrol he came in contact with Officer Nick Eylar regarding suspicious activity involving two (2) vehicles. Officer Eylar testified that he recognized one of the vehicles as belonging to a known drug associate and that he observed the vehicles at a parking lot where drug activity frequently occurs. He observed the vehicles merely park, with no one exiting the vehicles, then leave the parking lot and appeared to travel together. Officer Eylar testified that he followed the vehicles and eventually saw them stop at a gas station together, again with no individuals appearing to exit either vehicle. At that point he contacted Officer Stormes. Officer Stormes testified that he personally observed the vehicles, one of which was a white four-door sedan, at a gas station on Southway Avenue. Officer Stormes testified that he left the gas station after discussing the matter with Officer Eylar and proceeded southbound on Snake River Avenue. Within moments he was notified that the white car had left the gas station and was heading towards Snake River Avenue. Officer Stormes turned around and proceeded to drive northbound on Snake River Avenue. Tr. p. 7, ll. 2-22. Officer Stormes testified that he was traveling behind the white car and proceeded to have dispatch run the license plate as he read the numbers. Officer Stormes completed

one (1) registration check through dispatch and was told that the registration did not return. Tr. p. 8, ll. 9-11. In order to be sure, he asked dispatch to complete the registration check again but replacing the number eight for the letter "B" in the event that he had been mistaken. Tr. p. 8, ll. 16-22. This occurred as Officer Stormes continued to travel behind the white car on Snake River Avenue. Dispatch told him that the second search did not pull up a record for the vehicle either. Tr. p. 8, ll. 20-22. At that point Officer Stormes determined he would make a traffic stop on the vehicle to further investigate. Officer Stormes testified at the evidentiary hearing, that it is a standard practice for him to stop a vehicle that is not returning a registration through dispatch. He explained that there could be many reasons why this was occurring, several of which would signify a traffic violation. Officer Stormes next notified dispatch that he was going to conduct a traffic stop in order to investigate why the registration was not pulling up, and for a third time read dispatch the license plate number. Tr. p. 9, ll. 5-9. Dispatch never informed Officer Stormes of the results of the third record check while he conducted the stop.

During the traffic stop Officer Stormes asked the driver, identified as the Defendant, for his driver's license and the Defendant provided him with an Idaho identification card. Tr. p. 10, ll. 1-2. Officer Stormes then requested to see insurance and registration, of which the Defendant was only able to procure a registration card. Tr. p. 10, ll. 14-19. Officer Stormes also completed his investigation regarding the license plate not returning a valid registration. After comparing the registration card with the license plate and the VIN Officer Stormes concluded that the numbers matched and were correct. Tr. p. 10, ll. 21-25.

Officer Stormes proceeded to write out citations for failing to purchase a driver's license and failure to provide proof of insurance for the Defendant. Tr. p. 12, ll. 1-5. As he gave the first citation to the Defendant, the Defendant told him that he was on probation. Tr. p.12, ll. 5-8. Officer Stormes inquired as to who the Defendant's probation officer was, and testified that he was able to discern that the defendant was on felony probation. After receiving this new information Officer Stormes went back to his patrol car and contacted the on-call Probation and Parole officer, Chris Jensen, to let them know about the incident. Tr. p. 12, ll. 12-15. Officer Stormes testified that he relayed all the information regarding the stop as well as the suspicious activities that had been observed prior to the stop. Ms. Jensen told officer Stormes that she would be coming to the traffic stop to talk to the Defendant and that she wanted to search the vehicle. Tr. p. 12, ll. 24-25. Officer Stormes then proceeded to give the Defendant his second citation and told him that Ms. Jensen was going to be coming to the traffic in order to speak with him. Tr. p. 13, ll. 4-8. At this point the Defendant was not free to leave as he had been instructed that his probation officer was coming to meet him. When she arrived, Ms. Jensen wanted to search his person for officer safety reasons and search the vehicle. Tr. p. 13, ll. 14-17. During the course of the search, as explained by Officer Stormes, the Defendant fled the scene on foot. The search yielded the discovery of a large amount of narcotics leading to the charges before the Court. Tr. p. 15, ll. 9-16.

ISSUES

- I. Whether or not the search of the Defendant's vehicle was lawful?

- II. Whether or not Officer Stormes had reasonable suspicion to stop the Defendant?
- III. Whether the detention of the Defendant was lawful?

ARGUMENT

I. The search of the Defendant's vehicle was lawful.

The condition of probation that a defendant consent to a search of his person by a law enforcement officer without a search warrant is a supervisory procedure related to his reformation and rehabilitation in light of the offense of which he was convicted. *State v. Gawron*, 736 P.2d 1295 (Idaho 1987). The purpose of an unexpected, unprovoked search of defendant is to ascertain whether he is complying with his terms of probation; to determine not only whether he disobeys a law, but also whether he obeys the law. *Id.* The court in its discretion may allow a probationer to be subject to warrantless searches if they waive that right as a condition of their probation. *Id.*

The defendant signed and dated his court-ordered probation and the Order Suspending Sentence and Order of Probation. See Exhibit A. The Defendant also signed and initialed the Standard Agreement of Supervision which explicitly stated that he would consent to searches as a condition of his probation and that he waived his Fourth Amendment rights regarding searches. See Exhibit A at Condition #11. As such, the Defendant, rightfully, waived his Fourth Amendment right as a condition of his probation and is subject to warrantless searches by his probation officer even if the probation officer does not have reasonable grounds to believe that a probation violation has occurred. Additionally, the Defendant is also required to notify all law enforcement he comes in contact with that he is under

supervision and tell them the name of his supervising officer. See Exhibit A at Condition #2. Furthermore, the Defendant must obey all requests by probation and parole officer. *Id.* As Defendant's probation officer, Officer Jensen was within the law to request the Defendant to remain where he was located as she responded to the scene. She was also allowed to search the Defendant and the Defendant's vehicle.

II. Officer Stormes had reasonable articulable suspicion to conduct a traffic stop on the Defendant's vehicle.

The Idaho Supreme Court has held that a person may be detained by an officer even though he does not possess probable cause; the seizure is justified under the Fourth Amendment if there is a reasonable articulable suspicion that the person has committed or is about to commit a crime. *State v. Rawlings*, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992) (rehearing denied)(citing *Florida v. Royer*, 460 U.S. 491 (1983)). The reasonable suspicion standard requires less than probable cause, but more than speculation or instinct on the part of an officer. *Id.* at 664. An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity. *United States v. Cortez*, 449 U.S. 411(1981). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *Mason v. State Department of Law Enforcement*, 103 Idaho 748, 750, 653 P.2d 803, 805 (Ct.App. 1982). In order to detain a person for purposes of an investigatory stop, law enforcement officers must have specific facts which would "warrant a man of reasonable caution in the belief" that the action taken was appropriate—that a traffic law has been violated or that some criminal activity has been or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968); see also *United States v.*

Brignoni-Ponce, 422 U.S. 873, 878 (1975); *State v. Fry*, 122 Idaho 100, 103, 831 P.2d 942, 945 (Ct. App. 1991). A police officer's reasonable, good-faith mistake does not violate a person's Fourth Amendment rights. *Heien v. North Carolina*, 135 S. Ct. 530, 539 (2014).

In this case, Officer Stormes had articulable reasonable suspicion that a traffic violation had occurred or that he needed to further investigate a clear concern of possible violation. Pursuant to this reasonable suspicion he made a traffic stop. He made multiple attempts to check the registration on a vehicle and dispatch told him on two (2) different occasions that no records were coming up for that license plate number. On the third attempt to have dispatch check the license plate numbers, he did not receive any response from them as to whether or not the registration was valid and had already stopped the vehicle to investigate. While it turns out that the registration was up to date, this does not diminish the legitimacy of the traffic stop because at the time the stop was conducted Officer Stormes had reasonable articulable suspicion to support the stop. Officer Stormes also testified that the ultimate mistake was that dispatch had ran the wrong county of origin number. Officer Stormes was operating under a good faith belief that the registration was not returning after he made every effort to verify the numbers.

III. Even if the Defendant was not on Felony Probation, Officer Stormes did not unlawfully detain the Defendant.

Law enforcement officers may pose questions, ask for identification, and even request consent to search items provided they do not induce cooperation by coercive means. *Florida v. Bostick*, 501 U.S. 429, 434-35 (1991). The proper

inquiry necessitates a consideration of "all the circumstances surrounding the encounter." *Id.*, at 439.

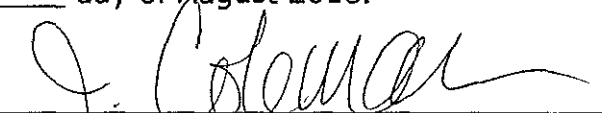
In this case Officer Stormes conducted his traffic stop and began writing two (2) citations because of the Defendant's failure to purchase a driver's license and his lack of insurance. While handing him the first citation the Defendant told Officer Stormes that he was on probation. Officer Stormes then contacted a probation officer to let them know that a probationer had just been stopped and cited, and had previously been engaged in suspicious activity with a vehicle known by officers to belong to a suspected drug dealer. The probation officer requested to speak to the Defendant and informed Officer Stormes she intended to search the Defendant's car. Officer Stormes then told the Defendant that a probation officer wanted to speak to him and that they were on their way to the location. At this point the traffic stop was concluded since the Defendant had by that point received both citations for the traffic violations, and the Defendant was no longer being detained by Officer Stormes for the stop. He was however not free to leave, as he had received a specific request from a probation and parole officer and was required to follow those instructions per the terms of his probation. The detention and search were valid and lawful.

CONCLUSION

Based on the foregoing, the State respectfully requests this court deny

Defendant's Motion to Suppress.

RESPECTFULLY submitted this 5th day of August 2016.



JUSTIN J. COLEMAN
Senior Deputy Prosecutor

AFFIDAVIT OF SERVICE

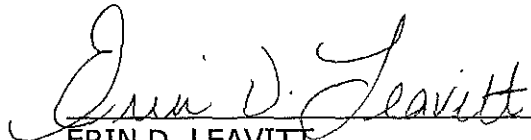
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing CLOSING BRIEF was

- (1) 1 hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

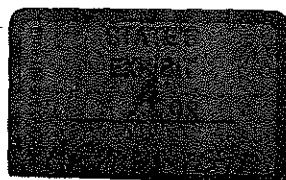
Richard M. Cuddihy
Knowlton & Miles, PLLC
PO Drawer 717
Lewiston, Idaho 83501

DATED this 5th day of August, 2016.


ERIN D. LEAVITT
Senior Legal Assistant

IDAHO DEPARTMENT OF CORRECTION
Standard Agreement of Supervision

1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Department of Correction (IDOC). LF
2. **Laws and Conduct:** The defendant shall obey all laws, municipal, county, state and federal. The defendant shall comply with all lawful requests of the IDOC district manager, section supervisor, or probation and parole officer (PPO). The defendant shall be completely truthful at all times with the IDOC district manager, section supervisor, or PPO. During any contact with law enforcement personnel the defendant shall provide his identity, notify the law enforcement officer(s) that he is under supervision and provide the name of his supervising PPO. The defendant shall notify his supervising PPO of the contact within 24 hrs. LF
3. **Residence:** The defendant shall not change residence without first obtaining permission from the IDOC district manager, section supervisor, or PPO. LF
4. **Reporting:** The defendant shall report to his supervising PPO as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the IDOC. LF
5. **Travel:** The defendant shall not leave the state of Idaho or the assigned district without first obtaining permission from his supervising PPO. LF
6. **Extradition:** If the defendant does leave the state of Idaho, with or without permission, the defendant does hereby waive extradition to the state of Idaho and will not contest any effort to return the defendant to the state of Idaho. LF
7. **Employment or Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his supervising PPO. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the defendant's specific situation and as approved by his supervising PPO. LF
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form and will not enter any establishment where alcohol is a primary source of income. LF
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him by a licensed physician or dentist. The defendant shall use medications only in the manner prescribed by his physician or dentist. LF
10. **Firearms or Weapons:** The defendant shall not purchase, carry, possess or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to, knives with blades over two and one half inches (2 1/2") in length; switch-blade knives; brass knuckles; swords; throwing stars; and other martial arts weapons. Any weapons or firearms seized will be forfeited to IDOC for disposal. The defendant shall not reside in any location that contains firearms unless the firearms are secured and this portion of the rule is exempted in writing by the district manager. LF
11. **Search:** The defendant shall consent to the search of his person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority. The search will be conducted by the IDOC district manager, section supervisor, or PPO or law enforcement officer. The defendant waives his Fourth Amendment rights concerning searches. LF
12. **Cost of Supervision:** The defendant shall comply with Idaho Code, Section 20-225, which authorizes the IDOC to collect a cost of supervision fee. The defendant shall make payments as prescribed in his monthly cost of supervision bill. LF
13. **Associations:** The defendant shall not associate with any person(s) designated by the IDOC district manager, section supervisor, or PPO. LF
14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by the IDOC district manager, section supervisor, or PPO or law enforcement officer. The defendant may be required to obtain tests at his own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. LF
15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the court or IDOC district manager, section supervisor, or PPO. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the court or IDOC district manager, section supervisor, or PPO. The defendant may be required to attend treatment, counseling or other programs at his own expense. LF



16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the PPO. The defendant shall allow the PPO to enter his residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alert them to the PPO's visit. The defendant shall not keep any vicious or dangerous dog or other animal on or in his property that the PPO perceives as an impediment to accessing the defendant or his property. LF

17. **Absconding Supervision:** The defendant will not leave or attempt to leave the state of Idaho or the assigned district in an effort to abscond or flee supervision. The defendant will make himself available for supervision and program participation as instructed by his supervising PPO and will not actively avoid supervision. LF

18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner ordered by the court. The defendant shall make payments as ordered by the court or as designated in a payment agreement and promissory note to be completed with the IDOC district manager, section supervisor, or PPO and signed by the defendant. LF

19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement except as allowed per IDOC standard operating procedure (SOP) 701.04.02.019, *Informants: Confidential*. LF

20. **Intrastate or Interstate Violations:** If allowed to transfer supervision to another district or state, the defendant agrees to accept any violation allegation documents purportedly submitted by the agency or officer supervising the defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents. LF

21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific district office that provides his supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific district office. All additional rules will be explained to the defendant and provided to him, in writing, by the IDOC district manager, section supervisor, or PPO. LF

I have read, or have had read to me, the above agreement. I understand and accept these conditions of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing authority.

Defendant's Signature:

Charles Jensen

Witness's Signature:

Date:

4/20/15

Date:



IDAHO DEPARTMENT OF CORRECTION

C. L. "BUTCH" OTTER
GOVERNOR

KEVIN KEMPF
DIRECTOR

District Two Additional Rules

1. I will not go into any gaming establishment without first obtaining permission from my supervising officer. LF
2. I will not associate with any person who is engaged in illegal activities, is on probation or parole, or who has been convicted of a felony crime, without prior authorization of my supervising officer. LF
3. I understand my curfew is from 10pm-6am, where I must be at my residence during these times, with some exceptions that have already been explained to me. My supervising officer can raise or lower my curfew, based upon my actions, at my supervising officer's discretion. LF
4. I understand that if I owe my PSI fee, and/or if my Cost of Supervision reaches \$120, my curfew automatically reduces to 8pm-6am (with exceptions that have already been explained to me.) My curfew does not revert to its prior time until my Cost of Supervision and/or PSI fee are paid in full. LF
5. I will not accept any loan without first obtaining the permission of my supervising officer. LF
6. I will ensure all persons in my presence have valid photo identification at all times. LF
7. I will obey all rules of any city or county jail in which I am incarcerated. LF
8. I will not visit any person in any jail or prison without first obtaining written permission from my supervising officer. LF
9. I will fill any prescriptions I receive in the State of Idaho only. LF

I have read, or have had read to me, the above agreement. I understand and accept these additional rules of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing authority.

[Signature] 4-20-15
Offender Signature Date

[Signature] 4/20/15
Witness Signature Date

FILED

2016 AUG 17 AM 11 04

PATTY G. WELCH
CLERK OF THE DISTRICT COURT
Patty G. Welch
DEPUTY

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 v.)
)
 LARRY GLENN FENTON, JR.,)
)
 Defendant.)

CASE NO. CR 2016-1591
OPINION AND ORDER ON
DEFENDANT'S MOTION TO
SUPPRESS

This matter came before the Court on the Defendant's Motion to Suppress. The State of Idaho was represented by Justin Coleman, Deputy Prosecuting Attorney for Nez Perce County. The Defendant was represented by Mackenzie Welch, of the firm Knowlton & Miles. Evidence was presented to the Court on August 4, 2016. The Court allowed the parties additional time to submit briefing. The Court, being fully advised in the matter, hereby renders its decision.

FACTS AND PROCEEDINGS

On February 28, 2016, Officer Nick Eylar of the Lewiston Police Department was on patrol when he saw a red/maroon GMC Yukon that he recognized from previous narcotic activity. Officer Eylar observed the Yukon enter the parking lot of A&B Foods, and then when the vehicle left the parking lot there was a white Grand Prix following it out of the parking lot. Officer Eylar testified that in his experience drug activity was common at the A&B Foods parking lot.

Officer Eylar followed the vehicles as they traveled south on 8th Street and then west on Southway, until the vehicles both entered into the Zip Trip gas station. The Yukon parked in a parking stop at the gas station and the Grand Prix parked at the gas pumps. Officer Eylar also parked in a parking spot and he was met there by Officer Stormes. The officers discussed the vehicles and then Officer Stormes left the gas station parking lot. Shortly thereafter, the white Grand Prix left the parking lot and Officer Eylar contacted Officer Stormes by radio to inform him. Officer Eylar stayed and continued to observe the Yukon.

Officer Stormes testified that after he was informed the white Grand Prix left the gas station, he observed the car driving north on Snake River Avenue. Officer Stormes estimated he was about 100 yards, or 10 car lengths, away from the white Grand Prix when he contacted dispatch to check the license number of the car to see if the registration was current. Officer Stormes first reported to dispatch a license number "Ida" 18028, which dispatch returned as record not found. Officer Stormes then asked dispatch to run the same plate number, but change the last number to the letter "B". This number also returned as record not found.

Officer Stormes caught up with the white Grand Prix and the intersection of Snake River Avenue and the Prospect Grade. He decided to initiate a traffic stop in order to investigate the whether the car registration was up to date. Officer Stormes informed dispatch he was making the stop and he repeated the plate number for a third time, this time stating "Nora" 18028. Dispatch did not respond on this plate number before Stormes initiated the traffic stop. Later in the day, well after the stop was completed, Stormes found out that dispatch did get a return on the third plate number, which was the correct plate number.

Officer Stormes contacted the driver of the white Grand Prix, who identified himself as Larry Fenton, Jr. Fenton provided Officer Stormes with the registration information for the car and Officer Stormes was able to verify that the vehicle was currently registered, thus, the registration concerns were taken care of. Officer Stormes also found out that Fenton did not have a current driver's license or proof of insurance, so Officer Stormes decided to write citations for these two violations.

Officer Stormes returned to the vehicle to issue the citations to the driver. He handed the first citation to Fenton, and at that time, Fenton informed him that he was on probation. Stormes asked Fenton the name of the probation officer, and when Stormes heard the name, he was able to discern that Fenton was on felony probation. Based on this information, Officer Stormes did not issue the second citation, but instead returned to his patrol car and contacted the probation office. Officer Stormes explained to the probation officer that he had stopped Fenton for a traffic infraction and also relayed to the probation officer the observations Officer Eylar had made of the two vehicles at A&B Foods and the Zip Trip gas station.

The probation officer stated to Officer Stormes that she would come to the stop and search the vehicle based upon the information Stormes had provided. Officer Stormes returned to the Grand Prix and gave Fenton the second citation; he informed Fenton that the probation officer was coming to the stop and that she wanted him to stand by. Tr. at 24. Officer Stormes turned the overhead lights off on his patrol vehicle and stayed near Fenton's vehicle with his partner until the probation officer arrived on scene approximately ten minutes later. Officer Stormes testified that he did not inform Fenton that he was free to leave; however, Stormes believed Fenton was free to leave because if Fenton chose to leave there wasn't anything Stormes could have done to stop him because the traffic stop was concluded. Tr. at 24.

When the probation officer arrived she asked Fenton to step out of the vehicle and he was handcuffed for officer safety reasons. Officer Stormes assisted the probation officer with the search of the vehicle. During the search methamphetamine was located in the vehicle.

ANALYSIS

The Defendant asserts he was illegally stopped, searched, and seized because the facts available to Officer Stormes at the time he detained him did not give rise to a reasonable suspicion that criminal activity was afoot. The Fourth Amendment to the United States Constitution protects citizens against unreasonable search and seizure. U.S. CONST. amend. IV. Evidence obtained in violation of this amendment generally may not be used as evidence against the victim of an illegal government action. *State v. Page*, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004); *see also Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 416, 9 L.Ed.2d 441, 453 (1963). "When a defendant moves

to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the government carries the burden of proving that the search or seizure in question was reasonable.” *State v. Bishop*, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009); *citing State v. Anderson*, 140 Idaho 484, 486, 95 P.3d 635, 637 (2004). Brief investigatory detentions must be reasonable under the Fourth Amendment. *See Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 1878, 20 L.Ed.2d 889, 904 (1968).

The issue in this case is whether Officer Stormes had reasonable, articulable suspicion to stop the Defendant’s vehicle based upon information he received from dispatch after he provided the incorrect license number to be checked. The State contends that Officer Stormes had reasonable articulable suspicion that a traffic violation had occurred or that he needed to investigate further regarding the potential registration violation. Specifically, the State contends that at the time the stop was conducted, the officer had reasonable articulable suspicion to support the stop.

The Defendant relies on *State v. Morgan*, 154 Idaho 109, 294 P.3d 1121 (2013) to assert that there was not reasonable suspicion in this case. In *Morgan*, the officer stopped a vehicle driving without a front license plate, which would be illegal if the vehicle was registered in Idaho pursuant to I.C. § 49-428. *Id.* at 111, 294 P.3d at 1123. This requirement does not extend to vehicles registered in other states, which was recognized by the officer during cross-examination. *Id.* at 112, 294 P.3d at 1124. The officer had also testified that it appeared the driver was either very lost or trying to avoid him. The Court found these observations were not sufficient to create reasonable, articulable suspicion.

The police officer's suspicion of Morgan was based primarily on a series of four left-hand turns that Morgan made. Although the officer stated that

he believed Morgan may have been trying to avoid him, the officer provided no factual justification for that belief. Absent other circumstances, driving around the block on a Friday night does not rise to the level of specific, articulable facts that justify an investigatory stop.

Id.

The case at hand is similar to *Morgan* where the police officer believed there was a violation, but then learned later that there was not. In the case at hand, the officer checked the vehicle registration information and confirmed the car was lawfully registered. The State contends that a police officer's reasonable, good-faith mistake does not violate a person's Fourth Amendment rights. *Heien v. North Carolina*, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014).

As the text indicates and we have repeatedly affirmed, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 573 U.S. —, —, 134 S.Ct. 2473, 2482, 189 L.Ed.2d 430 (2014) (some internal quotation marks omitted). To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them "fair leeway for enforcing the law in the community's protection." *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). We have recognized that searches and seizures based on mistakes of fact can be reasonable. The warrantless search of a home, for instance, is reasonable if undertaken with the consent of a resident, and remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident. See *Illinois v. Rodriguez*, 497 U.S. 177, 183–186, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990). By the same token, if officers with probable cause to arrest a suspect mistakenly arrest an individual matching the suspect's description, neither the seizure nor an accompanying search of the arrestee would be unlawful. See *Hill v. California*, 401 U.S. 797, 802–805, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971). The limit is that "the mistakes must be those of reasonable men." *Brinegar, supra*, at 176, 69 S.Ct. 1302.

Id. at 536.

In the case at hand, this Court must decide whether the mistake of fact made by the officer or dispatch in the transmission of the license plate number was objectively reasonable, and thus, whether the mistake of fact will operate to forgive or validate the

Fourth Amendment violation. Mistake of fact and mistake of law were discussed in *State v. Horton*, 150 Idaho 300, 303, 246 P.3d 673, 676 (Ct. App. 2010).

The parties, in essence, disagree whether the officer's mistake here was one of fact or law, and the line between the two is not always easy to draw. For instance, in *McCarthy*, 133 Idaho at 124–25, 982 P.2d at 959–60, an officer stopped a vehicle for speeding but was mistaken concerning the location of a sign where the speed limit decreased from 35 mph to 25 mph. The state asserted that the mistake was one of fact (the sign's location) and we cited United States Supreme Court precedent to the effect that a mistake of fact will sometimes operate to forgive or validate a Fourth Amendment violation. However, we did not blindly accept the state's characterization of the officer's mistake as one of fact as the applicable speed limit is certainly a question of law. We noted a split of authority from other jurisdictions as to whether a mistake of law can ever be held to be reasonable and further noted that the issue in Idaho was undecided. *See, e.g., United States v. King*, 244 F.3d 736, 737–41 (9th Cir.2001) (officer's mistake of law, although reasonable, cannot form basis for reasonable suspicion to initiate traffic stop); *United States v. Twilley*, 222 F.3d 1092, 1096 n. 1 (9th Cir.2000) (officer's correct understanding of the law, together with a good-faith error regarding the facts, can establish reasonable suspicion) (also citing *McCarthy, supra*); *compare People v. Glick*, 203 Cal.App.3d 796, 250 Cal.Rptr. 315, 318 (1988) (mistake of fact and law treated the same) with *People v. White*, 107 Cal.App.4th 636, 132 Cal.Rptr.2d 371, 376–77 (2003) (distinguishing and disagreeing with *Glick* rationale). *See also State v. Young*, 144 Idaho 646, 649 n. 1, 167 P.3d 783, 786 n. 1 (Ct.App.2006); *State v. Schmadeka*, 136 Idaho 595, 599 n. 3, 38 P.3d 633, 637 n. 3 (Ct.App.2001). Ultimately, in *McCarthy* we held that the two types of mistakes were “inextricably connected,” but found it unnecessary to decide whether a mistake of law is unreasonable per se because, were that the correct characterization of the mistake, we concluded that the officer's mistake was not objectively reasonable. *McCarthy*, 133 Idaho at 125, 982 P.2d at 960.

Id. at 303, 246 P.3d at 676.

In this matter, Officer Stormes candidly testified that he was a significant distance from the car when he first read the license plate number to dispatch. It is clear he was not certain regarding the numbers he read off in his second communication with dispatch, where he suggested the last number may be the letter “B” rather than the number “8”. Officer Stormes provided dispatch with a license number three times based upon the

uncertainty of the plate number. Therefore, based upon the facts of this case, this Court cannot find the officer's mistake was objectively reasonable, and thus, created a reasonable, articulable basis for the traffic stop.

A similar issue was addressed in the State of Washington, in *State v. Creed*, 170 Wash. App. 534, 319 P.3d 80 (2014). In this case, an officer ran the defendant's license plate number as part of a routine check during his nighttime patrol. The officer erroneously entered the number as "154 YMK" instead of the actual number—"154 YDK". The incorrect number returned that the car was stolen and the officer initiated a traffic stop on this basis. *Id.* at 537-538, 319 P.3d at 81.

Extending *Snapp* on the facts presented here would elevate the innocence or culpability of an officer over the real concern of article I, section 7: the right of citizens to be protected from unwarranted invasions and intrusions. As our Supreme Court explained in *Day*, "[w]e suppress [unlawfully seized] evidence not to punish the police, *who may easily have erred innocently*. We suppress unlawfully seized evidence because we do not want to become knowingly complicit in an unconstitutional exercise of power. *See generally Olmstead v. United States*, 277 U.S. 438, 484-85, 48 S.Ct. 564, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting)." 161 Wash.2d at 894, 168 P.3d 1265 (emphasis added).

This means that while police may sometimes *reasonably* rely on incorrect information provided by third parties, they may not *reasonably* rely on their own mistaken assessment of material facts. *See, e.g., State v. Mance*, 82 Wash.App. 539, 918 P.2d 527 (1996) (holding that police may not rely upon information that is incorrect or incomplete through their fault); *State v. O'Cain*, 108 Wash.App. 542, 31 P.3d 733 (2001) (holding that a police dispatch indicating vehicle driven by defendant had been reported stolen did not provide reasonable suspicion for investigatory stop); *State v. Sandholm*, 96 Wash.App. 846, 848, 980 P.2d 1292 (1999) (noting that "exclusive reliance on the WACIC stolen vehicle report would not have provided sufficient basis for the State to establish probable cause to arrest"); *cf. State v. Gaddy*, 152 Wash.2d 64, 71, 74, 93 P.3d 872 (2004) (distinguishing officers' right to rely on erroneous license information from Department of Licensing, which is not a police agency and whose information is presumptively reliable, from information subject to the "fellow officer rule").

Id. at 542-43, 319 P.3d at 83-84.

While this Court is not bound by the determination in *Creed*, it is instructive in the case at hand. In this case, Officer Stormes testified he provided the incorrect license number to dispatch. Officer Stormes distance from the Defendant's vehicle may have been a factor in this error. It is clear in this case, that other than the error regarding the license plate number, the Defendant was driving in a lawful manner. The officer did not observe any other traffic infractions. Further, Officer Eylar's observations of the vehicle at the grocery store and gas station¹ also did not give rise to a reasonable suspicion to conduct a traffic stop. In this case, the only claim of reasonable articulate suspicion is based upon the officer's incorrect recitation of the license plate number. This, without more, is not a sufficient basis for the traffic stop. Therefore, the Defendant's motion to suppress is granted.

CONCLUSION

Based upon the foregoing analysis, the defendant's motion to suppress is granted.

ORDER

The Defendant's Motion to Suppress is hereby GRANTED.

IT IS SO ORDERED.

DATED this 17th day of August 2016.


JAY P. GASKILL - District Judge

¹Officer Eylar did recognize the GMC Yukon as a vehicle owned by someone who had been involved in other narcotic investigations. However, the fact that this vehicle and the Defendant's vehicle were seen, in the middle of the day, at a local grocery store and a gas station was not sufficient evidence to give rise to a traffic stop, or Officer Eylar would have presumably stopped the vehicles at the gas station. These facts are similar to those of the driver going around the block in *State v. Morgan*, 154 Idaho 109, 294 P.3d 1121 (2013).

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS as:

faxed & hand delivered via court basket, or

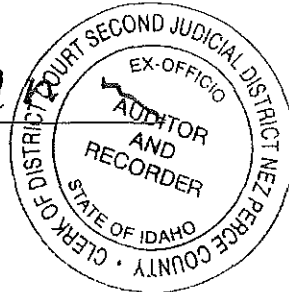
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this day of August, 2016, to:

Rick Cuddihy
Mackenzie Welch
P O Drawer 717
Lewiston ID 83501

Justin Coleman
Deputy Prosecutor
P O Box 1267
Lewiston ID 83501

PATTY O. WEEKS, CLERK

By *P. Weeks*
Deputy



Second Judicial District Court, State of Idaho
and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

FILED

2016 AUG 17 PM 1:47

STATE OF IDAHO,

Plaintiff,

vs.

Larry Glenn Fenton Jr,

Defendant.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

Case No: CR-2016-0001591

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Status Conference
Judge:

Thursday, August 18, 2016 01:30 PM
Jay P. Gaskill DJ

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, August 17, 2016.

Defendant: Larry Glenn Fenton Jr
802 9th Ave Apt 4
Lewiston, ID 83501

Mailed _____ *mailed*
Hand-Delivered x *mail*

Private Counsel: Rick Cuddihy PD 2016
P.O. Drawer 717
Lewiston, ID 83501

Mailed _____ *fixed*
Hand-Delivered x

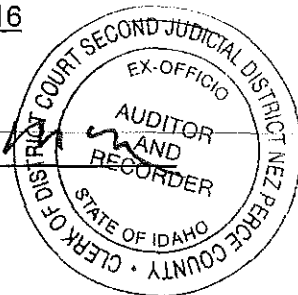
Prosecutor: Justin J. Coleman

Mailed _____ *fixed*
Hand-Delivered x

Dated: Wednesday, August 17, 2016

Patty O. Weeks
Clerk Of The District Court

By: *[Signature]*
Deputy Clerk
DOC22 7/96



COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Status Conference

Hearing date: 8/18/2016

Time: 1:46 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: Justin Coleman

- 14625 Defendant present, in custody, with counsel.
- 14644 Mr. Coleman addresses the Court and requests continuance to determine the next step and potential appeal.
- 14709 Mr. Cuddihy addresses the Court. Bond is set at \$50,000.00 and the Court recently granted Defendant's Motion to Suppress.
- 14942 Court will continue 1 week until 8-25-16 at 1:30 p.m. Court would like to review the files re: bond and will let Mr. Cuddihy know this afternoon.
- 15006 Court recess.

COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Status Conference

Hearing date: 8/25/2016

Time: 1:40 pm

Judge: Jay P. Gaskill DJ

Courtroom: 3

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 3

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: April Smith

- 14012 Defendant present, in custody, with counsel.
- 14042 Ms. Smith addresses the Court and may file motion to reconsider and just received the transcript of the motion hearing.
- 14102 Mr. Cuddihy addresses the Court.
- 14216 Ms. Smith requests the probation violation CR13-7217 be set for pv merit hearing.
- 14302 Court sets CR13-7217 for pv merit hearing 9-1-16 at 2:30 p.m.
- 14330 Court orders Defendant remain in custody at this time and can up again next week.
- 14346 Court recess.
-

FILED

2016 SEP -2 AM 11: 11

DEPUTY CLERK
[Signature]
DEPUTY

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

STATE OF IDAHO,)

Plaintiff,)

vs.)

LARRY G. FENTON, JR.,)

Defendant.)

CASE NO. CR16-01591

ORDER FOR FURLOUGH

IT IS HEREBY ORDERED that Defendant shall be released on a TWENTY-FOUR (24) hour furlough for the birth of his child. Ashley Martin Felton is to call the jail once she goes in to labor and Defendant shall be released on his furlough.

Dated this 2nd day of September, 2016.

[Signature]

JAY P. GASKILL - District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER FOR FURLOUGH was:

~~_____ hand delivered via court basket, or~~

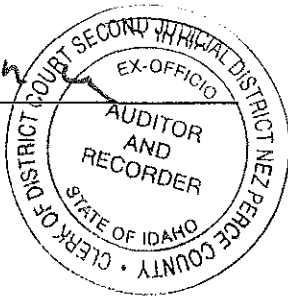
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 2nd day of September, 2016, to:

Faxed to: Prosecutor & Rick Cuddihy

PATTY O. WEEKS, Clerk

emailed to: NDC Jail

By *[Signature]*
Deputy



ORIGINAL

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

JUSTIN J. COLEMAN
Senior Deputy Prosecutor
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 8023

FILED

2016 SEP 2 PM 4 14

PATTY O. WEEKE
CLERK OF DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

vs.

LARRY G. FENTON,

Defendant.

CASE NO. CR2016-0001591

MOTION FOR RECONSIDERATION

JUSTIN J. COLEMAN, Senior Deputy Prosecutor, for Nez Perce County, State of Idaho, comes before the Court and moves this Court to reconsider the Opinion and Order filed on August 17, 2016, suppressing the evidence in this case.

This Motion is being made based upon Defendant's diminished expectation of privacy as a result of his active parole/probation status and the attenuation doctrine as recently articulated in *Utah v. Strieff*, 579 U.S. ____ (June 2016)(attached as Exhibit A, for the Court's convenience).

The State submits that the Defendant did not have a Fourth Amendment right that was intruded upon by the officer and asks the Court to reconsider its decision.

The attenuation doctrine is an exception to the exclusionary rule and allows for the admission of evidence even in the face of an impermissible stop. In *Strieff*, a vehicle stop was

determined to be illegal. The officer who stopped the car subsequently learned that there was an arrest warrant for the driver of the vehicle. The officer arrested the individual and searched him, finding controlled substance. The Supreme Court applied the attenuation doctrine. In applying three factors the Court found the evidence to be admissible. First, the Court looked at the sequential closeness between the unconstitutional act and the discovery of the evidence. Second, the Court determined if there were “intervening circumstances” that existed. And Third, the Court considered the “purpose and flagrancy of the official misconduct.” The Supreme Court found that evidence obtained after the stop admissible as the pre-existing arrest warrant was a sufficient attenuation between finding the evidence and the illegal stop.

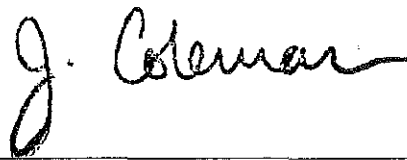
Particularly important to note, if the Court were to continue to impose “a reasonable suspicion requirement” on the ability to search a probationer, as it seems to be doing, it “would give parolees greater opportunity to anticipate searches and conceal criminality.” *Samson v. California*, 547 U.S. 843, 854 (2006).

As was submitted and established previously in this case, on April 24, 2014, the Defendant was found guilty of POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, a felony, committed on or about September 23, 2013, and was sentenced to the custody of the IDAHO STATE BOARD OF CORRECTION in Case No. CR2013-07217. On March 16, 2015, the Court suspended the remainder of Defendant’s sentence and placed the Defendant on probation for five (5) years beginning April 24, 2014. The Order Suspending Sentence and Order of Probation was signed and initialed by the Defendant on April 20, 2015. The Defendant also signed and initialed the Idaho Department of Correction Standard Agreement of Supervision on April 20, 2015. The Defendant’s probation agreement is attached again, as previously stipulated to by the parties and marked as Exhibit B.

Given the defendant's active parole/probation status as determined by Officer Stormes and confirmed by Probation Officer Jensen, a search of the defendant's vehicle is justified without reasonable suspicion. Officer Stormes did not learn of the Defendant's felony probation status until after the initial stop and investigation for traffic infractions. Officer Stormes testified that he did not learn that the Defendant was on felony probation until after he had completed the traffic infractions and was giving the citations to the Defendant. This is clearly an intervening circumstance after the officer had stopped the vehicle. Additionally, the officer's conduct was by no means involved "flagrant" police misconduct. The attenuation doctrine should apply and the subsequent search found to be constitutionally permissible.

Based on the foregoing analysis the State respectfully requests the Court reconsider its decision to suppress the evidence.

DATED this 2nd day of September, 2016



JUSTIN J. COLEMAN
Senior Deputy Prosecutor

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing MOTION FOR RECONSIDERATION was

- (1) _____ hand delivered, or
- (2) hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Richard Cuddihy
Knowlton & Miles
PO Drawer 717
Lewiston, ID 83501

DATED this 2nd day of September, 2016.

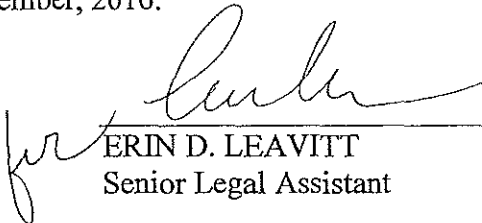

ERIN D. LEAVITT
Senior Legal Assistant

EXHIBIT "A"

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UTAH *v.* STRIEFF

CERTIORARI TO THE SUPREME COURT OF UTAH

No. 14–1373. Argued February 22, 2016—Decided June 20, 2016

Narcotics detective Douglas Fackrell conducted surveillance on a South Salt Lake City residence based on an anonymous tip about drug activity. The number of people he observed making brief visits to the house over the course of a week made him suspicious that the occupants were dealing drugs. After observing respondent Edward Strieff leave the residence, Officer Fackrell detained Strieff at a nearby parking lot, identifying himself and asking Strieff what he was doing at the house. He then requested Strieff's identification and relayed the information to a police dispatcher, who informed him that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell arrested Strieff, searched him, and found methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that it was derived from an unlawful investigatory stop. The trial court denied the motion, and the Utah Court of Appeals affirmed. The Utah Supreme Court reversed, however, and ordered the evidence suppressed.

Held: The evidence Officer Fackrell seized incident to Strieff's arrest is admissible based on an application of the attenuation factors from *Brown v. Illinois*, 422 U. S. 590. In this case, there was no flagrant police misconduct. Therefore, Officer Fackrell's discovery of a valid, pre-existing, and untainted arrest warrant attenuated the connection between the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest. Pp. 4–10.

(a) As the primary judicial remedy for deterring Fourth Amendment violations, the exclusionary rule encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure" and, relevant here, "evidence later discovered and found to be derivative of an illegality." *Segura v. United States*, 468 U. S. 796, 804. But to ensure that those deterrence benefits are not outweighed by

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the rule's substantial social costs, there are several exceptions to the rule. One exception is the attenuation doctrine, which provides for admissibility when the connection between unconstitutional police conduct and the evidence is sufficiently remote or has been interrupted by some intervening circumstance. See *Hudson v. Michigan*, 547 U. S. 586, 593. Pp. 4–5.

(b) As a threshold matter, the attenuation doctrine is not limited to the defendant's independent acts. The doctrine therefore applies here, where the intervening circumstance is the discovery of a valid, pre-existing, and untainted arrest warrant. Assuming, without deciding, that Officer Fackrell lacked reasonable suspicion to stop Strieff initially, the discovery of that arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to his arrest. Pp. 5–10.

(1) Three factors articulated in *Brown v. Illinois*, 422 U. S. 590, lead to this conclusion. The first, "temporal proximity" between the initially unlawful stop and the search, *id.*, at 603, favors suppressing the evidence. Officer Fackrell discovered drug contraband on Strieff only minutes after the illegal stop. In contrast, the second factor, "the presence of intervening circumstances, *id.*, at 603–604, strongly favors the State. The existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favors finding sufficient attenuation between the unlawful conduct and the discovery of evidence. That warrant authorized Officer Fackrell to arrest Strieff, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful. The third factor, "the purpose and flagrancy of the official misconduct," *id.*, at 604, also strongly favors the State. Officer Fackrell was at most negligent, but his errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights. After the unlawful stop, his conduct was lawful, and there is no indication that the stop was part of any systemic or recurrent police misconduct. Pp. 6–9.

(2) Strieff's counterarguments are unpersuasive. First, neither Officer Fackrell's purpose nor the flagrancy of the violation rises to a level of misconduct warranting suppression. Officer Fackrell's purpose was not to conduct a suspicionless fishing expedition but was to gather information about activity inside a house whose occupants were legitimately suspected of dealing drugs. Strieff conflates the standard for an illegal stop with the standard for flagrancy, which requires more than the mere absence of proper cause. Second, it is unlikely that the prevalence of outstanding warrants will lead to dragnet searches by police. Such misconduct would expose police to civil liability and, in any event, is already accounted for by *Brown's* "purpose and flagrancy" factor. Pp. 9–10.

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2015 UT 2, 357 P. 3d 532, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and ALITO, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined as to Parts I, II, and III. KAGAN, J., filed a dissenting opinion, in which GINSBURG, J., joined.

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SUPREME COURT OF THE UNITED STATES

No. 14–1373

UTAH, PETITIONER *v.* EDWARD
JOSEPH STRIEFF, JR.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

[June 20, 2016]

JUSTICE THOMAS delivered the opinion of the Court.

To enforce the Fourth Amendment’s prohibition against “unreasonable searches and seizures,” this Court has at times required courts to exclude evidence obtained by unconstitutional police conduct. But the Court has also held that, even when there is a Fourth Amendment violation, this exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits. In some cases, for example, the link between the unconstitutional conduct and the discovery of the evidence is too attenuated to justify suppression. The question in this case is whether this attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest. We hold that the evidence the officer seized as part of the search incident to arrest is admissible because the officer’s discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.

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I

This case began with an anonymous tip. In December 2006, someone called the South Salt Lake City police's drug-tip line to report "narcotics activity" at a particular residence. App. 15. Narcotics detective Douglas Fackrell investigated the tip. Over the course of about a week, Officer Fackrell conducted intermittent surveillance of the home. He observed visitors who left a few minutes after arriving at the house. These visits were sufficiently frequent to raise his suspicion that the occupants were dealing drugs.

One of those visitors was respondent Edward Strieff. Officer Fackrell observed Strieff exit the house and walk toward a nearby convenience store. In the store's parking lot, Officer Fackrell detained Strieff, identified himself, and asked Strieff what he was doing at the residence.

As part of the stop, Officer Fackrell requested Strieff's identification, and Strieff produced his Utah identification card. Officer Fackrell relayed Strieff's information to a police dispatcher, who reported that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell then arrested Strieff pursuant to that warrant. When Officer Fackrell searched Strieff incident to the arrest, he discovered a baggie of methamphetamine and drug paraphernalia.

The State charged Strieff with unlawful possession of methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that the evidence was inadmissible because it was derived from an unlawful investigatory stop. At the suppression hearing, the prosecutor conceded that Officer Fackrell lacked reasonable suspicion for the stop but argued that the evidence should not be suppressed because the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband.

The trial court agreed with the State and admitted the

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evidence. The court found that the short time between the illegal stop and the search weighed in favor of suppressing the evidence, but that two countervailing considerations made it admissible. First, the court considered the presence of a valid arrest warrant to be an “extraordinary intervening circumstance.” App. to Pet. for Cert. 102 (quoting *United States v. Simpson*, 439 F. 3d 490, 496 (CA8 2006)). Second, the court stressed the absence of flagrant misconduct by Officer Fackrell, who was conducting a legitimate investigation of a suspected drug house.

Strieff conditionally pleaded guilty to reduced charges of attempted possession of a controlled substance and possession of drug paraphernalia, but reserved his right to appeal the trial court’s denial of the suppression motion. The Utah Court of Appeals affirmed. 2012 UT App 245, 286 P. 3d 317.

The Utah Supreme Court reversed. 2015 UT 2, 357 P. 3d 532. It held that the evidence was inadmissible because only “a voluntary act of a defendant’s free will (as in a confession or consent to search)” sufficiently breaks the connection between an illegal search and the discovery of evidence. *Id.*, at 536. Because Officer Fackrell’s discovery of a valid arrest warrant did not fit this description, the court ordered the evidence suppressed. *Ibid.*

We granted certiorari to resolve disagreement about how the attenuation doctrine applies where an unconstitutional detention leads to the discovery of a valid arrest warrant. 576 U. S. ____ (2015). Compare, *e.g.*, *United States v. Green*, 111 F. 3d 515, 522–523 (CA7 1997) (holding that discovery of the warrant is a dispositive intervening circumstance where police misconduct was not flagrant), with, *e.g.*, *State v. Morales*, 297 Kan. 397, 415, 300 P. 3d 1090, 1102 (2013) (assigning little significance to the discovery of the warrant). We now reverse.

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II

A

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Because officers who violated the Fourth Amendment were traditionally considered trespassers, individuals subject to unconstitutional searches or seizures historically enforced their rights through tort suits or self-help. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 625 (1999). In the 20th century, however, the exclusionary rule—the rule that often requires trial courts to exclude unlawfully seized evidence in a criminal trial—became the principal judicial remedy to deter Fourth Amendment violations. See, e.g., *Mapp v. Ohio*, 367 U. S. 643, 655 (1961).

Under the Court’s precedents, the exclusionary rule encompasses both the “primary evidence obtained as a direct result of an illegal search or seizure” and, relevant here, “evidence later discovered and found to be derivative of an illegality,” the so-called “fruit of the poisonous tree.” *Segura v. United States*, 468 U. S. 796, 804 (1984). But the significant costs of this rule have led us to deem it “applicable only . . . where its deterrence benefits outweigh its substantial social costs.” *Hudson v. Michigan*, 547 U. S. 586, 591 (2006) (internal quotation marks omitted). “Suppression of evidence . . . has always been our last resort, not our first impulse.” *Ibid.*

We have accordingly recognized several exceptions to the rule. Three of these exceptions involve the causal relationship between the unconstitutional act and the discovery of evidence. First, the independent source doctrine allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source. See *Murray v. United States*, 487 U. S. 533, 537 (1988). Second, the inevitable

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discovery doctrine allows for the admission of evidence that would have been discovered even without the unconstitutional source. See *Nix v. Williams*, 467 U. S. 431, 443–444 (1984). Third, and at issue here, is the attenuation doctrine: Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that “the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.” *Hudson*, *supra*, at 593.

B

Turning to the application of the attenuation doctrine to this case, we first address a threshold question: whether this doctrine applies at all to a case like this, where the intervening circumstance that the State relies on is the discovery of a valid, pre-existing, and untainted arrest warrant. The Utah Supreme Court declined to apply the attenuation doctrine because it read our precedents as applying the doctrine only “to circumstances involving an independent act of a defendant’s ‘free will’ in confessing to a crime or consenting to a search.” 357 P. 3d, at 544. In this Court, Strieff has not defended this argument, and we disagree with it, as well. The attenuation doctrine evaluates the causal link between the government’s unlawful act and the discovery of evidence, which often has nothing to do with a defendant’s actions. And the logic of our prior attenuation cases is not limited to independent acts by the defendant.

It remains for us to address whether the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strieff’s person. The three factors articulated in *Brown v. Illinois*, 422 U. S. 590 (1975), guide our analysis. First, we look to the “temporal

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proximity” between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search. *Id.*, at 603. Second, we consider “the presence of intervening circumstances.” *Id.*, at 603–604. Third, and “particularly” significant, we examine “the purpose and flagrancy of the official misconduct.” *Id.*, at 604. In evaluating these factors, we assume without deciding (because the State conceded the point) that Officer Fackrell lacked reasonable suspicion to initially stop Strieff. And, because we ultimately conclude that the warrant breaks the causal chain, we also have no need to decide whether the warrant’s existence alone would make the initial stop constitutional even if Officer Fackrell was unaware of its existence.

1

The first factor, temporal proximity between the initially unlawful stop and the search, favors suppressing the evidence. Our precedents have declined to find that this factor favors attenuation unless “substantial time” elapses between an unlawful act and when the evidence is obtained. *Kaupp v. Texas*, 538 U. S. 626, 633 (2003) (*per curiam*). Here, however, Officer Fackrell discovered drug contraband on Strieff’s person only minutes after the illegal stop. See App. 18–19. As the Court explained in *Brown*, such a short time interval counsels in favor of suppression; there, we found that the confession should be suppressed, relying in part on the “less than two hours” that separated the unconstitutional arrest and the confession. 422 U. S., at 604.

In contrast, the second factor, the presence of intervening circumstances, strongly favors the State. In *Segura*, 468 U. S. 796, the Court addressed similar facts to those here and found sufficient intervening circumstances to allow the admission of evidence. There, agents had probable cause to believe that apartment occupants were deal-

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ing cocaine. *Id.*, at 799–800. They sought a warrant. In the meantime, they entered the apartment, arrested an occupant, and discovered evidence of drug activity during a limited search for security reasons. *Id.*, at 800–801. The next evening, the Magistrate Judge issued the search warrant. *Ibid.* This Court deemed the evidence admissible notwithstanding the illegal search because the information supporting the warrant was “wholly unconnected with the [arguably illegal] entry and was known to the agents well before the initial entry.” *Id.*, at 814.

Segura, of course, applied the independent source doctrine because the unlawful entry “did not contribute in any way to discovery of the evidence seized under the warrant.” *Id.*, at 815. But the *Segura* Court suggested that the existence of a valid warrant favors finding that the connection between unlawful conduct and the discovery of evidence is “sufficiently attenuated to dissipate the taint.” *Ibid.* That principle applies here.

In this case, the warrant was valid, it predated Officer Fackrell’s investigation, and it was entirely unconnected with the stop. And once Officer Fackrell discovered the warrant, he had an obligation to arrest Strieff. “A warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions.” *United States v. Leon*, 468 U. S. 897, 920, n. 21 (1984) (internal quotation marks omitted). Officer Fackrell’s arrest of Strieff thus was a ministerial act that was independently compelled by the pre-existing warrant. And once Officer Fackrell was authorized to arrest Strieff, it was undisputedly lawful to search Strieff as an incident of his arrest to protect Officer Fackrell’s safety. See *Arizona v. Gant*, 556 U. S. 332, 339 (2009) (explaining the permissible scope of searches incident to arrest).

Finally, the third factor, “the purpose and flagrancy of the official misconduct,” *Brown, supra*, at 604, also strongly

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favors the State. The exclusionary rule exists to deter police misconduct. *Davis v. United States*, 564 U. S. 229, 236–237 (2011). The third factor of the attenuation doctrine reflects that rationale by favoring exclusion only when the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant.

Officer Fackrell was at most negligent. In stopping Strieff, Officer Fackrell made two good-faith mistakes. First, he had not observed what time Strieff entered the suspected drug house, so he did not know how long Strieff had been there. Officer Fackrell thus lacked a sufficient basis to conclude that Strieff was a short-term visitor who may have been consummating a drug transaction. Second, because he lacked confirmation that Strieff was a short-term visitor, Officer Fackrell should have asked Strieff whether he would speak with him, instead of demanding that Strieff do so. Officer Fackrell’s stated purpose was to “find out what was going on [in] the house.” App. 17. Nothing prevented him from approaching Strieff simply to ask. See *Florida v. Bostick*, 501 U. S. 429, 434 (1991) (“[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions”). But these errors in judgment hardly rise to a purposeful or flagrant violation of Strieff’s Fourth Amendment rights.

While Officer Fackrell’s decision to initiate the stop was mistaken, his conduct thereafter was lawful. The officer’s decision to run the warrant check was a “negligibly burdensome precautio[n]” for officer safety. *Rodriguez v. United States*, 575 U. S. ___, ___ (2015) (slip op., at 7). And Officer Fackrell’s actual search of Strieff was a lawful search incident to arrest. See *Gant*, *supra*, at 339.

Moreover, there is no indication that this unlawful stop was part of any systemic or recurrent police misconduct. To the contrary, all the evidence suggests that the stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected

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drug house. Officer Fackrell saw Strieff leave a suspected drug house. And his suspicion about the house was based on an anonymous tip and his personal observations.

Applying these factors, we hold that the evidence discovered on Strieff's person was admissible because the unlawful stop was sufficiently attenuated by the pre-existing arrest warrant. Although the illegal stop was close in time to Strieff's arrest, that consideration is outweighed by two factors supporting the State. The outstanding arrest warrant for Strieff's arrest is a critical intervening circumstance that is wholly independent of the illegal stop. The discovery of that warrant broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff. And, it is especially significant that there is no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct.

2

We find Strieff's counterarguments unpersuasive.

First, he argues that the attenuation doctrine should not apply because the officer's stop was purposeful and flagrant. He asserts that Officer Fackrell stopped him solely to fish for evidence of suspected wrongdoing. But Officer Fackrell sought information from Strieff to find out what was happening inside a house whose occupants were legitimately suspected of dealing drugs. This was not a suspicionless fishing expedition "in the hope that something would turn up." *Taylor v. Alabama*, 457 U. S. 687, 691 (1982).

Strieff argues, moreover, that Officer Fackrell's conduct was flagrant because he detained Strieff without the necessary level of cause (here, reasonable suspicion). But that conflates the standard for an illegal stop with the standard for flagrancy. For the violation to be flagrant, more severe police misconduct is required than the mere

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absence of proper cause for the seizure. See, *e.g.*, *Kaupp*, 538 U. S., at 628, 633 (finding flagrant violation where a warrantless arrest was made in the arrestee's home after police were denied a warrant and at least some officers knew they lacked probable cause). Neither the officer's alleged purpose nor the flagrancy of the violation rise to a level of misconduct to warrant suppression.

Second, Strieff argues that, because of the prevalence of outstanding arrest warrants in many jurisdictions, police will engage in dragnet searches if the exclusionary rule is not applied. We think that this outcome is unlikely. Such wanton conduct would expose police to civil liability. See 42 U. S. C. §1983; *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 690 (1978); see also *Segura*, 468 U. S., at 812. And in any event, the *Brown* factors take account of the purpose and flagrancy of police misconduct. Were evidence of a dragnet search presented here, the application of the *Brown* factors could be different. But there is no evidence that the concerns that Strieff raises with the criminal justice system are present in South Salt Lake City, Utah.

* * *

We hold that the evidence Officer Fackrell seized as part of his search incident to arrest is admissible because his discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest. The judgment of the Utah Supreme Court, accordingly, is reversed.

It is so ordered.

SOTOMAYOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 14–1373

**UTAH, PETITIONER v. EDWARD
JOSEPH STRIEFF, JR.**

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

[June 20, 2016]

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins as to Parts I, II, and III, dissenting.

The Court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer’s violation of your Fourth Amendment rights. Do not be soothed by the opinion’s technical language: This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant. Because the Fourth Amendment should prohibit, not permit, such misconduct, I dissent.

I

Minutes after Edward Strieff walked out of a South Salt Lake City home, an officer stopped him, questioned him, and took his identification to run it through a police database. The officer did not suspect that Strieff had done anything wrong. Strieff just happened to be the first person to leave a house that the officer thought might contain “drug activity.” App. 16–19.

As the State of Utah concedes, this stop was illegal. App. 24. The Fourth Amendment protects people from “unreasonable searches and seizures.” An officer breaches

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that protection when he detains a pedestrian to check his license without any evidence that the person is engaged in a crime. *Delaware v. Prouse*, 440 U. S. 648, 663 (1979); *Terry v. Ohio*, 392 U. S. 1, 21 (1968). The officer deepens the breach when he prolongs the detention just to fish further for evidence of wrongdoing. *Rodriguez v. United States*, 575 U. S. ___, ___-___ (2015) (slip op., at 6-7). In his search for lawbreaking, the officer in this case himself broke the law.

The officer learned that Strieff had a “small traffic warrant.” App. 19. Pursuant to that warrant, he arrested Strieff and, conducting a search incident to the arrest, discovered methamphetamine in Strieff’s pockets.

Utah charged Strieff with illegal drug possession. Before trial, Strieff argued that admitting the drugs into evidence would condone the officer’s misbehavior. The methamphetamine, he reasoned, was the product of the officer’s illegal stop. Admitting it would tell officers that unlawfully discovering even a “small traffic warrant” would give them license to search for evidence of unrelated offenses. The Utah Supreme Court unanimously agreed with Strieff. A majority of this Court now reverses.

II

It is tempting in a case like this, where illegal conduct by an officer uncovers illegal conduct by a civilian, to forgive the officer. After all, his instincts, although unconstitutional, were correct. But a basic principle lies at the heart of the Fourth Amendment: Two wrongs don’t make a right. See *Weeks v. United States*, 232 U. S. 383, 392 (1914). When “lawless police conduct” uncovers evidence of lawless civilian conduct, this Court has long required later criminal trials to exclude the illegally obtained evidence. *Terry*, 392 U. S., at 12; *Mapp v. Ohio*, 367 U. S. 643, 655 (1961). For example, if an officer breaks into a home and finds a forged check lying around, that check

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may not be used to prosecute the homeowner for bank fraud. We would describe the check as “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U. S. 471, 488 (1963). Fruit that must be cast aside includes not only evidence directly found by an illegal search but also evidence “come at by exploitation of that illegality.” *Ibid.*

This “exclusionary rule” removes an incentive for officers to search us without proper justification. *Terry*, 392 U. S., at 12. It also keeps courts from being “made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions.” *Id.*, at 13. When courts admit only lawfully obtained evidence, they encourage “those who formulate law enforcement policies, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system.” *Stone v. Powell*, 428 U. S. 465, 492 (1976). But when courts admit illegally obtained evidence as well, they reward “manifest neglect if not an open defiance of the prohibitions of the Constitution.” *Weeks*, 232 U. S., at 394.

Applying the exclusionary rule, the Utah Supreme Court correctly decided that Strieff’s drugs must be excluded because the officer exploited his illegal stop to discover them. The officer found the drugs only after learning of Strieff’s traffic violation; and he learned of Strieff’s traffic violation only because he unlawfully stopped Strieff to check his driver’s license.

The court also correctly rejected the State’s argument that the officer’s discovery of a traffic warrant unspooled the poisonous fruit. The State analogizes finding the warrant to one of our earlier decisions, *Wong Sun v. United States*. There, an officer illegally arrested a person who, days later, voluntarily returned to the station to confess to committing a crime. 371 U. S., at 491. Even though the person would not have confessed “but for the illegal actions of the police,” *id.*, at 488, we noted that the

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police did not exploit their illegal arrest to obtain the confession, *id.*, at 491. Because the confession was obtained by “means sufficiently distinguishable” from the constitutional violation, we held that it could be admitted into evidence. *Id.*, at 488, 491. The State contends that the search incident to the warrant-arrest here is similarly distinguishable from the illegal stop.

But *Wong Sun* explains why Strieff’s drugs must be excluded. We reasoned that a Fourth Amendment violation may not color every investigation that follows but it certainly stains the actions of officers who exploit the infraction. We distinguished evidence obtained by innocuous means from evidence obtained by exploiting misconduct after considering a variety of factors: whether a long time passed, whether there were “intervening circumstances,” and whether the purpose or flagrancy of the misconduct was “calculated” to procure the evidence. *Brown v. Illinois*, 422 U. S. 590, 603–604 (1975).

These factors confirm that the officer in this case discovered Strieff’s drugs by exploiting his own illegal conduct. The officer did not ask Strieff to volunteer his name only to find out, days later, that Strieff had a warrant against him. The officer illegally stopped Strieff and immediately ran a warrant check. The officer’s discovery of a warrant was not some intervening surprise that he could not have anticipated. Utah lists over 180,000 misdemeanor warrants in its database, and at the time of the arrest, Salt Lake County had a “backlog of outstanding warrants” so large that it faced the “potential for civil liability.” See Dept. of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2014 (2015) (Systems Survey) (Table 5a), online at <https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf> (all Internet materials as last visited June 16, 2016); Inst. for Law and Policy Planning, Salt Lake County Criminal Justice System Assessment 6.7 (2004), online at

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<http://www.slco.org/cjac/resources/SaltLakeCJSAfinal.pdf>. The officer's violation was also calculated to procure evidence. His sole reason for stopping Strieff, he acknowledged, was investigative—he wanted to discover whether drug activity was going on in the house Strieff had just exited. App. 17.

The warrant check, in other words, was not an “intervening circumstance” separating the stop from the search for drugs. It was part and parcel of the officer's illegal “expedition for evidence in the hope that something might turn up.” *Brown*, 422 U. S., at 605. Under our precedents, because the officer found Strieff's drugs by exploiting his own constitutional violation, the drugs should be excluded.

III

A

The Court sees things differently. To the Court, the fact that a warrant gives an officer cause to arrest a person severs the connection between illegal policing and the resulting discovery of evidence. *Ante*, at 7. This is a remarkable proposition: The mere existence of a warrant not only gives an officer legal cause to arrest and search a person, it also forgives an officer who, with no knowledge of the warrant at all, unlawfully stops that person on a whim or hunch.

To explain its reasoning, the Court relies on *Segura v. United States*, 468 U. S. 796 (1984). There, federal agents applied for a warrant to search an apartment but illegally entered the apartment to secure it before the judge issued the warrant. *Id.*, at 800–801. After receiving the warrant, the agents then searched the apartment for drugs. *Id.*, at 801. The question before us was what to do with the evidence the agents then discovered. We declined to suppress it because “[t]he illegal entry into petitioners' apartment did not contribute in any way to discovery of the evidence seized under the warrant.” *Id.*, at 815.

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According to the majority, *Segura* involves facts “similar” to this case and “suggest[s]” that a valid warrant will clean up whatever illegal conduct uncovered it. *Ante*, at 6–7. It is difficult to understand this interpretation. In *Segura*, the agents’ illegal conduct in entering the apartment had nothing to do with their procurement of a search warrant. Here, the officer’s illegal conduct in stopping Strieff was essential to his discovery of an arrest warrant. *Segura* would be similar only if the agents used information they illegally obtained from the apartment to procure a search warrant or discover an arrest warrant. Precisely because that was not the case, the Court admitted the untainted evidence. 468 U. S., at 814.

The majority likewise misses the point when it calls the warrant check here a “negligibly burdensome precaution[n]” taken for the officer’s “safety.” *Ante*, at 8 (quoting *Rodriguez*, 575 U. S., at ___ (slip op., at 7)). Remember, the officer stopped Strieff without suspecting him of committing any crime. By his own account, the officer did not fear Strieff. Moreover, the safety rationale we discussed in *Rodriguez*, an opinion about highway patrols, is conspicuously absent here. A warrant check on a highway “ensur[es] that vehicles on the road are operated safely and responsibly.” *Id.*, at ___ (slip op., at 6). We allow such checks during legal traffic stops because the legitimacy of a person’s driver’s license has a “close connection to roadway safety.” *Id.*, at ___ (slip op., at 7). A warrant check of a pedestrian on a sidewalk, “by contrast, is a measure aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing.’” *Ibid.* (quoting *Indianapolis v. Edmond*, 531 U. S. 32, 40–41 (2000)). Surely we would not allow officers to warrant-check random joggers, dog walkers, and lemonade vendors just to ensure they pose no threat to anyone else.

The majority also posits that the officer could not have exploited his illegal conduct because he did not violate the Fourth Amendment on purpose. Rather, he made “good-

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faith mistakes.” *Ante*, at 8. Never mind that the officer’s sole purpose was to fish for evidence. The majority casts his unconstitutional actions as “negligent” and therefore incapable of being deterred by the exclusionary rule. *Ibid*.

But the Fourth Amendment does not tolerate an officer’s unreasonable searches and seizures just because he did not know any better. Even officers prone to negligence can learn from courts that exclude illegally obtained evidence. *Stone*, 428 U. S., at 492. Indeed, they are perhaps the most in need of the education, whether by the judge’s opinion, the prosecutor’s future guidance, or an updated manual on criminal procedure. If the officers are in doubt about what the law requires, exclusion gives them an “incentive to err on the side of constitutional behavior.” *United States v. Johnson*, 457 U. S. 537, 561 (1982).

B

Most striking about the Court’s opinion is its insistence that the event here was “isolated,” with “no indication that this unlawful stop was part of any systemic or recurrent police misconduct.” *Ante*, at 8–9. Respectfully, nothing about this case is isolated.

Outstanding warrants are surprisingly common. When a person with a traffic ticket misses a fine payment or court appearance, a court will issue a warrant. See, e.g., Brennan Center for Justice, *Criminal Justice Debt 23* (2010), online at <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>. When a person on probation drinks alcohol or breaks curfew, a court will issue a warrant. See, e.g., Human Rights Watch, *Profiting from Probation 1*, 51 (2014), online at <https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry>. The States and Federal Government maintain databases with over 7.8 million outstanding warrants, the vast majority of which appear to be for minor offenses. See Systems Sur-

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vey (Table 5a). Even these sources may not track the “staggering” numbers of warrants, “drawers and drawers” full, that many cities issue for traffic violations and ordinance infractions. Dept. of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 47, 55 (2015) (Ferguson Report), online at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf. The county in this case has had a “backlog” of such warrants. See *supra*, at 4. The Department of Justice recently reported that in the town of Ferguson, Missouri, with a population of 21,000, 16,000 people had outstanding warrants against them. Ferguson Report, at 6, 55.

Justice Department investigations across the country have illustrated how these astounding numbers of warrants can be used by police to stop people without cause. In a single year in New Orleans, officers “made nearly 60,000 arrests, of which about 20,000 were of people with outstanding traffic or misdemeanor warrants from neighboring parishes for such infractions as unpaid tickets.” Dept. of Justice, Civil Rights Div., Investigation of the New Orleans Police Department 29 (2011), online at https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf. In the St. Louis metropolitan area, officers “routinely” stop people—on the street, at bus stops, or even in court—for no reason other than “an officer’s desire to check whether the subject had a municipal arrest warrant pending.” Ferguson Report, at 49, 57. In Newark, New Jersey, officers stopped 52,235 pedestrians within a 4-year period and ran warrant checks on 39,308 of them. Dept. of Justice, Civil Rights Div., Investigation of the Newark Police Department 8, 19, n. 15 (2014), online at https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf. The Justice Department analyzed these warrant-checked stops and reported that “approximately 93% of the stops would

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have been considered unsupported by articulated reasonable suspicion.” *Id.*, at 9, n. 7.

I do not doubt that most officers act in “good faith” and do not set out to break the law. That does not mean these stops are “isolated instance[s] of negligence,” however. *Ante*, at 8. Many are the product of institutionalized training procedures. The New York City Police Department long trained officers to, in the words of a District Judge, “stop and question first, develop reasonable suspicion later.” *Ligon v. New York*, 925 F. Supp. 2d 478, 537–538 (SDNY), stay granted on other grounds, 736 F. 3d 118 (CA2 2013). The Utah Supreme Court described as “‘routine procedure’ or ‘common practice’” the decision of Salt Lake City police officers to run warrant checks on pedestrians they detained without reasonable suspicion. *State v. Topanotes*, 2003 UT 30, ¶2, 76 P. 3d 1159, 1160. In the related context of traffic stops, one widely followed police manual instructs officers looking for drugs to “run at least a warrants check on all drivers you stop. Statistically, narcotics offenders are . . . more likely to fail to appear on simple citations, such as traffic or trespass violations, leading to the issuance of bench warrants. Discovery of an outstanding warrant gives you cause for an immediate custodial arrest and search of the suspect.” C. Remsberg, *Tactics for Criminal Patrol* 205–206 (1995); C. Epp et al., *Pulled Over* 23, 33–36 (2014).

The majority does not suggest what makes this case “isolated” from these and countless other examples. Nor does it offer guidance for how a defendant can prove that his arrest was the result of “widespread” misconduct. Surely it should not take a federal investigation of Salt Lake County before the Court would protect someone in Strieff’s position.

IV

Writing only for myself, and drawing on my professional

SOTOMAYOR, J., dissenting

experiences, I would add that unlawful “stops” have severe consequences much greater than the inconvenience suggested by the name. This Court has given officers an array of instruments to probe and examine you. When we condone officers’ use of these devices without adequate cause, we give them reason to target pedestrians in an arbitrary manner. We also risk treating members of our communities as second-class citizens.

Although many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more. This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a pretextual justification after the fact. *Whren v. United States*, 517 U. S. 806, 813 (1996). That justification must provide specific reasons why the officer suspected you were breaking the law, *Terry*, 392 U. S., at 21, but it may factor in your ethnicity, *United States v. Brignoni-Ponce*, 422 U. S. 873, 886–887 (1975), where you live, *Adams v. Williams*, 407 U. S. 143, 147 (1972), what you were wearing, *United States v. Sokolow*, 490 U. S. 1, 4–5 (1989), and how you behaved, *Illinois v. Wardlow*, 528 U. S. 119, 124–125 (2000). The officer does not even need to know which law you might have broken so long as he can later point to any possible infraction—even one that is minor, unrelated, or ambiguous. *Devenpeck v. Alford*, 543 U. S. 146, 154–155 (2004); *Heien v. North Carolina*, 574 U. S. ___ (2014).

The indignity of the stop is not limited to an officer telling you that you look like a criminal. See *Epp, Pulled Over*, at 5. The officer may next ask for your “consent” to inspect your bag or purse without telling you that you can decline. See *Florida v. Bostick*, 501 U. S. 429, 438 (1991). Regardless of your answer, he may order you to stand “helpless, perhaps facing a wall with [your] hands raised.” *Terry*, 392 U. S., at 17. If the officer thinks you might be dangerous, he may then “frisk” you for weapons. This

SOTOMAYOR, J., dissenting

involves more than just a pat down. As onlookers pass by, the officer may “feel with sensitive fingers every portion of [your] body. A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.” *Id.*, at 17, n. 13.

The officer’s control over you does not end with the stop. If the officer chooses, he may handcuff you and take you to jail for doing nothing more than speeding, jaywalking, or “driving [your] pickup truck . . . with [your] 3-year-old son and 5-year-old daughter . . . without [your] seatbelt fastened.” *Atwater v. Lago Vista*, 532 U. S. 318, 323–324 (2001). At the jail, he can fingerprint you, swab DNA from the inside of your mouth, and force you to “shower with a delousing agent” while you “lift [your] tongue, hold out [your] arms, turn around, and lift [your] genitals.” *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U. S. ___, ___–___ (2012) (slip op., at 2–3); *Maryland v. King*, 569 U. S. ___, ___ (2013) (slip op., at 28). Even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the “civil death” of discrimination by employers, landlords, and whoever else conducts a background check. Chin, *The New Civil Death*, 160 U. Pa. L. Rev. 1789, 1805 (2012); see J. Jacobs, *The Eternal Criminal Record* 33–51 (2015); Young & Petersilia, *Keeping Track*, 129 Harv. L. Rev. 1318, 1341–1357 (2016). And, of course, if you fail to pay bail or appear for court, a judge will issue a warrant to render you “arrestable on sight” in the future. A. Goffman, *On the Run* 196 (2014).

This case involves a *suspicionless* stop, one in which the officer initiated this chain of events without justification. As the Justice Department notes, *supra*, at 8, many innocent people are subjected to the humiliations of these unconstitutional searches. The white defendant in this case shows that anyone’s dignity can be violated in this

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manner. See M. Gottschalk, *Caught* 119–138 (2015). But it is no secret that people of color are disproportionate victims of this type of scrutiny. See M. Alexander, *The New Jim Crow* 95–136 (2010). For generations, black and brown parents have given their children “the talk”—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them. See, *e.g.*, W. E. B. Du Bois, *The Souls of Black Folk* (1903); J. Baldwin, *The Fire Next Time* (1963); T. Coates, *Between the World and Me* (2015).

By legitimizing the conduct that produces this double consciousness, this case tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.

We must not pretend that the countless people who are routinely targeted by police are “isolated.” They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. See L. Guinier & G. Torres, *The Miner’s Canary* 274–283 (2002). They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.

* * *

I dissent.

KAGAN, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 14–1373

UTAH, PETITIONER *v.* EDWARD
JOSEPH STRIEFF, JR.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

[June 20, 2016]

JUSTICE KAGAN, with whom JUSTICE GINSBURG joins, dissenting.

If a police officer stops a person on the street without reasonable suspicion, that seizure violates the Fourth Amendment. And if the officer pats down the unlawfully detained individual and finds drugs in his pocket, the State may not use the contraband as evidence in a criminal prosecution. That much is beyond dispute. The question here is whether the prohibition on admitting evidence dissolves if the officer discovers, after making the stop but before finding the drugs, that the person has an outstanding arrest warrant. Because that added wrinkle makes no difference under the Constitution, I respectfully dissent.

This Court has established a simple framework for determining whether to exclude evidence obtained through a Fourth Amendment violation: Suppression is necessary when, but only when, its societal benefits outweigh its costs. See *ante*, at 4; *Davis v. United States*, 564 U. S. 229, 237 (2011). The exclusionary rule serves a crucial function—to deter unconstitutional police conduct. By barring the use of illegally obtained evidence, courts reduce the temptation for police officers to skirt the Fourth Amendment’s requirements. See *James v. Illinois*, 493 U. S. 307, 319 (1990). But suppression of evidence also “exact[s] a heavy toll”: Its consequence in many cases is to release a criminal without just punishment. *Davis*, 564

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U. S., at 237. Our decisions have thus endeavored to strike a sound balance between those two competing considerations—rejecting the “reflexive” impulse to exclude evidence every time an officer runs afoul of the Fourth Amendment, *id.*, at 238, but insisting on suppression when it will lead to “appreciable deterrence” of police misconduct, *Herring v. United States*, 555 U. S. 135, 141 (2009).

This case thus requires the Court to determine whether excluding the fruits of Officer Douglas Fackrell’s unjustified stop of Edward Strieff would significantly deter police from committing similar constitutional violations in the future. And as the Court states, that inquiry turns on application of the “attenuation doctrine,” *ante*, at 5—our effort to “mark the point” at which the discovery of evidence “become[s] so attenuated” from the police misconduct that the deterrent benefit of exclusion drops below its cost. *United States v. Leon*, 468 U. S. 897, 911 (1984). Since *Brown v. Illinois*, 422 U. S. 590, 604–605 (1975), three factors have guided that analysis. First, the closer the “temporal proximity” between the unlawful act and the discovery of evidence, the greater the deterrent value of suppression. *Id.*, at 603. Second, the more “purpose[ful]” or “flagran[t]” the police illegality, the clearer the necessity, and better the chance, of preventing similar misbehavior. *Id.*, at 604. And third, the presence (or absence) of “intervening circumstances” makes a difference: The stronger the causal chain between the misconduct and the evidence, the more exclusion will curb future constitutional violations. *Id.*, at 603–604. Here, as shown below, each of those considerations points toward suppression: Nothing in Fackrell’s discovery of an outstanding warrant so attenuated the connection between his wrongful behavior and his detection of drugs as to diminish the exclusionary rule’s deterrent benefits.

Start where the majority does: The temporal proximity

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factor, it forthrightly admits, “favors suppressing the evidence.” *Ante*, at 6. After all, Fackrell’s discovery of drugs came just minutes after the unconstitutional stop. And in prior decisions, this Court has made clear that only the lapse of “substantial time” between the two could favor admission. *Kaupp v. Texas*, 538 U. S. 626, 633 (2003) (*per curiam*); see, e.g., *Brown*, 422 U. S., at 604 (suppressing a confession when “less than two hours” separated it from an unlawful arrest). So the State, by all accounts, takes strike one.

Move on to the purposefulness of Fackrell’s conduct, where the majority is less willing to see a problem for what it is. The majority chalks up Fackrell’s Fourth Amendment violation to a couple of innocent “mistakes.” *Ante*, at 8. But far from a Barney Fife-type mishap, Fackrell’s seizure of Strieff was a calculated decision, taken with so little justification that the State has never tried to defend its legality. At the suppression hearing, Fackrell acknowledged that the stop was designed for investigatory purposes—*i.e.*, to “find out what was going on [in] the house” he had been watching, and to figure out “what [Strieff] was doing there.” App. 17–18. And Fackrell frankly admitted that he had no basis for his action except that Strieff “was coming out of the house.” *Id.*, at 17. Plug in Fackrell’s and Strieff’s names, substitute “stop” for “arrest” and “reasonable suspicion” for “probable cause,” and this Court’s decision in *Brown* perfectly describes this case:

“[I]t is not disputed that [Fackrell stopped Strieff] without [reasonable suspicion]. [He] later testified that [he] made the [stop] for the purpose of questioning [Strieff] as part of [his] investigation The illegality here . . . had a quality of purposefulness. The impropriety of the [stop] was obvious. [A]wareness of that fact was virtually conceded by [Fackrell] when

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[he] repeatedly acknowledged, in [his] testimony, that the purpose of [his] action was ‘for investigation’: [Fackrell] embarked upon this expedition for evidence in the hope that something might turn up.” 422 U. S., at 592, 605 (some internal punctuation altered; footnote, citation, and paragraph break omitted).

In *Brown*, the Court held those facts to support suppression—and they do here as well. Swing and a miss for strike two.

Finally, consider whether any intervening circumstance “br[oke] the causal chain” between the stop and the evidence. *Ante*, at 6. The notion of such a disrupting event comes from the tort law doctrine of proximate causation. See *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U. S. 639, 658–659 (2008) (explaining that a party cannot “establish[] proximate cause” when “an intervening cause break[s] the chain of causation between” the act and the injury); Kerr, Good Faith, New Law, and the Scope of the Exclusionary Rule, 99 *Geo. L. J.* 1077, 1099 (2011) (Fourth Amendment attenuation analysis “looks to whether the constitutional violation was the proximate cause of the discovery of the evidence”). And as in the tort context, a circumstance counts as intervening only when it is unforeseeable—not when it can be seen coming from miles away. See W. Keeton, D. Dobbs, B. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* 312 (5th ed. 1984). For rather than breaking the causal chain, predictable effects (*e.g.*, X leads naturally to Y leads naturally to Z) are its very links.

And Fackrell’s discovery of an arrest warrant—the only event the majority thinks intervened—was an eminently foreseeable consequence of stopping Strieff. As Fackrell testified, checking for outstanding warrants during a stop is the “normal” practice of South Salt Lake City police. App. 18; see also *State v. Topanotes*, 2003 UT 30, ¶2, 76 P. 3d 1159, 1160 (describing a warrant check as “routine

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procedure” and “common practice” in Salt Lake City). In other words, the department’s standard detention procedures—stop, ask for identification, run a check—are partly designed to find outstanding warrants. And find them they will, given the staggering number of such warrants on the books. See generally *ante*, at 7–8 (SOTOMAYOR, J., dissenting). To take just a few examples: The State of California has 2.5 million outstanding arrest warrants (a number corresponding to about 9% of its adult population); Pennsylvania (with a population of about 12.8 million) contributes 1.4 million more; and New York City (population 8.4 million) adds another 1.2 million. See Reply Brief 8; Associated Press, Pa. Database, NBC News (Apr. 8, 2007), online at <http://goo.gl/3Yq3Nd> (as last visited June 17, 2016); N. Y. Times, Oct. 8, 2015, p. A24.¹ So outstanding warrants do not appear as bolts from the blue. They are the run-of-the-mill results of police stops—what officers look for when they run a routine check of a person’s identification and what they know will turn up with fair regularity. In short, they are nothing like what intervening circumstances are supposed to be.² Strike

¹What is more, outstanding arrest warrants are not distributed evenly across the population. To the contrary, they are concentrated in cities, towns, and neighborhoods where stops are most likely to occur—and so the odds of any given stop revealing a warrant are even higher than the above numbers indicate. One study found, for example, that Cincinnati, Ohio had over 100,000 outstanding warrants with only 300,000 residents. See Helland & Tabarrok, *The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping*, 47 *J. Law & Econ.* 93, 98 (2004). And as JUSTICE SOTOMAYOR notes, 16,000 of the 21,000 people residing in the town of Ferguson, Missouri have outstanding warrants. See *ante*, at 8.

²The majority relies on *Segura v. United States*, 468 U. S. 796 (1984), to reach the opposite conclusion, see *ante*, at 6–7, but that decision lacks any relevance to this case. The Court there held that the Fourth Amendment violation at issue “did not contribute in any way” to the police’s subsequent procurement of a warrant and discovery of contraband. 468 U. S., at 815. So the Court had no occasion to consider the

KAGAN, J., dissenting

three.

The majority's misapplication of *Brown's* three-part inquiry creates unfortunate incentives for the police—indeed, practically invites them to do what Fackrell did here. Consider an officer who, like Fackrell, wishes to stop someone for investigative reasons, but does not have what a court would view as reasonable suspicion. If the officer believes that any evidence he discovers will be inadmissible, he is likely to think the unlawful stop not worth making—precisely the deterrence the exclusionary rule is meant to achieve. But when he is told of today's decision? Now the officer knows that the stop may well yield admissible evidence: So long as the target is one of the many millions of people in this country with an outstanding arrest warrant, anything the officer finds in a search is fair game for use in a criminal prosecution. The officer's incentive to violate the Constitution thus increases: From here on, he sees potential advantage in stopping individuals without reasonable suspicion—exactly the temptation the exclusionary rule is supposed to remove. Because the majority thus places Fourth Amendment protections at risk, I respectfully dissent.

question here: What happens when an unconstitutional act in fact leads to a warrant which then leads to evidence?

EXHIBIT "B"

IDAHO DEPARTMENT OF CORRECTION
Standard Agreement of Supervision

1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Department of Correction (IDOC). LF
2. **Laws and Conduct:** The defendant shall obey all laws, municipal, county, state and federal. The defendant shall comply with all lawful requests of the IDOC district manager, section supervisor, or probation and parole officer (PPO). The defendant shall be completely truthful at all times with the IDOC district manager, section supervisor, or PPO. During any contact with law enforcement personnel the defendant shall provide his identity, notify the law enforcement officer(s) that he is under supervision and provide the name of his supervising PPO. The defendant shall notify his supervising PPO of the contact within 24 hrs. LF
3. **Residence:** The defendant shall not change residence without first obtaining permission from the IDOC district manager, section supervisor, or PPO. LF
4. **Reporting:** The defendant shall report to his supervising PPO as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the IDOC. LF
5. **Travel:** The defendant shall not leave the state of Idaho or the assigned district without first obtaining permission from his supervising PPO. LF
6. **Extradition:** If the defendant does leave the state of Idaho, with or without permission, the defendant does hereby waive extradition to the state of Idaho and will not contest any effort to return the defendant to the state of Idaho. LF
7. **Employment or Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his supervising PPO. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the defendant's specific situation and as approved by his supervising PPO. LF
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form and will not enter any establishment where alcohol is a primary source of income. LF
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him by a licensed physician or dentist. The defendant shall use medications only in the manner prescribed by his physician or dentist. LF
10. **Firearms or Weapons:** The defendant shall not purchase, carry, possess or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to, knives with blades over two and one half inches (2 1/2") in length; switch-blade knives; brass knuckles; swords; throwing stars; and other martial arts weapons. Any weapons or firearms seized will be forfeited to IDOC for disposal. The defendant shall not reside in any location that contains firearms unless the firearms are secured and this portion of the rule is exempted in writing by the district manager. LF
11. **Search:** The defendant shall consent to the search of his person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority. The search will be conducted by the IDOC district manager, section supervisor, or PPO or law enforcement officer. The defendant waives his Fourth Amendment rights concerning searches. LF
12. **Cost of Supervision:** The defendant shall comply with Idaho Code, Section 20-225, which authorizes the IDOC to collect a cost of supervision fee. The defendant shall make payments as prescribed in his monthly cost of supervision bill. LF
13. **Associations:** The defendant shall not associate with any person(s) designated by the IDOC district manager, section supervisor, or PPO. LF
14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by the IDOC district manager, section supervisor, or PPO or law enforcement officer. The defendant may be required to obtain tests at his own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. LF
15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the court or IDOC district manager, section supervisor, or PPO. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the court or IDOC district manager, section supervisor, or PPO. The defendant may be required to attend treatment, counseling or other programs at his own expense. LF

16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the PPO. The defendant shall allow the PPO to enter his residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alert them to the PPO's visit. The defendant shall not keep any vicious or dangerous dog or other animal on or in his property that the PPO perceives as an impediment to accessing the defendant or his property. LF

17. **Absconding Supervision:** The defendant will not leave or attempt to leave the state of Idaho or the assigned district in an effort to abscond or flee supervision. The defendant will make himself available for supervision and program participation as instructed by his supervising PPO and will not actively avoid supervision. LF

18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner ordered by the court. The defendant shall make payments as ordered by the court or as designated in a payment agreement and promissory note to be completed with the IDOC district manager, section supervisor, or PPO and signed by the defendant. LF

19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement except as allowed per IDOC standard operating procedure (SOP) 701.04.02.019, *Informants: Confidential*. LF

20. **Intrastate or Interstate Violations:** If allowed to transfer supervision to another district or state, the defendant agrees to accept any violation allegation documents purportedly submitted by the agency or officer supervising the defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents. LF

21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific district office that provides his supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific district office. All additional rules will be explained to the defendant and provided to him, in writing, by the IDOC district manager, section supervisor, or PPO. LF

I have read, or have had read to me, the above agreement. I understand and accept these conditions of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing authority.

Defendant's Signature:

Witness's Signature:

Date:

Date:



IDAHO DEPARTMENT OF CORRECTION

C. L. "BUTCH" OTTER
GOVERNOR

KEVIN KEMPF
DIRECTOR

District Two Additional Rules

1. I will not go into any gaming establishment without first obtaining permission from my supervising officer. LF
2. I will not associate with any person who is engaged in illegal activities, is on probation or parole, or who has been convicted of a felony crime, without prior authorization of my supervising officer. LF
3. I understand my curfew is from 10pm-6am, where I must be at my residence during these times, with some exceptions that have already been explained to me. My supervising officer can raise or lower my curfew, based upon my actions, at my supervising officer's discretion. LF
4. I understand that if I owe my PSI fee, and/or if my Cost of Supervision reaches \$120, my curfew automatically reduces to 8pm-6am (with exceptions that have already been explained to me.) My curfew does not revert to its prior time until my Cost of Supervision and/or PSI fee are paid in full. LF
5. I will not accept any loan without first obtaining the permission of my supervising officer. LF
6. I will ensure all persons in my presence have valid photo identification at all times. LF
7. I will obey all rules of any city or county jail in which I am incarcerated. LF
8. I will not visit any person in any jail or prison without first obtaining written permission from my supervising officer. LF
9. I will fill any prescriptions I receive in the State of Idaho only. LF

I have read, or have had read to me, the above agreement. I understand and accept these additional rules of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing authority.

[Signature]
Offender Signature

4-20-15
Date

[Signature]
Witness Signature

4/20/15
Date

COURT MINUTES

CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Hearing type: Status Conference

Hearing date: 9/9/2016

Time: 9:12 am

Judge: Jay P. Gaskill DJ

Courtroom: 3

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 3

Defense Attorney: Rick Cuddihy PD 2016

Prosecutor: Justin Coleman

- 91253 Defendant present, in custody, with counsel.
- 91346 Mr. Cuddihy addresses the Court and Defendant will admit Summary 5 & 6 and the State will withdraw the remaining allegations.
- 91412 Court addresses Defendant re: rights.
- 91438 Report of Violation dated 3-1-16 filed in CR13-7217.
- 91506 Court Order Condition 13, Summary #5—Defendant admits.
- 91528 Agreement of Supervision Condition 17, Summary #6—Defendant admits.
- 91530 Court accepts admissions and grants State's motion to withdraw remaining allegations.
- 91624 Mr. Cuddihy addresses the Court re: disposition.
- 91812 Mr. Coleman addresses the Court re: disposition.
- 91904 Defendant addresses the Court.
- 92055 Court addresses Defendant.
- 92234 Court reinstates probation, credit for time already served (since 3-4-16 190 days). Defendant to report immediately to Probation and Parole.

- 92333 Mr. Cuddihy addresses the Court re: CR16-1591.
- 92340 Court releases Defendant on his OR in CR16-1591.
- 92354 Court recess.

FILED

2016 SEP 16 AM 11 19

PATTY O. WEEKS
CLERK OF DISTRICT COURT
[Signature]
DEPUTY

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Attorneys for Defendant

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

STATE OF IDAHO,	)	Case No. CR16-1591
)	
Plaintiff,	)	DEFENDANT'S RESPONSE
v.	)	TO STATE'S MOTION
	)	FOR RECONSIDERATION
LARRY G. FENTON,)	
)	
Defendant.)	

COMES NOW the defendant, by and through his attorney, Richard M. Cuddihy and objects to the State's Motion for Reconsideration based upon the following argument.

ARGUMENT

Here, the State argues since Mr. Fenton was on probation this Court should apply the attenuation doctrine to the illegal seizure as articulated by the U. S. Supreme Court in *Utah v. Strieff*. In *Strieff* the Court found a pre-existing arrest warrant for the driver was "intervening circumstances" sufficient to apply the attenuation doctrine and not suppress the initial illegal seizure of the person. The State argues here Mr. Fenton's status as a probationer is akin to a person with an arrest warrant. However, being on probation is not the same having an arrest

warrant. A person with an arrest warrant must be seized. A probationer may only be seized upon reasonable suspicion.

While Idaho Courts have applied the "attention doctrine" to illegal seizures of defendants with a valid arrest warrant; Idaho Courts have not applied the "attenuation doctrine" to illegal searches and/or detentions of probationers.

"Relying upon *United States v. Green*, 111 F.3d 515 (7th Cir. 1997), the Supreme Court held that the discovery of an arrest warrant can, in certain circumstances, constitute an intervening circumstance that dissipates the taint of an otherwise illegal seizure of a person. *Page*, 140 Idaho at 846, 103 P.3d at 459. The Court applied the "attenuation doctrine," which permits use of evidence that would normally be suppressed as fruit of police misconduct if the causal chain between the misconduct and the discovery of the evidence has been sufficiently attenuated." *State v. Bigham*, 141 Idaho 732, 734 (Ida.App. 2005).

Here, the State also argues that California Courts do not impose a "reasonable suspicion" requirement on the ability to search probationers. However, Idaho Courts have not interpreted this issue the same as the California Courts. In *State v. Pinson*, 104 Idaho 227, 233, 657 P.2d 1095, 1101 (Ct.App.1983), this Court, considering warrantless probation searches, held that a probation officer could make a warrantless search if: (1) he has reasonable grounds to believe that the probationer has violated some condition of probation, and (2) the search is reasonably related to disclosure or confirmation of that violation. The Court also ruled that a search could not be based on a mere hunch unsupported by any factual basis." See *State v. Prestwich*, 112 Idaho 590 (Ida.App.1987).

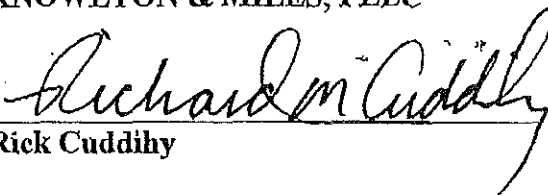
Here, the officer absent any articulable suspicion illegally detained Mr. Fenton. After completing the purpose of the stop and issuing a citation, the officer learned from Mr. Fenton about his probationary status. Instead of releasing Mr. Fenton, the officer continued to detain Mr. Fenton absent any reasonable suspicion that Mr. Fenton was in violation of his probation or

the law. The prolonged detention was absent any reasonable suspicion was also illegal. Both the initial detention of Mr. Fenton and expanding the length of the detention were constitutional violations.

Since Idaho Courts have not found a defendant's probation status as an intervening circumstance pursuant to the attenuation doctrine concerning an illegal seizure; this Court should deny the State's Motion for Reconsideration.

DATED this 16th day of September, 2016.

KNOWLTON & MILES, PLLC


Rick Cuddihy

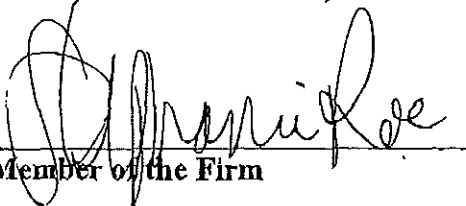
CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 16th day of September, I caused a true and correct copy of the foregoing **Response** to be:

faxed
to the following:

Nez Perce County Prosecuting Attorney
PO Box 1267
Lewiston, Idaho 83501
Fax: 208-799-3080

KNOWLTON & MILES, PLLC


Member of the Firm

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar #4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

FILED

2016 SEP 26 PM 3 53

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,	)	District Court No. CR-2016-1591
)	
Plaintiff-Appellant,	)	Supreme Court No.
)	
vs.	)	NOTICE OF APPEAL
)	
LARRY GLENN FENTON, JR.,)	
)	
Defendant-Respondent.)	

TO: LARRY GLENN FENTON, JR., THE ABOVE-NAMED
RESPONDENT, MACKENZIE WELCH, KNOWLTON & MILES, PLLC, P. O.
BOX 717, LEWISTON, IDAHO 83501 AND THE CLERK OF THE ABOVE-
ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the
above-named respondent to the Idaho Supreme Court from the OPINION AND
ORDER ON DEFENDANT'S MOTION TO SUPPRESS, entered in the above-

entitled action on the 17th day of August, 2016, the Honorable Jay P. Gaskill presiding. A copy of the judgment or order being appealed is attached to this notice, as well as a copy of the final judgment if this is an appeal from an order entered after final judgment.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(7), I.A.R.

3. Preliminary statement of the issue on appeal: Whether the district court erred when it concluded that a probation search was tainted by a prior stop without reasonable suspicion.

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript:

Hearing on the defendant's motion to suppress held August 4, 2016 (Nancy Towler court reporter, estimated number of pages unknown).

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:

NANCY TOWLER
P. O. Box 896
Lewiston, ID 83501

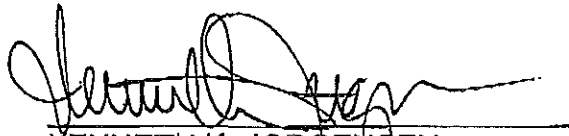
(b) That arrangements have been made with the Nez Perce County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 26th day of September, 2016.


KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 26th day of September, 2016, caused a true and correct copy of the foregoing NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JAY P. GASKILL
Nez Perce County District Court
P. O. Box 896
Lewiston, ID 83501

DANIEL SPICKLER
Nez Perce County Prosecuting Attorney
P. O. Box 1267
Lewiston, ID 83501

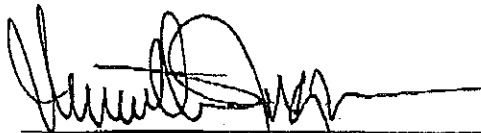
JUSTIN COLEMAN
Nez Perce County Prosecuting Attorney's Office
P. O. Box 1267
Lewiston, ID 83501

MACKENZIE WELCH
KNOWLTON & MILES, PLLC
P. O. Box 717
Lewiston, ID 83501

NANCY TOWLER
P. O. Box 896
Lewiston, ID 83501

HAND DELIVERY

STEPHEN W. KENYON
CLERK OF THE COURT
IDAHO SUPREME COURT
P. O. Box 83720
Boise, ID 83720-0101



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd

AUG. 17. 2016 11:08AM DISTRICT COURT
TO: NPC PROSECUTER

NO. 4893 P. 1

FILED

2016 AUG 17 AM 11 04

PATTY O. VEECH
CLERK OF THE COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

v.

LARRY GLENN FENTON, JR.,

Defendant.

CASE NO. CR 2016-1591

OPINION AND ORDER ON
DEFENDANT'S MOTION TO
SUPPRESS

This matter came before the Court on the Defendant's Motion to Suppress. The State of Idaho was represented by Justin Coleman, Deputy Prosecuting Attorney for Nez Perce County. The Defendant was represented by Mackenzie Welch, of the firm Knowlton & Miles. Evidence was presented to the Court on August 4, 2016. The Court allowed the parties additional time to submit briefing. The Court, being fully advised in the matter, hereby renders its decision.

FACTS AND PROCEEDINGS

On February 28, 2016, Officer Nick Eylar of the Lewiston Police Department was on patrol when he saw a red/maroon GMC Yukon that he recognized from previous narcotic activity. Officer Eylar observed the Yukon enter the parking lot of A&B Foods, and then when the vehicle left the parking lot there was a white Grand Prix following it out of the parking lot. Officer Eylar testified that in his experience drug activity was common at the A&B Foods parking lot.

Officer Eylar followed the vehicles as they traveled south on 8th Street and then west on Southway, until the vehicles both entered into the Zip Trip gas station. The Yukon parked in a parking stop at the gas station and the Grand Prix parked at the gas pumps. Officer Eylar also parked in a parking spot and he was met there by Officer Stormes. The officers discussed the vehicles and then Officer Stormes left the gas station parking lot. Shortly thereafter, the white Grand Prix left the parking lot and Officer Eylar contacted Officer Stormes by radio to inform him. Officer Eylar stayed and continued to observe the Yukon.

Officer Stormes testified that after he was informed the white Grand Prix left the gas station, he observed the car driving north on Snake River Avenue. Officer Stormes estimated he was about 100 yards, or 10 car lengths, away from the white Grand Prix when he contacted dispatch to check the license number of the car to see if the registration was current. Officer Stormes first reported to dispatch a license number "Ida" 18028, which dispatch returned as record not found. Officer Stormes then asked dispatch to run the same plate number, but change the last number to the letter "D". This number also returned as record not found.

Officer Stormes caught up with the white Grand Prix and the intersection of Snake River Avenue and the Prospect Grade. He decided to initiate a traffic stop in order to investigate the whether the car registration was up to date. Officer Stormes informed dispatch he was making the stop and he repeated the plate number for a third time, this time stating "Nora" 18028. Dispatch did not respond on this plate number before Stormes initiated the traffic stop. Later in the day, well after the stop was completed, Stormes found out that dispatch did get a return on the third plate number, which was the correct plate number.

Officer Stormes contacted the driver of the white Grand Prix, who identified himself as Larry Fenton, Jr. Fenton provided Officer Stormes with the registration information for the car and Officer Stormes was able to verify that the vehicle was currently registered, thus, the registration concerns were taken care of. Officer Stormes also found out that Fenton did not have a current driver's license or proof of insurance, so Officer Stormes decided to write citations for these two violations.

Officer Stormes returned to the vehicle to issue the citations to the driver. He handed the first citation to Fenton, and at that time, Fenton informed him that he was on probation. Stormes asked Fenton the name of the probation officer, and when Stormes heard the name, he was able to discern that Fenton was on felony probation. Based on this information, Officer Stormes did not issue the second citation, but instead returned to his patrol car and contacted the probation office. Officer Stormes explained to the probation officer that he had stopped Fenton for a traffic infraction and also relayed to the probation officer the observations Officer Eylar had made of the two vehicles at A&B Foods and the Zip Trip gas station.

The probation officer stated to Officer Stormes that she would come to the stop and search the vehicle based upon the information Stormes had provided. Officer Stormes returned to the Grand Prix and gave Fenton the second citation; he informed Fenton that the probation officer was coming to the stop and that she wanted him to stand by, Tr. at 24. Officer Stormes turned the overhead lights off on his patrol vehicle and stayed near Fenton's vehicle with his partner until the probation officer arrived on scene approximately ten minutes later. Officer Stormes testified that he did not inform Fenton that he was free to leave; however, Stormes believed Fenton was free to leave because if Fenton chose to leave there wasn't anything Stormes could have done to stop him because the traffic stop was concluded. Tr. at 24.

When the probation officer arrived she asked Fenton to step out of the vehicle and he was handcuffed for officer safety reasons. Officer Stormes assisted the probation officer with the search of the vehicle. During the search methamphetamine was located in the vehicle.

ANALYSIS

The Defendant asserts he was illegally stopped, searched, and seized because the facts available to Officer Stormes at the time he detained him did not give rise to a reasonable suspicion that criminal activity was afoot. The Fourth Amendment to the United States Constitution protects citizens against unreasonable search and seizure. U.S. CONST. amend. IV. Evidence obtained in violation of this amendment generally may not be used as evidence against the victim of an illegal government action. *State v. Pagn*, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004); see also *Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 416, 9 L.Ed.2d 441, 453 (1963). "When a defendant moves

to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the government carries the burden of proving that the search or seizure in question was reasonable." *State v. Bishop*, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009); citing *State v. Anderson*, 140 Idaho 484, 486, 95 P.3d 635, 637 (2004). Brief investigatory detentions must be reasonable under the Fourth Amendment. See *Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 1878, 20 L.Ed.2d 889, 904 (1968).

The issue in this case is whether Officer Stormes had reasonable, articulable suspicion to stop the Defendant's vehicle based upon information he received from dispatch after he provided the incorrect license number to be checked. The State contends that Officer Stormes had reasonable articulable suspicion that a traffic violation had occurred or that he needed to investigate further regarding the potential registration violation. Specifically, the State contends that at the time the stop was conducted, the officer had reasonable articulable suspicion to support the stop.

The Defendant relies on *State v. Morgan*, 154 Idaho 109, 294 P.3d 1121 (2013) to assert that there was not reasonable suspicion in this case. In *Morgan*, the officer stopped a vehicle driving without a front license plate, which would be illegal if the vehicle was registered in Idaho pursuant to I.C. § 49-428. *Id.* at 111, 294 P.3d at 1123. This requirement does not extend to vehicles registered in other states, which was recognized by the officer during cross-examination. *Id.* at 112, 294 P.3d at 1124. The officer had also testified that it appeared the driver was either very lost or trying to avoid him. The Court found these observations were not sufficient to create reasonable, articulable suspicion.

The police officer's suspicion of Morgan was based primarily on a series of four left-hand turns that Morgan made. Although the officer stated that

he believed Morgan may have been trying to avoid him, the officer provided no factual justification for that belief. Absent other circumstances, driving around the block on a Friday night does not rise to the level of specific, articulable facts that justify an investigatory stop.

Id.

The case at hand is similar to *Morgan* where the police officer believed there was a violation, but then learned later that there was not. In the case at hand, the officer checked the vehicle registration information and confirmed the car was lawfully registered. The State contends that a police officer's reasonable, good-faith mistake does not violate a person's Fourth Amendment rights. *Heien v. North Carolina*, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014).

As the text indicates and we have repeatedly affirmed, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 573 U.S. —, —, 134 S.Ct. 2473, 2482, 189 L.Ed.2d 430 (2014) (some internal quotation marks omitted). To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them "fair leeway for enforcing the law in the community's protection." *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). We have recognized that searches and seizures based on mistakes of fact can be reasonable. The warrantless search of a home, for instance, is reasonable if undertaken with the consent of a resident, and remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident. See *Illinois v. Rodriguez*, 497 U.S. 177, 183–186, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990). By the same token, if officers with probable cause to arrest a suspect mistakenly arrest an individual matching the suspect's description, neither the seizure nor an accompanying search of the arrestee would be unlawful. See *Hill v. California*, 401 U.S. 797, 802–805, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971). The limit is that "the mistakes must be those of reasonable men." *Brinegar, supra*, at 176, 69 S.Ct. 1302.

Id., at 536.

In the case at hand, this Court must decide whether the mistake of fact made by the officer or dispatch in the transmission of the license plate number was objectively reasonable, and thus, whether the mistake of fact will operate to forgive or validate the

Fourth Amendment violation. Mistake of fact and mistake of law were discussed in *Stone v. Horton*, 150 Idaho 300, 303, 246 P.3d 673, 676 (Ct. App. 2010).

The parties, in essence, disagree whether the officer's mistake here was one of fact or law, and the line between the two is not always easy to draw. For instance, in *McCarthy*, 133 Idaho at 124-25, 982 P.2d at 959-60, an officer stopped a vehicle for speeding but was mistaken concerning the location of a sign where the speed limit decreased from 35 mph to 25 mph. The state asserted that the mistake was one of fact (the sign's location) and we cited United States Supreme Court precedent to the effect that a mistake of fact will sometimes operate to forgive or validate a Fourth Amendment violation. However, we did not blindly accept the state's characterization of the officer's mistake as one of fact as the applicable speed limit is certainly a question of law. We noted a split of authority from other jurisdictions as to whether a mistake of law can ever be held to be reasonable and further noted that the issue in Idaho was undecided. See, e.g., *United States v. King*, 244 F.3d 736, 737-41 (9th Cir.2001) (officer's mistake of law, although reasonable, cannot form basis for reasonable suspicion to initiate traffic stop); *United States v. Twilley*, 222 F.3d 1092, 1096 n. 1 (9th Cir.2000) (officer's correct understanding of the law, together with a good-faith error regarding the facts, can establish reasonable suspicion) (also citing *McCarthy*, *supra*); compare *People v. Glick*, 203 Cal.App.3d 796, 250 Cal.Rptr. 315, 318 (1988) (mistake of fact and law treated the same) with *People v. White*, 107 Cal.App.4th 636, 132 Cal.Rptr.2d 371, 376-77 (2003) (distinguishing and disagreeing with *Glick* rationale). See also *State v. Young*, 144 Idaho 646, 649 n. 1, 167 P.3d 783, 786 n. 1 (Ct.App. 2006); *State v. Schmadeka*, 136 Idaho 595, 599 n. 3, 38 P.3d 633, 637 n. 3 (Ct.App.2001). Ultimately, in *McCarthy* we held that the two types of mistakes were "inextricably connected," but found it unnecessary to decide whether a mistake of law is unreasonable per se because, were that the correct characterization of the mistake, we concluded that the officer's mistake was not objectively reasonable. *McCarthy*, 133 Idaho at 125, 982 P.2d at 960.

Id. at 303, 246 P.3d at 676.

In this matter, Officer Stormes candidly testified that he was a significant distance from the car when he first read the license plate number to dispatch. It is clear he was not certain regarding the numbers he read off in his second communication with dispatch, where he suggested the last number may be the letter "B" rather than the number "8". Officer Stormes provided dispatch with a license number three times based upon the

uncertainty of the plate number. Therefore, based upon the facts of this case, this Court cannot find the officer's mistake was objectively reasonable, and thus, created a reasonable, articulable basis for the traffic stop.

A similar issue was addressed in the State of Washington, in *State v. Craci*, 170 Wash. App. 534, 319 P.3d 80 (2014). In this case, an officer ran the defendant's license plate number as part of a routine check during his nighttime patrol. The officer erroneously entered the number as "154 YMK" instead of the actual number—"154 YDK". The incorrect number returned that the car was stolen and the officer initiated a traffic stop on this basis. *Id.* at 537-538, 319 P.3d at 81.

Extending *Snapp* on the facts presented here would elevate the innocence or culpability of an officer over the real concern of article I, section 7: the right of citizens to be protected from unwarranted invasions and intrusions. As our Supreme Court explained in *Day*, "[w]e suppress [unlawfully seized] evidence not to punish the police, who may easily have erred innocently. We suppress unlawfully seized evidence because we do not want to become knowingly complicit in an unconstitutional exercise of power. See generally *Olmstead v. United States*, 277 U.S. 438, 484-85, 48 S.Ct. 564, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting)." 161 Wash.2d at 894, 168 P.3d 1265 (emphasis added).

This means that while police may sometimes *reasonably* rely on incorrect information provided by third parties, they may not *reasonably* rely on their own mistaken assessment of material facts. See, e.g., *State v. Mance*, 82 Wash.App. 539, 918 P.2d 527 (1996) (holding that police may not rely upon information that is incorrect or incomplete through their fault); *State v. O' Cain*, 108 Wash.App. 542, 51 P.3d 733 (2001) (holding that a police dispatch indicating vehicle driven by defendant had been reported stolen did not provide reasonable suspicion for investigatory stop); *State v. Sandholm*, 95 Wash.App. 846, 848, 980 P.2d 1292 (1999) (noting that "exclusive reliance on the WACIC stolen vehicle report would not have provided sufficient basis for the State to establish probable cause to arrest"); cf. *State v. Gault*, 152 Wash.2d 64, 71, 74, 93 P.3d 872 (2004) (distinguishing officers' right to rely on erroneous license information from Department of Licensing, which is not a police agency and whose information is presumptively reliable, from information subject to the "fellow officer rule").

Id. at 542-43, 319 P.3d at 83-84.

While this Court is not bound by the determination in *Creed*, it is instructive in the case at hand. In this case, Officer Stonnes testified he provided the incorrect license number to dispatch. Officer Stonnes' distance from the Defendant's vehicle may have been a factor in this error. It is clear in this case, that other than the error regarding the license plate number, the Defendant was driving in a lawful manner. The officer did not observe any other traffic infractions. Further, Officer Eylar's observations of the vehicle at the grocery store and gas station also did not give rise to a reasonable suspicion to conduct a traffic stop. In this case, the only claim of reasonable articulate suspicion is based upon the officer's incorrect recitation of the license plate number. This, without more, is not a sufficient basis for the traffic stop. Therefore, the Defendant's motion to suppress is granted.

CONCLUSION

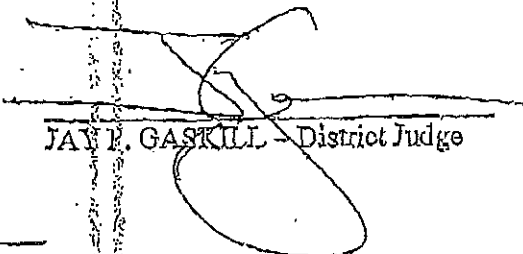
Based upon the foregoing analysis, the defendant's motion to suppress is granted.

ORDER

The Defendant's Motion to suppress is hereby GRANTED.

IT IS SO ORDERED.

DATED this 17th day of August 2016.


 JAY P. GASKILL - District Judge

¹Officer Eylar did recognize the GMC Yukon as a vehicle owned by someone who had been involved in other narcotic investigations. However, the fact that this vehicle and the Defendant's vehicle were seen, in the middle of the day, at a local grocery store and a gas station was not sufficient evidence to give rise to a traffic stop, or Officer Eylar would have presumably stopped the vehicles at the gas station. These facts are similar to those of the driver going around the block in *State v. Morgan*, 154 Idaho 109, 294 P.3d 1121 (2013).

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS are:

Excell
hand delivered via court basket, or

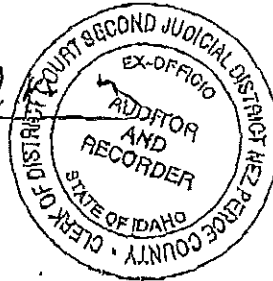
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this day of August, 2016, to:

Rick Cuddihy
Mackenzie Welch
P O Drawer 717
Lewiston ID 83501

Justin Coleman
Deputy Prosecutor
P O Box 1267
Lewiston ID 83501

PATTY O. WEEKS, CLERK

By [Signature]
Deputy



FILED

2016 SEP 30 PM 2:09

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 v.)
)
 LARRY GLENN FENTON, JR.,)
)
 Defendant.)
 _____)

CASE NO. CR 2016-1591

OPINION AND ORDER ON
STATE'S MOTION TO
RECONSIDER

This matter came before the Court on the State's Motion to Reconsider this Court's order granting the Defendant's motion to suppress, filed, August 17, 2016. The State of Idaho was represented by Justin Coleman, Deputy Prosecuting Attorney for Nez Perce County. The Defendant was represented by Mackenzie Welch, of the firm Knowlton & Miles. The matter was submitted to the Court on the briefs filed by the parties. The Court, being fully advised in the matter, hereby renders its decision.

The facts of this case are set forth in detail in the suppression order, and thus, will not be repeated here. The motion to suppress was granted because the officer did not have reasonable, articulable suspicion that a traffic infraction had occurred, beyond the officer's error in reciting the license plate number to dispatch.

The State asks this Court to reconsider the ruling based upon the attenuation doctrine. The State relies on a recent United States Supreme Court case, *Utah v. Strieff*, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016) in support of the argument that evidence from the search should have been allowed even in the face of an impermissible stop. In this case, the Court considered how the attenuation doctrine applies where an unconstitutional detention leads to the discovery of a valid arrest warrant. *Id.* at 2060.¹

In *Utah v. Strieff*, law enforcement received an anonymous tip that reported drug activity at a particular residence. Law enforcement began intermittent surveillance of the residence, and the officer noted visitors who left a few minutes after arriving at the house. Strieff visited the house in this manner, so an officer followed him as he left the house and detained him at a convenience store parking lot. As part of the stop, the officer relayed Strieff's information to dispatch, who informed the officer he had an outstanding warrant. Strieff was arrested pursuant to the warrant, and in a search incident to arrest, methamphetamine was found on his person. *Id.* at 2059-2060.

The Court considered three factors regarding the attenuation doctrine: first the temporal proximity between the unconstitutional conduct and the discovery of evidence; second the presence of intervening circumstances, and third, the purpose and flagrancy of

¹The Court noted there was a difference in application of the attenuation doctrine:

We granted certiorari to resolve disagreement about how the attenuation doctrine applies where an unconstitutional detention leads to the discovery of a valid arrest warrant. 576 U.S. —, 136 S.Ct. 27, 192 L.Ed.2d 997 (2015). Compare, e.g., *United States v. Green*, 111 F.3d 515, 522–523 (C.A.7 1997) (holding that discovery of the warrant is a dispositive intervening circumstance where police misconduct was not flagrant), with, e.g., *State v. Morales*, 297 Kan. 397, 415, 300 P.3d 1090, 1102 (2013) (assigning little significance to the discovery of the warrant).

Utah v. Strieff, 136 S. Ct. 2056, 2060, 195 L. Ed. 2d 400 (2016).

the official misconduct. *Id.* 2061–2062. The Idaho Supreme Court set forth these same factors in *State v. Page*, 140 Idaho 841, 103 P.3d 454 (2004).

Generally, evidence obtained as the result of an unlawful search may not be used against the victim of the search. *Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 416, 9 L.Ed.2d 441, 453 (1963). To determine whether to suppress evidence as “fruit of the poisonous tree,” the court must inquire whether the evidence has been recovered as a result of the exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. *Green*, 111 F.3d at 520. The attenuation doctrine—whether the causal chain has been sufficiently attenuated to dissipate the taint of the unlawful conduct—has been used to support the admission of evidence, including for example, voluntary confessions obtained after unlawful arrests. *Id.* at 522 (citing *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975)). There are three factors for a court to consider when determining whether unlawful conduct has been adequately attenuated. *Id.* at 521 (citing *Brown*, 422 U.S. at 603–04, 95 S.Ct. at 2261–62, 45 L.Ed.2d at 426–427). The factors are: (1) the elapsed time between the misconduct and the acquisition of the evidence, (2) the occurrence of intervening circumstances, and (3) the flagrancy and purpose of the improper law enforcement action. *Id.*

Id. at 846, 103 P.3d at 459. In *Page*, an officer discovered an outstanding warrant for the defendant after unlawfully detaining him. The Court determine the discovery of the outstanding warrant was an intervening circumstance that allowed the officer to continue to detain and eventually arrest and search the defendant. *Id.* at 846-847, 267 P.3d at 1284-1285.

The Idaho Court of Appeals considered the attenuation doctrine in *State v. Liechty*, 152 Idaho 163, 267 P.3d 1278 (Ct. App. 2011). In this case, officers observed a vehicle in an usual location with respect to nearby homes. The officer approached the vehicle on foot and noted a sleeping bag covering the rear window. The officer could see Liechty sitting in the driver’s seat, with something in his hand. The officer was able to observe this even though there was a shade on the passenger side window he was looking through. Liechty leaned over to the passenger window to remove the shade, and at that

moment the officer opened the passenger door to make sure Liechty did not have a weapon in his hand. Standing in the open passenger doorway, the officer asked Liechty what he was doing, and if he had weapons. Liechty responded there was a kitchen knife under the backseat and the officer ordered him out of the vehicle and handcuffed him. The knife was located, Liechty was charged with possession of a concealed weapon. Methamphetamine was found when the car was searched. *Id.* at 165-166, 267 P.3d at 1280-1281.

The Court of Appeals considered the attenuation doctrine and found it was not applicable to the case.

The state concedes that the time between the seizure and the discovery of methamphetamine was short. Regarding the second factor, the state asserts that the officer did not learn about the methamphetamine based on his seizure of Liechty. Rather, the state argues, Liechty's clothing and the presence of women's underwear and binoculars in the vehicle, coupled with the officer's routine questions, were intervening circumstances that resulted in the discovery of the methamphetamine. Liechty's seizure occurred from the moment that the officer opened the door, stood in the open passenger doorway, and began questioning Liechty. Liechty's arrest led to the discovery of the methamphetamine, and his arrest was the direct result of questions posed by the officer *while standing in the open passenger doorway*. Liechty's admission that there was a weapon in the vehicle was not the product of some other intervening circumstance, nor was there an arrest or search warrant that would have allowed for the search of Liechty's vehicle despite the officer's conduct. While we acknowledge that the officer did not appear to act flagrantly or with an improper purpose, we cannot conclude that the attenuation doctrine applies here.

Id. at 170, 267 P.3d at 1285.

In the case before this Court, the Defendant was stopped based upon the officer's error in stating his license plate number. There were no other factors which supported the traffic stop. After the officer confirmed the vehicle was registered, he issued citations because the Defendant did not have a current driver's license or insurance. When issuing

the citations, the officer learned the Defendant was on probation, so the officer held back one citation, and returned to his patrol car to contact the probation officer. Based upon that communication, the probation officer asked the officer to inform the Defendant that she was coming to search the vehicle. The officer issued the second citation and informed the Defendant that the probation officer was on the way. Once the probation officer arrived, the vehicle was searched and drugs were found.

The State asks the Court to consider the Defendant's status as a probationer as akin to a person with an outstanding search warrant. This Court declines to do so. While a probationer may have agreed to a diminished expectation of privacy in exchange for being placed on probation, this is not equivalent to an active search warrant, which authorized the immediate arrest of an individual. The Court finds the case at hand distinguishable from *Utah v. Strieff* and *State v. Page*. The matter is similar to *State v. Liechty*. In this case, but for the officer's error, the Defendant's vehicle would not have been stopped, and the probation office would not have been contacted—thus a search would not have occurred. Therefore, the State's motion for reconsideration is denied.

ORDER

The State's Motion for Reconsideration is hereby DENIED.

IT IS SO ORDERED.

DATED this 30th day of September 2016.



JAY P. GASKILL – District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON STATE'S MOTION TO RECONSIDER was:


FAXED, or

_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 30th day of September, 2016, to:

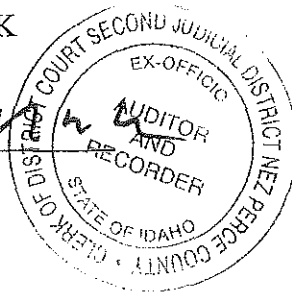
Mackenzie Welch
Fax: (208) 746-0118

Justin Coleman
Fax: (208) 799-3080

PATTY O. WEEKS, CLERK

By 

Deputy





Richard M. Cuddihy ISB NO. 7064
KNOWLTON & Miles, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Fax: (208) 746-0118

FILED

2016 OCT 7 PM 4 16

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
Patty Weeks
DEPUTY

Attorney for Defendant

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 LARRY FENTON, JR.,)
)
 Defendant.)

Case No. CR 16-1591

MOTION TO APPOINT STATE
APPELLATE PUBLIC DEFENDER

COMES NOW, the above-named Defendant, by and through his Attorney of record,
Richard M. Cuddihy, and hereby moves the Court to appoint the Office of the State Appellate
Public Defender to represent the above named Defendant in his pending appeal to the Idaho
Supreme Court/Court of Appeals, as the Defendant has been declared indigent and is currently
represented by the public defenders office. This Motion is based on the records and files of this
case.

DATED this 7th day of October, 2016.

Richard M Cuddihy
Richard M. Cuddihy

MOTION TO APPOINT STATE
APPELLATE PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 7th day of October, 2016, I caused a true and correct copy of the foregoing Motion to Appoint State Appellate Public Defender to be:

Faxed to:

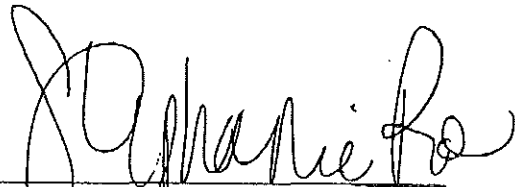
Nez Perce County Prosecutor
P.O. Box 1267
Lewiston, Idaho 83501
Fax: 208-799-3080

Mailed to:

State Appellate Public Defender
3647 N Harbor Lane
Boise, Idaho 83703-6914

Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

Larry G. Fenton, Jr.
RISING SUN
322 Adams Lane
Lewiston, ID 83501


A member of the firm

FILED

2016 OCT 11 PM 1:55

~~PATTY O. WEEKS~~
~~CLERK OF THE DIST. COURT~~
DEPUTY

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

STATE OF IDAHO,)

Plaintiff,)

vs.)

LARRY FENTON, JR.,)

Defendant.)

Case No. CR 16-1591

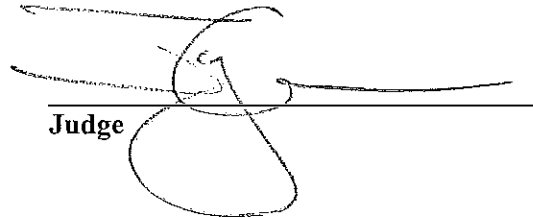
ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER

After reviewing the records and files herein and after considering the Motion to Appoint State Appellate Public Defender and being fully advised in the premises.

IT IS HEREBY ORDERED that the Office of the State Appellate Public Defender is appointed to represent the above named Defendant in the pending appeal to the Idaho Supreme Court/Court of Appeals.

IT IF FURTHER ORDERED that Richard Cuddihy of Knowlton & Miles, PLLC, shall continue to represent the above-named in all other aspects of this case, subject to the further order of this court.

DATED this 11th day of October, 2016.



Judge

ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER

Original

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2016, I caused a true and correct copy of the foregoing to be delivered to the following:

Mailed to the following:

State Appellate Public Defender
P.O. Box 2816
Boise, Idaho 83701

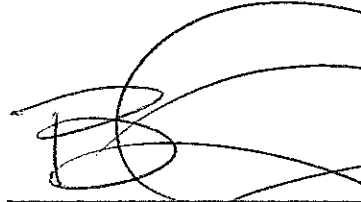
Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

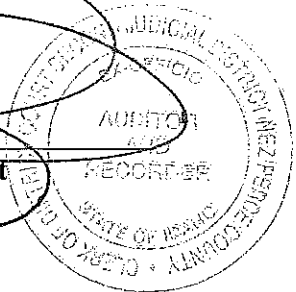
Larry G. Fenton, Jr.
RISING SUN
322 Adams Lane
Lewiston, ID 83501

Sent Via Valley Messenger Service

Richard Cuddihy
Knowlton & Miles, PLLC
312 17th Street
Lewiston, Idaho 83501

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501


Clerk of the District Court



IN THE SUPREME COURT OF THE STATE OF IDAHO

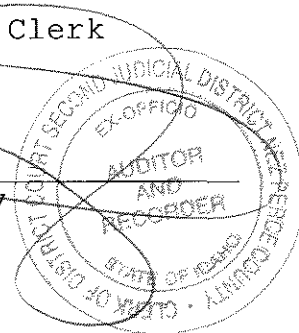
STATE OF IDAHO,)	
)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 44546
	)	CERTIFICATE OF EXHIBITS
v.)	
)	
LARRY GLENN FENTON, JR.,)	
)	
Defendant-Respondent.)	

I, Patty O. Weeks, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, do hereby certify that the following is a list of the exhibits offered or admitted and which have been lodged with the Supreme Court or retained as indicated.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Court this 22nd day of November 2016.

PATTY O. WEEKS, Clerk

By [Signature]
Deputy



CERTIFICATE OF EXHIBITS

Exhibit Summary

Case: CR-2016-0001591

State of Idaho vs. Larry Glenn Fenton Jr

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	State's exhibit 1 - ISP Forensic Services Controlled Substance Analysis Report. Admitted 5/18/16	Admitted	Exhibit Vault		
		Assigned to:	Coleman, Justin J., 8023		

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
) SUPREME COURT NO. 44546
 Plaintiff-Appellant,)
) CLERK'S CERTIFICATE
)
 v.)
)
)
 LARRY GLENN FENTON, JR.,)
)
)
 Defendant-Respondent.)

I, Patty O. Weeks, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That all documents, x-rays, charts, and pictures offered or admitted as exhibits in the above-entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record. The above exhibits will be retained in the possession of the

CLERK'S CERTIFICATE

undersigned, as required by Rule 31 of the Idaho Appellate Rules.

2. That the following will be submitted as exhibit to the record:

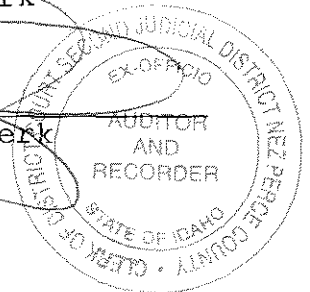
- o Transcript of Preliminary Hearing filed 6/1/2016
- o Transcript of Pretrial Motion Hearing filed 8/25/2016
- o DVD attached to Motion to Suppress and Brief in Support filed 6/24/2016

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court this 22nd day of November 2016.

PATTY O. WEEKS, Clerk

By 

Deputy Clerk




IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 44546
	)	CERTIFICATE OF SERVICE
v.)	
)	
LARRY GLENN FENTON, JR.,)	
)	
Defendant-Respondent.)	

I, Patty O. Weeks, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that copies of the Clerk's Record were placed in the United States mail and addressed to Lawrence G. Wasden, Attorney General, P. O. Box 83720, Boise, Idaho 83720-0010 and Eric D. Frederickson, SAPD, P. O. Box 2816, Boise, ID 83701 this 23rd day of November, 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 23rd day of November, 2016.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

By  Deputy Clerk

